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The principles of property law according to William Blackstone – preliminary observations

Pryncypia prawa własności według Williama Blackstone'a – rozważania wstępne

Принципы права собственности ссогласно Уильяму Блэкстоуну – вводные соображения

Принципи права власності за Вільямом Блекстоуном – попередні зауваження

ŁUKASZ JAN KORPOROWICZ
Dr. habil., Prof. of University of Lodz
e-mail: lkorporowicz@wpia.uni.lodz.pl, https://orcid.org/0000-0002-5725-5018

Summary: According to many legal historians nothing spectacular occurred in the English legal history during the eighteenth century. However, this view ignores the efforts which were made during this period in the area of systematisation. This article takes the position that major attempts to formulate clear new legal doctrines and to put in order those that already existed, could be observed. This process occurred in various branches of the law. One of the most characteristic and significant branches of the English common law was real property. The initial view taken in this article is analysed against the benchmark of certain general themes (hereinafter referred to as 'principles') associated with real property by reference to theoretical statements made by William Blackstone in his common law lectures which were published under the title *Commentaries on the Law of England*.

Key words: property, English law, 18th century, evolution, rules

Streszczenie: Zdaniem wielu historyków prawa, w XVIII stuleciu nie wydarzyło się nic spektakularnego w obszarze historii prawa angielskiego. W rzeczywistości jednak pogląd ten umniejsza dążeniom systematyzacyjnym mającym miejsce w tamtej epoce. W artykule przyjmuje się, że jest możliwe dostrzeżenie poważnych oznak kształtowania się nowych, przejrzystych doktryn praw w XVIII stuleciu oraz porządkowania tych, które już istniały. Proces ten występował w obszarze różnych gałęzi prawa. Jedną z najbardziej charakterystycznych i szczególnych gałęzi angielskiego *common law* było prawo własności ziemskiej. Pierwotne założenie artykułu zostało poddane analizie za sprawą porównania go z naczelnymi motywami (nazywanymi pryncypiami) związanymi z prawem własności ziemskiej, wynikającymi z tez Williama Blackstone'a wygłoszonych w trakcie wykładów poświęconych *common law*, a utrwalonych w jego *Commentaries on the Laws of England*.

Słowa kluczowe: własność, prawo angielskie, XVIII w., ewolucja, zasady

Резюме: По мнению многих историков права, в XVIII веке в области истории английского права не произошло ничего выдающегося. Однако в действительности такое восприятие недооценивает стремление к систематизации, имевшее место в ту эпоху. В статье высказывается предположение, что в XVIII веке можно обнаружить серьезные признаки формирования новых, прозрачных доктрин права и упорядочивания уже существовавших. Этот процесс происходил в области различных отраслей права. Одной из наиболее характерных и специфических отраслей английского *common law* было право собственности на землю. Исходная предпосылка статьи анализируется путем сопоставления с основными мотивами (так называемыми принципами), связанными с правом собственности на землю, вытекающими из тезисов Уильяма Блэкстоуна, прочитанных им на лекциях по *common law* и зафиксированных в его *Commentaries on the Laws of England*.

Ключевые слова: собственность, английское право, XVIII век, эволюция, принципы

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Резюме: На думку багатьох істориків права, в XVIII столітті в історії англійського права не відбулося нічого вражаючого. Насправді, однак, така точка зору применшує помітне прагнення до систематизації, яке мало місце саме в ту епоху. У даній статті підкреслюється, що у вісімнадцятому столітті можна побачити серйозні ознаки формування нових, чітких доктрин права, а також переосмислення тих, що вже існували. Цей процес відбувався в різних галузях права. Однією з найбільш характерних і своєрідних галузей англійського загального права (*common law*) було право землеволодіння. Вихідне положення статті аналізується шляхом порівняння з провідними мотивами (так званими принципами), пов'язаними з землеволодінням, що випливають з тез Вільяма Блекстоуна, які він викладав під час своїх лекцій із загального права і записав у своїх *Коментарях до законів Англії* (*Commentaries on the Laws of England*).

