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# Census of Law Books in Colonial Virginia

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Census of Law Books  
in Colonial Virginia

William Hamilton Bryson

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## Preface

The preparation of this census of law books has led me down many seldom traveled paths through obscure Virginia. But for the guidance of Harold B. Gill, Jr., Richard Beale Davis, and William M. E. Rachal many would have been missed, and I am grateful to them for their help.

I would also like to express my appreciation to the Faculty Publications Committee of the University of Richmond for their financial support.

W. H. B.

## Preface

This census of law books has led me down many paths through obscure Virginia. But for the help of B. Gill, Jr., Richard Beale Davis, and William B. Davis, I would have been missed, and I am grateful to them.

I wish to express my appreciation to the Faculty and the Board of Trustees of the University of Richmond for their financial support.

W. H. B.

## Introduction

Of all professionals, lawyers are the most dependent upon books. All of their resource material is in written form. To know the level, the quality of the practicing bar, the bench, legal studies, and legal scholarship in general, one must know the books upon which they are founded. Therefore, this census of law books was undertaken in order to know a little better the legal life of colonial Virginia.<sup>1</sup>

Virginia was the largest British colony in North America in the seventeenth and eighteenth centuries. There was not much legal communication with the other colonies before the beginning of the Revolutionary period; British laws assured that commercial and cultural ties were direct with Great Britain. However, Virginians had a disproportionate influence on the United States for the first fifty years of its existence, and this influence was exerted largely by men trained in the law at the end of the colonial period. It is believed that this census will shed some light on the law which shaped the lawyers who shaped the nation.

To say that this census covers the colonial period calls for a warning. It does include the entire span from 1607 to 1776 as far as the presence of law books could be discovered. However, the records of seventeenth-century Virginia were not as carefully made or preserved as they were in the following century. Therefore almost all of the entries come from the period of about 1676 to 1776. This statement in turn requires the explanation that Virginia before 1676 was nowhere near so prosperous or so populous as it was later, and therefore fewer books of any kind would have been present in the early years.

The types of libraries which included law books were varied. There were those of the professional lawyers with extensive and

<sup>1</sup>For a good treatment of lawyers, see A. M. Smith, "Virginia Lawyers 1680-1776: The Birth of an American Profession" (Ph.D. diss., Johns Hopkins Univ., 1967); for colonial libraries in general, see the works listed in D. Gillespie and M. H. Harris, "A Bibliography of Virginia Library History," *Journal of Library History* 6 (1971): 72-90, and J. M. Patterson, "Private Libraries in Virginia in the Eighteenth Century" (M.A. thesis, U. Va., 1936).

comprehensive law collections, e.g., Richard Hickman and John Mercer. The libraries of the great landowners, William Byrd II and Robert "King" Carter, who sat in the General Court in Williamsburg, show that they had more than a superficial understanding of the law. 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 appear regularly in their modest libraries. The larger libraries will be mentioned later in more detail.

Each entry in this census is divided into three parts. The first part identifies the book where I have been able to do so. In giving the author's name, I have not followed the bibliographical custom of distinguishing anonymous authors who are now known. Many works went through several editions, some of which identified the author but others, usually the earlier ones, did not. In other books the author is identified by his initials, which were well known in his own day, or by his signature at the end of a dedication or preface. Therefore square brackets have been reserved for the names of authors whose works have been abridged, indexed, or severely edited, such as Sir Edward Coke.

I have given the short title of each work in order to reduce the size of this volume. Many title pages of the seventeenth and eighteenth centuries were used to describe at great length the contents of the book rather than to give identifying appellations. In this census I have attempted to give the minimum short title which mentions the subject of the book. These titles have been modernized because frequently the originals vary in wording and spelling from edition to edition. Unidentified titles are given within quotation marks. Where the identification is not certain, the title as given by the inventory is quoted at the end of the last part of the entry.

All editions and translations of a single work have in most cases been listed together under a single entry. Except when a book was issued in a single edition, it is rare to be able to determine the date of a particular copy. Such information as to edition and date that has come to hand has, of course, been included.

The second part of the entry gives a few bibliographical references; the abbreviations used here are explained in the list of works which immediately precedes the census. The third part identifies the copies of the work which were located in colonial Virginia. The first word is a reference to my source of information; these articles and books are listed along with the bibliographical

collections, e.g., Richard Hickman and John Carter, who sat in the General Court in that they had more than a superficial understanding of the law. The lesser gentry, an extensive class in Virginia, were peace and composed the county courts, the colonial Virginia. In addition they usually handled legal affairs, and legal manuals and guides appear in the most modest libraries. The larger libraries will be mentioned in more detail.

