Introduction

*Shaping Legal Emotions in Blackstone’s England*

In the best-selling *Commentaries on the Laws of England* (1765–69), William Blackstone—most celebrated as a legal scholar, but also an occasional poet—famously took the “ungodly jumble” of English law and transformed it into an elegant, readable, and easily transportable four-volume summary. Soon after publication, it became an international monument not only to English law, but to English conceptions of justice, or to, as Blackstone put it, “the immutable laws of good and evil” (I:40).¹ The *Commentaries* was celebrated in London, carried on horseback throughout the American colonies, and relied upon across what was fast becoming the British Empire.² The first text assigned in America’s first law school at William & Mary, it has been reprinted over 200 times in the 250 years since its initial publication, spawning numerous additional abridgements and related works, but also eliciting comment in fiction and poetry, right up to the present day. In recent years, Blackstone’s work has newly interested the US Supreme Court, and has been cited in more than 8 percent of Supreme Court cases.³

Legal historians tend to regard the *Commentaries* as the first successful modern application of Enlightenment reason to English legal history. But “reason” and “history” alone do not fully explain the crucial role Blackstone’s work played in disseminating conceptions of justice throughout the British Empire. While assuming the voice of reason and claiming historical accuracy as the source of his authority, all in the service of presenting a comprehensive yet easily assimilated guide to English law, Blackstone was also deeply invested in what he thought of as “the qualities of the heart” related to law and justice (I:34).⁴ In this he reflected his own time, but also prefigured the view that our conceptions of justice are felt conceptions, interconnected to our perceptions of the beautiful and the ugly: they are arrived at emotionally and aesthetically, as well
as rationally. Blackstone—a poet who believed that “the only true and natural foundations of society are the wants and fears of individuals”—was ideally situated to condense English law into a form that evoked emotions crucial to promoting English ideas of justice (I:47). Making art of English law, he avoided the typically dry, encyclopedic overview of black letter law common in his time, and instead produced an elegantly written, emotionally saturated treatise that encouraged readers to feel as much as reason their way to justice. That feeling element in the Commentaries is the key to what might be called its “binding” power, the force that attracted readers to the Commentaries and made it an icon for English justice. In enlisting an affective aesthetics to represent English law as just, Blackstone created a moving, evocative poetics of justice with continuing influence across the Western world.

It is hard to imagine the state of English law before the Commentaries or the magnitude of Blackstone’s task. In an early poem discussed at length later in this introduction, Blackstone lamented the unpleasant “noisiness” of Westminster Hall, a noisiness that was vastly overdetermined, standing in for the incoherence of the English way of doing law during this period. As the courts struggled to cope with international trade and its companions, paper credit and a burgeoning insurance industry, the noise of the present could be seen as frightening and threatening, capable of drowning out what must have seemed like the smoother, more harmonious rhythms of the past. Thus projectors and advisors multiplied throughout the century: the law should be methodized; the law should be formalized; the law should be de-formalized because its formal practices were defeating its larger purposes; practices of lawyers should be regulated through the 1739 Society of Gentlemen Practisers; the behavior of those in the Hall should improve; Law Latin should be eliminated (it was in 1733); without Law Latin, legal pronouncements would become even more incoherent, so it should be enforced; court hand should be eliminated; court hand was a lost art. Complaints about the mysteriousness of the law coincided with an equally heartfelt and more depressing realization: the common law was a chaotic mess of inexplicably conflicting written case reports and precedents, half-remembered practices, and adages, while new statutory laws were often passed with little knowledge of precedent or history, as Blackstone commented in the introduction to the Commentaries (I:10–
Before Blackstone, others had made feeble or incomplete attempts to synthesize the English common law system, but most practitioners or “professors” of law, as they were called, relied on a compendium of knowledge drawn from a bewildering array of sources—oral, manuscript, and print. As early as 1600, lawyers were calling for organizational methods that would classify legal thought and give them practical guidelines (Cromwell himself had described the law as “an ungodly jumble”). And the print revolution only made things worse: understandings of English law degenerated as printers began to spin off a bewildering number of texts, none of which could predict outcomes or explain decisions. Despite the publication of numerous treatises and guides, there was little to help the anxious law student sort through the mass of available literature. Matthew Hale’s *History and Analysis of the Common Law of England* was published in 1713, but it was fragmented, uneven, and did not attempt comprehensive coverage. Many legal texts consisted of lists that assumed an “internal logic” but did not articulate it, leaving later scholars to remark that their “major methodological tool was the alphabet.” Thomas Wood, the author of an early eighteenth-century attempt to synthesize English law, was only one of many who complained of the “tedious wandering about” that the study of law had become. No wonder law teaching was referred to as the “cobbler method.” To the uninitiated it seemed laws were simply cobbled together in order to reach arbitrary results. Responses to this crisis were well meaning, sometimes brilliant, but ineffective. By the middle of the century, “strident attacks” on the law were common, and “many sought to reduce the common law to good order.” Commentators despaired of reconciling the vast array of conflicting cases and incidental jurisprudential remarks with prevailing views of the English constitution and of the continuity and integrity of the system. When Blackstone wrote the *Commentaries*, he attempted to solve a problem that many believed insoluble.

Daniel Boorstin, for years the author of the only humanities-oriented study of Blackstone, noted Blackstone’s methodical reduction of legal complexity to “short and rational form,” but also recognized that Blackstone was more than a reductive classifier or organizer and more than a legal commentator. Instead, as Boorstin argues, Blackstone drew on the aesthetic tastes and tendencies of his time to represent the law. But Blackstone’s artful recapitulation of his materials included successfully
managing the emotions that had accumulated around the common law, transforming confusion and irritation into admiration, creating desire where none had existed, and inducing readers to become advocates for the English common law. Much of this involved reducing anxiety around change. The Commentaries, in its effort to find an authentic past and preserve it, constructed a particular version of modernity that bridged past and present, shoring up beliefs in the common law system, even while demonstrating its value for adaptation and change.\(^{15}\) While the practice had been to emphasize tradition through focusing on the history of the law, Blackstone joined other “evolutionary theorists” in bringing history to an “explanation of form and evolution.”\(^{16}\) He also bridged the old alliance with “natural law” and the new interest in positivism that came to drive nineteenth-century law.\(^{17}\) And finally, he reassured readers of the value of the English common law tradition by managing geographical boundaries, avoiding efforts like Samuel Johnson’s to fence off Englishness from its non-English sources, instead celebrating the diverse origins of the English tradition, and foregrounding the “mixing” that linked law and language together in what he presented as a triumphant English achievement. As he put it, “Our laws are mixed as our language: and as our language is so much the richer, the laws are more complete” (I:64).