Ключові слова: власність, англійське право, XVIII ст., еволюція, принципи

Introduction

The eighteenth century is often an underrated period in the English legal history. It is true that major constitutional and political changes occurred one century earlier.[1] It is also true that root and branch reforms of the criminal law,[2] the court system,[3] and the development of modern contractual relations occurred one century later.[4] Notwithstanding this, upon closer examination, the eighteenth century may be regarded as one of the most important epochs in the English legal history.

Firstly, during the eighteenth century, nothing hugely turbulent happened in England that would impact on the legal system.[5] Compared to the unstable seventeenth century, the next one hundred years remained relatively peaceful.

Secondly, the English society and culture flourished thanks to the relative peace it enjoyed at the time.[6] It gave time and space to numerous academically minded

1 See e.g. D.J. Hulsebosch, *The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence*, Law and History Review 2003, vol. 21, no. 3, pp. 439–482.

2 See e.g. D. Hay, *Crime and Justice in Eighteenth- and Nineteenth-Century England*, Crime and Justice 1980, vol. 2, pp. 45–84; R. McGowen, *The Image of Justice and Reform of the Criminal Law in Early Nineteenth-Century England*, Buffalo Law Review 1983, vol. 32, no. 1, pp. 89–125; D. Bentley, *English Criminal Justice in Nineteenth Century*, London 1998.

3 For the reforms of the judicial system in the nineteenth century, see P. Polden, *Courts of Law*, in: *The Oxford History of the Laws of England*, vol. 11, eds. W. Cornish et al., Oxford 2010, pp. 525–956.

4 P.S. Atiyah, *The Rise and Fall of Freedom of Contract*, Oxford 1979; D. Ibbetson, *A Historical Introduction to the Law of Obligations*, Oxford 1999, pp. 220–244.

5 It is true that during the eighteenth century several very important political events occurred in England and more broadly in Great Britain and in the Empire. By way of example, the Acts of Union 1707, the collapse of Robert Walpole's government in 1742, the Jacobite Rebellion of 1745, and American Independence in 1776. All these events had a huge impact on England's everyday life, but rather minimal and indirect effect on its law, and especially the principles of that law.

6 The eighteenth century is considered to be the epoch of the rise and the development of the British middle class. Lawyers, especially barristers, were considered as typically representative of the middle

figures to focus on developing various aspects of daily life, including the law. Even if the majority of the great legal and juridical reforms occurred only in the nineteenth century, their seeds were planted in the eighteenth century.

Thirdly, the seeds mentioned above formed a part of the significant process of systematisation and generalisation of the pivotal themes in the English law. An obvious example of this process was William Blackstone's effort to present the most extensive and accessible legal treatise since Edward Coke's *Institutes* published in the first half of the seventeenth century. However, Blackstone was not the only legal writer who wanted to accomplish that task. Two other representatives of the same movement who deserve to be mentioned here are Thomas Wood and Charles Viner. That said, the list of writers who could be labelled as legal structuralists is much longer.[7] It is hard to forget that the eighteenth century was also the time when a group of influential judges actively worked to bring English law more in tune with modern needs. Among them we can enumerate Sir Jeffrey Gilbert C.B., Lord Holt C.J., and Lord Mansfield C.J.[8]

A meticulous and holistic study of the eighteenth-century concept of the English law still seems to be a necessary task, especially in the area of private law. Although an increase in research concerning eighteenth-century English law has been observed in the last few decades, most of the works written by such distinguished scholars as David Liberman, David Lemmings, Wilfrid Prest, or Christopher Brooks focus on selected branches of the law or selected phenomena (e.g. legal thought, the legal profession, and the relationship between the law and society). It is still necessary to look at the more doctrinal aspects of English law praxis and theory in the eighteenth century. The purpose of such research should not limit itself to England. It must be remembered that English law, as it was understood in the eighteenth century, was also an inspiration for the development of what would in the future become the American legal system. For this reason, any future holistic research shall include both the English and American experience of the eighteenth-century vision of the law.[9]

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class, see, e.g. D. Sugarman, *Simple Images and Complex Realities: English Lawyers and Their Relationship to Business and Politics, 1750–1950*, Law and History Review 1993, vol. 11, no. 2, pp. 267–270.