The census is divided into three parts. The first part is where I have been able to do so. In giving the titles I have not followed the bibliographical custom of listing famous authors who are now known. Many works have multiple editions, some of which identified the author of the earlier ones, did not. In other books the author is identified by his initials, which were well known in his own time. Brackets at the end of a dedication or preface have been reserved for the names of the books. Books have been abridged, indexed, or severely edited by Edward Coke.

The short title of each work in order to reduce the length of the title. Many title pages of the seventeenth and eighteenth centuries were used to describe at great length the contents rather than to give identifying appellations. In this work I attempted to give the minimum short title which would identify the book. These titles have been modernized where the originals vary in wording and spelling from the originals. Unidentified titles are given within quotation marks. If identification is not certain, the title as given by the author is used at the end of the last part of the entry.

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The list of the entry gives a few bibliographical details. The abbreviations used here are explained in the list of abbreviations which immediately precedes the census. The third part of the entry of the work which were located in colonial Virginia is a reference to my source of information; the titles of the books are listed along with the bibliographical

references. Within the parentheses is the name of the owner and the date of his ownership or of the book's presence in Virginia. In most cases this date is that of the inventory of the decedent's estate. Miscellaneous information as to copies, volumes, editions, etc., concludes the third part. It is this third part which records the number of copies in Virginia.

Take as an example the second entry of the census. The book present in Virginia was *Select Cases in the King's Bench* compiled by John Aleyn. The second part, the bibliographical part, of the entry mentions that the books could have been copies of the 1681 edition or the 1688 edition. If it could have been determined which edition, then the date of publication would have been stated at the end of the first part of the entry. This was done in the third entry; Anderson's *Reports* had appeared in only one edition during the period covered by this census, thus the date of the books is known. The bibliographical part of the second entry continues with references to Sweet and Maxwell's *Legal Bibliography*, volume one, *The Reports* by J. W. Wallace, and the *Short Title Catalogue* by D. G. Wing, where fuller bibliographical information is found. The third or census part of the entry shows that three copies of the work are known to have been present in colonial Virginia, in the libraries of Daniel McCarty in 1724, of Richard Hickman in 1732, and of John Mercer in 1746. The first words of each line of the census part of the entry refer to my sources of information, L. G. Tyler, "Libraries in Colonial Virginia" in the *William and Mary Quarterly* and C. M. Watkins, *The Cultural History of Marlborough, Virginia* (Washington, D.C., 1968). The abbreviations and references of the bibliographical and census parts of the entry are explained in the list which immediately precedes the main body of this book. It is interesting to note that there is a substantial time gap between the second edition of the work and its appearance in the estates of McCarty and Hickman and in the account book of Mercer. Hickman and McCarty no doubt owned their copies for a significant time before they died, but it still cannot be thought that this work was in Virginia hot off the press. This work, however, was a reference work and formed a basic part of a practicing lawyer's working library. Reports of cases are the foundation of a lawyer's library, and these books do not go out of date quickly. Lawyers then and now regularly cite cases which were decided several hundred years before.

In regard to the scope of the designation "law books," it must be recognized that the distinction between jurisprudence and political philosophy is a fine one. The works of Hobbes, Locke and



Montesquieu have been omitted, but I have deliberately erred on the side of inclusion in regard to other Continental works.

This census is based on printed sources plus two manuscripts which have come to hand. These printed sources are for the most part transcripts of inventories of decedent's estates, which were 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 Virginia's history. Of particular distress is the loss of the probate records of Williamsburg, since this was the colonial capital, the seat of the General Court, and the residence of many prominent lawyers including the attorneys general. There must have been a large number of law books in colonial Williamsburg which are now unknown to us and thus not included in this census.

Moreover, there must have existed many books which perished in the lifetimes of their owners and were thus never inventoried. Fires were frequent in private homes.<sup>2</sup> Some books were lent and never returned; others must have been lost to overuse, dampness, and vermin.

Many of the inventories that we do have are incomplete lists.<sup>3</sup> Many others tantalize with vague entries such as "law books" or "old legal books."<sup>4</sup> This information has been omitted. Even though it sheds some light on the quantity of legal reading, it is of no use in assessing the quality of the literature.

I have also omitted from consideration law books ordered by Virginians where no evidence of receipt has been found. The largest group of these orders were the subscriptions to the 1771 Philadelphia edition of Blackstone's *Commentaries*.<sup>5</sup> Between 1768 and 1772 George Wythe and John Randolph placed several orders with John Norton and Sons for law books.<sup>6</sup> These books were probably sent to Virginia, but we have no way of knowing for certain.