His own contemporaries greeted his achievement with palpable relief, recognizing that by humanizing an archaic system, Blackstone had made the English common law palatable to a wide audience. William Meredith commented in 1770 that the law “til you brought it from darkness into light, had been as carefully secreted from common understanding, as the mysteries of religion ever were.”\(^{18}\) Edward Gibbon praised him for “clearing” jurisprudence “of the pedantry and obscurity which rendered it the unknown horror of all men of taste.”\(^{19}\) And The Barrister noted that the Commentaries “brought darkness to light, and reduced to system & method a farrago of legal knowledge, scattered over immense volumes of black-lettered law.”\(^{20}\) It is not surprising that Blackstone was, in his own time, compared to Montesquieu, Beccaria, and Voltaire. As the Literary Fly said in 1779, these four great thinkers “echoed” each other.\(^{21}\) By 1826, his work was seen “in the light of a national property.”\(^{22}\) Horror versus taste, darkness versus light, obscurity versus clarity, mystery versus system: these critiques suggest that Blackstone left the dark past
behind for a well-lit present. It thus must have seemed a monumental achievement, the equivalent of Johnson’s great *Dictionary* or the British Museum. It is not too much to say of the *Commentaries*, as A. W. B. Simpson does, that its achievement goes beyond the law: “Nothing remotely resembling them in execution had appeared in the English language before.”23 In part, this was because the portable, digestible *Commentaries* not only told the English what the law was and where it came from, but how they were supposed to feel about it.

Although Blackstone has been “rediscovered” numerous times by legal historians, he is only now being rediscovered as a major figure for eighteenth-century studies, as well as for Law and Humanities and the history of emotion. This book participates in the current “Blackstone Revival,” signaled by Wilfrid Prest’s 2008 biography, his collection of Blackstone’s letters, three collections of essays, and the publication of a new edition of the *Commentaries* from Oxford University Press.24 Blackstone was not merely a writer of legal treatises, but a broadly based eighteenth-century thinker, perhaps one of the most understudied writers of his time, writing not only the *Commentaries*, but also poetry, historical tracts, architectural essays, and criticism, all of which formed a subtext to his legal commentary. His imagination was expansive: the footnotes to the *Commentaries* reveal that he drew from history, political philosophy, literature, and many other sources, yet he managed to produce an elegant (rather than distractingly digressive) treatise that exemplified Pope’s praise for “what oft was thought, but ne’re so well expressed.” His influence is hard to overstate; underestimating him flies in the face of his overriding and yet uncelebrated presence not only in Anglo-American law where Blackstone looms large, but in Anglo-American culture as represented by novels, plays, and most recently experimental essays. As the following chapters will demonstrate, Blackstone appears in some unlikely contexts: in a lover’s garden in one of Wilkie Collins’s novels, on a pitching ship in *Billy Budd*, in an isolated plantation in the pre–Civil War South in *To Kill a Mockingbird*, even in a modern romance novel, *The Blackstone Key*, published in 2008 by Rose Melikan. Recently, Jessie Allen has produced an eloquent, compelling set of personal essays that bring Blackstone’s *Commentaries* to contemporary political and personal issues.25 Sometimes these creative uses of Blackstone invoke the *Commentaries* as a sign for justice, sometimes for
injustice, but always for its emotional valence, for its value in telling us something about how we are supposed to feel about justice and the law.

The Mashup: Blackstone’s Poetics

To read Blackstone’s *Commentaries* for its emotional valence is, in part, to read it as we would read poetry, to “close read” the *Commentaries*, as literary critics say, to tease out the relationships between form, diction, and content, to go beyond the surface. And to understand why this sort of reading of the *Commentaries* is important, we need to understand Blackstone both as poet and legal commentator, as a writer as invested in aesthetics as he was in law. It doesn’t take much of a stretch of the imagination to make this leap, for as a young man, Blackstone was a literary prodigy, the author of numerous poems and other short pieces. He was devoted to literature, studying poetry from Horace to Alexander Pope and publishing verse before he was nine, even winning a prize for a poem on Milton. Admitted to Pembroke College, Oxford, in 1738, he not only read classical poetry and studied Shakespeare, but also absorbed the great English poets, particularly Pope. There was no hint that he would one day become one of the great English jurists. But sometime in 1744 when he was twenty-one years old, he wrote a poem extraordinary for its foreshadowing of his later career. Throughout this book I will return to this early poem, investigating the relationship between certain of its emotional moments as well as its aesthetic preoccupations, and their reappearance in various guises in the much later *Commentaries*. For in “Lawyer’s Farewel to His Muse,” Blackstone staged the aesthetic, moral, and, above all, emotional issues he would later engage with in the *Commentaries*. The close reading I offer here introduces both the poem and a methodology of close reading that I will return to in my various analyses of the *Commentaries*, one crucial to understanding how the relationships Blackstone created between form and content served to infuse his text with emotion and engage his readers in what he took to be the appropriate emotional responses to legal content.

Katrin Pahl asks, “In what sense can a text be emotional?” and argues that emotional texts are “incongruous and (self) transforming.” They “put things or people at odds with themselves.” Blackstone’s poem is emotional in content, in diction, and in form, as I shall demonstrate at
length here. It is high-minded yet sexualized, idealistic yet grounded in gritty images of London life. If a poem had feelings, this one would feel confused, maybe agitated. In the poem, Blackstone’s protagonist “drops a last tear” as he turns away from a delighted appreciation of literature and poetry to enter the law. He finds law practice at best irritating and at worst gloomy and frightening, a nightmarish arena of disease and murder where stereotypes about urban London evoke fear and disgust. Only justice offers the sort of pleasure associated with poetry, but she, a “venerable maid,” is represented in sexual terms that confuse the image. The poem rotates around multiple dichotomies and moves uneasily through several generic, embodied, and emotive realms: literature is set against law, desire against disappointment, harmony against discord, in order to illustrate an idealized, aestheticized, and yet sexualized representation of justice, who represents “the wisdom of a thousand years,” yet is admired “like Eastern queens.” Saturated with emotion, the poem fuses the literary world to positive emotions and the legal world to negative ones while justice is represented as an unattainable (and yet oddly embodied) ideal.

