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# Law Books in the Libraries of Colonial Virginians

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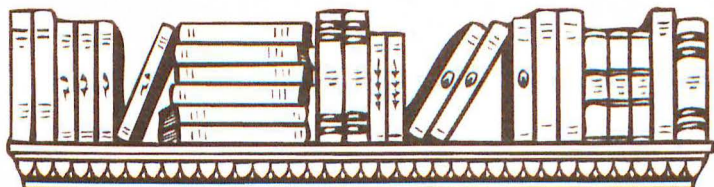
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“ESTEEMED  
*Bookes of*  
LAWE”



AND THE LEGAL CULTURE  
OF EARLY VIRGINIA

*Edited by*  
WARREN M. BILLINGS  
AND BRENT TARTER

# “Esteemed Bookes of Lawe”

AND THE  
LEGAL CULTURE  
OF EARLY VIRGINIA



Edited by  
Warren M. Billings  
and Brent Tarter

University of Virginia Press  
CHARLOTTESVILLE AND LONDON

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LAW BOOKS  
IN THE  
LIBRARIES OF  
COLONIAL  
VIRGINIANS



*W. Hamilton Bryson*

*James Ward Deputy A Clerk to James Darcy and R. King*

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OF  
TESTAMENTS  
AND LAST  
WILLS,

Fit to be understood by all men, that they may  
know, Whether, Whereof, and How, to  
make them.

Compiled out of the Laws Ecclesiasticall, Civill and  
Canon, as also out of the Common Laws,  
Customes and Statutes of this Realm.

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the Prerogative Court of YORK.

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and all such Statutes relating to this Subject as have been published  
unto this time. With an exact Table to the whole.

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2 KINGS 20. 1.

*Put thine house in order, for thou shalt die, and not live.*

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LONDON,

Printed by George Sawbridge, Thomas Roycroft, and  
William Rawlins, Assigns of Richard Atkins and Edward  
Atkins Esquires, 1677.

Cum gratia & privilegio Regiæ Majestatis.

*Henry Swinburne's Treatise of Testaments and Last Wills, first published in 1590-91, was the standard reference work for lawyers and magistrates charged with overseeing the probate of estates. Henry Swinburne, Treatise of Testaments and Last Wills (London, 1677). (Courtesy the Library of Virginia)*



OF ALL PROFESSIONALS, LAWYERS are the most dependent on books. All of their resource material is in written form. To know the quality of the practicing bar, the bench, legal studies, and legal scholarship in general, one must know the books on which they are founded. A census of law books present in the libraries of colonial Virginians can shed some light on the law and the lawyers who shaped the colony and the nation.<sup>1</sup>

Virginia was the largest and most populous British colony in North America. From the Stamp Act crisis through the American Revolution and for the next half century Virginians had a disproportionate influence in founding the United States. Virginians trained in the law late in the colonial period exercised that influence, which makes understanding the quality and abundance of the legal literature available to them both interesting and important.

To say that this essay covers the colonial period calls for a warning. It includes the entire span from 1607 to 1776 as far as the presence of law books in private libraries can be identified, but because the relevant records from seventeenth-century Virginia were not always as carefully made and have not been as well preserved as those from the eighteenth century, almost all of the information comes from the period from about 1700 to 1776. Moreover, Virginia before 1700 was neither so populous nor so prosperous as it was later, and fewer books of any kind would have been present in most households in the early years.

The types of libraries that included law books varied. Some professional lawyers, such as Richard Hickman (d. 1731) and John Mercer (1704–1768), had large, comprehensive law collections. The libraries of the great landowners William Byrd (1674–1744) and Robert “King” Carter (ca. 1663–1732), who sat on the General Court in Williamsburg, show that they had much more than a superficial understanding of the law.<sup>2</sup> The lesser gentry, an extensive class in Virginia, were justices of the peace and composed the county courts, the quarter sessions of colonial Virginia. In addition, they usually handled their own legal affairs, and legal manuals and guides appeared commonly in their more modest libraries.