<sup>2</sup>For example, Jefferson's library at Shadwell, which was composed mostly of law books, was burnt in 1770 (Smith, pp. 249, 250).

<sup>3</sup>Patterson, pp. 3, 4, 9, 48, 56.

<sup>4</sup>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," *Va. Mag. Hist. Biog.* 10 (1903): 389-405.

<sup>5</sup>"Subscribers in Virginia to Blackstone's Commentaries," *Wm. and Mary Q'tly.*, 2d ser., 1 (1921): 183-85, which lists 89 individuals and 66 sets ordered by booksellers; the count is 82 individuals and 97 sets for resale according to Smith, p. 212.

<sup>6</sup>F. N. Mason, *John Norton and Sons* (New York, 1968), pp. 51, 52, 54, 101, 133, 134, 179, 180, 243.

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Finally there were many law collections which were begun before 1776 but not inventoried until afterwards, most notably those of Wythe and Jefferson. Thus there is not sufficient evidence to determine which of the books were owned during the period covered by this census.

For these reasons books which should have been included may have been omitted. Let us now consider the possibility of a single book being included more than once. It has not been possible to trace migrations of books to any degree significant to this census. It is obvious from the fact that the titles were listed that books were considered of importance and value by the administrator of an estate and that they were not going to be discarded. Nevertheless, I have not been able to discern any pattern in the acquisition or ownership of the various copies of the same title, and therefore I cannot make any conjecture that a certain person got his copy from any other particular individual, though he may have.

Furthermore, it cannot be said that the number of entries in this census is the minimum number of titles present in colonial Virginia because many entries of the inventories are too laconic to be identified and had to be copied verbatim. These may, and probably do, duplicate some of the fully identified entries. It is hoped that these errors of omission and commission will cancel each other. It is my opinion that the size of this census is quite conservative.

The results of the compilation of this census are a number of interesting statistics and insights. There are 1,240 copies of 449 identified titles; in addition there are 299 copies of 163 unidentified titles. Probably many of these unidentified titles are additional copies of identified books, but many are not. Sometimes it has been convenient to have separate entries for different editions of the same work. We must keep these two caveats in mind when noting that this census contains a total of 1,539 copies and 612 entries.

The number of volumes cannot be determined with any significant degree of accuracy because it is seldom that this information was recorded. (The number of volumes has been noted where possible.) Many works were published in different numbers of volumes with the different editions, but the inventories do not identify editions. Furthermore, it is possible and likely that many titles in these lists represent incomplete sets, especially where the volumes were not issued simultaneously but might have had to be ordered from England separately over a period of several years.

Let us first consider the types of law books found in colonial Virginia and then the libraries in which they were found. The census begins with the reports or collections of cases and accounts of

various individual state trials. There are 263 copies of 87 identified reports, 6 copies of 3 or 4 indexes to reports, and 8 copies of 5 unidentified collections. These reports would have been of no practical value to a layman, and thus the presence of several in one library would suggest that their 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. With this in mind, let us examine the list of reports as a clue to the professional and intellectual level of the bar of colonial Virginia.

As one should expect, the most popular of reporters was Sir Edward Coke; there were 18 copies of his reports (including incomplete sets and abridgments). The next in number of copies in Virginia was Croke with 13. There were 10 copies of Hobart and 7 each of Salkeld, Pollexfen, and Ventris. At least one copy of all the then printed reports were present in Virginia before 1776, except those of Andrews, which was published in 1754; Atkyns, 1765 to 1768; Brooke's *New Cases*, which appeared in several editions up to 1628; Bunbury, 1755; Burrow, 1766 and 1771; Cooke, 1742 and 1747; Cunningham, 1766 and 1770; Mosely, 1744; Sayer, 1775; F. Vesey, Sr., 1771, 1773; and Wilson, 1770 to 1775. Of the 98 reports in print, 87 are known to have been available to the colonial bar.

The holders of the largest numbers of copies of reports were:

John Mercer	97
William Byrd II	33
King Carter	26
George Johnston	25
Richard Hickman	21
Henry Churchill	15
Daniel McCarty	11
Dabney Carr	10

The libraries of these men will be discussed below.

There were 40 copies of 22 titles of collections of state trials and of individual cases, most of which were criminal trials. These works were probably bought for their general interest value rather than for use for legal research.

The section giving the legislative materials includes collections of statutes, abridgments, debates, and journals. Most of the 29 entries of the English subsection cannot be positively identified because the inventories usually only give general descriptions such as "statutes"

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or "debates." Since the Virginia laws were published under the title *Acts of Assembly* or a very similar title, a reference to "statutes" has been assumed to refer to an English collection. Most of the English collections are called *Statutes at Large*. Although I have arranged these books into 29 entries, they represent 99 copies and sets.