One could hardly find a poem more dense with what historians of emotion have called “emotives,” words that are meant not only to describe emotions, but to change how we feel, to “do emotions” in a sense.29 Throughout the poem, the poet cycles through a series of emotions: he “dreads,” is “pensive,” “doubtful,” “cheer’d,” “lulled,” “joyous,” awestruck, “admiring,” desiring, disgusted, fearful, and sad (he drops that highly aestheticized “last tear”) in turn as the occasion warrants. The poem uses, by conservative count, forty-five emotionally descriptive words in about a hundred lines, all set in contexts meant to evoke more than is said directly. These emotions are connected to both aesthetic and moral realms: riding waves of moral sentiment, the poet-lawyer finds only good in the pastoral imagery and harmonic sounds of the poems he admires, only bad in legal imagery. To transcend that dichotomy, the poet yearns for a particularized, embodied, even sexualized version of justice (the poet wants to “pierce the secret shade” to find her) where “parts with parts unite / In one harmonious rule of right” and “countless wheels distinctly tend / By various laws to one great end.” Readers who ride these waves of moral sentiment along with Blackstone’s protagonist will love poetry and desire what was understood in Blackstone’s time.
as harmonic justice, a concept I will discuss in subsequent chapters, experience the turn to law as loss, and be saddened as the poet-turned-lawyer eases his way into retirement and towards what seems to be an early death. And they will feel these emotions as part and parcel of both aesthetic and moral judgments.

For the young Blackstone who authored the poem, both justice’s harmonies and law’s discordances are felt as embodied emotional experiences, expressed both directly in emotive diction and formally, structurally. We feel this with him at the basic level of sound in that sound is felt in the body; Blackstone’s references to noise are in themselves unpleasantly noisy. Law becomes “wrangling” and “stubborn” as Blackstone uses discordant hard consonants to bring his emotive points home. In the “sounds uncouth and accents dry, / That grate the soul of harmony,” he gives us a false anti-rhyme in “dry” and “harmony” that itself suggests the grating nature of legal talk. Even in resigned retirement at the end of the poem, Blackstone returns to these unpleasant noises, valuing his “retirement” precisely because it removes him from the jarring curses of the “harpy tribe” and the more plaintive but guilt-inducing “orphan’s cry.” Sound echoes sense here as unpleasant emotions are personified: Blackstone repeatedly draws on the ugly hard r; the “harpy tribe” also offers a hard p and uses the long ee to suggest the shriek of imagined harpies. The more plaintive “orphan’s cry” that “wounds” his ear draws on the emphatically long i of “cry” and oo of “wounds” to underscore the invasive nature of sounds that seemingly can injure the organ of hearing. This is emotion embodied on the page, expressed through both words and sounds.

An alertness to formal conventions reveals that Blackstone relies on the compressed tetrameter couplet to contain the many emotional moments he steers us through in the poem. Couplets have often been seen as a way of closing down difference, but here they keep oppositions in close interaction with each other, allowing Blackstone to sustain the poem’s divisive stances (literature against law, harmony against discord, fine feelings against disgust and misery) over many lines. He places opposition against opposition, confining them in the closed world of two rhyming lines, and thus forcing connections between them. To indicate his poet-lawyer’s ambivalence, Blackstone writes, “Pensive he treads the destin’d way, / And dreads to go, nor dares to stay,” bringing the prosaic “tread” together
with the melancholic “dread” and the expansive “way” with the confining “stay.” He makes prominent use of the couplet’s caesura, a crucial tool in constructing both oppositions and balance. For example, the second line of the couplet quoted above, caesured with the comma, reinforces the opposed “pensive” and “destined” of the first line while containing its ambivalence, leaving the poet-lawyer positioned, even teetering on the back of the comma. Blackstone relies on the caesura at other particularly divisive moments in the poem: “Lost to the field, and torn from you—”; “No room for Peace, no room for you—.” The caesura magnifies the sense of irrevocable loss the poet-lawyer feels as he departs from literature; it breaks but also sustains the connection by containing both the loss of the other and the other itself within the same line.

The couplet form intensifies the emotional impact of the poem, while it enacts Blackstone’s theoretical and emotional commitment to ideals of Concordia discors and harmonic justice, ideals that dated back to Plato and Pythagoras but gained new vigor in the first half of the eighteenth century. Harmonic justice was based on theories of proportion and scale. Blackstone’s reliance on it in the poem connected the law unevenly to what were felt to be eternal verities, to the idea that not only the world but the universe worked through a sort of natural, coherent harmony, that “beauty and order are founded upon the divinely ordained harmony of things.”

But “Concordia,” as Bernard Hibbitts points out, conflates a number of ideas, including that of the “chorda” related to string instruments, as well as that of “cordia” related to the heart. It is thus a mixed concept, linking abstract musical harmonies to the real world of the body and affect. Its assumption that “contrarieties are essential to order,” and of a “universe of exquisite harmonies and of nice correspondences between macrocosm and microcosm” offered a compelling way of thinking about the seemingly impossible-to-reconcile legal material the young Blackstone would eventually sort through as a law student and then as a lecturer on the common law, yet it also suggested the implacability of difference, the difficulties inherent in attempting to make incongruities congruent. Concordia discors thus linked harmony to moral theory while simultaneously suggesting its opposite: in harmonic justice, harmony is not only pleasing but actually is moral virtue. Inevitably, the discordant noise of lived life suggests the fragility of moral virtue so conceived.
The poem embraces this conflict, most tellingly in Blackstone’s discussion of “Justice” with its mixed erotic and idealistic imagery. Justice is represented as an object of sexual desire that can be obtained only through penetrative force and yet in herself exhibits ideas of harmonic justice drawn from Aristotle, Plato, and Pythagoras. While Blackstone surely did not subscribe to the precise mathematical and geometrical formulas that had made Pythagoras the butt of Swift’s humor in *Gulliver’s Travels*, in the poem’s discussion of “lady” Justice, he offers us a version of justice that aligns the theoretical (*Concordia discors*) with the formal (tetrameter couplet), and suggests both the commitments that would govern the eventual organization of the *Commentaries* and the eventual unraveling of those commitments. To find Justice, Blackstone’s young poet-lawyer must first fight his way through a “formal band” of lawyers who speak in “sounds uncouth,” then be led through a “thorny maze” of law, before he can “pierce the secret shade” and encounter Justice, a “venerable maid.” It is here Blackstone finds his “pure spring” of what might be called “harmonic justice,” the place where law merges with justice and the two seem to co-exist in perfect harmony. The passage is worth quoting at length since it offers us a window into the idealistic and yet desirous vision that drove the *Commentaries*:

There, in a winding, close retreat,  
Is Justice doom’d to fix her seat,  
There, fenc’d by bulwarks of the Law,  
She keeps the wond’ring world in awe,  
And there, from vulgar sight retir’d,  
Like eastern queens is more admir’d.  
O let me pierce the secret shade  
Where dwells the venerable maid!  
There humbly mark, with rev’rent awe,  
The guardian of Britannia’s Law,  
Unfold with joy her sacred page,  
(Th’ united boast of many an age,  
Where mix’d, yet uniform, appears  
The wisdom of a thousand years)  
In that pure spring the bottom view,  
Clear, deep, and regularly true,
And other doctrines thence imbibe
Than lurk within the sordid scribe;
Observe how parts with parts unite
In one harmonious rule of right;
See countless wheels distinctly tend
By various laws to one great end;
While mighty Alfred’s piercing soul
Pervades, and regulates the whole.\textsuperscript{36}

As the most casual reader will notice, the passage mixes poetic and sexual references. Blackstone evokes myriad eighteenth-century poets, most obviously John Denham—early master of the couplet and poetic popularizer of \textit{Concordia discors}—in both diction and theme, by offering us a “bottom view” of a “pure spring” that is “clear, deep, and regularly true.” This “bottom view” (and many eighteenth-century readers would have made a ribald joke of it) reveals what \textit{Concordia discors} implies: the struggle between a controlling sense of order and disorderly elements, in essence a world order unified by a history imagined through that “piercing” gaze. We can hear Denham’s “Cooper’s Hill” here representing the Thames through images of contained masculine sexuality: “Though deep, yet clear, though gentle, yet not dull / Strong without rage, without ore-flowing full.”\textsuperscript{37}

Harmony, harmonic justice, and happiness are mapped onto each other in this dissonant image, only to be undone as Blackstone’s poet enters the discordant world of law practice. We are meant to desire Alexander Pope’s “heav’n strung lyre,” while Blackstone’s reference to Edmund Waller and the diction he borrows from Denham suggest the larger cultural valence of harmony for Blackstone’s world. For the eighteenth-century reader, harmony was not simply a matter of sweet sounds that signified congenial feelings but instead marked a system capable of organizing the post-Augustan understanding of politics and society in ways meant to ensure public happiness.\textsuperscript{38} \textit{Concordia discors}, the idea that contradictory principles could be aligned harmoniously, had been pressed into use as a way of explaining the cosmos, but also England’s political and jurisprudential life. As Earl Wasserman has argued, it “came to be the cosmic rationale for England’s parliamentary monarchy and the model for the ideal attributes of the king of such a
mixed state: the political harmony arising from the conflict of monarch and populace is but an imitation of the cosmic harmony produced by the clash of the opposing elements.” Concordia discors theorized what harmony in poetry enacted: it allowed, even celebrated, the incorporation of elements that threatened its smooth surface. In Blackstone’s hands, discordant images of law interrupt the smooth harmony associated with justice, and Concordia discors is almost undone by the discord represented by law practice.

What does the poem tell us about the emotions that circulated around law practice in Blackstone’s time? In the poem, law is represented as discordant and unpleasant, both emotionally and physically, the antithesis of harmony. We are offered, for instance, what might seem a throwaway reference to the “babbling Hall,” suggesting that Blackstone anchored the irritation, disgust, and fear he associated with urban law practice in embodied experience at Westminster Hall, a particularized, well-known, and nationally significant space. Today we do not think of Westminster Hall as particularly noisy, but as a monumental symbol of the majesty and permanence of English law. As Blackstone himself would later write in the Commentaries (he was complicit in establishing this myth), the establishment of Westminster Hall as “some certain place” to locate the law of the kingdom ended the long battle between “foreign” law and what he felt to be far superior, the common law of England. Westminster Hall, he argued, “soon raised those laws to that pitch of perfection, which they suddenly attained under the auspices of our English Justinian, King Edward the First” (I:23). But in the “Lawyer’s Farewel,” Westminster Hall serves as a metaphor for the unpleasant noise of the modern, and the fear and disgust that noise evoked. There Blackstone dreaded encountering the “sounds uncouth and accents dry” as well as the uproar of the city, its “loose revelry and riot,” sounds that penumbraed out to embrace not only all the noisiness and ugliness of legal thought and practice during his era, but the noisiness of a new urban world of overpopulation, of too much talk, too many controversial print publications, and too much conflict.

As legal historian David Lemmings remarks in his characteristically understated fashion, “the grandeur, solemnity, and dignity which are normally associated with modern high court proceedings were probably not the prevailing emotions in Westminster Hall during the eigh-
teenth century. Instead, this setting provoked frustration, irritation, and anxiety as well as excitement. Maintaining order in the midst of the noise seems to have been a daunting task. The Hall’s numerous courts operated simultaneously, in close proximity to each other and at best separated by the thinnest of partitions and curtains only a few feet high. Crowds exacerbated the noise: the Hall was full of all sorts of folks unconnected to the law, as well as the usual barristers, ushers calling out to witnesses, witnesses waiting for hours and days, and even hangers-on called “men of straw,” those who would wear a straw in their shoes to advertise their willingness to give false testimony. Peers, the clergy, and members of Parliament used the Hall as a passageway, while others came in to get warm, to watch, or sometimes to steal from those who were watching. Oddly (at least to modern expectations), the walls were lined with shops in open stalls, selling books and other wares. A 1730 painting by Gravelot depicting these shops is accompanied by a verse claiming Westminster Hall as the “house of babel” where “jargon and noise prevail.” As Tom Brown noted in 1702, Westminster Hall was “a magnificent building which is open to all the world, and yet in a manner is shut up, by the prodigious concourse of people, who crowd and sweat to get in or out. What a fantastical jargon does this heap of contrarieties amount to.” “Babel,” “jargon,” “noise,” a “heap of contrarieties,” people who “crowd and sweat”: while we cannot hear the noises of the past or feel the bodies, we can imagine the aversive nature of this environment. No wonder the poem urges us to seek the harmony associated with justice.