This description of private libraries is based on printed sources, some manuscripts that have come to hand, and inventories of decedents’ estates. The printed sources are for the most part transcriptions of inventories filed among the probate records of the county courts. One of the major limitations of this compilation is that not all of the county records have survived the fires, wars,

and other vicissitudes of time. One particularly serious loss was that of the probate records of Williamsburg, the colonial capital during the eighteenth century, the seat of the General Court, and the residence of many prominent lawyers, including the attorneys general. With the loss of those records went references to a large number of law books in the colonial capital. Moreover, some of the manuscript county records have not been systematically surveyed to identify every surviving estate inventory, and eighteenth-century Virginia law allowed people to specify that their executors not file inventories, so that some collections never got catalogued in that way. Many of the surviving inventories contain incomplete lists, and some tantalize with vague entries such as "law books" or "old legal books."<sup>3</sup> Books also perished during the lifetimes of their owners and were thus never listed on estate inventories. Fires were frequent in private homes. The library of Thomas Jefferson (1743–1826) at Shadwell, which was composed mostly of law books, was accidentally burned in 1770.<sup>4</sup> People also lent books that were never returned, and other books were lost to overuse, dampness, and vermin.

On the other hand, it is possible that a single book has been counted more than once, because it is impossible to trace migrations of most individual volumes from owner to owner. That executors or administrators listed the titles demonstrates that those men understood that the books were of importance and had been important to the owners. They were not going to discard the volumes, but heirs with no pressing need or desire for law books may have sold them or given them away. No pattern is discernible in the acquisition or ownership of the various copies of the same title; therefore, with the exception of the rare surviving volumes that contain evidence of a chain of ownership, one cannot make any conjecture that a person got his copy from a particular individual, though he may have.

Furthermore, the number of titles is certainly not the minimum number present in the inventoried libraries of colonial Virginians, because many entries in the inventories are too terse to permit identification of the title. Some of them may duplicate, and probably do, some of the fully identified entries. Even when titles are given, the number of volumes is not always known, because law books were occasionally published in different numbers of volumes when issued in new editions, and some of the entries probably represent incomplete sets. Nevertheless, the errors of omission and commission may cancel each other. While the statistics that follow are cautious and conservative, they are probably representative with respect to the relative abundance in those libraries of the different classes of law books and to which titles in each class were most numerous. The published estate inventories refer to 1,571 copies of 482 identified titles and 360 copies of 179 unidentified titles. Many of the unidentified titles are probably additional copies of identified books, but



some certainly are not. We must keep this caveat in mind when noting that the census gives a total of 1,931 copies and 661 entries.

The primary sources of the law represented in the identifiable titles are the reports of judicial decisions and editions of the statutes of Parliament and of the Virginia General Assembly. The secondary sources of the law are abridgments, digests, and treatises prepared by practicing lawyers, law publishers, and, beginning late in the eighteenth century, legal academics, the first and foremost of whom was Sir William Blackstone (1723–1780). Those were works of legal theory, legal history, legal philosophy, and jurisprudence.<sup>5</sup>

The inventories identify 345 copies of 91 reports and accounts of trials, 6 copies of 3 or 4 indexes to reports, and 12 copies of 6 unidentified collections. These reports would have been of little practical value to most laymen, and thus the presence of several in one library suggests that the owner was a practicing lawyer or a person with aspirations in that direction. Of course, a volume of reports could have strayed into a gentleman's library by gift, bequest, or ill-advised purchase. Thus, the list of reports shows the professional and intellectual level of the bar of colonial Virginia.

As one would expect, the most popular of the reporters was Sir Edward Coke, with 20 copies of his reports, including incomplete sets and abridgments. The next highest number is 14 copies of the reports of Sir George Croke. Thirteen copies each of reports by Sir Henry Hobart and William Salkeld appear in the estate inventories, as well as 9 copies of the reports of Sir Henry Pollexfen and of Sir Peyton Ventris. At least one copy of almost all the then-printed reports was present in the private libraries of Virginia before 1776. Of the 98 reports then in print, 91 are known to have been available to one or more members of the colonial Virginia bar, and some of the others may have been. The exceptions were reports of Sir Robert Brooke, William Bunbury, Timothy Cunningham, William Mosely, Joseph Sayer, Francis Vessey Sr., and George Wilson, most of them published after 1755. The Virginians who owned the largest numbers of reports were John Mercer, who owned 97; William Byrd, with 33; Robert Carter, 26; George Johnston (1700–1766), 25; Peyton Randolph (ca. 1722–1775), 24; and Richard Hickman (d. 1732), 21. Five other men each owned between 10 and 20.

