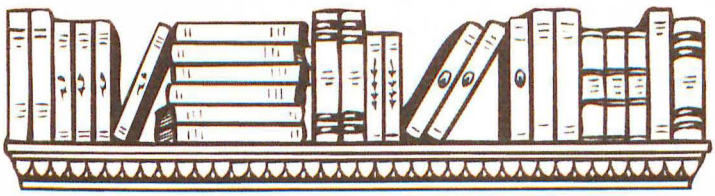
2017

English Statutes in Virginia, 1660-1714

John R. Pagan
University of Richmond, jpagan@richmond.edu

"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

University of Virginia Press

Printed in the United States of America on acid-free paper

First published 2017

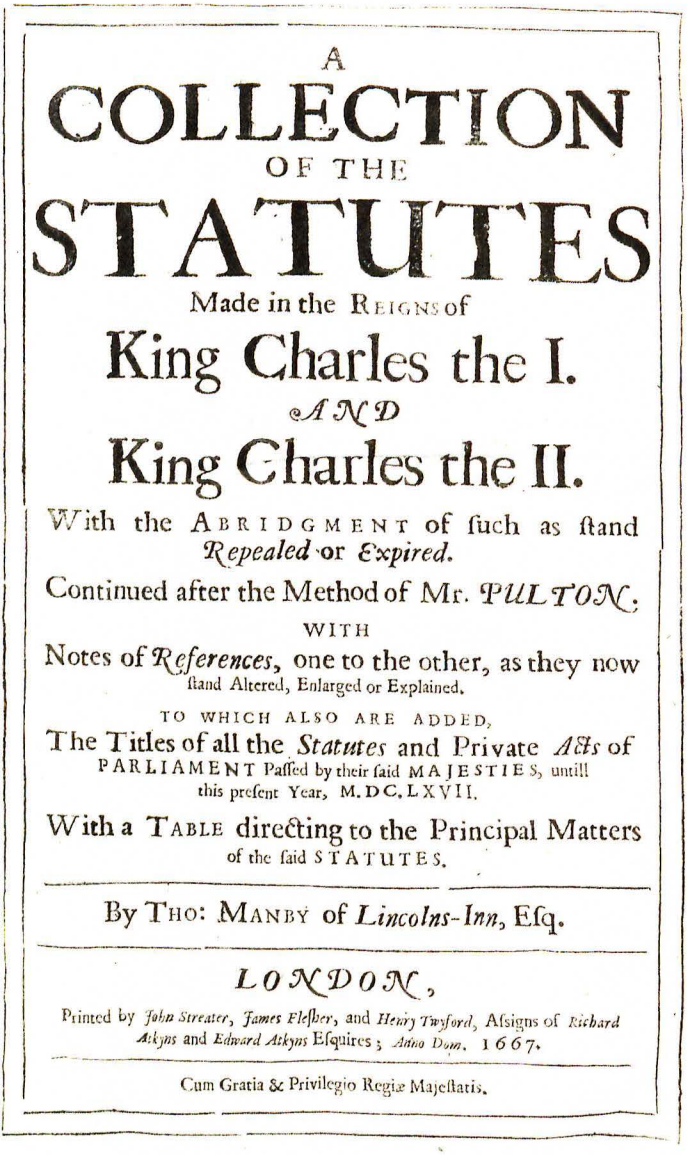
1 3 5 7 9 8 6 4 2

Library of Congress Cataloging-in-Publication Data
Names: Billings, Warren M., 1940– editor. | Tarter, Brent, 1948– editor.
Title: "Esteemed bookes of lawe" and the legal culture of early Virginia / edited by Warren M. Billings and Brent Tarter.
Description: Charlottesville : University of Virginia Press, 2017. | Series: Early American histories | Includes bibliographical references and index.
Identifiers: LCCN 2016030554 | ISBN 9780813939391 (cloth : alk. paper) | ISBN 9780813939407 (e-book)
Subjects: LCSH: Law—Virginia—History. | Law—Virginia—Bibliography—History.
Classification: LCC KFV2478 .E84 2017 | DDC 349.75509/033—dc23
LC record available at https://lccn.loc.gov/2016030554

CONTENTS

ENGLISH STATUTES IN VIRGINIA, 1660–1714

John Ruston Pagan



A
COLLECTION
OF THE
STATUTES
Made in the REIGNS of
King Charles the I.
AND
King Charles the II.
With the ABRIDGMENT of ſuch as ſtand *Repealed* or *Expired.*
Continued after the Method of Mr. *PULTON.*
WITH
Notes of *References,* one to the other, as they now ſtand Altered, Enlarged or Explained.
TO WHICH ALSO ARE ADDED,
The Titles of all the *Statutes* and Private *Acts* of PARLIAMENT Paſſed by their ſaid MAJESTIES, untill this preſent Year, M.DC.LXVII.
With a TABLE directing to the Principal Matters of the ſaid STATUTES.
By THO: MANBY of *Lincolns-Inn,* Eſq.
LONDON,
Printed by *John Streater, James Fleſher,* and *Henry Twyford,* Aſsigns of *Richard Atkyns* and *Edward Atkyns* Eſquires; *Anno Dom.* 1667.
Cum Gratia & Privilegio Regiæ Majeſtatis.

Virginia's county courts and its General Court enforced acts of Parliament in the colony and purchased editions of English laws. Thomas Manby, A Collection of the Statutes Made in the Reigns of King Charles the I. And King Charles the II. (London, 1667). (Courtesy Wolf Law Library, College of William and Mary)

VIRGINIA HAD A GOVERNMENT OF dual legislative authorities in the seventeenth and early eighteenth centuries. Under the transatlantic constitution—an evolving framework of legal relations within England's empire—both the Crown and the General Assembly had jurisdiction to prescribe laws for the colony. The Crown occasionally required Virginians to enforce acts of Parliament, but for the most part the imperial government allowed colonists to deviate from the metropolitan model and enact legislation tailored to their own needs, provided they refrained from passing statutes contrary or repugnant to English law. Instead of delineating separate spheres of imperial and provincial legislative power, the transatlantic constitution struck a workable balance between local autonomy and central control. "If modern American law has longed for theoretical, logical, and conceptual consistency over doctrines and institutions," Mary Sarah Bilder has observed, "transatlantic legal culture valued a certain pragmatism and flexibility."[1]

This essay explores the principal ways in which the pragmatic makers of transatlantic legal culture introduced English statutes into Virginia's legal system during the later Stuart period (1660–1714). The first section discusses the *extension* of English statutes to Virginia, an exercise of the royal prerogative that projected particular acts of Parliament beyond the realm of England and imposed them on the king's subjects overseas. The second section examines the *accretion* of English statutes to Virginia's corpus juris, a voluntary process of adoption, incorporation, and application that gradually added a variety of parliamentary acts to the body of laws that Virginians willingly enforced.[2] The third section describes Virginians' efforts to acquire up-to-date parliamentary statute books to help them keep abreast of legal developments at "home" in England[3] and govern their colonial communities in conformity with current English law.

EXTENSION OF ENGLISH STATUTES TO VIRGINIA

The Englishmen who colonized Virginia retained their identity as a free people whose liberty rested on the rule of law.[4] King James I assured the Virginia Company's first settlers that they and their descendants would enjoy all the "liberties, franchises and immunities" they would have possessed if they had stayed in England.[5] He later instructed the company to come "as

neere as convenientlie maie be" to operating a legal system "agreable to the laws, statutes, government, and pollicie" of England.[6] Writing in the 1650s, Sir Matthew Hale noted that "the English planters carry along with them those English liberties that are incident to their persons."[7] Hale did not mean that specific English legal doctrines accompanied Englishmen wherever they went, for English law as such operated only in England.[8] His point was that migrants to the king's dominions could expect to be governed there in conformity with customary English legal norms. Those norms included protection from arbitrary power; a prohibition against the deprivation of life, liberty, or property without due process of law; and an exemption from taxation without consent.[9] Denial of the colonists' inherited rights as Englishmen would be tantamount to a denial of their status as subjects of the English king.[10]

Some of the colonists' inherited liberties, such as those listed in Magna Carta, had roots in English statutes.[11] In the sixteenth century, statutes became the highest form of positive law in England.[12] As Robert Zaller has remarked, parliamentary legislation derived from the whole community of the realm, and not just from the Crown, making statutes "a collective and uniquely comprehensive expression of the will of all."[13] Statutes played a vital role in shielding Englishmen from oppressive governance. By the seventeenth century, Jeffrey Goldsworthy notes, "Parliament, rather than the ordinary courts, was regarded as the principal guardian of the liberties of subjects."[14] But despite the growing importance of statutes as a source of legal rights and constitutional principles, most acts of Parliament did not operate automatically in the colonies, because they lay outside the realm of England, the territory over which Parliament had legislative jurisdiction. The colonies belonged to the Crown and were "part of its Royalty,"[15] which meant that the king held *imperium* (sovereignty) and *dominium* (the right to possess and rule) there.[16] The king had the prerogative to prescribe laws for his dominions, and therefore the Crown's approval was a prerequisite to extending English statutes to the colonies.[17]

The procedural formalities of extension depended on whether the statute in question expressly included the colonies in its territorial ambit.[18] If a statute did not refer to the dominions, its ambit was implicitly limited to England and Wales, but the monarch could extend it to the colonies simply by ordering his officials to enforce it there. The royal command effectively negated the presumption that acts of Parliament applied only inside the realm.[19] Extending a statute that "particularly named"[20] the colonies involved the king's use of his power to approve or disapprove proposed legislation. No bill could become law without the monarch's assent, a step in the legislative process that still had real significance in the later Stuart period.[21] Assent simultaneously exercised both the monarch's legislative power as the king in Parliament and his prerogative power to prescribe laws for his overseas possessions. Extending statutes to the colonies by assent made colonial administration a collaborative venture

between the king and the houses of Parliament. This arrangement would later attract harsh criticism from Americans who tried to draw a bright-line distinction between the king and Parliament,[22] but in the seventeenth century it provided a workable method of prescribing laws for the developing empire.

Parliament's role in legislating for the colonies began during the Interregnum. James I and Charles I had tried to prevent the Commons and the Lords from participating in colonial governance, but the temporary lapse of royal authority enabled Parliament to acquire a permanent voice in imperial policymaking.[23] Parliament passed two colonial trade laws early in the 1650s.[24] Although those measures were repealed when Charles II regained the throne in 1660, he and all subsequent monarchs used parliamentary legislation as an instrument for regulating commerce between England and the colonies. The Navigation Act of 1660[25] provides a good illustration of post-Restoration imperial cooperation between the king and the two houses of Parliament. The act applied to "any Lands Islelands Plantations or Territories to his Majesty belonging or in his possession . . . in Asia Africa or America."[26] The House of Commons passed the measure on 4 September 1660, and the House of Lords concurred three days later.[27] The clerk of the Parliaments, a royal appointee assigned to the Lords, read the bill before the Privy Council on 9 September, at which time it "passed his Majesties approbation."[28] On 13 September the members of both houses assembled in the Lords' chamber in the presence of Charles II. "Then His Majesty gave Command for the passing" of several bills, including the Navigation Act, "the Clerk of the Crown reading the Titles, and the Clerk of the Parliaments pronouncing the Royal Assent" in "these Words: *Le Roy le veult* [The King wills it]."[29]

Charles II's Navigation Act sought to increase customs revenues, drive the Dutch out of the colonial trade, and secure a monopoly for English merchants and mariners.[30] Section 1 stripped Virginians of the right to trade with foreigners by declaring that "noe Goods or Commodities whatsoever" were to be imported into or exported from the colonies except in English, Irish, Welsh, or colonial vessels "wherof the Master and three fourths of the Marriners at least are English."[31] Violators risked forfeiture of the ship and cargo, with a third of the proceeds going to the king, a third to the governor, and a third to "him or them who shall Seize Informe or sue for the same in any Court of Record."[32] Section 18 authorized condemnation of all ships carrying tobacco, sugar, and other enumerated colonial products to ports outside the British Isles or the English colonies. This part of the 1660 act attempted to ensure that colonial products were unloaded and taxed before being consumed domestically or reexported to foreign countries.[33]

News of the Navigation Act's passage reached Virginia by late December 1660. Even before county magistrates had a chance to read the statute, they learned that the new law would complicate their lives. At the 31 December

session of the Northampton County Court, Tunis Derickson and five other Dutch mariners complained that their ship's owners had fired them and dumped them on the Eastern Shore of Virginia "upon pretence of Submission to an Act of Parliament in England that their shall bee but one fourth part of Company upon any shipp that Shalbe Dutchmen." Finding himself "in a Strange Country and not knowing what to doe," Derickson sought help from the county magistrates. He found a sympathetic audience, for Virginians had long espoused free trade and cultivated good relations with the Dutch. The court ordered the shipowners to pay the Dutchmen their full wages for the period from the time they sailed from Europe until they were discharged in Virginia and also required the owners to finance the mariners' passage back to England or Holland.[34]