7 Cf. D. Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain*, Cambridge 1989, pp. 32–33.

8 D. Hay, *Origins: The Courts of Westminster Hall in the Eighteenth Century*, in: *The Supreme Court of Nova Scotia, 1754–2004: From Imperial Bastion to Provincial Oracle*, eds. P. Girard, J. Phillips, B. Cahill, Toronto 2004, pp. 22–25.

9 See, e.g., J.R. Pole, *Reflections on American Law and the American Revolution*, The William and Mary Quarterly 1993, vol. 50, no. 1, pp. 124–125.

When looking for a suitable topic to undertake this type of research, it seems obvious to address, first of all, one of the most characteristic branches of the English private law, i.e. the real property law.[10] As has been suggested, more detailed studies need to be undertaken in this area. This article hardly strives to achieve that goal. It is rather an introduction to further research and an indication of certain possibilities that that research may bring in the future.

1. Property in the English law before Blackstone

Property law is still one of the most characteristic features of the English legal system and it is often thought that it differentiates most clearly between the civil and common law traditions.[11]

The origins of this uniqueness are rooted in the Anglo-Norman period of the English history when the new feudal patterns were brought to England by William the Conqueror and his followers.[12] The importance of land being a visible sign of authority and power led to a situation where the key legal problems discussed at the time were focused on land property rights. It would not be an exaggeration to say that the English common law of the medieval period was, in fact, the English common law of real property.[13] In the second half of the 12th c. and the 13th c., a gradual petrification of the real actions (petty assizes, writ of entry, etc.) could be observed, which eventually led to the stabilization of the land law and to the defining of the roles of lords and tenants.[14]

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10 Cf. J. Baker, *An Introduction to English Legal History*, 5th ed., Oxford 2019, p. 241. As to wider role and perception of property in the early modern era, see an edited collected by J. Brewer and S. Staves (eds.), *Early Modern Conception of Property*, London 1994.

11 W.W. Buckland, A.D. McNair, *Roman Law and Common Law*, rev. F.H. Lawson, 2nd ed., Cambridge 1952, pp. 60–126. See also J.E. Penner, *The Idea of Property in Law*, Oxford 1997, passim. For a more flexible approach which tends to demonstrate more similarities than differences between common law and civilian proprietary traditions see Y. Chang, H.E. Smith, *An Economic Analysis of Civil versus Common Law Property*, Notre Dame Law Review 2012, vol. 88, no. 1, pp. 3–4.

12 Literature devoted to the early history of English land law is vast. The fundamental findings related to the Anglo-Norman origins of the English property law can be attributed to F.W. Maitland and F. Pollock, *The History of English Law before the Time of Edward I*, vol. 2, 2nd ed., Cambridge 1898, pp. 1–183; S.F.C. Milsom, *Historical Foundations of the Common Law*, 2nd ed., Oxford 1981, pp. 99–151; A.W.B. Simpson, *A History of the Land Law*, 2nd ed., Oxford 1986, pp. 1–80, and J. Baker, *An Introduction*…, pp. 241–266.