I have omitted from this census any mention of the "Act of Parliament" which was distributed by the *Virginia Gazette* office in 1765. From 8 June until 11 October 1765, 142 copies were sold on credit to forty-one individuals and seven merchants. These latter took 95 copies for resale. They were probably copies of the Stamp Act of 1765. It is interesting to note that the first copy was bought by Thomas Jefferson. I have not included these because their interest to Virginians was primarily political and administrative rather than legal.

The Virginia statutory collections are represented by 15 entries and a total of 90 copies. It was easier to identify these titles than the English ones because the possibilities are fewer. However, the proportion of unidentified books is much higher than that for the reports of cases.

I have omitted from this census the 164 copies of the first edition of John Mercer's *Abridgment* (1737) and the 213 copies of the second edition of 1759 which were still in Mercer's possession at the time of his death, according to the Brock manuscript. These unsold copies tell us about the law book trade but not about the use of these copies. They had not been sold by 1770, thus they had not circulated or been used, nor do we have any evidence that they ever were.

The number of Continental legal works is not great, but it is larger than one might have expected. There were 57 copies of 32 titles. Of these 57 the library of William Byrd II accounted for 28, and these 28 were the more esoteric. The remainder, standard texts, were scattered thinly and were often English translations. There were in total 17 copies of Pufendorf's two popular treatises, 9 copies of Grotius's *De Jure Belli ac Pacis*, 4 of Justinian's *Institutes* (a textbook of Roman law), and 2 copies of Domat, *Loix Civiles*. The other 25 titles were represented by single copies each, 18 of which were owned by Byrd.

The secondary English legal literature constitutes the great bulk of this census. It includes everything from scholarly treatises to form books and manuals for laymen. There were 829 copies of 314 identifiable titles and 282 copies of 150 unidentified ones. This is an appropriate place to inquire of this census what were the more

popular categories of treatises and handbooks owned in colonial Virginia.

There were a substantial number of English manuals for justices of the peace, 50 copies of 19 titles. The most popular of these were the works of Dalton (as might have been expected), whose treatise was represented by 13 copies, of Keble, 5 copies, and Burn, 5 copies. Dalton's *Country Justice* was first published in 1618; it superseded in popularity Lambarde's *Eirenarcha*. Dalton's work was enormously popular in England as well as in Virginia and went through many editions before it was, in its turn, superseded by Burn's *Justice*. The presence of only 5 copies of this last mentioned book is not really surprising. Burn's manual was highly successful on both sides of the ocean, but since the first edition was not issued until 1755, not many copies had the opportunity to appear in Virginia inventories before 1776. Moreover, by the middle of the eighteenth century there was local competition in the field.

This brings us to mention three entries which have two things in common; first, they are the only American treatises found in colonial Virginia, and second, they are all three manuals for justices. There was one copy of the work by Simpson published in Charleston and one copy of a handbook by Parker, which went through three editions in the middle colonies before 1776. The third was George Webb's *Virginia Justice*, which was printed in Williamsburg in 1736. I have found 20 copies, but there must have been many more in circulation.

Only two secondary legal works were published in colonial Virginia, and both of them were manuals for justices of the peace. In addition to Webb's *Virginia Justice*, a second handbook appeared in 1775 by Richard Starke. Starke's volume must have circulated in Virginia in the last year before Independence, but it is omitted from this census because there is no evidence of who held copies before 1776.

In Virginia the justices of the peace presided over the county courts, which had civil as well as criminal jurisdiction; but in England the justices were invested only with criminal jurisdiction and with quasi-criminal administrative duties. Therefore, these manuals for justices dealt only with matters of criminal law. In addition to these, there were other types of books dealing with the criminal law and its administration.

There were three separate guides for sheriffs. There were at least 6 copies of the one by Dalton and single copies of Wilkinson's

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Very few legal works were published in colonial Virginia. The most common were manuals for justices of the peace. In 1736, *Virginia Justice*, a second handbook appeared in Williamsburg. Starke's volume must have circulated in the colonies before Independence, but it is omitted from the list because there is no evidence of who held copies before 1776.

Justices of the peace presided over the county courts, both civil as well as criminal jurisdiction; but in England they were invested only with criminal jurisdiction and administrative duties. Therefore, these manuals dealt primarily with matters of criminal law. In addition to these were other types of books dealing with the criminal law in England.