While the Northampton magistrates were getting a firsthand introduction to the burdens of the Navigation Act, the authorities in London were taking steps to enforce it. On 1 December the Crown instructed the new Council for Foreign Plantations to write the colonial governors and order them "to take special care and enquire into the strict execution" of the Navigation Act.[35] The council dispatched its letter to Virginia governor Sir William Berkeley on 17 February 1661, enclosing a copy of the act and instructing him "to prosecute the good provisions and intentions" of the statute.[36] The General Assembly, meeting in late March and early April, expressed concern about the possible revival of a monopolistic Virginia Company and the danger of "the losse of our liberties for want of such an agent in England as is able to oppose the invaders of our freedoms and truly to represent our condition to his sacred majestie."[37] The legislature appropriated two hundred thousand pounds of tobacco to send Governor Berkeley, a longtime advocate of free trade, to England to lobby for changes in commercial policy. He departed for England early in June, leaving Francis Moryson in charge as acting governor.[38]

In London Berkeley met with the Council for Foreign Plantations and appeared before the Privy Council, where he pressed for free trade in the face of stout opposition from London merchants.[39] About January 1662, he produced a printed brief in which he argued that the Navigation Act's restrictions injured Virginians and benefited neither the Crown nor the mother country. "[W]e cannot but resent," Berkeley complained, "that forty thousand people should be impoverish'd to enrich little more than forty Merchants, who being the only buyers of our *Tobacco,* give us what they please for it, and after it is here, sell it how they please."[40] Virginians tried to bolster Berkeley's credibility in government circles by vouching for his steady royalism. In March 1662 Moryson and the General Assembly prefaced their revision of the Virginia acts by praising Berkeley for having "retein'd us in an inviolated obedience to his Majesty, that we were the last of his Subjects that necessity enforc'd from our duty, which was an Act of approved Loyalty." They also boasted about

their fidelity to English law, claiming that they had "endeavoured in all things, as near as the capacity and constitution of this Countrey would admit, to adhere to those Excellent, and often refined Laws of England, to which we profess and acknowledge all Reverence and Obedience."[41]

Berkeley promoted his economic program in government and commercial circles throughout the remainder of his stay in London, achieving a modest degree of success in his diversification efforts. The Crown refused to grant his request for free trade, however. The only sop the colonists received was a provision in the Customs Fraud Act[42] that clarified the Navigation Act's requirement that the master and three-fourths of the crew be English. "[I]t is to be understood," the 1662 statute declared, "that any of His Majesties Subjects of England Ireland and His Plantacons are to bee accounted English and no others."[43] When Berkeley returned to the colony in September 1662, he carried fresh instructions from Charles II ordering him to ensure the "severe prosecution and punishment" of those who transgressed the Navigation Act.[44]

To let Berkeley and his fellow governors know that the Crown was keeping a close eye on them, in June 1663 the Privy Council dispatched a sharply worded circular letter reminding the governors of the severe penalties they would incur if they allowed violations of the Navigation Act. The Privy Council had been informed by shipmasters trading in Virginia, Maryland, and other colonies "of many neglects or rather contempts of his Majesties Commands for the true observance" of the Act "through the dayly practices and designes sett on foote, by trading into forrain parts," especially Manhattan and European countries such as Holland and Spain. These violations resulted from the governors' failure to check ships' certificates and take the required bonds, "of which neglect and contempt his Majestie is sensible." If a governor failed to administer the act properly, the Privy Council threatened, "His Majesty will interpret it a very greate neglect in you," and the governor could expect to be punished and dismissed from office.[45]

Charles and Parliament tightened the screws further in the Staple Act of 1663.[46] Enacted "by the Kings most Excellent Majestie with the Advice and Consent of the Lords Spirituall and Temporall and the Commons in this present Parliament assembled,"[47] this statute governed trade with any of the Crown's territories in Asia, Africa, or America. The statute aimed to foster the employment of English ships and mariners, promote the sale of English woolens and other manufactured goods, and make the "Kingdome a Staple not onely of the Commodities of those Plantations but alsoe of the Commodities of other Countryes and Places for the supplying of them."[48] The Staple Act supplemented the Navigation Act by prohibiting European commodities from being imported into English colonies except directly from England, Wales, or Berwick-upon-Tweed in English-built ships of which the master and at least three-fourths of the crew were English. Although Irishmen were con-

sidered honorary Englishmen for purposes of the crew-composition rule, the terms of the act deemed Irish ports foreign.[49] Under section 4 of the Staple Act, violators faced forfeiture of their goods and cargo, with the proceeds being divided equally among the king, the governor, and the informer. The measure emphasized colonial courts' obligation to enforce the new law by authorizing informers to bring their condemnation suits "in any of His Majesties Courts" in the place where the offense was committed or in any court of record in England.[50]

Like the Navigation Act, the Staple Act was designed to drive England's greatest commercial rivals, the Dutch, out of the lucrative transatlantic carrying trade. The legislation exacerbated tensions between the two nations, who also struggled for control of trade with Africa. In January 1664, English forces attacked Dutch posts on the African coast, and in August the Dutch settlement at New Amsterdam surrendered. Dutch reprisal raids in Africa soon followed, and the English responded in December by attacking a Dutch merchant fleet off Gibraltar. On 27 January 1665, Charles II wrote Berkeley to warn him that a Dutch attack on Virginia might be imminent. The governor should build forts, seize Dutch ships, and do whatever was necessary to protect the colony and the "Navigation of our merchants."[51]

Charles formally declared war against Holland on 4 March 1665. This conflict, the Second Anglo-Dutch War, has been called "the clearest case in [English] history of a purely commercial war."[52] Governor Berkeley learned about the Anglo-Dutch War early in June[53] and immediately began organizing the colony's defense.[54] He called the General Assembly into session in October to appropriate funds for the construction of a fort,[55] which Berkeley decided to locate at Jamestown. As the fort neared completion, Berkeley received instructions from Charles II to abandon the Jamestown project and build another fort at Point Comfort. Berkeley considered the king's order unwise, because a fort at Point Comfort would be virtually worthless. Nevertheless, "that we may be found rather to pay a ready obedience to all his majesties commands" than "demur to any of them at this distance," Berkeley issued an order on 29 March 1666 telling Virginians to follow Charles's foolish instructions to the letter.[56] The Crown's decision was wasteful and probably dangerous, Berkeley told the Earl of Arlington on 13 July 1666, "But the Command was soe possetive wee durst not disobey it."[57]

Berkeley's prediction of a military disaster proved accurate. In June 1667 a Dutch naval squadron sailed up the James River flying false English colors and captured the frigate Charles II had sent to protect the colony. The Dutch then seized the tobacco fleet, which was preparing to sail for England, and carried off their prizes "without a blow" thanks to the cowardice of the English merchant mariners, who refused to transport Berkeley's forces into battle. As they departed, the Dutch burned five or six of the tobacco vessels plus the royal

frigate, wounding the governor's pride and forcing him to write a groveling apology to the king.[58]

England's inability to meet the costs of war forced Charles to agree to a peace treaty with the Dutch on 21 July 1667.[59] The Treaty of Breda allowed England to keep New Netherland but granted some commercial concessions to the Dutch, including relaxation of the Navigation Act's ban on Dutch ships' importation of German goods into England. Economic warfare in the colonial trade continued unabated, however. On 20 January 1669 the king in council ordered the commissioners of the customs to send an officer to each plantation to inspect ships' papers and take the governor's oath that he would faithfully execute the trade laws.[60] Berkeley, in turn, leaned on the colonial judiciary to help him carry out the Crown's instructions.

Although most colonists probably favored free trade and resented Parliament's regulations, self-interest encouraged members of the General Court of Virginia to enforce the Navigation Act and the Staple Act. The informers in these cases tended to be the court's own members, who had used their influence as councillors to win lucrative gubernatorial appointments as customs collectors and naval officers.[61] When councillors caught an illegal trader, they brought forfeiture proceedings and sought a share of the proceeds. In October 1669, for example, Councillor Theoderick Bland, a customs collector and prominent Charles City County politician,[62] obtained a General Court order seizing the *Hope,* allegedly of Amsterdam, "on behalf of his majestie for that the said Ship was a Dutch ship and navigated contrary to Act of parliament."[63] The vessel turned out to be the *Hope* of Accomack County, Virginia, however, and its Virginian owner strenuously denied that the ship had come to the colony directly from Amsterdam.[64] The outcome of the condemnation suit is unknown. The ship's owner, Colonel Edmund Scarburgh, did not have a punctilious attitude toward the trade laws. In 1663, while serving as the customs collector in Accomack County, he had allowed an English ship coming directly from Holland with a cargo of merchandise to load tobacco and sail directly back to the Netherlands.[65] In another instance, Thomas Ballard, a James City County politician who soon joined the Council of State,[66] brought a condemnation action in the General Court in April 1670 against the *Dolphin,* of Dartmouth, on the ground that it "belongeth to Dutch owners and is manned contrary to Act of parliament."[67] Ballard lost the suit when the shipmaster produced proof of English ownership and lading. The ship "had but two Dutchmen aboard that were Seamen," which brought the vessel within the Navigation Act's requirement that three-fourths of the crew be English, but the General Court made the master pay hefty litigation costs for failing to record his documents properly.[68]

County courts shared the General Court's duty to enforce Parliament's trade laws. Composed of justices of the peace, Virginia county courts handled

the same kinds of criminal and administrative matters that came before English justices of the peace, and they also functioned as the colonial equivalents of the central courts at Westminster and the church courts. Most noncapital criminal cases began and ended in the county courts, as did the majority of civil suits. The General Assembly required county magistrates to swear that they would administer justice "after the laws and customes of this colony, and as neere as may be after the laws of the realme of England and statutes thereof made."[69] This command to conform to English law obliged colonial judges to pay close attention to the intricacies of commercial legislation.

In *Rex ex rel. Spencer v. the Ship Constant Matthew,*[70] for instance, the Northumberland County Court had to try a difficult condemnation suit brought under the Staple Act in March 1678. Councillor Nicholas Spencer, the king's collector for the Potomac River, sought the forfeiture of a fifty-ton Irish vessel because the ship's papers showed that it had sailed directly from Londonderry to Virginia with a load of Irish-made goods. The jury found that the ship's master had broken the law by failing to stop in England and enter the goods with the customs officers there. The court ordered forfeiture of the ship and its cargo. The shipmaster, on behalf of himself and his ten-man crew, asked the court to pay their wages from the proceeds of the condemnation sale so that they could return home to Londonderry. The merchant who had hired them to make a round-trip journey to Virginia had paid the king's duties in Ireland and had said nothing about a mandatory stop in England along the way. The Northumberland County justices of the peace accepted the mariners' claim that they had been ignorant of the statute's requirements and awarded them their wages, an act of compassion toward men who found themselves marooned by the workings of an exceedingly complicated regulatory regime.