The poem does not, in the end, suggest that harmony rules or that justice is obtainable. In the final stanza, the poet-lawyer withdraws into retirement, still haunted by the discordant sounds of law practice. Thus, the poem presents us with an unresolved problem. Harmonic justice is a tremendously seductive idea. But if harmonic justice is what we desire, we will despair when we confront the gap between what we want and what exists. English law and legal practice are unpleasant; they result in human misery. The idea of natural and eternal laws offered up in Justice’s one monumental book (“unfold with joy her sacred page”), and with it the hope that law’s unpleasant discordant elements could be reduced to “one harmonious rule of right,” appealed to Blackstone precisely because it was so distant from the practice of law in mid-century England.
is the project of this book to explore how the traces of an affective aesthetics outlined in this early poem served to help Blackstone reimagine the aesthetic and emotional world of eighteenth-century English law. The alignment of English law with harmonic justice offered an effective, compelling way to organize his legal material around an admirable ideal. While harmonic justice did not offer an escape from the emotional, embodied world of law that Blackstone found after leaving literature, it did offer a scaffolding for his efforts to balance tradition against change, precedent against contingencies. And it helped Blackstone organize the nexus of emotions that I refer to here as “legal emotions,” emotions that helped readers make sense of both the Commentaries and their attachment to English law.

Taking Care of Blackstone: An Interdisciplinary Methodology

This project emerged from both large-scale and narrowly focused questions. First, the large-scale: a long-held curiosity about group loyalty. Given the emotional turmoil most humans experience, what holds high-functioning societies together? In particular, why do people who have little or no investment in and receive minimal returns from a particular national legal system tend to obey the law? Deterrence theories are hardly satisfying; clearly the threat of punishment alone is not enough to ensure lawful behavior. Every person cannot be managed by a universal regulatory force, even in the most panoptic culture. And in fact, most people break the law at least once in a while—even in fairly well-regulated societies. But most people in well-managed societies obey the law most of the time. Why? The answer to this question is, of course, complex, but it seems to be primarily emotional. Through various public and private interactions between legal systems and human beings, most human beings internalize a desire for law-abiding behavior because they rely on the law’s relationship to justice. They learn to love justice and to associate the law with justice, and are, in a sense, “bound” to justice ideals. For them, the law becomes “normative,” as Tom Tyler puts it: they obey the law because they “feel the law is just” and they “feel that the authority enforcing the law has the right to dictate behavior.” Following this line of scholarship, what John Deigh calls “an emotion-based account of the law’s authority,” as I do in this book, focuses more on
persuasion than force, although there is always the threat of force behind persuasive juridical gestures.

Informed by affect studies, the history of emotion, and new efforts to study the relationship between law and emotion, but also by the relatively capacious and recently developed Law and Humanities movement, this book crosses disciplinary and historical boundaries in its conception and methodology, stretching from eighteenth-century England to the Colonies, the early Republic and to contemporary matters. My approach addresses a gap that results from powerful if sometimes porous disciplinary constraints. While there are always exceptions and offshoots in any discipline, traditional legal historians tend to focus on empirical, doctrinal, legal, and historical truths; literary critics focus primarily on literary texts and tend to see legal texts as sources of information rather than subjects for interpretation; political philosophers have historically operated at a comparatively abstract, decontextualized level; law and literature scholars take up issues involving the impact of law on literature or vice versa; law and emotion scholars scrutinize normative understandings of emotion with largely instrumental goals in mind. To imagine these disciplinary constraints differently, the question for the legal historian might be, What was the doctrine? For the legal scholar, Given what we know, what should the law do? For the historian of emotion, How did they feel? What evidence is there for a particular emotion? For the law and literature scholar, Where is the law in this literary text, the literary in this legal text? For the literary critic interested in emotion, How does this text produce this particular feeling or encourage the reader to try out this particular feeling? For the law and emotions scholar, How are particular emotions expressed and how do they play into legal decision-making? Law and Humanities scholarship draws on and also bridges these disciplinary divides and allows us to ask, Given its historical and contemporary context, what does this text do to produce this particular feeling about the law and what does this tell us about the pursuit of justice?24

As a major figure of the Enlightenment who profoundly influenced how a wide audience understood Enlightenment law, Blackstone did more than merely persuade people to follow the law. He was engaged in a sophisticated exploration of the appropriate emotions one should have in regard to the law, and not only to individual laws, but to the entire
fabric of the English common law. This was part of the much larger English Enlightenment project that promoted English values as a sign of national identity and British morals as a sign of civility. Blackstone took part in all of the advances and advanced all of the problems and contradictory movements that arose from Enlightenment thought. This intermingling of Enlightenment accomplishments and contradictions is captured in the phrase “legal emotions,” meant to be double-edged, implying both the emotions associated with law in Blackstone’s England and those regulated by the law. To explore this double-edged line of inquiry, I have drawn fluidly from approaches rooted in textual analysis while taking into account generic and cultural contextualization. My work brings together humanist critique, an attentiveness to how we read, a sensitivity to history, and an alertness to the entanglement of aesthetics, emotion, and law. I try to tease out the emotions of the past through examining textual references to emotions in not only their legal context, but their literary and cultural and philosophical contexts. Along the way, I rely on several different modes of interpretation or what are known as “ways of reading,” much discussed among literary historians and critics, perhaps less so in other fields. Methodological flexibility is important in part because Blackstone has been radically under-read or even not read at all. Often the Commentaries is milked for quotations out of context. Frequently, it is read for its truth value, as if it represented a transparent window into the common law. Casual readers (or those looking for an apt legal quotation to support a point) may fail to realize that what Blackstone produced was not an authoritative treatise for advanced practitioners, but what he called “a general map of the law,” a basic introductory guide to the law meant for “students of all ranks and professions,” for an audience not only of beginning law students but of many groups of people who might never go into law practice (I:34, 36). The Commentaries then should be thought of as a pedagogical exercise, a text for those who would manage estates or go into the professions—maybe law, but also the clergy or the military. Thus, it presents a highly mediated account of the common law of England, one that goes beyond the trope of “representation” so often relied upon by literary critics or the “primary source evidence” that historians speak of, instead to create what Nathan Hensley has called a “productive reconfiguration” and a “critical recoding operation.” This does not mean it is not true or not
“real,” but rather that it hovers between the true and the sort of true, the real and the unreal, the evidentiary and the imaginary, like all depictions of law. Law is always already mediated by its representations, whether those are performed (a clod of earth being passed to a new owner representing the transfer of real property); narrated (the story told about that passing of the clod); treated as custom (a legal requirement that the clod of earth be passed); or become the subject of a lengthy book that attempts to capture all of England’s legal history in four volumes. In the case of the Commentaries, we find mediation all the way down: what we get is an elaborated, much mediated condensation of previously mediated texts. It is an authoritative mediation, though, one that many have treated as the final word on eighteenth-century English law.