There were separate guides for sheriffs. There were at least two by Dalton and single copies of Wilkinson's

*Treatise* and of the anonymous *Complete Sheriff*. There were two books for constables, those by Meriton and Wingate, and two for clerks of assize. Also there were 12 titles dealing with the criminal law in general; they were represented by 33 copies. The most popular of these were Coke's *Third Institute* (10 copies), Hale's *Summary of the Pleas of the Crown* (8 copies), and Hawkins's *Pleas of the Crown* (4 copies).

By far the most commonly owned law books in colonial Virginia were guides, handbooks, and collections of forms for pleading in court and for the conveying of land. One hundred six titles were represented by 274 copies. These books constituted the foundations of the practicing attorney's professional library and were also very popular with the layman who handled his own legal affairs. The most common of these were:

- Fitzherbert, *New Natura Brevium* (12 copies)
- West, *Symboleography* (11 copies)
- Duncombe, *Trials per Pais* (10 copies)
- Manley, *Clerk's Guide* (9 copies)
- Bohnn, *Institutio Legalis* (8 copies)
- Billinghurst, *Arcana Clericalia* (7 copies)
- Richardson, *Attorney's Practice in the Court of King's Bench* (7 copies)
- Style, *Registrum Practicale* (7 copies)
- Attorney's Pocket Companion* (6 copies)
- Brown, *Modus Inrandi Placita Generalia* (6 copies)
- Jacob, *Every Man His Own Lawyer* (6 copies)
- Practick Part of the Law* (6 copies)
- Richardson, *Attorney's Practice in the Court of Common Pleas* (6 copies)
- Hutton, *Young Clerk's Guide* (5 copies)
- Townsend, *Preparative to Pleading* (5 copies)

There were a few books on various branches of the substantive common law, such as contracts, slander, and fraud, and many on the subject of real property. This large preponderance of books on property law reflects the fact that real estate was by far the major form of wealth in England as well as in Virginia and also that this was the most well developed and sophisticated branch of English law. This census lists 20 titles and 58 copies of books on this subject. By far the most important of these was *Coke upon Littleton*, which constituted the first part of Coke's *Institutes*; it was an elaborate

and deeply learned commentary on Littleton's *Tenures*. This was the standard law text (though certainly not originally intended for beginners) until the appearance of Blackstone's *Commentaries* in 1765. There were at least 22 copies of *Coke upon Littleton* in colonial Virginia. The second most popular work was that by Perkins, *A Profitable Book*; 7 copies of this one were found here.

Equity, the other major branch of English law, was represented by 21 copies of 12 titles on procedure and practice. In addition there were 8 copies of 6 works on the substantive principles.

In addition were the general works: law dictionaries, abridgments, and encyclopedias. Of these there were 27 titles and 109 copies.

Jacob, *Law Dictionary* (16 copies)

Rastell, *Termes de la Ley* (15 copies)

Wood, *Institutes* (10 copies)

Cowell, *Interpreter* (6 copies)

Bacon, *Elements of the Common Laws of England* (5 copies)

Sheppard, *Abridgment* (5 copies)

These figures do not include the following five works whose antiquity and scholarship entitles them to special notice: Glanvill, Bracton, *Britton*, Selden's *Ad Fletam Dissertatio*, and Saint Germain's *Doctor and Student*. There were 8 copies of this last-mentioned work in colonial Virginia. All five of these works were on the shelves of William Byrd's library at Westover; King Carter owned copies of Bracton and *Britton*; and John Mercer had a copy of *Britton*. Indeed it is the presence of these books and others of equal erudition in other fields which justifies the reputations of Byrd and Carter and of their libraries.

The final categories of law books to be considered are those branches of the civil law of the Continent which 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). The works dealing with the various aspects of church law, tithes, canons, convocations, parishes, etc., are represented by 20 copies of 17 titles. The fact that only 2 titles were present in more than one copy 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. There were 64 copies of 11 titles. The most frequently found of these were:

commentary on Littleton's *Tenures*. This was text (though certainly not originally intended for the appearance of Blackstone's *Commentaries* in at least 22 copies of *Coke upon Littleton* in co-second most popular work was that by Perkins, 7 copies of this one were found here.

major branch of English law, was represented titles on procedure and practice. In addition there works on the substantive principles.

the general works: law dictionaries, abridg-pedias. Of these there were 27 titles and 109

*nary* (16 copies)

*de la Ley* (15 copies)

(10 copies)

*r* (6 copies)

*of the Common Laws of England* (5 copies)

*ment* (5 copies)

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Swinburne, *Treatise of Testaments and Last Wills* (21 copies)

Wentworth, *Office of Executors* (11 copies)

Godolphin, *Orphan's Legacy* (10 copies)

Gilbert, *Law of Devises* (8 copies)

Anyone of any financial substance would have wanted to make a will then, as now, and the absence of banks meant that many persons would have found themselves serving as executors of wills and administrators of decedents' estates.