Rex ex rel. Stringer v. the Ship Katherine of London,[71] tried by the Accomack County Court in April 1685, provides another example of a county court's execution of England's demanding trade laws. Acting on a tip, Colonel John Stringer, the king's collector for the Eastern Shore of Virginia, seized the *Katherine* for importing "diverse uncustomed goods."[72] The Crown's lawyer alleged that the ship's master had imported goods illegally and had neglected to furnish the information that the Staple Act required. Section 6 of the act prohibited ships from unloading until the master had informed the governor or his deputy of the ship's name and the master's name; shown that the ship was English-built and English-owned; proven that the vessel was navigated by an English commander and a crew that was at least three-quarters English; and produced an inventory of the cargo showing where the ship was laden. Two of the *Katherine*'s crew members testified that six months earlier they had seen "a very small" bundle of "Scotch linnen Cloth" brought on board after sunset while contrary winds detained the ship in a Scottish harbor. The cloth, which had been consigned to the ship's Scottish merchant, had then

been transported directly from Scotland to Virginia without being entered at an English customs house. The twelve jurors found the *Katherine* "to be lyable to Condemnation," and the court confirmed the verdict, ordering the ship to be appraised and then disposed of as the governor saw fit.[73]

The draconian penalty imposed in this case no doubt pleased the Crown and Governor Francis Howard, 5th Baron Howard of Effingham, because it put money in their pockets. The decision also redounded to the benefit of a couple of Eastern Shoremen. Three weeks after the trial, one of the justices of the peace who heard the case, Major Charles Scarburgh, bought the *Katherine* for £65 18s. 3d. A third of this sum went to the king, a third to Effingham, and a third to the twenty-year-old informer, Hugh Montgomerie.[74] The young man's share of almost £22 must have seemed like a fortune, for the sum was roughly equivalent to four or five years' wages for a hired servant on the Eastern Shore.[75] Scarburgh's deal turned sour in June 1687, however, when the *Katherine* was seized for importing European goods without proper customs documents.[76] The Eastern Shore collector, council member John Custis, won a jury verdict that the *Katherine*'s customs cocket was inaccurate. The deputy attorney general who handled the case for Custis, Charles Holden, an experienced Eastern Shore lawyer, produced the Customs Fraud Act and the Staple Act in support of his motion for judgment. The "said Lawes being read and considered by the Court," the Accomack justices condemned both the ship and its cargo.[77]

Parliament strengthened its commercial regulations in the Plantation Trade Act of 1696,[78] which required stricter customs enforcement, ship registration, and other measures designed to prevent circumvention of the mercantile system. To underscore colonial judges' duty to respect the supremacy of English law, Parliament declared that any and all colonial laws "which are in any wise repugnant" to English statutes that "relate to and mention" the plantations "are illegall null and void to all Intents and Purposes whatsoever."[79] The 1696 act authorized penalties and forfeitures to be recovered in vice-admiralty courts held in the colonies.[80] The Crown established its vice-admiralty court in Virginia in 1698,[81] and that tribunal took a leading role in enforcing the navigation and trade laws. The regular colonial courts retained concurrent jurisdiction, giving plaintiffs the option of litigating in either forum.[82]

Surviving court records from the later Stuart period contain numerous examples of Virginians' enforcement of parliamentary trade laws.[83] This evidence contradicts a scholar's recent assertion that condemnation actions "routinely resulted in an acquittal."[84] The cases support Lawrence Harper's conclusion that colonial juries' alleged opposition to implementing England's commercial regulations "has been very much exaggerated."[85] Colonists wished to remain in the monarch's good graces, and therefore they generally tried to obey parliamentary mandates even when they disagreed with the laws' under-

lying rationale, especially if obedience coincided with an opportunity to gain a windfall.

ACCRETION OF ENGLISH STATUTES TO VIRGINIA'S BODY OF LAWS

Besides enforcing statutes at the king's command, Virginians sometimes voluntarily adopted or incorporated certain "municipal laws of England," Sir William Blackstone's term for acts of Parliament that applied in the mother country but not in the colonies.[86] Creating an entire body of law would have been next to impossible in the early decades of settlement, so selective introduction of English statutes by the General Assembly was a quick and easy way to build an effective legal system in the American wilderness. In 1632, for instance, the colonial legislature declared that the 1563 and 1604 English statutes regulating artificers and workmen were "*thought fitt* to be published in this colony."[87] The assembly also ordered that the Tudor laws against engrossing commodities and forestalling the market "be made known and executed in this colony"[88] and declared that Parliament's 1606 statute punishing drunkards was "*thought fitt,* to be published and dulie put in execution."[89] In 1658 the assembly directed that English laws against bigamy were to "be putt in execution in this countrie."[90] The English statute that prescribed capital punishment for bigamy literally applied only to "persons within his Majesties Domynions of England and Wales," but this reference to the act's territorial scope did not deter the assembly from adopting it for use in Virginia. A 1699 colonial act exempted Protestant dissenters from penalties for failing to attend Church of England services if they would have qualified for an exemption under Parliament's Toleration Act of 1689.[91] And in 1705 the assembly ordered that the 1696 English statute allowing Quakers to testify by affirmation was to be "to all intents and purposes, in full force within this dominion."[92]

Adopting English statutes by reference presented a significant notice problem. How were colonists supposed to comply with an act of Parliament if they knew only its title and general topic? William Waller Hening criticized the General Assembly for adopting an English statute "by a mere *general reference,* when not one person in a thousand could possibly know its contents."[93] This was a valid criticism, and the colony's principal method of promulgating legislation, scribal publication, probably offered little help.[94] At the conclusion of each session of the assembly, county courts purchased manuscript copies of the acts and published them locally by reading each new law aloud during a court session.[95] If rigorously followed, scribal publication informed the community that the assembly had decided to introduce certain acts of Parliament into Virginia's legal system, but the practice did not tell people what those

laws required them to do. County magistrates could not enforce the adopted acts unless they had access to the English statutes at large and could look up the relevant texts. As we will see, several county courts addressed this need by purchasing sets of English law books.

Virginians viewed adopted English statutes as equivalent to the laws the king had explicitly ordered them to enforce. Thus, when a Stafford County mill owner brought suit in 1691 against a laborer who had left his work unfinished, the plaintiff grounded his claim directly on the adopted English Statute of Artificers[96] and did not even bother to mention the 1632 act of assembly that had integrated the Elizabethan statute into Virginia's body of laws. Closely tracking the act of Parliament in this instance, the owner sought a penalty of £5 and one month's imprisonment, plus common-law damages and costs. The county court submitted the debt action to a jury, which rendered a verdict in the defendant's favor.[97]

The General Assembly sometimes adopted English statutes wholesale. A 1692 act of assembly empowered the governor to commission a court of oyer and terminer to try without a jury any slave accused of committing a crime "which the law of England requires to be satisfied with the death of the offender or loss of member." The special court, usually made up of the local justices of the peace, had authority to pass judgment "as the law of England provides in the like case."[98] In 1693 the Northampton County justices, sitting as a court of oyer and terminer, tried a slave under a 1532 act of Parliament imposing capital punishment for willfully burning down a dwelling house.[99] They sentenced the defendant to hang for violating "the Knowne Lawes of England"[100]—known to the justices and their forebears, perhaps, but one wonders whether or how the slave acquired knowledge of that law.[101]

The assembly employed a somewhat different technique—incorporation—when it wished to borrow language from an English statute rather than put the statute itself into effect.[102] Of course, all colonial laws had to comport with English law,[103] but occasionally the governor, burgesses, and councillors went beyond mere concordance by copying passages from English statutes and inserting them into their own legislation, tweaking the language if necessary to fit local circumstances. The bill then had to pass both houses of the assembly, survive gubernatorial scrutiny, and avoid disallowance by the imperial bureaucracy in London.[104] When completed, this process of selective incorporation resulted in a Virginia law that received its "obligation, and authoritative force, from being the law of the country."[105]

Virginia's 1710 statute of limitations for certain actions to recover real property provides a good example of incorporation.[106] The colonial statute borrowed wording from a 1624 act of Parliament requiring writs of formedon in descender, formedon in remainder, and formedon in reverter to be sued within twenty years after the cause of action accrued.[107] The Virginia law also

included some language from a 1540 English statute prescribing limitation periods for assizes of mort d'ancestor and several other property actions.[108] Unlike some other acts of assembly adopting English statutes, the 1710 measure did not identify the source from which the legislature derived its text, much less purport to give effect to an otherwise inapplicable act of Parliament.[109] However, the committee that compiled a comprehensive collection of Virginia's statutes that the Williamsburg printer William Parks published in 1732 "added Many useful Marginal Notes, and References," including citations to the 1624 and 1540 English statutes that served as models for parts of the 1710 colonial legislation.[110] A comparison of the texts confirms that the Virginia law was simply a cut-and-paste job, an act of imitation, not activation.

Judicial accretion offered another way to add English statutes to Virginia's body of laws. This occurred when colonial judges decided on their own to apply English municipal statutes on an ad hoc basis. Judges presumably derived their authority to apply acts of Parliament from royal instructions such as Charles I's 1641 commission to Governor Berkeley, which declared that Virginia was to be governed "according to the lawes and statutes of our Realme of England, Which Wee propose to have established there."[111] This vague command, coupled with the governor's commissions to justices of the peace empowering them "to act according to the laws of England, and of this country,"[112] led Virginia judges to view the English statutes at large as something akin to a "brooding omnipresence in the sky"[113] that offered a vast selection of fallback rules they could apply interstitially when other types of law left gaps.

Fallback rules were useful in situations in which a quartet of circumstances converged: (*a*) the king had not expressly ordered the colonies to enforce a particular rule; (*b*) the Virginia General Assembly had not enacted a law covering the subject; (*c*) customary law, including the colonial version of the common law, seemed inadequate because of pleading technicalities or for other reasons; and (*d*) a municipal law of England prescribed a rule that colonial judges found well suited to local conditions. Presettlement English statutes made attractive candidates for ad hoc application because they did not raise fairness concerns. Englishmen who migrated to Virginia had received constructive notice—that is, were presumed to have knowledge—of all statutes in force in England at the time of their departure. Emigrants had been represented, actually or virtually, in the Parliaments that enacted those laws. The first settlers brought their imputed knowledge of English law with them on the *Susan Constant,* the *Godspeed,* and the *Discovery* and then passed it along to later generations together with the rest of their cultural baggage.

Virginians frequently had occasion to apply pre-1607 criminal statutes on an ad hoc basis.[114] In 1681, for instance, an informer brought a prosecution in the Accomack County Court based on an alleged violation of a 1563 perjury statute. The county court dismissed the prosecution because the information

failed to specify, as required, the time when the act had been committed.[115] When smallpox appeared on the Eastern Shore in 1668, the local authorities ordered infected people to stay home or risk being "severely punished according to the Statute of the First of King James,"[116] a 1604 quarantine law aimed primarily at preventing the plague from spreading through cities and towns. The English statute authorized the death penalty for anyone who ventured outside his home with "any infectious sore upon hym uncured." The law empowered authorities to have others who broke quarantine whipped like vagabonds.[117] And when fourteen "seditious & rude people" met in 1673 to discuss ways of protesting Surry County's high taxes, the magistrates arrested and interrogated them under a 1411 statute that prohibited riots and unlawful assemblies.[118]

County courts applied pre-1607 English statutes in civil litigation as well. In 1663 the owner of a Northampton County shoemaking business who became frustrated by a currier's failure to deliver hides on time haled him into court under a 1604 act of Parliament. The law required curriers to process leather within eight days in summer and sixteen days in winter. Noncompliance entitled the customer to receive ten shillings for every hide and piece of leather not dressed within the prescribed period.[119] To make sure the tardy currier understood his obligations, the magistrates ordered the sheriff to "cause the Statute to be produced" to the defendant "that hee may not pretend Ignorance." The plaintiff, Colonel Edmund Scarburgh, a former Speaker of the House of Burgesses and longtime justice of the peace on the Eastern Shore, had received some legal training in England. He skillfully used his knowledge of the law to his own benefit.[120] In 1685 a Northumberland County property owner successfully invoked a 1429 act of Parliament[121] to win an award of treble damages "according to the Statute of England in the like case provided" against a tenant who had forcibly resisted demands that he leave the plaintiff's house.[122] No one seemed to care that the General Assembly of Virginia had not formally adopted these statutes. They fit the problems at hand, so judges used them to fill interstices in the colony's framework of laws.

If a provision in an English municipal statute conflicted with Virginia law, the latter prevailed. Illustrations of this principle can be found in freedom suits that illegitimate children filed after being bound into servitude under the poor laws. The English Poor Law of 1601[123] authorized justices of the peace to bind males until the age of twenty-four and females until the age of twenty-one. The General Assembly adopted the English statute in 1672, ordering county courts to "put the laws of England against vagrant, idle and desolute persons in strict execution" and authorizing magistrates to bind into servitude all children whose parents were not able to support them. The assembly changed the age of emancipation to twenty-one for males and eighteen for females.[124] In *Morgan v. Bally,*[125] a 1698 case in the Accomack County Court, a twenty-one-

year-old servant sued his master, claiming that the 1672 Virginia law entitled him to his freedom. The master relied on the 1601 act of Parliament and produced a copy of the English statute for the court to read and consider. After comparing the two laws and hearing oral argument, the justices of the peace ruled in the servant's favor, holding that the act of assembly "was bindeing to us in this Country."[126] Other county courts reached the same conclusion.[127] Inasmuch as the House of Burgesses was made up largely of men who served concurrently as county magistrates,[128] the county benches had no qualms about deferring to the wisdom of the colonial legislature.