A second class of legal reference works consists of collections of state trials and published accounts of individual cases, most of which were criminal trials. The estate inventories identify 43 copies of 24 titles. Virginians probably acquired these books for their historical-interest value rather than for their limited use in legal research or in the routine practice of the law.

Editions of statutes constituted a third class. Most of the English collections of parliamentary statutes were entitled *Statutes at Large*, making it difficult in some instances and impossible in others to ascertain how many titles,

editions, and volumes Virginians owned. The inventories record at least 104 copies and sets in their libraries. Collections of statutes that the General Assembly of Virginia adopted, either in full text or in abstract, are easier to identify because editions were fewer in number. The colony's laws are represented by 16 titles and a total of 133 copies.

The secondary English legal literature comprises the great bulk of the books present in eighteenth-century Virginia libraries, 1,007 copies of 346 identifiable titles and 305 copies of 162 unidentified ones. This class of law books includes everything from scholarly treatises to form books and manuals for laymen. English manuals for justices of the peace, 63 copies of 21 titles, were the most abundant. The most popular were the works of Michael Dalton (as might have been expected),<sup>6</sup> whose treatise was represented by 17 copies; of Joseph Keble, 5 copies; and of Richard Burn, 5 copies. Michael Dalton's *Country Justice: Or the Office of a Justice of Peace Out of their Sessions* was first published in 1618 and superseded in popularity William Lambarde's *Eirenarcha: Or the Office of Justices of Peace, in Foure Bookes*. Dalton's work was enormously popular in England as well as in Virginia and went through many editions before Robert Burn's *Justice of the Peace, and Parish Officer* replaced it. The presence of only five copies of Burn's book is not really surprising. His manual was highly successful in England, but because the first edition was not issued until 1755, it had serious local competition from George Webb's *Office and Authority of a Justice of Peace*, published specifically for Virginia justices of the peace in 1736.

Justices of the peace in Virginia presided over the county courts, which had civil as well as petty criminal jurisdiction, but in England justices were invested only with criminal jurisdiction and some quasi-criminal administrative duties. The English manuals for justices dealt largely with matters of criminal law. Webb's manual was much more useful to Virginia magistrates because it offered them guidance on a much wider variety of subjects that came before them. It appears in forty-three estate inventories and was one of only three works by a colonial American. The other two were also manuals for justices of the peace. The inventories identify one copy of William Simpson's *Practical Justice of the Peace and Parish-Officer*, published in Charleston, South Carolina, and six copies of James Parker's *Conductor Generalis: Or the Office, Duty and Authority of Justices of the Peace*, which went through three editions in the middle Atlantic colonies before 1776.

In addition to the manuals for justices of the peace, other types of books dealt with the criminal law and its administration, such as three guides for sheriffs. The inventories record at least 7 copies of Michael Dalton's *Officium Vicecomitum: The Office and Authority of Sheriffs* and a single copy of John Wilkinson's *Practical Treatise on the Office of High Sheriff and of the Complete Sheriff*, published without an author's name. The lists also include two books



for constables, one by George Meriton and the other by Edmund Wingate, and two for clerks of assize. Forty copies of twelve titles deal with the criminal law in general. The most popular of them were Sir Edward Coke's *Institute of the Laws of England* (10 copies), Sir Matthew Hale's *Historia Placitorum Coronae: The History of the Pleas of the Crown* (8), and William Hawkins's *Pleas of the Crown* (7).

By far the most commonly owned law books in colonial Virginia were practical guides, handbooks, and collections of forms for pleading in court and for the conveying of land. These books were the foundation of the practicing attorney's professional library, and they were also very popular with laymen who handled their own legal affairs. The most common of the 117 titles in 359 volumes were Giles Duncombe's *Trials per Pais; or, The Law Concerning Juries by Nisi-Prius* (15 copies); Sir Anthony Fitzherbert's *New Natura Brevium* (13); Thomas Manley's *Clerk's Guide* (11); and William West's *Symboleography* (11). Eleven other titles appeared in inventories of between five and ten private libraries.