I often read Blackstone appreciatively. I am enchanted. He accomplished something that few could have done and none before him had managed. But this does not preclude critique. In fact, my investment in Blackstone came first from the exercise of what Eve Sedgwick has famously called “the hermeneutics of suspicion.” Blackstone staged the contradictions that would appear in his own text, noting early on in the first volume that the study of the law as a science might result in “improving its method, retrenching its superfluities, and reconciling the little contrarieties, which the practice of many centuries will necessarily create in any human system” (1:30). Reading the Commentaries for “little contrarieties” reveals nothing “little,” but instead vast yawning gaps between the claims Blackstone made for the English common law system and his descriptions of how the law actually worked. Given the claim that liberty was the foundation of English law, what are we to make of English restrictions on women’s liberty or its tolerance for slavery? How are we to understand a legal system developed to “the pitch of perfection” that claimed tenderness when it was about to torture a defendant? Casting these fissures as “symptoms” could have led to a methodological dead end, to obvious questions and obvious condemnations, to a Benthamite casting aside of the Commentaries as sheer hypocrisy, to what Hensley has critiqued as criticism in a “heroic mode.” But these “little contrarieties” turn out to signify emotionally driven, ideological, and moral conundrums in need of detangling and explanation. In making contradictory claims, Blackstone alerts us to disruptions in the smooth surface he wished to make of English common law, disruptions
that call out for analysis rather than dismissal. For all that he wanted readers to love the English common law and identify it with a particular understanding of justice that he thought justified such love, he recognized the law as a human creation driven by human emotions as well as by failed human efforts at rationality.

As I have read and reread Blackstone, I have looked for the way his “little contrarieties” intersect with emotions, how they arouse different emotions or attempt to control or negate them. In other words, in a work of exceptional clarity, what do the muddy parts tell us? In doing so, I have become more interested in what Blackstone was doing than in what he was unable to do. He could not paper over the inconsistencies in the English common law, but he could attempt to create emotional bonds between his readers and their legal system. Thus, my reading has become what might be called a sympathetic critique, more curatorial than adversarial, as interested in understanding Blackstone’s creative use of emotions as in the usual critical moves. By “curatorial” here I mean to invoke the idea of care: I want, as Hensley puts it, “to restore a positive affective relation” towards my object of study. Mine is thus in part a recovery project. I advocate for Blackstone’s centrality in the canon of eighteenth-century prose works, while recognizing his limitations and internal contradictions, including his concern with maintaining hierarchies and justifying an unjust status quo. But the curatorial effort always gestures towards more than “care.” It interferes; it is invasive in that it rearranges its objects and points to certain of their features, in essence exclaiming, “Look at this! Look at that!” and “That’s how it is!” To the extent that curators create maps towards a better understanding of the objects they arrange, they also un-map, disrupting whatever arrangement they have encountered, displaying it anew, and creating new knowledge as they do so. Blackstone curated the English common law in order to argue that it had reached the “pitch of perfection.” Through this action, he invented new knowledge. Thus, to curate Blackstone, bringing into focus the emotionally driven social and cultural arrangements he so skillfully constructed, and thus to create new knowledge as he did himself, seems both a disruptive and a sympathetic approach, even a just way to read him, in the sense that Cornel West speaks of justice as “what love looks like in public.”
To pursue this kind of curatorial reading, I have drawn on techniques more familiar to literary critics than to legal historians or historians of emotion. As I indicated in the reading of Blackstone’s poetry earlier in this introduction, I pay close attention to both macrocosmic and microcosmic forms (the macro and micro suggesting forms themselves). “Forms, measured forms, are everything,” Melville says ironically in *Billy Budd.* And while they may not be everything, as some readings of Billy Budd attest, no one could read Blackstone without noticing his preoccupation with form. Whether he is writing a poem or prose, drawing on the imagery of a walled enclosure like a gothic castle or writing a long, periodic sentence meant to hammer diversity into alignment, Blackstone is a consummate formalist. Attentiveness to form suggests analysis on the level of the set of four volumes, but also on the level of each volume, its chapters, its paragraphs, sentences, and individual words. Paradoxically, it also involves reading surfaces: Blackstone has been so under-read that few have noticed how hard he works to appeal to readers. I offer sustained attention to metaphors, symbols, and to the way details and doctrines are presented. This sort of reading and what it brings to formal analysis has only recently become more fashionable in literary studies. But as critics as diverse as Caroline Levine and Eugenie Brinkema have argued, close reading “was always the way to unlock potentialities,” even when it has seemed constrained to demonstrations of the unity and integration of canonical works of literature. And the study of form, of “structural patterns and organizational modes,” of “the various shapes language takes” when under pressure, offers insights into both the contradictions and confluences a text can offer. Forms “shape what it is possible to think, say, and do so in a given context,” Levine points out. They are not static, but instead can be assembled and disassembled, remade, retrofitted to suit different contexts and purposes. An analysis of form thus has special value not only for literary criticism but for understanding social arrangements, both for how they operate and how they can be changed. This connection between form and social change can help inform our understanding of legal culture. It is no accident that Levine relies on legal theorist Roberto Unger for the argument that social life is not dictated by a few intractable deep structures, but instead by multiple sets of forms, all jostling each other. Understanding
forms draws attention to “the artificiality and contingency of social arrangements and so opens up a new set of opportunities for real change by way of feasible rearrangements.”