For most of the seventeenth century, Virginia judges applied even post-1607 English statutes if they perceived a need for a ready-made rule. To prevent infanticide, for example, colonial courts enforced a 1624 act of Parliament aimed at women suspected of killing their newborns.[129] If a woman concealed the death of her illegitimate child, the statute created a rebuttable presumption that the baby had been born alive and murdered by the mother. The woman faced the death penalty unless she could prove by at least one witness that the child had been stillborn. The county courts and the General Court tried defendants under the 1624 English act even though it did not mention the colonies.[130] In 1689 in the General Court case *Rex v. Lewis,* Elizabeth Lewis "was convicted for the Murder of a Bastard Child upon the Stat. 21. Jac. 1 and Sentenced to dye." She petitioned for mercy, claiming that "the Child was born dead." The council granted a reprieve until the next General Court, but because of the loss of the court's records, the final outcome is unknown.[131]

Early in the 1680s, however, the General Court's decision in *Griffin and Burwell v. Wormeley*[132] cast doubt on the propriety of applying postsettlement English statutes without express authorization from either Parliament or the General Assembly. The case involved the question whether the Statute of Frauds,[133] enacted by Parliament in 1677, applied to wills executed in Virginia after that date. The Statute of Frauds required that "all Devises and Bequests of Land or Tenements" be in writing, signed by the testator, and attested in his presence "by three or fower credible witnesses."[134] The act did not mention the colonies. Prior to its passage, Virginia courts had deemed two witnesses sufficient to authenticate a will devising land.

In January 1681, Lieutenant Colonel John Burnham, of Middlesex County, a justice of the peace and member of the House of Burgesses, executed a death-bed will before only two witnesses. Burnham's would-be executors, Colonel Leroy Griffin and Major Lewis Burwell, were also the devisees of the 2,250 acres of land bequeathed in the will. They presented the will for probate in the Middlesex County Court on 7 February 1681. Councillor Ralph Wormeley objected, contending that the will was invalid because Burnham had not been in his right mind when he made it. Wormeley argued that Burnham's property therefore escheated to the Crown. The county court referred the

case to the General Court because it involved "a matter of greate Consequence & wherein the Kings majestie hath a Right."[135] Depositions that the county court took later at the General Court's direction demonstrated that Burnham had moved in and out of consciousness when dictating the purported will, and a bystander had had to hold his hand while he made his mark on it. At some stage of the judicial proceedings, a jury found the will valid, indicating that Burnham had had testamentary capacity.[136] The verdict eliminated all the factual issues in the case, leaving the outcome to be determined by the General Court's ruling on the legal question of whether the English Statute of Frauds operated in Virginia. If the statute applied, the will was invalid, and the property escheated to the Crown for lack of heirs. If the act of Parliament did not apply, however, the property passed as Burnham had intended.

Representing Wormeley, who hoped to profit from the escheat by buying the property from the Crown, the lawyer William Fitzhugh advanced several reasons for presuming that the Statute of Frauds and other general acts of Parliament applied in Virginia. He argued that it would have been highly impractical to force settlers to create a completely new legal system the moment they stepped ashore at Jamestown. Besides the numerous precedents in which county courts and the General Court had applied postsettlement English statutes, Fitzhugh pointed to the colonists' land patents as evidence that Virginia was joined "to the Realm of England as parcel thereof," and "if we are a Part & branch of Engld. then consequently, we have a Right to, & benefit of the Laws of England."[137]

Griffin and Burwell argued against the applicability of the Statute of Frauds on what amounted to due process grounds. They invoked the emerging principle of the rule of law, a doctrine developed in the seventeenth century to protect liberty and property by preventing the arbitrary exercise of government power.[138] At the heart of the rule of law lay the concept of adherence to established and predictable norms. Authorities had to announce those norms publicly prior to enforcing them in particular cases.[139] Griffin and Burwell contended that "it would be not only unreasonable but inhuman to require Obedience and observation of a Law of which we have no means to take notice." Nobody had proclaimed the Statute of Frauds to be in effect in Virginia, nor had any metropolitan official sent copies of the act to the colony so that settlers could familiarize themselves with its contents. Therefore, Burnham had been incapable of conforming his conduct to the 1677 law's three-witness requirement, and it would be unjust to upset his legitimate expectations after his death.[140]

Griffin and Burwell's lack-of-notice argument raised serious questions about the fairness of applying the Statute of Frauds to Burnham's will. On 30 September 1681, the General Court, "not being satisfyed whether the Lawes & Statutes of England ought to be binding to the People of this Countrey

before Publick Proclamacon & Promulgacon thereof," referred the case to the General Assembly, which not long thereafter lost its jurisdiction to hear and determine appeals from the General Court.[141] Meanwhile, across the Atlantic, the English attorney general, Sir William Jones, weighed in with an opinion on 22 September 1681. Governor Thomas Culpeper, 2d Baron Culpeper of Thoresway, who was in England at the time, had sought Jones's guidance. The three-witness requirement of the Statute of Frauds did not apply in Virginia, the attorney general concluded, because the statute did not mention the colony and the General Assembly had not adopted or incorporated it. Jones asserted that "an Act of Parliament made in England doth bind Virginia or any other of the English Plantations where they are expressly named," but "a new law or Statute made in England, not naming Virginia or any other Plantation, shall not take Effect in Virginia or the other Plantation, 'till received by the General Assembly or others who have the Legislative Power in Virginia or such other Plantation."[142]

Jones's reasoning reflected the same fairness concerns that Griffin and Burwell's lawyers had raised. When Parliament enacted a law "without naming more Places than England as the Extent to which it shall relate," Jones explained, the lawmakers were "not to be presumed to have Consideration of the particular Circumstances and Conditions of the Plantations, especially considering no Member come from thence to the Parliament of England." Moreover, an act of Parliament normally took effect soon after passage, and "it is commonly so short a Time as no Notice can arrive to the Plantations" before people became obliged to obey the new law. People should not be bound "by Law of which they are, or may be reasonably supposed necessarily & invariably ignorant."[143] Culpeper showed the attorney general's opinion "to all the then Judges of England, Who declared the same to be Law."[144]

The governor took Jones's opinion with him when he returned to Virginia about November 1682. Heeding the attorney general's advice, the General Court entered judgment for Griffin and Burwell, apparently on the ground that the Statute of Frauds did not apply in Virginia.[145] The Burnham will case probably served as a precedent for the Richmond County Court's decision in *Hayberd v. Hawksford,*[146] an ejectment suit brought in 1701. The plaintiff claimed land as the heir by intestate succession; the defendant claimed by devise in a will that complied with Virginia customs but not with the Statute of Frauds. The Richmond County Court ruled for the defendant, holding that the statute "doth not reach or is pleadable in this Colony."[147] In 1748 the General Assembly enacted its own version of the Statute of Frauds and borrowed some of the language in the 1677 English statute but jettisoned the three-witness requirement in favor of Virginia's traditional rule requiring that all devises and bequests of land be in writing, be signed by the testator, and

be attested "by two or more credible witnesses" unless wholly written in the devisor's own hand.[148]

Were other postsettlement English statutes "pleadable" in Virginia? No one could say for sure. In 1705 the Virginia historian Robert Beverley claimed that Sir Edmund Andros, when he was governor from 1693 to 1698, "caused the Statutes of England to be allowed for Law there; even such Statutes, as were made of late time, since the grant of the last Charter."[149] Henry Hartwell, James Blair, and Edward Chilton complained to the Board of Trade in 1697, "It is none of the least Misfortunes of that Country, that it is not clear what is the Law whereby they are govern'd." Virginians understood that English statutes and acts of the General Assembly were the highest forms of law, "but how far both or either of these is to take place, is in the Judge's Breast, and is apply'd according to their particular Affection to the Party."[150] This trio of colonial politicians had an axe to grind, and their allegations may have exaggerated the confused state of Virginia jurisprudence at the end of the seventeenth century. Nevertheless, the hybrid character of early Virginia law—a blend of the metropolitan and the provincial—undoubtedly caused headaches for those who had to operate the system or represent clients. As another Virginian wrote about the same time, "[W]e are too often obliged to depend upon the Crooked Cord of a Judge's Discretion."[151]

The distinction between pre- and postsettlement English statutes became clearer in 1710 as a consequence of an infanticide case tried by the General Court. A woman was indicted under the 1624 English statute that created a presumption of murder if an unwed mother concealed her newborn's corpse. The defendant's lawyer moved to dismiss on the ground that "being a penal statute made since the Settlement of this Country, and wherein the plantations are not named," the law did not operate in Virginia. According to Lieutenant Governor Alexander Spotswood, the judges consulted "the ablest Lawyers here" and acquitted the defendant on the ground that the 1624 English statute was ineligible for ad hoc application. "But lest that Judgement should give encouragement to such wicked practices," in 1710 the General Assembly passed its own act, which incorporated "the Very terms of the Act of Parliament with some small variation adopting it to the Circumstances of this Country."[152] The main "variation" was a clause providing that the statute applied only to white women or other females who were not enslaved,[153] a candid acknowledgment that indentured servants were the people most likely to commit infanticide and hide babies' corpses.[154] Those women knew only too well that Virginia law would lengthen their terms of servitude if they were caught bearing children out of wedlock. To remind women of the penalty for infanticide, the 1710 statute required ministers to read the law in church every May.[155]

The conclusions reached in 1710 by the bench and bar of Williamsburg co-

incided, for the most part, with the views of early eighteenth-century English jurists.[156] In 1720 Richard West, counsel to the Board of Trade, opined that "all statutes in affirmance of the common law, passed in England, antecedent to the settlement of a colony, are in force in that colony, unless there is some private act to the contrary, though no statutes, made since those settlements, are there in force, unless the colonies are particularly mentioned."[157] Virginians probably would have qualified West's statement by saying that presettlement statutes were in force only if they suited local conditions,[158] but most would have agreed with his summary of the rule governing postsettlement statutes.[159] The master of the rolls, Sir Joseph Jekyll, reported in 1722 that the Privy Council had drawn the same distinction between pre- and postsettlement statutes. In newly settled colonies "inhabited by the *English,* acts of parliament made in *England,* without naming the foreign plantations, will not bind them," and therefore the Statute of Frauds did not apply in dominions such as Barbados and, by implication, Virginia.[160] Sir Philip Yorke, the English attorney general, rendered an opinion to the same effect in 1729. Responding to a query about the status of English statutes in Maryland, Yorke said that acts of Parliament made since the colony's settlement did not apply there unless (*a*) they expressly referred to the colonies in general or to Maryland in particular; (*b*) the provincial assembly had adopted them; or (*c*) they had been "received there by long uninterrupted usage, or practice, which may import a tacit consent of the lord proprietor, and the people of the colony" that they should have the force of law.[161]

Presettlement English statutes went unmentioned by George Webb when he wrote his influential handbook for Virginia justices of the peace in 1736. His distillation of the general rule implied, however, that he understood the principle behind the General Court's 1710 infanticide decision. "All Acts of Parliament made in *England,* expressly declaring, That they shall extend to *Virginia,* or to His Majesty's *American* Plantations, are of full Force in this Dominion, tho' not Enacted here," Webb wrote. "Divers other Statutes are Enacted here, and Declared to be of Force in this Colony, by our Acts of Assembly."[162] Webb's restatement of current doctrine left no room for the ad hoc application of postsettlement English statutes that neither referred to the colony nor bore the General Assembly's imprimatur. Nevertheless, the issue remained controversial for the rest of the century. As late as 1798, two prominent Virginia jurists, St. George Tucker and John Tyler, could still disagree about whether the 1677 Statute of Frauds's liberalization of the rules of descent for leaseholds pur autre vie (for the life of another) applied to a Virginia will executed before the Revolution.[163] Tyler thought the English statute applied, contending that "it was not doubted in this Country till the Revolution that the General Statutes of England posterior to our Colonization were in force here. That we claimed the Benefit of them all."[164] Tucker denied that the statute had anything to do

with the case, insisting that "even the most zealous advocates for the supremacy of the British parliament went no further than to say, that we were bound by all acts of parliament made after the establishment of the colonial legislatures *if therein* especially and particularly *named.*" Because the 1677 act did not name the colonies, Tucker argued, the Virginia will was governed by presettlement English law, which prohibited a testator from devising a leasehold pur autre vie.[165] Although Tucker greatly exaggerated the number of conflicts that would have arisen from Tyler's theory, most eighteenth-century Virginia lawyers probably would have shared Tucker's view that only presettlement English statutes were eligible for ad hoc application.

ACQUISITION OF ENGLISH STATUTE BOOKS

Extension and accretion introduced scores of English statutes into Virginia's legal system. To interpret and apply those laws, colonial judges needed reliable, up-to-date statute books. In August 1661, soon after learning about the passage of the Navigation Act, the York County justices of the peace announced that they found it "very necessary that a Statute booke be provided for the Courts use." They ordered that "the Statutes att Large" be sent to them "out of England the next shipping."[166] The magistrates evidently wanted a book containing the full, authoritative texts of acts of Parliament rather than abridged versions.[167] As Edmund Wingate, the author of a popular abridgment candidly acknowledged, an abridgment "is but an extract of the Statutes at large; when any doubt shall arise in the Text (as you shall finde it here abridged) relie not wholly hereupon, but (in such case) repair to the Statutes at large."[168] Various works with the phrase *statutes at large* in the title appeared in the late sixteenth and early seventeenth centuries,[169] but no book with that precise phrase in the title would have been current enough to serve the York County justices' purposes. The most useful collection from their standpoint would have been the 1661 edition of Ferdinando Pulton's *A Collection of Sundry Statutes, Frequent in Use,* a comprehensive compilation first published in 1618.[170] The massive, 1,511-page work contained the statutes at large from Magna Carta (conveniently translated into English, as all the other statutes were) through the laws passed by Charles II's most recent Parliament, which adjourned on 30 July 1661.