13 J. Baker, *An Introduction*…, pp. 242–245.

14 Ibidem, pp. 250–256.

The end of the early rapid development of real property was brought about by legislation passed in the 13th century, especially by the enactment of *Quia emptores* (1290) which eventually ended English feudal land relations by forbidding the so-called subinfeudation (making a purchaser of the land a tenant of the current tenant) and replacing the existing tenant by way of substitution.[15]

Over the next several centuries, the land law model created by the end of the 13th c. survived without larger changes, although some innovations were introduced on the periphery of the common law. Examples of these changes include the development of uses (the precursor of the English common law trust) within the chancery jurisdiction[16] and the development of entailed property (with land being passed down a lineal line of descent).[17]

A new wave of major land law reforms occurred under the Tudors. Initially slowly developing uses, mentioned above, started to play an increasingly important role. The original strict common law concepts began to be cleverly avoided by uses. Henry VII and Henry VIII tried to re-establish the status of the common law real property. The most successful way to do this (aligned with the Crown's political needs) was to deal with the matter at the fiscal level. Both kings introduced a series of legal solutions that combined realty with fiscal obligations. This was achieved through legislation, and in this respect two of the most important statutes that had an effect on the future of the land law in England were the Statute of Uses (1536) and the Statute of Wills (1540).[18] Thereafter, more modern and individualistic forms of land law relations were established and lasted for the next several centuries.

It is important to mention one other feature of the English proprietary relations that was not directly pointed out earlier. From the very beginning, English lawyers and judges built two separate regimes governing property, the so-called real property and personal property, also known as chattels personal. In addition, over time, English law developed the category of the chattels real, i.e. interests in land held for a specific period of time (e.g. leases).[19] The difference can be simplified by comparing it with the civil law typology of movables and immovables. In the civil law tradition, however, these two types of property are governed by roughly the same

15 Ibidem, pp. 263–264.

16 Ibidem, pp. 267–271.

17 Ł.J. Korporowicz, J.G. Owen, *Polish 'ordynacje' and the English Common Law Entail and Strict Settlement: Social, Political, and Religious Comparative Context*, Comparative Legal History 2022, vol. 10, no. 2, pp. 181–187.

18 J. Baker, *An Introduction*…, pp. 272–278. See also N.G. Jones, *The Authority of Parliament and the Scope of the Statute of Uses 1536*, in: *Law and Authority in British Legal History, 1200–1900*, ed. M. Godfrey, Cambridge 2016, pp. 13–32, especially 21–25.

19 A.W.B. Simpson, *A History*…, pp. 75–76.

set of rules. In the case of the common law, real and personal property constitute two different branches of the law, coming within the jurisdiction of different courts. Even today real and personal property are separated and are not regarded as something that can be easily intermixed.[20]

2. Blackstone and the principles of the law of property: uniqueness of the theory?

Even if Blackstone's *Commentaries on the Laws of England* are not the first attempt made in the eighteenth century to present a holistic picture of English law, there is no doubt that it was the most important one.[21] Blackstone's *Commentaries* were the first large and successful attempt since the time of Edward Coke (late 16th – early 17th c.), to offer a detailed analysis of the English common law. This attempt was especially important in the legal world which based much of its theoretical conceptualisation on the so-called books of authority, i.e. legal treatises that formed the intellectual skeleton of English law. There is no definitive list of what constitutes the books of authority, but Blackstone's can safely be called one of the most important examples of them.[22] In addition, Blackstone's impact on further legal discussion is undoubtedly the largest; both in the English and, more broadly, in the Anglo-American legal tradition.[23]

Blackstone's scheme (both in his lectures and in his *Commentaries*) was institutional, i.e., based on the institutional taxonomy used by Gaius and later by Justinian in their *Institutions*. This led also to a certain level of reliance on the Blackstonian narrative from the civilian and more broadly continental legal literature.[24] Refer-

20 M. Bridge, *Personal Property Law*, 4th ed., Oxford 2015, pp. 10–12.

21 The most important work on Blackstone and his work is W. Prest's, *Law and Letters in the Eighteenth Century*, Oxford 2008.

22 Cf. P.H. Winfield, *The Chief Sources of English Legal History*, Cambridge, MA 1925, pp. 252–256.

23 For the use of Blackstone's *Commentaries in the Supreme Court of the United States*, see J. Allen, *Reading Blackstone in the Twenty-First Century and Twenty-First Century through Blackstone*, in: *Re-Interpreting Blackstone's Commentaries: A Seminal Text in National and International Contexts*, ed. W. Prest, Oxford–Portland, OR 2014, pp. 216–220.