Almost all colonial Virginians derived their income from farming, and they were dependent upon British merchants and shippers to provide them with manufactured goods and to market their agricultural products. To aid themselves in these mercantile affairs, the Virginia planters used 48 copies of 19 titles. The single most popular book by far was Molloy's *De Jure Maritimo* with 16 copies. There were 5 copies of Malynes's *Lex Mercatoria* and 8 copies of various "books of rates," which were schedules of customs duties.

These statistics have shown which were the most popular types of law books in pre-Revolutionary Virginia. Now let us look at this census to see which were the most popular individual titles:

*Coke upon Littleton* (22 copies)

Swinburne, *Treatise of Testaments* (21 copies)

Webb, *Virginia Justice* (20 copies)

Jacob, *Law Dictionary* (16 copies)

Molloy, *De Jure Maritimo* (16 copies)

Mercer, *Abridgment of Acts of Assembly of Virginia* (15 copies)

Rastell, *Termes de la Ley* (15 copies)

Coke, *Reports* (14 sets)

Dalton, *Country Justice* (13 copies)

Fitzherbert, *New Natura Brevium* (12 copies)

Pufendorf, *Law of Nature and Nations* (12 copies)

Croke, *Reports* (11 copies)

Wentworth, *Office of Executors* (11 copies)

West, *Symboleography* (11 copies)

Duncombe, *Trials per Pais* (10 copies)

Godolphin, *Orphan's Legacy* (10 copies)

Manley, *Clerk's Guide* (9 copies)

Wingate, *Abridgment of Statutes* (9 copies)

Before going on to the discussion of individual law collections, let us pause to note the presence in this list of the books by Swinburne and Dalton and the absence of Dalton's manual for sheriffs, of



which only 6 copies have been located in Virginia. In 1666 these three works were given a sort of official approval by the General Assembly by an act which required copies of each to be provided for the use of every court.<sup>7</sup> Thus one should expect to find them in the possession of many private persons as well.

Having considered the titles of this census by intellectual categories, it is now appropriate to consider them as they were collected together in the various private libraries of colonial Virginia. The largest collection of law books in the period was owned by John Mercer of Marlborough, Stafford County. His library included 284 titles and 26 duplicate copies. Mercer was a planter and a real estate speculator, but primarily he was a practicing attorney and a highly successful one.<sup>8</sup> Furthermore his legal activities extended to sitting as a justice of the county court and to compiling an abridgment of the laws of Virginia.<sup>9</sup>

Mercer's collecting of law books had begun as early as 1725; his account books show that he was adding steadily to his law library in the 1730s and 1740s, and the *Virginia Gazette* daybooks record several purchases in 1751, 1764, and 1765.<sup>10</sup> He died in 1768 after a long and busy career at the bar, and his library was sold several years later.<sup>11</sup> The information for this census is based upon Mercer's own account books, supplemented by the *Virginia Gazette* daybooks and the inventory of his estate made in 1770. Mercer's library included 101 copies of reports and state trials, 191 copies of a wide range of treatises, and 18 copies of legislative compilations. It is interesting to note that 114 of the titles in this collection are not known to have been present elsewhere in colonial Virginia. This law library was one of breadth and depth; it was the working library of a practicing lawyer who could and did handle any sort of lawsuit.

The second largest law collection and the largest library overall in colonial Virginia belonged to William Byrd II of Westover, Charles City County. Byrd was born into the aristocracy and therefore never practiced law. However, he was closely concerned with the

<sup>7</sup>W. W. Hening, *Statutes at Large of Virginia* (New York, 1823), 2: 246.

<sup>8</sup>C. M. Watkins, *Cultural History of Marlborough, Virginia* (Washington, D.C., 1968), pp. 21, 23, 24, 27, 49, 55.

<sup>9</sup>*Ibid.*, pp. 24, 50-53.

<sup>10</sup>*Ibid.*, pp. 17, 191, 192, 198-208; *Virginia Gazette Day Books*, 2 vols., University of Virginia Library.

<sup>11</sup>Watkins, pp. 59, 61-63; see also the inventory made in 1770, a copy of which is among the Brock MSS in the Huntington Library.