The General Assembly of Virginia passed a law in the fall of 1666 instructing every county court to buy "all the former statutes at large and those made since the beginning of the raigne of his sacred majestie that now is," meaning King Charles II.[171] The Lancaster County Court complied in January 1670 by asking the commander of the ship *Duke of Yorke* to bring some law books with him on his return voyage, promising to reimburse him out of the next year's

tax levy.[172] The volumes arrived in due course, and in November 1671 the justices appropriated funds to pay for them.[173] In October 1671 the York County Court, citing the 1666 Virginia statute, ordered a couple of legal treatises plus a compilation of the statutes of Charles II's reign.[174] The books were later "dispersed in severall Persons hands," prompting the justices of the peace to order the clerk to launch a search for the missing volumes and "secure the same for the use & benefitt of the Court."[175]

Another spate of book buying occurred at the beginning of the eighteenth century. In July 1700 the Essex County Court asked one of its members to order law books from England "as the Law directs for the use of the County."[176] In May 1701 the Richmond County Court ordered that its clerk "forthwith send to England for all the Statutes at large being two Volumes and that the name of the County be sett in Letters of gold on the Covers."[177] The justices may have had in mind the two-volume edition of Joseph Keble's *The Statutes at Large in Paragraphs and Sections or Numbers,*[178] which was published in London in 1695 and contained all the statutes enacted through May of that year. The clerk, William Colston, died early in the fall of 1701,[179] and either he failed to place the county's book order or his successor discovered that Keble's two-volume edition was outdated because it omitted the Plantation Trade Act of 1696,[180] the most recent English statute requiring colonists to enforce England's commercial policies. The Richmond County justices placed another book order in November 1703, after they received a directive from Governor Francis Nicholson and the Council of State telling Virginia magistrates to purchase copies of any acts of Parliament "as are now wanting in their Courts" and to "continue the like care for the future that the Courts be duly provided with the Laws & Statutes of England as from time to time they come out."[181] The Richmond justices acknowledged the importance of staying current when they "ordered that the Statutes and acts of Parliament to the Latest date now Extant be sent for."[182] The books apparently went astray, for in May 1705 the justices of the peace lamented "the Great Inconvenience of not haveing the Laws and Statutes and other necessary Law books," and they accepted a magistrate's offer to order them from England.[183]

Keeping up with Parliament's growing output of legislation proved expensive. In November 1703 the Middlesex County Court announced that it would comply with the governor and council's order and purchase "what Laws and Statutes of England are wanting . . . with what convenient speed may be."[184] The records do not reveal which books they acquired in the next four years, but we do know that in April 1707 the court authorized two of its members "to get one good Chest with lock and key to Hold the Court bookes etc., to be set in the Jury Roome."[185] The following November, the court appropriated three thousand pounds of tobacco—almost 36 percent of that year's entire county budget—"to buy Law books for the Court."[186] In June 1709 Harry Beverley,

the justice of the peace to whom that task had been assigned, "produced the Statutes at Large in five volumes which he bought with the Tobacco raised by the County," and the court ordered that the expensive tomes "be carefully Lodged amongst the County records."[187] The five books were probably the three-volume edition of Keble's *Statutes at Large,* published in 1706 and current through the session of Parliament that ended on 14 March 1704;[188] the *Supplement to the Statutes at Large,* published in 1706 and containing acts passed between 1696 and 1704;[189] and the *Addenda to the Third Volume of the Statutes at Large,* published in 1708 and current through the session of Parliament that ended on 1 April 1708.[190] These weighty compilations brought the Middlesex justices completely up to date on potentially applicable English legislation.

As Gordon Wood has argued, colonial adjudication "was not simply a matter of applying some kind of crude, untechnical law to achieve common-sense 'frontier' justice." He found "much evidence to suggest that even as early as the late seventeenth century in new back-country counties the quality of legal procedures was remarkably sophisticated."[191] Virginians' frequent and varied use of English statutes in the later Stuart period supports Wood's claim. Although the mixed nature of early Virginia jurisprudence occasionally caused confusion, settlers still managed to construct a legal regime that coherently blended imported and indigenous legislation.

The makers of early Virginia's legal culture drew upon acts of Parliament often and for three principal reasons: to obtain the instructions they needed to carry out imperial commands; to identify useful legislation they could transfer from the mother country's advanced legal system to their own emerging polity; and to find suitable rules of decision to help them determine the outcome of individual cases. English statute books served as essential guides for men who had to fathom the complexities of the Navigation Act, the Staple Act, and all the other metropolitan legislation that touched their lives. Integrating English statutes into colonial jurisprudence proclaimed Virginians' fidelity to the rule of law and reaffirmed their ethnocultural identity. As members of the English nation, colonists took pride in having what Sir William Berkeley described as "the best Lawes in the World for the security of the subject."[192] The presence of English statute books in the courthouses of colonial Virginia both symbolized and perpetuated this legacy.

NOTES

1. Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA, 2004), 7. For a discussion of the origins and development of dual legislative authorities in English America, see Bilder, "English Settlement

and Local Governance," in *The Cambridge History of Law in America,* ed. Michael Grossberg and Christopher Tomlins, 3 vols. (New York, 2008), 1:63–103. On the prohibition against passing colonial statutes that were repugnant to English law, see Bilder, "The Corporate Origins of Judicial Review," *Yale Law Journal* 116 (2006): 535–41.

2. I have borrowed the term *accretion* from Robert M. Bliss, who referred to "the accretion of precedent and custom" in seventeenth-century Virginia. Bliss, *Revolution and Empire: English Politics and the American Colonies in the Seventeenth Century* (Manchester, 1990), 63. *Accretion* is an equally apt term for Virginians' gradual addition of English statutes to their corpus juris.
3. For an example of a longtime Virginia resident's reference to England as "home," see the nuncupative will, dated 22 Jan. 1671, of William Mellinge, who directed that two hogsheads of tobacco "bee sent home for England to buy a silver Tankard of five pound price" as a bequest to his friend and executor Lt. Col. William Waters. Northampton Co. Order Book (1664–74), 97. Mellinge served at various times as a burgess, justice of the peace, sheriff, and clerk in Northampton County. Except for a brief trip to London in the early 1660s, Mellinge resided continuously in Virginia from about 1636 until his death almost thirty-five years later, yet he still considered England his "home."
4. On the link between law and English identity, see Jack P. Greene, *The Constitutional Origins of the American Revolution* (New York, 2011), 5–8.
5. First Charter from James I to the Virginia Company, 10 Apr. 1606, in *The Three Charters of the Virginia Company of London with Seven Related Documents; 1606–1621,* ed. Samuel M. Bemiss (Williamsburg, 1957), 9. The Second Charter, dated 23 May 1609, contained a similar provision. Ibid., 51.
6. Second Charter, ibid., 52.
7. Sir Matthew Hale, *The Prerogatives of the King,* ed. D. E. C. Yale, Selden Society 92 (London, 1976), 43–44.
8. Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (New York, 2010), 88–89.
9. For discussions of the colonists' understanding of the basic liberties that they brought with them from England to America, see Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788* (New York, 1986), 25; and John Phillip Reid, *Constitutional History of the American Revolution,* abr. ed. (Madison, WI, 1995), 23, 58–59. For an analysis of Sir Edward Coke's suggestion that "there were core English liberties—property rights and consent—that the king had to respect whenever Englishmen traveled to his non-English dominions," see Daniel J. Hulsebosch, "The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence," *Law and History Review* 21 (2003): 466–69.
10. Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (New York, 2006), 37.
11. Magna Carta, which originated in an agreement between King John and the barons in 1215, was enacted into a statute by King Edward I in 1297. Chapter 29 provided:

"No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor [condemn him,] but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right." 25 Edward 1, c. 29 (1297). See also the Petition of Right, in which King Charles I agreed not to compel his subjects "to make or yeild any Guift Loane Benevolence Taxe or such like Charge without common consent by Acte of Parliament." 3 Charles 1, c. 1, § 8 (1628). All quotations from acts of Parliament come from *The Statutes of the Realm,* 12 vols. (London, 1810–25), a compilation of laws enacted between 1235 and 1713.

12. David L. Smith, *The Stuart Parliaments, 1603–1689* (London, 1999), 178.
13. Robert Zaller, *The Discourse of Legitimacy in Early Modern England* (Stanford, CA, 2007), 476.
14. Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Oxford, 1999), 106.
15. *Craw v. Ramsey,* Vaughan 274, 300, 124 Eng. Rep. 1072, 1084 (C.P. 1670).
16. MacMillan, *Sovereignty and Possession,* 6.
17. Hale, *Prerogatives of the King,* 42–44. Some English jurists asserted that the law applicable to a newly acquired territory depended on whether the king of England conquered it from a Christian king, conquered it from an infidel king, or inherited it. See Joseph Henry Smith, *Appeals to the Privy Council from the American Plantations* (New York, 1950), 467–73, discussing *Calvin's Case,* 7 Coke Rep. 1, 17b, 77 Eng. Rep. 377, 397–98 (Exch. Ch. 1608), and its progeny. These jurists viewed the American colonies as conquered countries for which the king could prescribe whatever laws he saw fit. See William Blackstone, *Commentaries on the Laws of England,* 4 vols. (Oxford, 1765–69), 1:105. But the issue remained unresolved, and "[n]o clear acceptance of the doctrine of the adjudged English cases appears in the colonies." Smith, *Appeals to the Privy Council,* 473. On the debate over the status of the colonies and the scope of the king's power to determine which English statutes applied there, see Greene, *Peripheries and Center,* 23–28. For a discussion of the applicability of English statutes to the colonies, see Elizabeth Gaspar Brown, *British Statutes in American Law, 1776–1836* (Ann Arbor, MI, 1964), 1–22. On the theoretical and historical origins of the king's absolute prerogative to prescribe laws for his overseas territories, see MacMillan, *Sovereignty and Possession,* 37–41.
18. *Territorial ambit* refers to the parts of the world where the law applies. Michael Hirst, *Jurisdiction and the Ambit of the Criminal Law* (Oxford, 2003), 2.
19. For example, when the exiled Charles II issued his commission to Virginia governor Sir William Berkeley and the Council of State on 3 June 1650, the king ordered his appointees to take the oath of allegiance prescribed by 3 James I, c. 4, § 9 (1606). *The Papers of Sir William Berkeley, 1605–1677,* ed. Warren M. Billings, with the assistance of Maria Kimberly (Richmond, 2007), 94. See also ibid., 551, on the 1676 proclamation by Charles II promising a pardon to participants in Bacon's Rebellion who took the oath of allegiance prescribed by the 1606 English statute.
20. A colony was "particularly named" if it was expressly mentioned or "included un-

der general words," such as "American plantations." See Blackstone, *Commentaries,* 1:101, 105.

21. The last royal veto occurred on 11 Mar. 1708, when Queen Anne, on the advice of her ministers, withheld her assent to the Scottish Militia Bill, An Act for settling the Militia of that Part of Great Britain called Scotland. With the queen seated on her throne in the House of Lords, "adorned with Her Crown and Regal Ornaments," the clerk informed the assembled peers and Commons that "La Reine se avisera [*sic*]" (The Queen will consider it), a euphemistic way of expressing her disapproval. The queen herself then offered an explanation. That morning she had learned that a French fleet bearing Charles Francis Edward Stuart, "the Old Pretender," had sailed from Dunkirk, presumably headed for Scotland. She assured the Lords and Commons that she would "continue to take all proper Measures for disappointing the Enemy's Designs." *Journals of the House of Lords,* 39 vols. (London, 1767–1830), 18:506. Anne and her ministers evidently suspected that the militia might prove disloyal, so they decided to leave the Scottish force "unsettled."
22. Thomas Jefferson, for example, argued in 1774 that colonists owed a duty of obedience to the monarch but not to the British legislature, "a body of men foreign to our constitutions, and unacknowledged by our laws." Jefferson, "A Summary View of the Rights of British America," in *The Papers of Thomas Jefferson,* ed. Julian Boyd et al. (Princeton, NJ, 1950–), 1:129. See also the preamble to the Virginia Constitution of 1776, dismissing Parliament as "a foreign jurisdiction." William Waller Hening, ed., *The Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature,* 13 vols. (Richmond, Philadelphia, and New York, 1809–23), 9:113. The Declaration of Independence alleged that George III had tried to "subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws."
23. For a discussion of the early Stuarts' claim that the colonies belonged to the king alone and therefore could not be regulated by parliamentary legislation, see Eric Nelson, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, MA, 2014), 39–50, 257n47, 264n102. On the emergence of Parliament's role in colonial governance, see Ian K. Steele, "The British Parliament and the Atlantic Colonies to 1760: New Approaches to Enduring Questions," in *Parliament and the Atlantic Empire,* ed. Philip Lawson (Edinburgh, 1995), 35–38.
24. An Act for Prohibiting Trade with the Barbadoes, Virginia, Bermuda and Antego, enacted 3 Oct. 1650, and An Act for Increase of Shipping, and Encouragement of the Navigation of this Nation, enacted 9 Oct. 1651. C. H. Firth and R. S. Rait, eds., *Acts and Ordinances of the Interregnum, 1642–1660,* 3 vols. (London, 1911), 2:425–29, 559–62. The background and purposes of the 1650 and 1651 acts are analyzed in Robert Brenner, *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550–1653* (Princeton, NJ, 1993), 592–628; and J. E. Farnell, "The Navigation Act of 1651, the First Dutch War, and the London Merchant Community," *Economic History Review,* 2d ser., 16 (1964): 439–54.
25. An Act for the Encourageing and Increasing of Shipping and Navigation, 12 Charles 2, c. 18 (1660), confirmed by 13 Charles 2, c. 14 (1661).