24 J.W. Cairns, *Blackstone, an English Institutist: Legal Literature and the Rise of the Nation State*, Oxford Journal of Legal Studies 1984, vol. 4, no. 3, pp. 318–360; D. Kennedy, *The Structure of Blackstone's Commentaries*, Buffalo Law Review 1979, vol. 28, no. 2, pp. 205–382; A. Watson, *The Structure of Blackstone's Commentaries*, The Yale Law Journal 1988, vol. 97, pp. 795–821.

ences to the Roman concept of *res* became the subject of the second volume of the *Commentaries*.[25] The importance of these considerations for the wider vision of the English law was stated by Blackstone at the very beginning of the chapter. Blackstone proclaimed that 'there is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property.'[26]

Even though the second book of the *Commentaries* is wholly devoted to property, Blackstone discussed its more theoretical basis elsewhere, i.e. at the beginning of the first book, in the essay titled *On the Study of Law*. It was originally presented by Blackstone as an inaugural lecture on 24 October 1758, just a couple of days after he was appointed to the Vinerian Professorship. When Blackstone decided to publish his lectures, *On the Study of Law* was reused by him as an introduction to the *Commentaries*.

The first mention of landed property (a term used regularly by Blackstone as an equivalent to the term real property) in the *Commentaries* immediately indicates how Blackstone perceived the concept of property within the English legal system. He pointed out that the 'landed property,' that belongs to the gentleman, 'with its long and voluminous train of descents and conveyances, settlements, entails, and incumbrances, […] forms the most intricate and most extensive object of legal knowledge.'[27] This passage encompasses three general themes associated by Blackstone with English property law. Firstly, landed property is 'the' property, i.e. its importance is incomparable to any other branch of law. Secondly, landed property is deeply rooted in the history of English society, especially, its upper ranks. Thirdly, landed property is a highly formalistic and challenging branch of the law. This latest observation is supported by Blackstone's immediate comment that 'the thorough comprehension of these, in all their minute distinctions, is perhaps too laborious a task for any but a lawyer.'[28] These three themes can boldly be called principles of the English property law as Blackstone understood it. They can also be treated as Blackstone's general suppositions that mark the distinctiveness of English landed property. In other words, it might be suggested that these were fundamental (most likely conservative) conceptions upon which Blackstone was building his interpretation of English real property.

It should be added to this that Blackstone in his theoretical observations is not focused on the fundamental division into the common law and equity. As mentioned earlier, the creation of uses resulted in a wide gap between the common law

25 W. Blackstone, *Commentaries on the Laws of England*, book 2, Oxford 1766.
26 Ibidem, *2.
27 W. Blackstone, book 1, *7.
28 Ibidem.

understanding of real property and its equitable counterpart. Notwithstanding this, when Blackstone refers to the theoretical principles of property, he does not seem to reflect on that. This is, of course, not true in case of Blackstone's discussion of the material issues related to landed property but seems to be odd in this theoretical context.

3. Examples of referring to the principles by Blackstone

Blackstone returns to the three above-mentioned themes on numerous occasions, both in the introductory essay and in the second volume of the *Commentaries*. Some of these examples are discussed in the following paragraphs.

As to the extraordinary character of property law and its unique place within the legal system of England, Blackstone developed his thoughts in several places. He was quite certain that property law was, even in his own time, a fundamental branch of English law. Although the jurisdiction of the Westminster courts already covered a wide scope of legal issues, Blackstone primarily linked the judiciary to the idea of protecting property rights. While speaking about the importance of judicial activity of the House of Lords,[29] Blackstone noted that the nobility, 'being not only by birth hereditary counsellors of the crown' they also performed judicial functions. These functions were of dual character – the members of the nobility were judges of 'their brother-peers' as well as the 'arbiters of the property of all their fellow-subjects.'[30] He also declared that lords' decisions were 'final, decisive, irrevocable,' and 'the inferior courts of justice must conform; otherwise, the rule of property would no longer be uniform and steady.'[31] Elsewhere, Blackstone declared that the Court of Common Pleas is 'the grand tribunal for disputes of property.'[32]