Books on the subject of real property (21 titles and 68 copies) far outnumbered books on other branches of the substantive common law, such as contracts, slander, and fraud. This large preponderance of books on property law reflects the fundamental importance of real estate, the major form of wealth in England as well as in Virginia. Property law was also the most well developed and sophisticated branch of English law. Certainly the most important of the titles was *Coke upon Littleton*, which constituted the first part of Sir Edward Coke's *Institutes*. It was an elaborate and deeply learned commentary on Sir Thomas Littleton's *Tenures*, first published in 1481. *Coke upon Littleton* was the standard text until the appearance of the first volume of Sir William Blackstone's *Commentaries on the Laws of England* in 1765. At least 27 copies of *Coke upon Littleton* were in Virginia libraries. The second most popular such work was John Perkins's *A Profitable Book . . . Treating the Laws of England*, which was in at least eight libraries.

Twenty-six copies of 13 titles dealt with procedure and practice in equity, the other major branch of English law, and there were 10 copies of 6 works on the substantive principles. General reference works such as law dictionaries,<sup>7</sup> abridgments, and encyclopedias, accounted for 28 titles and 132 copies. Giles Jacob's *Law Dictionary* was the most popular title in the general reference category, with 23 copies. The other titles that appeared most often in inventories were John Rastell's *Termes de la Ley* (17 copies); Thomas Wood's *An Institute of the Laws of England* (14); William Sheppard's *Abridgment* (7); Sir Francis Bacon's *Elements of the Common Laws of England* (6); and John Cowell's *Interpreter* (6).

Five other works are entitled to special notice because of their antiquity and scholarship: *Tractatus de Legibus et Consuetudinibus Regni Anglie*, puta-



tively authored by Ranulf de Glanville (d. 1190, commonly called Glanvill), with subsequent revisions or editions attributed to Henry de Bracton (d. 1268) and John le Breton, commonly called Britton (d. 1275); John Selden's *Ad Fletam Dissertatio*; and Christopher Saint Germain's *Doctor and Student*, the last included in eight inventories. All five of these works were on the shelves of William Byrd's library at Westover, Robert Carter owned copies of Bracton and Britton, and John Mercer had a copy of Britton. Indeed, the presence of these books and others of equal scarcity and erudition in other fields contributes to the high reputations of Byrd and Carter and of their libraries.

Virginians also owned books treating those branches of the civil law of the Continent that were grafted onto the trunk of English jurisprudence: ecclesiastical law, including the law of wills; and the law of merchants, including maritime law and the levy of customs duties. Inventories contain references to 24 copies of 20 titles dealing with the various aspects of church law concerning tithes, canons, convocations, and parishes. That only 2 titles appear more than once suggests the relative unimportance of this general group of books. On the other hand, the works dealing with wills and executors were very useful and were present in relative profusion, 72 copies of 11 titles. The most numerous were Henry Swinburne's *Treatise of Testaments and Last Wills* (23), Thomas Wentworth's *Office of Executors* (13), John Godolphin's *Orphan's Legacy* (11), and George Gilbert's *Law of Devises* (8).

The number of Continental legal works is not great, but it is larger than one might have expected, 65 copies of 34 titles. The library of William Byrd of Westover accounted for 28, and they were among the more esoteric. The remainder were standard texts, often English translations, scattered thinly among the colony's libraries. The inventories list 20 copies of Samuel von Pufendorf's two popular treatises, 10 of Hugo Grotius's *De Jure Belli ac Pacis*, 6 of Justinian's *Institutes* (a textbook of Roman law), and 2 of Jean Domat's *Lois Civiles*, or in its English translation, *Civil Law in its Natural Order*.