26. 12 Charles 2, c. 18, § 1.
27. *Journals of the House of Commons,* 12 vols. (London, 1802–3), 8:151; *Journals of the House of Lords* (London, 1830), 11:160.
28. W. L. Grant and James Munro, eds., *Acts of the Privy Council of England, Colonial Series,* 6 vols. (London, 1906–12), 1:298–99.
29. *Journals of the House of Lords,* 11:171.
30. For more about the commercial rivalry that led to the Navigation Act, see John R. Pagan, "Dutch Maritime and Commercial Activity in Mid-Seventeenth-Century Virginia," *Virginia Magazine of History and Biography* 90 (1982) 485–501; and Victor Enthoven and Wim Klooster, "The Rise and Fall of the Virginia-Dutch Connection in the Seventeenth Century," in *Early Modern Virginia: Reconsidering the Old Dominion,* ed. Douglas Bradburn and John C. Coombs (Charlottesville, 2011), 90–127. For discussions of the act's background, purpose, and effects, see Charles M. Andrews, *The Colonial Period of American History,* 4 vols. (New Haven, CT, 1934–38) 4:60–90; Lawrence A. Harper, *The English Navigation Laws, a Seventeenth Century Experiment in Social Engineering* (New York, 1939), 50–58; and J. M. Sosin, *English America and the Restoration Monarchy of Charles II: Transatlantic Politics, Commerce, and Kinship* (Lincoln, NE, 1980), 49–55.
31. 12 Charles 2, c. 18, § 1. The Navigation Act permitted ships belonging to the people of Berwick-upon-Tweed to trade with the colonies but banned Scottish vessels.
32. Ibid.
33. Two other sections also affected Virginians. Section 3 banned the importation into the British Isles of any colonial products not carried in the type of ship defined in § 1. Section 19 required ships going from England, Ireland, Wales, or Berwick-upon-Tweed to the colonies to post bond guaranteeing that they would carry enumerated colonial products such as tobacco only to ports in England, Ireland, Wales, or Berwick-upon-Tweed. Other lawful vessels, such as colonial ships, had to post bond with the governor ensuring that they would carry enumerated colonial products only to another English colony or to England, Ireland, Wales, or Berwick-upon-Tweed.
34. *In re Derickson* (1660), Northampton Co. Order Book (1657–64), 86–87.
35. *Papers of Sir William Berkeley,* 143.
36. Ibid., 148.
37. Hening, *Statutes at Large,* 2:17.
38. Warren M. Billings, *Sir William Berkeley and the Forging of Colonial Virginia* (Baton Rouge, 2004), 132–35, 140–41.
39. Ibid., 136–62.
40. Thomas R. Stewart, ed., *A Discourse and View of Virginia by Sir William Berkeley* (Norwalk, CT, 1914), 6–7. Berkeley wrote the pamphlet sometime between August 1661 and January 1662, when he had it printed. Billings, *Sir William Berkeley and the Forging of Colonial Virginia,* 277. The quotation in the text comes from Stewart's facsimile reprint of the printed version of Berkeley's *Discourse.* For a slightly different version, see *Papers of Sir William Berkeley,* 164–65.
41. *The Lawes of Virginia Now in Force* (London, 1662), ii, 2; Hening, *Statutes at Large,* 2:43.

42. An Act for preventing Frauds and regulating Abuses in His Majesties Customes, 14 Charles 2, c. 11 (1662). Charles assented to the act on 19 May 1662. *Journals of the House of Lords,* 11:471–72.
43. 14 Charles 2, c. 11, § 5.
44. Instructions from Charles II to Berkeley, 12 Sept. 1662, in *Papers of Sir William Berkeley,* 179.
45. *Papers of Sir William Berkeley,* 198–99; Grant and Munro, *Acts of the Privy Council,* 1:365–67.
46. An Act for the Encouragement of Trade, 15 Charles 2, c. 7 (1663). The act received the royal assent on 27 July 1663. *Journals of the House of Lords,* 11:579.
47. 15 Charles 2, c. 7, § 1.
48. Ibid., § 4.
49. The Staple Act explicitly mentioned the 1662 Customs Act and evidently incorporated the latter's definition of "English" crewmen as including Irish and colonial subjects. 14 Charles 2, c. 11, § 5. The Staple Act required that European goods bound for the American colonies be "laden and shipped in England Wales and the Towne of Berwicke upon Tweede and in English built Shipping." 15 Charles 2, c. 7, § 4. If an Irish merchant wished to send Irish-made goods to America, he had to ship them to England first and then reship them to the colonies.
50. 15 Charles 2, c. 7, § 4.
51. Charles II to Berkeley, 27 Jan. 1665, in *Papers of Sir William Berkeley,* 243.
52. Sir George Clark, *The Later Stuarts, 1660–1714,* 2d ed., Oxford History of England (Oxford, 1956), 63.
53. *Papers of Sir William Berkeley,* 256, 291.
54. See "Orders for the defense of Virginia," 21 June 1665, in *Papers of Sir William Berkeley,* 255–56. For a detailed account of Berkeley's conduct during the Second Anglo-Dutch War, see Billings, *Sir William Berkeley and the Forging of Colonial Virginia,* 204–8.
55. See act of 9 Oct. 1665, in Hening, *Statutes at Large,* 2:220–21.
56. "Order-in-council to fortify Old Point Comfort," 29 Mar. 1666, in *Papers of Sir William Berkeley,* 273–75.
57. Berkeley to Henry Bennet, 1st Earl of Arlington, 13 July 1666, ibid., 289.
58. Berkeley to Charles II and the Privy Council, ca. 24 June 1667, ibid., 319–20.
59. See N. H. Keeble, *The Restoration: England in the 1660s* (Oxford, 2002), 104 (attributing the Treaty of Breda to financial pressures).
60. Commissioners of the customs to Berkeley, 3 Feb. 1669, in *Papers of Sir William Berkeley,* 352.
61. On the councillors' ability to secure plum appointments that enabled them to profit from enforcing England's trade laws, see Emory G. Evans, *A "Topping People": The Rise and Decline of Virginia's Old Political Elite, 1680–1790* (Charlottesville, 2009), 10–12, 42.
62. For a brief sketches of Bland's career, see *Papers of Sir William Berkeley,* 118n1; and John T. Kneebone et al., eds., *Dictionary of Virginia Biography* (Richmond, 1998–), 2:14.

63. *Rex ex rel. Bland v. the Ship Hope* (1670), in *Minutes of the Council and General Court of Colonial Virginia,* ed. H. R. McIlwaine, 2d ed. (Richmond, 1979), 216; *Papers of Sir William Berkeley,* 369.
64. Petition of Edmund Scarburgh, ca. 30 Mar. 1670, in *Papers of Sir William Berkeley,* 369–70.
65. Philip Alexander Bruce, *Economic History of Virginia in the Seventeenth Century,* 2 vols. (New York, 1895), 1:358n1.
66. Ballard joined the Council on 22 June 1670. McIlwaine, *Minutes of the Council and General Court,* 223. He served until 1679. He represented James City County in the House of Burgesses in 1666. Kneebone et al., *Dictionary of Virginia Biography* 1:307–8.
67. *Rex ex rel. Ballard v. Ship Dolphin* (1670), in McIlwaine, *Minutes of the Council and General Court,* 212.
68. Ibid., 214.
69. Hening, *Statutes at Large,* 1:169. Clauses demanding that magistrates conform their rulings to English law became standard features of judicial commissions. See, e.g., Susie M. Ames, ed., *County Court Records of Accomack-Northampton, Virginia, 1640–1645* (Charlottesville, 1973), 178 (commission issued 1642); Warren M. Billings, ed., *The Old Dominion in the Seventeenth Century: A Documentary History of Virginia, 1606–1700,* rev. ed. (Chapel Hill, NC, 2007), 98 (commission issued 1652); *Papers of Sir William Berkeley,* 435 (commission issued 1673); and *The Papers of Francis Howard, Baron Howard of Effingham, 1663–1695,* ed. Warren M. Billings (Richmond, 1989), 98 (commission issued 1684).
70. Northumberland Co. Order Book (1666–78), 344–46.
71. Accomack Co. Wills, Etc., Orders (1682–97), 60–61.
72. Effingham to George Nicholas Hack, 23 Mar. 1685, in ibid., 60–60a; *Papers of Francis Howard, Baron Howard of Effingham,* 187. For a 1675 condemnation suit brought by Stringer, see the account of *Rex ex rel. Stringer v. the Ship Phoenix* in *American Slavery, American Freedom: The Ordeal of Colonial Virginia,* by Edmund S. Morgan (New York, 1975), 202–3.
73. Accomack Co. Wills, Etc., Orders (1682–97), 60a–61.
74. The indenture of sale, dated 25 Apr. 1685, is recorded in Accomack Co. Wills and Deeds (1676–90), 403–4. Montgomerie was twenty years old at the time he gave a deposition in a different case on 11 Feb. 1685. Accomack Co. Wills, Etc., Orders (1682–97), 62a.
75. The farm price of Chesapeake tobacco in 1685 was one penny sterling per pound. Russell R. Menard, "The Tobacco Industry in the Chesapeake Colonies, 1617–1730: An Interpretation," *Research in Economic History* 5 (1980): 159. Thus, Montgomerie's informer's fee equaled 5,273 pounds of tobacco. In the mid-1680s, male hired servants on the Eastern Shore earned around 1,000 to 1,200 pounds of tobacco per year plus food, washing, and lodging. John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (New York, 2003), 142, 191n59.
76. *Rex ex rel. Custis v. the Ship Katherine,* Accomack Co. Wills, Etc., Orders (1682–97), 114–15.