Another issue was that English property law differed from the parallel rules governing property issues in other countries. Blackstone admitted that English land law, based on the common feudal structures characteristic of many European nations, evolved in England in a significantly different way.[33]

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29 It is worth mentioning that at the time the judicial functions of the House of Lords were still developing, especially in relation to different local jurisdictions (English, Scottish and Irish), see Ł.J. Korporowicz, *Prawo rzymskie w orzecznictwie Izby Lordów w latach 1876–2009*, Łódź 2016, pp. 80–90.

30 W. Blackstone, book 1, *11.

31 Ibidem.

32 Ibidem, *22.

33 W. Blackstone, book 2, *58.

The second theme observed by Blackstone is the association of landed property with the upper ranks of the English society. More broadly, he saw landed property as a means of securing wealth, authority, and impact on national affairs. These features are roughly the same as the one used to define the social category of the gentleman.[34]

This theme has already been mentioned in Blackstone's statement, quoted above, where he linked the role of the House of Lords with real property rights.[35] Furthermore, in Blackstone's first mention of property in the *Commentaries*, he linked it with the generations of 'gentlemen.'[36] The same motive can be traced in other places of the *Commentaries*. For example, Blackstone enumerated the characteristic features and legal prerogatives of the 'gentlemen of fortune, in consequence of their property.'[37] Landed property also appears in the passage when Blackstone emphasised the willingness of some members of society to become members of the parliament. They are 'gentlemen of considerable property.'[38] Interestingly, Blackstone calls the same people the 'guardians of the English constitution' and 'the makers, repealers, and interpreters of the English laws.'[39]

Finally, the third theme (or principle) of landed property is its highly formalistic character. Brian Simpson in *A History of Land Law* pointed out that the complexity of land law rules and regulations in the eighteenth century prevented even many lawyers to fully understand the nuances of that branch of law.[40] The same view was presented by Blackstone in the mid-eighteenth century. When talking about inheritance matters, Blackstone observed that 'those who have attended the courts of justice are the best witnesses of the confusion and distresses that are hereby occasioned by the families'[41] who were trying to settle their hereditary situation after the death of a close relative. In another place, Blackstone declared that 'some branches of law, as the formal process of civil suits, and the subtle distinctions incident to landed property, […] are the most difficult to be thoroughly understood.'[42]

Indirectly, the same is confirmed in the second volume of the *Commentaries*. In the first paragraph of the chapter 'Of the Feodal System.' Blackstone emphasised

34 J.D. Solinger, *Becoming the Gentleman: British Literature and the Invention of Modern Masculinity, 1660–1815*, New York 2012, pp. 17–29.
35 W. Blackstone, book 1, *11.
36 Ibidem, *7.
37 Ibidem, *8.
38 Ibidem, *9.
39 Ibidem.
40 A.W.B. Simpson, *A History*…, p. 272.
41 Blackstone, book 1, *7.
42 Ibidem, *37.

that the understanding of the landed property requires 'some general acquaintance with the nature and doctrine of feuds, or the feodal law.'[43] What Blackstone understood as a general acquaintance was described by him on the fourteen pages.

4. Theoretical attitudes of other legal writers?[44]

As has already been mentioned, not only did Blackstone attempt to give English law a structure in the eighteenth century, but he also tried to achieve that goal by building a theoretical foundation. Let us look at the very first eighteenth-century attempt to build a complete picture of English law. In 1720, Thomas Wood published his *An Institute of the Laws of England*. His narrative is strict. It is hard to find deep theoretical deliberations in Wood's work about the essence of the law of property. He rather reported the law of real property as it was. It is possible to even say that his approach is definition-minded, i.e. he presents legal terms and ideas as if he were explaining them to students.[45] In fact, this approach is not surprising, since it is most likely that it was the actual aim of Wood's work on the laws of England.[46]