Across the chapters in this book, I have explored the role of emotions in creating attachment and resistance to a particular version of justice, to its aesthetics as well as its maxims. Doing so has entailed navigating the emotional lexicon, determining what precisely I should call the broad phenomenon I am discussing as well as its discrete manifestations. I am alert to emotion historian Thomas Dixon’s concerns: the keyword “emotion” is indeed “in crisis,” as he has argued in a recent essay. Blackstone and his contemporaries would not have used the word “emotion” as historians and theorists of emotion use it today: they would have used “passion” or “interest” or “moral sentiment.” I have, however, aligned my practice with other historians of emotion, choosing the more modern “emotion” to indicate the sorts of feelings I discuss. Meanwhile, I have attempted to put specific emotions in their historical context: “embarrassment,” for example, when used in eighteenth-century England meant something different from (but related to) what it means today. “Disgust,” though often felt, was only beginning to be called by that name. A second concern—the distinction between “affect” and “emotion”—has also called for reflection. While affect theory has been important to my analysis, the reservation of the word “affect” for “something immediate and automatic and resistant taking place outside of language,” as Brinkema so succinctly puts it, has seemed as limiting as a decision not to use the word at all. Affect effects have directed my interpretive gestures here, but like many historians of emotion, I have chosen to blur the philosophical and theoretical distinctions between “affect” and “emotion,” while suggesting that they operate along a continuum in which affect is more oriented towards the body (but not prior to and outside of language and thus impervious to interpretive gestures) and emotion is more mediated by culture and community.

I have gone emotion-hunting with the tools at my disposal: contextual reading, surface reading, close reading, reading for form, curatorial reading, historiography (both general and legal), post-structuralist theory, and psychoanalytic theory. These technologies of reading have made it possible to read Blackstone for his emotional valence, for what we might call his affect effects, to make an emotional sense at times of
what has not seemed to make sense if law is thought of as purely rational. Assiduous hunting often yields its quarry: I have found emotions everywhere, on the surface of the text, buried deep in doctrinal details, in words, in sentences, paragraphs, and volumes, sometimes presented as clichés or conventions—and yet repeated enough to suggest something more than cliché, something both formal and formative and thus worthy of attention. Attentiveness to the genres of romance, comedy, tragedy, and the gothic has alerted me to the ways we are expected to feel about marriage law, property, torture, and the laws around slavery. Placing Blackstone’s public performances in a theatrical context has suggested new ways of thinking about the relationship between law’s performances and the usefulness of public embarrassment. Noting the narrative structures that underlie Blackstone’s defense of the English law’s unity has revealed how he wants us to feel about that unity and about its Englishness.

In a different register, the various strategies offered by both historians of emotion and affect theorists have come into play here. One might associate Blackstone’s effort to institute particular emotional responses to particular legal situations with Norbert Elias’s theory of gradual development. Elias imagines an ever-progressive movement towards a more civilized culture in which violent and passionate emotions are channeled through the legal system, gentled and domesticated along the way. But this would ignore a Gikandi-influenced understanding of the interdependence of civility and brutality during this period, one displayed multiple times in the Commentaries and discussed in detail in chapter 5. William Reddy’s idea of emotional regimes and refuges, with the theory that cultures dictate certain emotional norms, relegating others to the outskirts, also seems to explain “legal emotions” in the sense that they often seem compelled. But Blackstone’s efforts seem as oriented towards the creation of community as to the policing of emotion, as interested in persuasion as they are in regulation. Thus, while you will see echoes of Reddy here, Barbara H. Rosenwein’s concept of coexisting, various “emotional communities,” and Monique Scheer’s interesting work on emotional practices inflect this work as well. Emotions are embodied; they are, as Scheer argues, “themselves a form of practice” in which subjectivity appears not prior to but “in the doing of emotion.” In this “doing,” they are contagious, as both eighteenth-century moral
philosophers such as David Hume and Adam Smith and current affect theorists such as Lauren Berlant and Sara Ahmed have argued. We catch them from others as we attune ourselves to the emotions around us; we experience them when they are performed for us; we feel them through our reading but also as we read. They are also shaped by our environments and social settings: they “encompass a learned, culturally specific, and habitual distribution of attention to ‘inner’ processes of thought, feeling, and perception.”\(^7^1\) In reading Blackstone we experience this shaping both on the surface of the text and in its deep structures, its congruencies and its contradictions. Blackstone—a consummate emotional manager—uses emotions to focus our attention and in doing so attempts to teach us how we are supposed to feel about English law as an agent of justice.\(^7^2\)

Law and Emotion and . . .

My reading of Blackstone is rooted in eighteenth-century studies, yet explores the relationship between justice, genre, and representation by working across fields and periods, locating its concerns very specifically in Blackstone’s time and place, but also drawing out their implications across historical eras and the transatlantic. As such, the project joins other post-Rawlsian analyses in that it analyzes our feelings about justice not as abstractions, but as socially and culturally constructed and situated.\(^7^3\) As mentioned earlier, one special feature of the Law and Humanities movement is the merging of methodologies: in this book, the sort of close reading associated with literary history comes together with an appreciation for the relevance of history to present practices and problems. In this regard, I engage in one of the fundamental tasks of the Law and Humanities movement: the effort to examine affective and aesthetic attachments to justice through analyzing culturally embedded narratives in ways that illuminate current preoccupations and practices.

This book begins with desire and ends with a critique of happiness, organizing chapters around specific emotions that link to each other thematically. As Sara Ahmed points out, emotions often create the conditions for new ways of feeling or for the recognition of a layering of emotion: “Our love might create the condition for our grief, our loss could become the condition for our hate, and so on.”\(^7^4\) Such shifts sug-
gest various emotively directed narratives such as that from love to loss, from embarrassment to the need to dominate others through terror, from the assertion of power through terrorizing the public to the recognition that a realm of potential happiness has been lost. Thus, these chapters lead us through a range of the emotions expressed in the Commentaries, but also build interrelated narratives: one around the contrast between Blackstone’s harmonic idealization of justice and the “little contrarieties” of the common law that he negotiates; a second around the shift from oral to print culture that made the Commentaries essential for the study of law; another around nation and empire as Blackstone’s text is pressed into service to disseminate English ideas of justice across the globe; and a fourth about the almost osmotic absorption of Blackstone’s ideals as his book gradually became not something read, but an icon for a set of internalized values naturalized across much of the West. My reading is not meant to be exhaustive, but rather to provide proof of concept for future work by scholars interested in the history of emotion and eighteenth-century legal history. Thus, each chapter foregrounds a particular emotional matrix as it relates to a particular legal issue while the book as a whole makes no attempt at coverage. To fully address the emotions Blackstone drew on in writing the Commentaries is not the work of one scholar, but of many.