77. Accomack Co. Wills, Etc., Orders (1682–97), 114a.
78. An Act for preventing Frauds and regulating Abuses in the Plantation Trade, 7 & 8 William 3, c. 22 (1696). The act received the royal assent on 10 Apr. 1696. *Journals of the House of Commons* 11 (1693–97): 555.
79. 7 & 8 William 3, c. 22, § 8 (1696).
80. Ibid., § 6.
81. George Reese, ed., *Proceedings in the Court of Vice-Admiralty of Virginia, 1698–1775* (Richmond, 1983), 6.
82. Michael Garibaldi Hall, *Edward Randolph and the American Colonies, 1676–1703* (Chapel Hill, NC, 1960), 184–85; Andrews, *Colonial Period of American History,* 4:258–59; David R. Owen and Michael C. Tolley, *Courts of Admiralty in Colonial America: The Maryland Experience, 1634–1776* (Durham, NC, 1995), 106; Steven L. Snell, *Courts of Admiralty and the Common Law: Origins of the American Experiment in Concurrent Jurisdiction* (Durham, NC, 2007), 148–49.
83. For additional cases involving county courts' enforcement of English trade statutes, see *Rex ex rel. Spencer v. Lynes* (Westmoreland Co. Court, 1685), in Billings, *Old Dominion in the Seventeenth Century,* 113–16 (jury verdict and judgment for king's collector in forfeiture action against ship's merchant who carried tobacco out of Maryland without paying customs duties on part of his cargo); *Rex ex rel. Crofts v. the Ship Crown of London* (1686), Middlesex Co. Order Book (1680–94), 275 (jury verdict and judgment for collector in condemnation action under the Staple Act); *Rex ex rel. Custis v. the Barque Fortune of Boston, Lincolnshire* (1687), Northampton Co. Order Book & Wills (1683–89), 278–79, 286 (jury verdict and judgment for collector in action to condemn vessel and cargo under the Staple Act for importing cloth not listed on the ship's customs cocket); *Rex ex rel. Cole v. the Sloop Katherine of New York* (1686), York Co. Deeds, Orders, Wills (1684–87), 153–54 (judgment for collector in bench trial of action to condemn ship and cargo under the Staple Act for bringing European goods from New York to Virginia without passing through a port in England, Wales, or Berwick-upon-Tweed).
84. Claire Priest, "Law and Commerce, 1580–1815," in Grossberg and Tomlins, *Cambridge History of Law in America,* 1:414.
85. Harper, *English Navigation Laws,* 195. William E. Nelson likewise concluded that Virginia courts "succeeded in enforcing Parliament's Navigation Acts." Nelson, *The Common Law in Colonial America,* vol. 3, *The Chesapeake and New England, 1660–1750* (New York, 2016), 28.
86. Blackstone, *Commentaries,* 1:105–6.
87. Hening, *Statutes at Large,* 1:167. This 1632 act referred to "statutes" but cited only 1 James 1, c. 6 (1604). Using the plural made sense, though, because the 1604 law clarified magistrates' powers under an earlier statute, 5 Elizabeth 1, c. 4 (1563).
88. Hening, *Statutes at Large,* 1:172. This 1632 act did not cite particular English statutes, but evidently the lawmakers had in mind An Acte against Regratours Forestallers and Engrossers, 5 & 6 Edward 6, c. 14 (1552), amended by 5 Elizabeth 1, c. 12 (1563), and made perpetual by 13 Elizabeth 1, c. 25 (1571). At later sessions, the assembly defined engrossing and forestalling and tailored the laws to Virginia cir-

cumstances. See Act 31 of Sept. 1632, Act 6 of 1633, Act 6 of 1643, and Act 8 of 1655, in Hening, *Statutes at Large,* 1:194–95, 217, 245, 412. In 1662 the assembly purported to repeal "all acts concerning ingrossing," an apparent reference to the colonial versions. Ibid., 2:124.

89. Hening, *Statutes at Large,* 1:167. In this 1632 act, the assembly cited the English Acte for repressinge the odious and loathsome synne of Drunckennes, 4 James 1, c. 5 (1606), but did not cite the later statute making the 1606 law perpetual and relaxing its standards of proof, 21 James 1, c. 7 (1624).
90. Hening, *Statutes at Large,* 1:434. This 1658 act seems to refer to An Acte to restrayne all persons from Marriage until their former Wyves and former Husbandes be deade, 1 James 1, c. 11 (1604).
91. Hening, *Statutes at Large,* 3:171. This 1699 act required Virginians to attend Church of England services at least once every two months and prescribed penalties for failing to do so. The assembly excused Protestant dissenters from paying the penalties if they were "every way qualified" for an exemption under An Act for Exempting their Majestyes Protestant Subjects dissenting from the Church of England from the Penalties of certaine Lawes, 1 William & Mary, c. 18 (1689). This English statute, generally called the Toleration Act of 1689, allowed freedom of worship by Protestant nonconformists who were willing to take certain oaths of allegiance and leave their church doors unlocked during services.
92. Hening, *Statutes at Large,* 3:298, the 1705 act adopting "so much" of 7 & 8 William 3, c. 34 (1696), "as relates" to allowing Quakers to testify by affirmation. For yet another example of adoption, see the 1726 Virginia law declaring that a 1691 act of Parliament prohibiting fraudulent devises was "to be in force in this colony and dominion." Hening, *Statutes at Large,* 4:164, adopting An Act for Relief of Creditors against Fraudulent Devises, 3 William & Mary, c. 14 (1691).
93. Ibid., 3:171n.
94. On the shortcomings of scribal publication of statutes, see David D. Hall, "The Chesapeake in the Seventeenth Century," in *A History of the Book in America,* vol. 1, *The Colonial Book in the Atlantic World,* ed. Hugh Amory and David D. Hall (New York, 2000), 61–62.
95. See, e.g., Northampton Co. Orders, Wills, Etc. (1698–1710), 304. The county court spent four days in November 1706 reading aloud the comprehensive revisal of 1705.
96. 5 Elizabeth 1, c. 4, § 10 (1563).
97. *Gibson v. Blande* (1691), Stafford Co. Orders (1689–93), 160–61. For another example of an action based on the Statute of Artificers, see *Brent v. Dunne* (1690), ibid., 48.
98. Hening, *Statutes at Large,* 3:102–3. On the role of oyer and terminer courts for the trial of slaves, see Peter Charles Hoffer and William B. Scott, eds., *Criminal Proceedings in Colonial Virginia: Fines, Examination of Criminals, Trials of Slaves, Etc., from March 1710 to 1754* (Athens, GA, 1984), xliv–lii.
99. 23 Henry 8, c. 1, § 1 (1532).
100. *Rex v. Tom Cary* (1693), Northampton Co. Orders and Wills (1689–98), 237–39.
101. The homeowner obtained restitution under a 1529 statute, 21 Henry 8, c. 11. For an-

other case in which a slave was sentenced to hang for arson in violation of 23 Henry 8, c. 1, and 4 & 5 Philip and Mary, c. 4 (1558) (accessory to arson punishable without benefit of clergy), see *Regina v. Sarah* (1705), Northampton Co. Orders, Wills, Etc. (1698–1710), 244–47.

102. For a discussion of the General Assembly's use of English statutes as models for colonial legislation, see Warren M. Billings, *A Little Parliament: The Virginia General Assembly in the Seventeenth Century* (Richmond, 2004), 134, 193, 210–11. For examples of the mix-and-match approach to adoption and incorporation, see St. George Tucker's list of the postsettlement English statutes that made their way into the acts of assembly via one route or the other. St. George Tucker, *Blackstone's Commentaries: with Notes of Reference, to The Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia,* 5 vols. (Philadelphia, 1803), 1: appendix, 396. For another list, see *A Collection of All the Acts of Assembly, Now in Force, in the Colony of Virginia* (Williamsburg, 1733), 603.

103. This requirement dated back to the creation of the Virginia legislature. See the Virginia Company's Instructions to the Governor and Council of State in Virginia, 24 July 1621, in *The Records of the Virginia Company of London,* ed. Susan Myra Kingsbury, 4 vols. (Washington, DC, 1906–35), 3:484, requiring the General Assembly and Council of State to "imitate and followe the policy" of the form of government, laws, customs, and manner of administering justice "used in the Realme of England as neere as may bee." The Crown retained the requirement when it assumed control of the colony. See King Charles I's Instructions to Governor Sir William Berkeley, Aug. 1641, in *Papers of Sir William Berkeley,* 29, empowering the General Assembly to make laws for the colony "correspondant as near as may be to the laws of England."

104. Colonial legislation had to conform to imperial policies and the fundamental principles of English law. See Philip Hamburger, *Law and Judicial Duty* (Cambridge, MA, 2008), 261–62; Elmer Beecher Russell, *The Review of American Colonial Legislation by the King in Council* (New York, 1915); and Gwenda Morgan, "'The Privilege of Making Laws': The Board of Trade, the Virginia Assembly and Legislative Review, 1748–1754," *Journal of American Studies* 10 (1976): 1–15.

105. Blackstone, *Commentaries,* 1:105.

106. An act for settling the Titles and Bounds of Lands: and for preventing unlawful Shooting and Ranging thereupon (1710), in Hening, *Statutes at Large,* 3:521–22.

107. An Acte for lymytacon of Accons, and for avoyding of Suits in Lawe, 21 James 1, c. 16, § 1 (1624).

108. Lymitacon of Prescription, 32 Henry 8, c. 2, §§ 1–3 (1540).

109. See An Act for settling the Titles and Bounds of Lands, and for preventing unlawful Shooting and Ranging thereupon, Act 13 of 1710, in *Acts of Assembly, Passed in the Colony of Virginia, from 1662, to 1715* (London, 1727), 341–42.

110. *Collection of All the Acts of Assembly, Now in Force,* title page, 259–60, 603. For a discussion of this volume's importance, see W. Hamilton Bryson, *Virginia Law Books: Essays and Bibliographies* (Philadelphia, 2000), 14–15.

111. Commission from King Charles I to Sir William Berkeley, 10 Aug. 1641, in *Papers*

of Sir William Berkeley, 25. Another version of the 1641 commission used the word *purpose* instead of *propose.* Evarts Boutell Greene, *The Provincial Governor in the English Colonies of North America* (New York, 1907), 215. Berkeley's 1650 commission from King Charles II said that Virginians were to be regulated "according to the laws and Statutes of the Realm of England which wee purpose to Establish there." *Papers of Sir William Berkeley,* 91. Berkeley's 1660 commission reverted to *propose.* Ibid., 124.

112. Hening, *Statutes at Large,* 2:70.

113. The phrase "brooding omnipresence in the sky" comes from *Southern Pacific Co. v. Jensen,* 244 U.S. 205, 222 (1917) (Holmes, J., dissenting).

114. See Arthur P. Scott, *Criminal Law in Colonial Virginia* (Chicago, 1930); and Hoffer and Scott, *Criminal Proceedings in Colonial Virginia.*

115. *Rex ex rel. Sandford v. Kennet,* Accomack Co. Wills, Deeds & Orders (1678–82), 230, alleging violation of 5 Elizabeth 1, c. 9 (1563).

116. Northampton Co. Deeds and Wills (1666–68), 19a, enforcing 1 James 1, c. 31. The quarantine order, issued by the county's militia commander, concluded with a flourish: "God Save the King!"

117. An Acte for the charitable Reliefe and orderinge of persons infected with the Plague, 1 James 1, c. 31, § 2 (1604).

118. Surry Co. Deeds, Wills, Etc. (1671–84), fol. 40, citing 13 Henry 4, c. 7 (1411). I owe this reference to Brent Tarter. For his analysis of the broader social and political significance of this prosecution, see Tarter, *The Grandees of Government: The Origins and Persistence of Undemocratic Politics in Virginia* (Charlottesville, 2013), 72–73.

119. An Acte concerninge Tanners Curriers Shoomakers and other Artificers occupyinge the cuttinge of Leather, 1 James 1, c. 22, § 21 (1604).

120. *Scarburgh v. Bradford* (1663), Northampton Co. Order Book (1657–64), fol. 153. For biographical sketches of Scarburgh, see Susie M. Ames, ed., *County Court Records of Accomack-Northampton, Virginia, 1632–1640,* American Legal Records 8 (Washington, DC, 1954), xxvii; and Ames, ed., *County Court Records of Accomack-Northampton, Virginia, 1640–1645* (Charlottesville, 1973), xv–xvi.

121. 8 Henry 6, c. 9 (1429).