Similarly, a succinct narrative can be found in a work published several years later, in 1729, *A New Law-Dictionary* composed by Giles Jacob. Jacob dealt with property law in numerous entries in his dictionary, but usually he just recapitulated commonly accepted opinions and judicial doctrines. Different in character is his entry on property in general. Although the entry is not long, it resembles a certain theoretical conceptualisation of property.[47]

Among the important works devoted to law and published in the eighteenth century is Charles Viner's *A General Abridgement of Law and Equity*. The title on property occupies a significant part of volume 18 of Viner's work.[48] Due to the char-

43 Blackstone, book 2, *44.

44 A more widespread comparison of Blackstone's observations and the opinions of other eighteenth-century authors exceed the scope of this short introduction.

45 A good example of Wood's style is the introduction to the section entitled 'Estates.' Wood starts it in the following way: 'Estates are the *second* Object of our Laws; and in common Signification are all Manner of Property in *Lands*, &c *Goods* and Chattels,' see Th. Wood, *An Institute of the Laws of England*, Holborn 1720, p. 191.

46 R.B. Robinson, *The Two Institutes of Thomas Wood: A Study in Eighteenth Century Legal Scholarship*, American Journal of Legal History 1991, vol. 35, no. 4, p. 433.

47 G. Jacob, *A New Law-Dictionary*, printed by E. and R. Nutt and R. Gosling, London 1729, s.v. *Property*.

48 Ch. Viner, *A General Abridgement of Law and Equity. Alphabetically Digested Under Proper Titles, with Notes and References to the Whole*, vol. 18, 2nd ed., London 1793, pp. 62–77. The proprietary issues appeared also in other places of the *Abridgement* while discussing different terms.

acter of the work, a digest of concepts, and legal ideas, it is hard to observe any deep theoretical approach in Viner's dealing with property. It is true, however, that a certain level of conceptualization can be observed through the division of the entry into individual sections.

A work similar in its character to the Blackstonian *Commentaries* was *A Treatise on Estates and Tenures* written by Robert Chambers, Blackstone's successor as the Vinerian Professor. Chambers' work was published posthumously in 1824 but its content may be linked to his time as holder of Oxford's chair (1766–1777). Unlike other works, Chamber's treatise is a detailed analysis of real property based on earlier legal works, but it also contains a relatively wide theoretical (also historic) setting. For Chambers, the starting point for all the discussions is an analysis of initial feudal rules. At the end of the introduction to the treatise, he states: 'It is evident […] that our estates in England have all something of the nature of feuds, and formerly partook much more of it.'[49] Chambers' attempt was much closer to that of Blackstone, but even then, it is hard to compare it with Blackstone's approach.

Conclusions

The English real property has a long history. This history was already long and disturbed in the mid-eighteenth century when Blackstone started to sketch his lectures that eventually became *Commentaries on the Laws of England*. In this short essay, it was shown that the Blackstonian approach to the problem of property was different from that of other writers who were his contemporaries.

Unlike the others, Blackstone wanted to provide a more thorough perspective of English law. He did not limit his narratives to the legal reporting of ideas and doctrines. He was willing to explain the historical and theoretical framework of the issues he analysed.

As to real property, Blackstone built his vision of that branch of English law upon themes or principles. They were transparent illustrations of his conservative understanding of the law. According to Blackstone, English landed property had a special character; it was associated with wealth, authority, and impact on national matters, and, finally, it was highly formalistic. These observations preceded his detailed analysis of property law, and it allowed him to build a coherent vision of that branch of the law.