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law throughout his life. As a young man he studied law in London at the Middle Temple. After his return he was elected to the House of Burgesses and was later appointed to the Council, which also sat at the General Court, the highest court in the colony.<sup>12</sup>

Byrd's law library consisted of 189 titles and 19 duplicates. These can be divided as 52 copies of reports, of which 18 were state trials, 141 copies of secondary legal literature, and 25 copies of various legislative works. Seventy-six law titles in Byrd's library were unique copies in Virginia. The usual manuals and handbooks were present, but the collection is particularly noteworthy for its inclusion of many works on constitutional law, international and Continental jurisprudence, and the older English authors, such as Glanvill, Bracton, *Britton*, Fortescue, Littleton, and Brooke. This was the working library of a gentleman who was the manager of his own affairs and who was a statesman occupied with the legislative and judicial affairs of the colony.

William Byrd II died in 1744, but his library was not dispersed until 1777 following the suicide of his son.<sup>13</sup> Although Byrd's books were not inventoried until 1777, I have dated their presence in Virginia as 1744, the date of his death. William Byrd III was not an intellect at all and in all probability did not add to his father's library; he was addicted to gambling, was a poor businessman, and was constantly in debt. Therefore all of the books at Westover have been assigned to the collection of the scholarly William Byrd II.

The third largest law library in Virginia was that of Robert Carter of Corotoman, Lancaster County, who was so wealthy and powerful that he is usually referred to as "King" Carter. Carter was a planter, a land speculator, and the land agent for the Fairfax family, who were the proprietors of the Northern Neck. His public duties included the office of speaker of the House of Burgesses and later a place on the Council and a seat in the General Court. He was very conscious of learning and showed great concern for the education of his children; his library included over 260 titles at the time of his death in 1732.<sup>14</sup>

King Carter owned 87 different law books and 9 duplicates. Of these 30 were reports, 60 were guides, treatises, etc., and 6 were

<sup>12</sup>L. B. Wright, *First Gentlemen of Virginia* (1940; rept. Charlottesville, 1970), pp. 322, 325, 333; *Dictionary of American Biography*.

<sup>13</sup>E. Wolf, "The Dispersal of the Library of William Byrd of Westover," rept. from *Proc. Am. Antiq. Soc.* 68 (1958): 19-106.

<sup>14</sup>Wright, pp. 248-50; *Dictionary of American Biography*.

legislative materials. Although he would not have considered himself a lawyer, he did represent himself and the Fairfax interests in court. Certainly the handbooks and formbooks dealing with conveyancing were of great practical value to him. His general interest in learning and perhaps also his position as a judge of the General Court in Williamsburg led him to the acquisition of the more erudite legal works, such as Bracton, *Britton*, Fortescue, Fitzherbert, Brooke, and Selden, in addition to the standard treatises.

Richard Hickman, who was the clerk of the Council in Williamsburg and who died in 1732,<sup>15</sup> also built up a substantial law collection. It consisted of 73 titles and 8 duplicates. Reports of cases were represented by 20 copies, treatises and manuals by 56, and statutory material by 5. The size and character of this library suggests that Hickman was also a practicing attorney.

George Johnston was an eminent attorney from Fairfax and Alexandria. He was born in 1700 and served in the House of Burgesses from 1758 until his death in 1766.<sup>16</sup> His library included 62 legal titles, of which 25 were reports, 2 were statutes, and 35 secondary works.

Henry Churchill, a Virginian from the northern part of the colony, had been called to the bar of the Middle Temple in 1754 before beginning the practice of law back in his homeland. He died in 1760.<sup>17</sup> His legal library consisted of 54 titles and 2 duplicates, 16 law reports, 3 statute books, and 37 handbooks and treatises.

The earliest law library of any size which is included in this census is that of Arthur Spicer, who died in 1699. Spicer was a lawyer, merchant, burgess, justice of the peace, and county court judge of Richmond County.<sup>18</sup> He owned 53 different law books and 3 duplicates; of these 46 were treatises, 6 statutes, but only 4 reports. The secondary works were the commonly found books on pleading and conveyancing.

Godfrey Pole studied law for five years at Barnard's Inn in London and was an attorney of the Court of Common Pleas for fourteen years before immigrating to Virginia. He was admitted to practice here in 1715. He built up an extensive practice in the General Court in Williamsburg and in the county courts. In addition

<sup>15</sup> *Wm. and Mary Qily.*, 1st ser., 3 (1895): 248.

<sup>16</sup> *Va. Mag. Hist. Biog.* 10 (1902): 12; *Wm. and Mary Qily.*, 2d ser., 2 (1922): 75-80.

<sup>17</sup> *Va. Mag. Hist. Biog.*, 36 (1928): 31.

<sup>18</sup> *Wm. and Mary Qily.*, 1st ser., 3 (1894): 133; *Tyler's Qily.* 10 (1929): 163.

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36 (1928): 31.