Almost all free Virginians derived their income from farming, and they were dependent on British merchants and shippers to provide them with manufactured goods and to market their agricultural products. Fifty-five copies of 20 reference books on commerce appear in the inventories. The single most popular book was Charles Molloy's *De Jure Maritimo* (18 copies), followed by Gerard de Malynes's *Lex Mercatoria* (6) and what was usually referred to as "the book of rates," the schedule of the statutory customs duties established by the English Act of Tonnage and Poundage (Stat. 12 Car. 2, c. 4) (12).

As one would expect, the standard legal manuals and guidebooks for laymen were the most numerous law books in colonial libraries. People needed to know what their powers and duties were as justices of the peace, collectors of customs, sheriffs, constables, vestrymen, and administrators of estates. They needed to know how to make wills, how to convey land, how to draft bills of

exchange, and how to collect a debt or prosecute a thief. In addition, many of the practicing attorneys, justices of the peace, and judges of the General Court owned copies of the various reports of cases and collections of statutes. The wealthier and more highly educated also had erudite volumes of jurisprudence, legal history, and international law. The most fabulous library of all, that of William Byrd in the rooms at Westover, also included books of the Roman and canon laws of the Continent.

The law books that residents of colonial Virginia owned ranged from a single manual, form book, or statute book in many houses to more than a hundred volumes in a small number of well-stocked libraries. The ownership of law books was widespread throughout the colony, making it obvious that Virginians were concerned with their legal rights and that they looked to the English common law for their definition. Virginians frequently lent books to their neighbors, and the doors of their libraries were evidently always open to friends. With both large and small collections available throughout the settled areas of the colony, people could often borrow books that they did not own.

The scope of the legal literature available to eighteenth-century Virginians was remarkably deep and broad. The availability in eighteenth-century Virginia of the relevant law books, especially the reports of cases, the foundational books, shows that the common law of England was more than just a theoretical concept. It actually governed the community and was applied in the courts. This was true not only of the General Court in Williamsburg but also of the county courts throughout the colony.

## NOTES

An earlier version of this essay appeared in W. Hamilton Bryson, "Private Law Libraries before 1776," in *Virginia Law Books*, ed. W. Hamilton Bryson, *Memoirs of the American Philosophical Society*, vol. 239 (Philadelphia, 2000), 479–87.

1. The statistics in this essay are based on the information found in W. Hamilton Bryson, *Census of Law Books in Colonial Virginia* (Charlottesville, 1978), and upon further, subsequent research done primarily in the Virginia county-court records of wills and inventories of decedents' estates.
2. Kevin J. Hayes, *The Library of William Byrd of Westover* (Madison, WI, 1997); Lyon G. Tyler, "Libraries in Colonial Virginia." *William and Mary Quarterly*, 1st ser., 3 (1895): 248–51; Louis B. Wright, "The 'Gentleman's Library' in Early Virginia: The Literary Interests of the First Carters," *Huntington Library Quarterly* 1 (1937): 3–61.
3. For example, "1 law book" (Benjamin Brown, 1762), "15 law books" (Joseph Heenning, 1718), "13 law books" (Robert Tucker, 1723), "20 law books" (John Eustace, 1702). "Books in Colonial Virginia," *Virginia Magazine of History and Biography* 10 (1903): 389–405.
4. Dumas Malone, *Jefferson, the Virginian* (Boston, 1948), 126; Thomas Jefferson to

- John Page, 21 Feb. 1770, and Jefferson to James Oglivie, 20 Feb. 1771, in *The Papers of Thomas Jefferson*, ed. Julian P. Boyd et al. (Princeton, NJ, 1950–), 1: 34–35, 63.
5. David J. Ibbetson, “Charles Viner and His Chair: Legal Education in Eighteenth Century Oxford,” in *Learning the Law: Teaching and the Transmission of Law in England, 1150–1900*, ed. Jonathan A. Bush and Alain A. Wijffels (London, 1999), 315–28.
  6. L. R. McInnis, “Michael Dalton: The Training of the Early Modern Justice of the Peace and the Cromwellian Reforms,” in Bush and Wijffels, *Learning the Law*, 255–72.
  7. Gary L. McDowell, “Politics of Meaning: Law Dictionaries and the Liberal Tradition of Interpretation,” *American Journal of Legal History* 44 (2000): 257–83.