Chapter 1 begins with a question Wilkie Collins asked in his popular 1866 novel, Armadale: “Is there no love in Blackstone?” By examining various “zones of desire” and “zones of disgust,” first in Blackstone’s poetry and then in the Commentaries, the chapter unpacks Blackstone’s reliance on these twinned emotions as instrumental to his efforts to construct a new understanding of and loyalty to the English common law. Marriage law and Orientalism are interrelated here with a discussion of Blackstone’s celebration of the trial as a unique English contribution to justice. In these discussions, desire and disgust worked together to suggest an English legal tradition able to accommodate the forces of commodification and expansion that defined modernity. In chapter 2, I examine the flip side of desire, loss, and this leads to a reading of Blackstone’s melancholic assessment of the gaps in the English legal historical record as an extended elegy in the graveyard poets’ tradition. In his analysis of real property, Blackstone reifies traditions that reinforce lineage and the retention of estates across multiple generations. His preserv-
tion of remnants of Saxon property law stands in for the preservation of property as a concept; that property would forever be attached to a genetic heritage would seem an attempt to thwart not only the mortality of the human body, but the mortality of the English common law system.

Chapter 3 operates as a hinge that allows us to see how Blackstone’s own embarrassment marked the importance of the Commentaries as a written text, a materialized object that came to symbolize the permanence and reliability of written law. Blackstone’s “diffidence,” his deficiencies as an orator, operated as legible affective signs of discomfort with the orally based theatricality of legal practice. Reading Blackstone’s expressive body as a text in itself available for scrutiny in the famous libel case Onslow v. Horne (1770) suggests that although Blackstone’s “stuttering” affect in Westminster Hall may have seemed to undermine his authority, it instead played a symbolic role in the global dissemination of the Commentaries. The inadequacy of his authentic but imperfect performance shifted attention to the text where Blackstone could perfect his style, if not always his content.

Chapters 4 and 5 press historically contingent readings of the Commentaries into service for their value in understanding present-day injustice. In chapter 4, I again take up one of Blackstone’s contrarieties: the law is never so “tender” as when it contemplates torture. Here I examine what Blackstone referred to as “the tenderness of the law” in light of the English practice of peine forte et dure (pressing). By gothicizing his discussion of what was a common English, not French, practice, Blackstone attempts but fails to distance ideas of English justice from the European acceptance of torture. Buried beneath the surface of his text are experiences such as those of Nathaniel Hawes, a young rebel robber “persuaded” to comply with the law through the judicial application of peine forte et dure. Blackstone’s treatment of peine forte et dure offers analogies to recent US discussions of torture at Guantanamo Bay, but also provides an opening for what has in recent years become a new understanding of the value of tenderness as a legal standard.

I pursue that direction in chapter 5, where I circle back to the harmonic justice so much desired in both Blackstone’s early poem and in the Commentaries, suggesting that its allure is marred by its association with tyranny, with its intolerance for deviations from form. The happiness it promises is undone by Blackstone’s efforts to control contingency,
as demonstrated by his ambivalent and shifting position on slavery and the uses his text served in the American colonies and later in the young republic. To pretend that harmonic justice could preserve liberty as a major value becomes a form of what Lauren Berlant has called “cruel optimism,” in that the promise of liberty was undermined by later equivocations and then undone by the American amendments to the Commentaries. Blackstone’s reach is demonstrated through a reading of Harper Lee’s To Kill a Mockingbird, the canonical American novel that has been hailed for its advocacy for racial equality. In the novel, former slaves learn to read from the Commentaries as Lee celebrates Blackstone’s claims for liberty as a fundamental value of the English common law. But the irony inherent in this argument is as cruel as the cruel optimism Blackstone inspired. The novel inspires not racial justice, but complacent acceptance of glacially slow change in which gradualism cloaks the most brutal racism. Difference here is represented as deformity and deformity is erased by the end of the novel, replaced with a false sense of ease and comfort.

I end with a brief coda that takes up the value of sympathy in the context of resistance. Inspired by Mary Wollstonecraft’s agitated reaction to Blackstone, I reread agitation as a trigger for sympathetic review in light of a recent Texas case in which an agitated defendant undermined the court’s “decorum.” Wollstonecraft was quieted by an early death and the cultural suppression of her work; the Texas defendant discussed in this coda was silenced by the administration of seizure-inducing electric shocks. Both Wollstonecraft and the Texas defendant, the hapless Terry Lee Morris, offered threats to the formal trappings of justice, to its harmonic balance, or to what was termed “decorum” in the Texas case. We can draw on these moments to examine our emotions around the forms that justice takes. Read a bit askew, decorum seems to be just another name for harmonic justice, agitation another word for resistance.

Alison Young argues that to write of law as poetry, “as if law were art,” undermines “the standard hierarchy whereby law is able to govern and regulate artistic production.”\textsuperscript{75} The same might be said for the relationship between law and emotion. We imagine law as regulating art, and in a less doctrinal but much more fundamental way, governing emotion. But in Blackstone, law, art, and emotion are inextricable; art rules law as much as law rules art and both are channeled through the embodied
desires and emotions that we generally abject. On the whole, this approach offers hope for the future because it makes visible a rich archive evidencing the irrepressible human drive towards justice as well as the desire to understand it. While the desire for justice may be thwarted, diverted into other channels, cloaked by substitutions and dismissals, my analysis reveals this desire always at work, always purposefully seeking justice. That Blackstone was committed to that ideal in the context of the emotive life of a people helps explain the influence of the Commentaries, but also suggests new ways of thinking about emotion in legal contexts. Blackstone's construction of justice as harmonic and his application of that construction to English law suggests the power of the harmonic metaphor for our understanding of one way the law might work, while also revealing it as a metaphor, a human construction that can be changed. We can seek better and fairer metaphors and thus a better, more inclusive form of justice by viewing our loyalty to forms with suspicion, and instead paying more attention to how emotions work, and to what they can motivate us to do.