<sup>18</sup>*Wm. and Mary Q. J.*, 1st ser., 3 (1894): 133; *Tyler's Q. J.*, 10 (1929): 163.

he was the clerk of the Northampton County Court from 1722 until his death in 1729 or 1730.<sup>19</sup> The list of his books is dated 1716; it is quite possible that his library was much larger by the time of his death. Pole's working law library included 53 titles and 3 duplicates; of these 47 were secondary works, 4 were reports, and 5 were statutes.

There were 50 titles and a single duplicate in the collection of law books of Daniel McCarty. These figures include 32 treatises, 13 reports, and 6 copies of statutory material. McCarty was a wealthy man and a member of the House of Burgesses from Westmoreland County. He died in 1724.<sup>20</sup>

John Herbert of Chesterfield County, who died in 1760, had a law collection consisting of 42 titles. There were 32 treatises, 6 reports, and 4 collections of statutes.

On the eve of Independence, Philip Fithian made a partial catalogue of the library of Councillor Robert Carter of Nomini Hall, Westmoreland County. Councillor Carter, the grandson of King Carter, had studied law at the Inner Temple and was later a judge of the General Court and of the county court. He was an intellectually inclined gentleman, and by 1774 he had acquired some 1,400 volumes.<sup>21</sup> Carter's legal collection encompassed at least 40 titles and 2 duplicate copies. There were 36 treatises and guides, 3 reports, and 3 statute books. Along with the usual practice manuals were found works by Justinian, Grotius, Pufendorf, and 3 by Kames. Although he appears to have inherited his grandfather's love of books, a comparison of the two inventories suggests that he did not inherit the books themselves.

The next library to be mentioned is that of Dabney Carr, who died in 1773. Carr, brother-in-law of Thomas Jefferson, was a practicing lawyer and a burgess from Louisa County.<sup>22</sup> His law collection consisted of 38 titles and 1 duplicate; of these 26 were treatises, 9 reports, and 4 statute books.

The last two collections of law books to be considered have several things in common. They both constitute a fairly small proportion of fairly large libraries, 27 books in a collection of about 375

<sup>19</sup>*Va. Mag. Hist. Biog.* 17 (1909): 147-50.

<sup>20</sup>L. G. Tyler, *Encyclopedia of Virginia Biography* 288 (New York, 1915), 1:288.

<sup>21</sup>L. Morton, *Robert Carter of Nomini Hall* (Williamsburg, 1945), pp. 11, 27, 31, 34, 42, 54, 215; there is a transcript of the inventory in H. D. Farish, ed., *Journal and Letters of Philip Vickers Fithian* (Williamsburg, 1943), pp. 285-94.

<sup>22</sup>*Va. Mag. Hist. Biog.* 2 (1894): 221.

and 26 of about 300. Both were owned by wealthy and influential planters. Ralph Wormeley II of Rosegill, Middlesex County, who died in 1701, was a judge of the General Court and of the county court; he was also secretary of state, a receiver of duties, and a naval officer.<sup>23</sup> He had 27 law books, 22 of which were treatises and handbooks, 2 were reports, and 3 were collections of statutes.

The law library of Richard Lee II, who died in 1714, was very similar. This collection included 25 titles and 1 duplicate, and of these 21 were secondary legal works, 3 were reports of cases, and 2 were books of statutes. Lee, of Mount Pleasant, Westmoreland County, was a judge in the General Court in Williamsburg and in the local county court; he was also a collector of customs.<sup>24</sup>

The other holdings of law books in colonial Virginia ranged on down to a single manual, form book, or statute book. The ownership of law books was widespread throughout the colony. It is obvious that Virginians were concerned with their legal rights and that they looked to the English common law for the definition of them.

This census shows that the legal literature available to eighteenth-century Virginians was remarkably extensive in depth and in breadth of scope. Moreover, there were large and small holdings throughout the settled areas of the colony. It is also to be kept in mind that books were freely lent to neighbors and library doors were always open to friends.

As one would expect, the legal manuals and guidebooks for laymen were most frequently found in colonial libraries. People needed to know what their powers and duties were as justices of the peace, collectors of customs, sheriffs, constables, vestrymen, administrators of estates, etc. They needed to know how to make wills and how to convey land. In addition to this type of law book, many of the practicing attorneys and General Court judges had copies of the various reports of cases and collections of statutes. The more wealthy and highly educated had these books and also tomes of jurisprudence, legal history, and international law. The most fabulous library of all, that of William Byrd II, included books of the Roman and canon laws of the Continent. From the legal viewpoint, eighteenth-century Virginia was a successful though modified reproduction of English civilization.

<sup>23</sup>Wright, pp. 187, 189, 195-97.

<sup>24</sup>*Ibid.*, pp. 212-17.