49 R. Chambers, *A Treatise on Estates and Tenures*, ed. Ch.H. Chambers, London 1824, p. 18.

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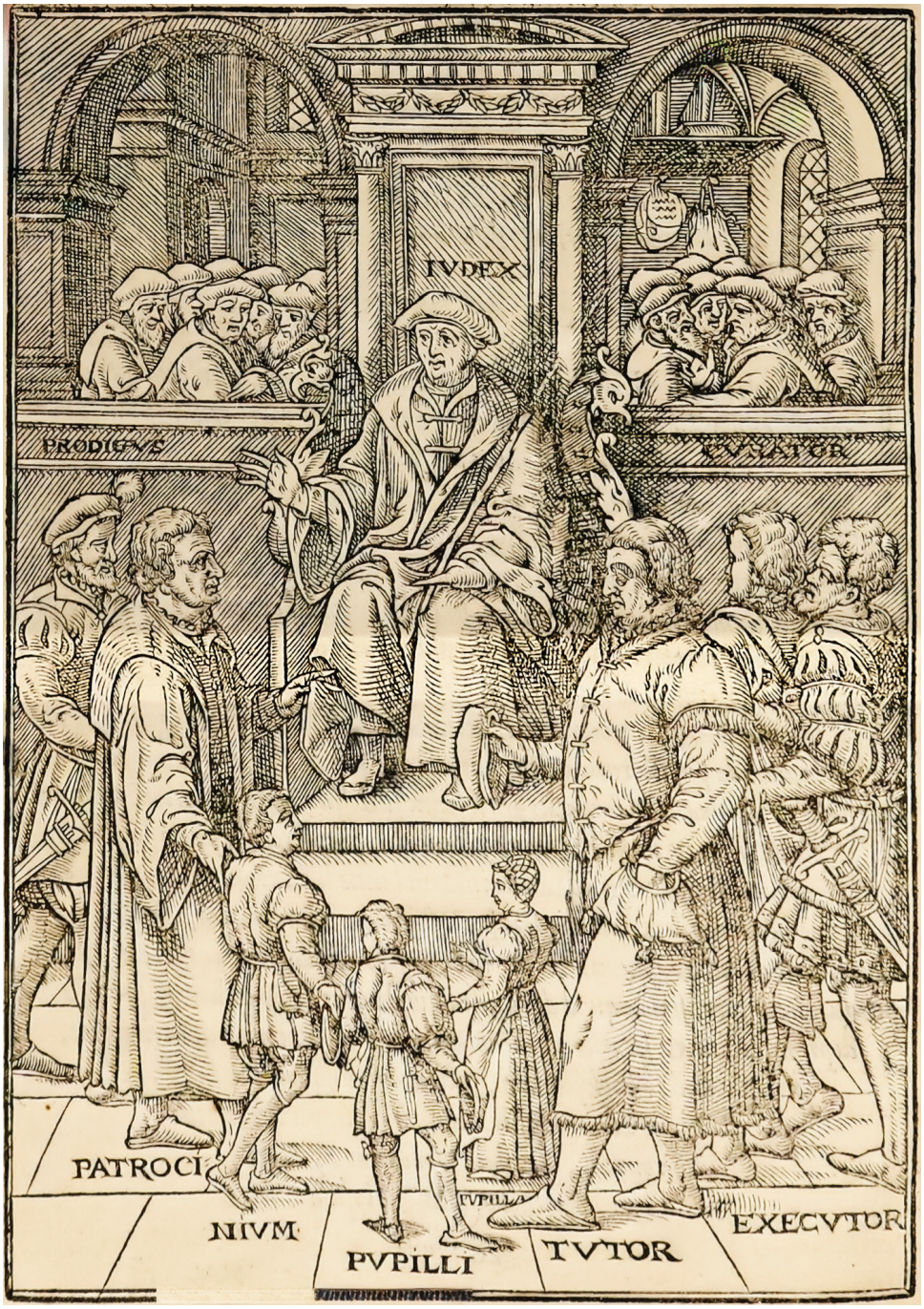

Pupillorum patrocinium legum et praxeos studiosis, […] Authore […] D. Iodoco Damhouderio, Apud Ioannem Bellerum, Antverpiae 1564, sygn. BU KUL. PXVI613, [k. 14].