122. *Byram v. Johnson* (1685), Northumberland Co. Order Book (1678–98), pt. 1, 287. The jury found that the plaintiff had sustained five hundred pounds of tobacco in actual damages. The relevant statute was 8 Henry 6, c. 9. The record does not reveal whether the court relied on the statutes at large or on an abridgment. The statute's treble-damages provision was abstracted in a chapter titled "Forcible Entry," in Edmund Wingate's *An Exact Abridgement of All Statutes In Force and Use, upon the 4th day of January, in the Year of our Lord 1641/42,* 2d ed. (London, 1655), 219, a work that was well known in Virginia. See W. Hamilton Bryson, *Census of Law Books in Colonial Virginia* Charlottesville, 1978), xvii, 156; *Rex v. Smith* (1670), Accomack Co. Orders (1666–70), 174, 180, citing p. 225 of the 1655 edition of Wingate's *Abridgement.*

123. An Acte for the Releife of the Poore, 43 Elizabeth 1, c. 2, § 3 (1601).

124. Hening, *Statutes at Large,* 2:298.
125. Accomack Co. Orders (1697–1703), 34a.
126. Ibid.
127. See the discussion of *Morgan v. Bally* and a couple of similar cases in Pagan, *Anne Orthwood's Bastard,* 136–44. Arthur P. Scott cites a 1692 case in which the Henrico County Court held that the 1672 Virginia act, rather than the English Poor Law, determined a girl's age of emancipation. Scott, *Criminal Law in Colonial Virginia,* 30n40.
128. See Warren M. Billings, "The Growth of Political Institutions in Virginia, 1634 to 1676," in *Magistrates and Pioneers: Essays in the History of American Law* (Clark, NJ, 2011), 35–36, noting that between 1662 and 1676 "no man sat in the House of Burgesses who was not simultaneously a justice of the peace."
129. An Acte to prevent the murthering of Bastard Children, 21 James 1, c. 27 (1624).
130. See, e.g., *Rex v. Carter* (1680), Accomack Co. Wills, Deeds & Orders (1678–82), 160–67 (woman presented to the county court under 21 James 1, c. 27, indicted by the grand jury, and bound over to the General Court for trial); and *Rex v. Anderson and Mikell* (1681), ibid., 218, 233–36 (prosecution of mother and her male accomplice under 21 James 1, c. 27). See also Scott, *Criminal Law in Colonial Virginia,* 33, 200–201 (discussing trals in the General Court under 21 James 1, c. 27).
131. H. R. McIlwaine et al., eds., *Executive Journals of the Council of Colonial Virginia,* 6 vols. (Richmond, 1925–67), 1:522. See also ibid., 1:314, a 1694 order by the council that "Elizabeth Lewis a person Condemned and reprieved until the next Generall Court" was to be kept "in Close Custody in the Comon Goal of James Citty as a Condemned person."
132. *Griffin and Burwell v. Wormeley* (1683), in McIlwaine et al., *Executive Journals,* 1:479–85, 492; Richard Beale Davis, ed., *William Fitzhugh and His Chesapeake World, 1676–1701* (Chapel Hill, NC, 1963), 88–89, 151–59; Robert T. Barton, ed., *Virginia Colonial Decisions: the Reports by Sir John Randolph and by Edward Barradall of Decisions of the General Court of Virginia, 1728–1741,* 2 vols. (Boston, 1909), 2:B1–B2.
133. An Act for prevention of Frauds and Perjuryes, 29 Charles 2, c. 3 (1677). The act received the royal assent on 16 Apr. 1677. *Journals of the House of Lords* 13 (1675–1681): 120. It applied to wills executed on or after 24 June 1677.
134. 29 Charles 2, c. 3, §5.
135. Middlesex Co. Order Book (1680–94), 11.
136. Ibid., 47, 48, 55; depositions in Middlesex Co. Deeds, Etc. (1679–94), 28–33; William Fitzhugh to Ralph Wormeley, n.d., in Davis, *William Fitzhugh,* 153.
137. Davis, *William Fitzhugh,* 154.
138. For an account of the struggle to define legal restraints and constitutional boundaries in early seventeenth-century England, see James S. Hart Jr., *The Rule of Law, 1603–1660: Crowns, Courts and Judges* (Harlow, England, 2003).
139. John Phillip Reid, *Rule of Law: The Jurisprudence of Liberty in the Seventeenth and Eighteenth Centuries* (DeKalb, IL, 2004), 5.

140. See "The Replication of Lewis Griffin and Lewis Burwell," in McIlwaine et al., *Executive Journals,* 1:481.

141. Middlesex Co. Deeds, Etc. (1679–94), 27. In October 1683, Charles II instructed the new governor, Lord Howard of Effingham, that he was "not for the future to admit or allow of any Appeals whatsoever to bee made from the Governor and Council unto the Assembly." Billings, *Papers of Francis Howard, Baron Howard of Effingham,* 25. Litigants who were dissatisfied with the decisions of the General Court could appeal to the king in Council provided the amount in controversy exceeded the prescribed minimum. Smith, *Appeals to the Privy Council,* 83–84.

142. Barton, *Virginia Colonial Decisions,* 2:B1.

143. Ibid., 2:B2.

144. Ibid.

145. Ibid., noting that Jones's opinion had been "affirmed in open Court" in Jamestown; Davis, *William Fitzhugh,* 88n2; McIlwaine et al., *Executive Journals,* 1:492; Hening, *Statutes at Large,* 2:564; "The Randolph Manuscript," *Virginia Magazine of History of Biography* 18 (1910): 130n. Wormeley was slow to obey the judgment. In April 1684, Griffin and Burwell were still trying to gain possession of Burnham's land. Middlesex Co. Order Book (1680–94), 166.

146. *Hayberd v. Hawksford* (1701), Richmond Co. Order Book (1699–1704), 82–83.

147. Ibid., 83.

148. Hening, *Statutes at Large,* 5:456.

149. Robert Beverley, *The History and Present State of Virginia,* ed. Susan Scott Parrish (Chapel Hill, NC, 2013), 204.

150. Henry Hartwell, James Blair, and Edward Chilton, *The Present State of Virginia, and the College,* ed. Hunter Dickinson Farish (Williamsburg, 1940), 40. Although the report was written in 1697, it was not published until 1727.

151. Louis B. Wright, ed., *An Essay Upon the Government of the English Plantations on the Continent of America* (San Marino, CA, 1945), 23.

152. Spotswood to the Council of Trade, 6 Mar. 1711, in *The Official Letters of Alexander Spotswood,* ed. Robert A. Brock, 2 vols. (Richmond, 1882–85), 1:57–58. The bill was prepared pursuant to a request made by the council on 31 October 1710 and was amended by both the House of Burgesses and the council as it wound its way through the legislature. See H. R. McIlwaine, ed., *Legislative Journals of the Council of Colonial Virginia,* 2d ed. (Richmond, 1979), 493, 494, 495, 497–98; John Pendleton Kennedy and H. R. McIlwaine, eds., *Journals of the House of Burgesses of Virginia, 1619–1776,* 13 unnumbered vols. (Richmond, 1905–15), *1702/3–1705, 1705–1706, 1710–1712,* 259, 261, 262, 264, 265, 268. Spotswood assented to the bill on 9 December 1710. Ibid., 298.

153. Hening, *Statutes at Large,* 3:516.

154. Hugh F. Rankin, *Criminal Trial Proceedings in the General Court of Colonial Virginia* (Williamsburg, 1965), 138. For discussion of Virginia laws extending the terms of servants who bore children out of wedlock, see Pagan, *Anne Orthwood's Bastard,* 84–85.

155. Hening, *Statutes at Large,* 3:516–17.
156. For a thorough examination of the views of English jurists on the applicability of English statutes to the American colonies, see Smith, *Appeals to the Privy Council,* 464–522.
157. George Chalmers, *Opinions of Eminent Lawyers, on Various Points of English Jurisprudence, Chiefly Concerning the Colonies, Fisheries, and Commerce, of Great Britain,* 2 vols. (London, 1814), 1:195.
158. Few Virginians probably would have endorsed the Reverend Hugh Jones's claim in 1724 that "[a]ll the laws and statutes of England before Queen Elizabeth are there in force, but none made since; except those that mention the plantations, which are always specified in English laws, when occasion requires." Hugh Jones, *The Present State of Virginia,* ed. Richard L. Morton (Chapel Hill, NC, 1956), 94. Jones erroneously excluded the presettlement statutes of James I from Virginia's body of laws, and he incorrectly claimed that pre-Elizabethan statutes always applied in the colony whether or not the colonists found them suitable to colonial conditions.
159. The constitutional crisis of the 1760s and 1770s would cause some Virginians to repudiate the rule articulated by West. Thomas Jefferson, for instance, claimed that "the rule, in our courts of judicature was, that the common law of England, and the general statutes previous to the 4th of James, were in force here; but that no subsequent statutes were, *unless we were named in them,* said the judges and other partisans of the crown, but *named or not named,* said those who reflected freely." Jefferson, *Notes on the State of Virginia,* ed. William Peden (Chapel Hill, NC, 1982), 132.
160. *Anonymous,* 2 Peere Williams 75, 24 Eng. Rep. 646 (Chan. 1722).
161. Chalmers, *Opinions of Eminent Lawyers,* 1:197. For a discussion of controversies over the applicability of English statutes in Maryland, Pennsylvania, South Carolina, and Jamaica, see St. George Leakin Sioussat, "The Theory of the Extension of English Statutes to the Plantations," in *Select Essays in Anglo-American Legal History,* ed. Association of American Law Schools, 3 vols. (Boston, 1907–9), 1:416–30.
162. George Webb, *The Office and Authority of a Justice of Peace* (Williamsburg, 1736), 324.
163. The Statute of Frauds changed English law by allowing a tenant pur autre vie to devise his interest by will. 29 Charles 2, c. 3, § 12 (1677).
164. *Mercer v. Hedgman* (Staunton District Court, 1798), in *St. George Tucker's Law Reports and Selected Papers, 1782–1825,* ed. Charles F. Hobson, 3 vols. (Chapel Hill, NC, 2013), 1:430n39. This quotation is Tucker's summary of Tyler's position.
165. Ibid., 1:430–31.
166. York Co. Deeds, Orders, Wills (1657–62), 125. In October 1661 the county court appropriated 450 pounds of tobacco to Lt. Col. William Barbar "to procure a Statute booke for the Court." The same amount was appropriated for copies of the acts of assembly and six orders. Ibid., 134.
167. On the distinction between statutes at large and abridgments, see William S. Holdsworth, *A History of English Law,* 2d ed., 17 vols. (Boston, 1922–72), 4:307–13.
168. Wingate, *Exact Abridgement of All Statutes in Force and Use,* ii.

169. See W. Harold Maxwell and Leslie F. Maxwell, eds., *A Legal Bibliography of the British Commonwealth of Nations,* 2d ed., 7 vols. (1955–64), 1:553–56.

170. Ferdinando Pulton, *A Collection of Sundry Statutes, Frequent in Use* (London, 1661). Holdsworth called Pulton's work "an advance upon all former editions of the statutes," setting a new standard "to which subsequent editors made at least an attempt to conform." Holdsworth, *History of English Law,* 4:309–10. Pulton (1536–1618) began the work in 1611. Following its initial publication in 1618, revised editions appeared in 1628, 1632, 1635–36, 1640, 1661, and 1670. Maxwell and Maxwell, *Legal Bibliography,* 1:555–56; Virgil B. Heltzel, "Ferdinando Pulton, Elizabethan Legal Editor," *Huntington Library Quarterly* 11 (1947): 77–79. Pulton's works were listed in several colonial Virginians' estate inventories. Bryson, *Census of Law Books,* 20. For an example of a compilation by an editor who imitated Pulton's method, see Thomas Manby, *A Collection of the Statutes Made in the Reigns of King Charles the I. and King Charles the II.* (London, 1667).

171. Hening, *Statutes at Large,* 2:246.

172. Lancaster Co. Orders (1666–80), 133. The county court also asked the captain of the *Duke of Yorke* to obtain weights and measures, as required by a 1662 statute. Hening, *Statutes at Large,* 2:89.

173. The county court appropriated 2,688 pounds of tobacco for both the law books and the weights and measures. Lancaster Co. Orders (1666–80), 211.

174. York Co. Deeds, Orders, and Wills (1665–72), 361.

175. York Co. Deeds, Orders, and Wills (1677–84), 331, order of 24 Aug. 1681.

176. Essex Co. Order Book (1699–1702), 53. The justice, Capt. Jonathan Battaile, was also asked to acquire a set of weights and measures for the county's use. At the next court of levy, in December 1700, the justices appropriated 7,525 pounds of tobacco to Battaile "for Law Books, Weights & Measures, etc." Ibid., 73.

177. Richmond Co. Order Book (1699–1704), 104.

178. Joseph Keble, *The Statutes at Large in Paragraphs and Sections or Numbers, from Magna Charta to the End of the Reign of King Charles II . . . In this impression are added all the Statutes made in the reigns of King James II, King William and Queen Mary to the end of the last session of Parliament, May, 3, 1695,* 2 vols. (London, 1695). The first edition of Keble's *Statutes at Large* was published in 1676, and the last edition appeared in 1736. Maxwell and Maxwell, *Legal Bibliography,* 1:554. Some Virginia lawyers possessed their own copies of Keble's collection. Godfrey Pole, who practiced in Northampton County in the early eighteenth century, owned "Keebles Statutes at large to the End of Charles 2d [1685]." "Miscellaneous Colonial Documents," *Virginia Magazine of History and Biography* 17 (1909): 147n1; Bryson, *Census of Law Books,* 19.

179. See Richmond Co. Order Book (1699–1704), 118–19.

180. An Act for preventing Frauds and regulating Abuses in the Plantation Trade, 7 & 8 William 3, c. 22 (1696).

181. McIlwaine et al., *Executive Journals,* 2:336, order of 27 Aug. 1703.

182. Richmond Co. Order Book (1699–1704), 297. English statute books could be

updated by "publishing" (reading) new laws during county-court sessions. In June 1702, for example, the Northumberland County Court read a royal proclamation concerning piracy and published An Act for the more effectuall Suppression of Piracy, 11 William 3, c. 7 (1700). Northumberland Co. Order Book (1699–1713), pt. 1, 206. In May 1709 the Middlesex County Court published An Act for ascertaining the Rates of Foreign Coins in Her Majesties Plantations in America, 6 Anne, c. 57 (1708), and An Act for the Encouragement of the Trade to America, 6 Anne, c. 64 (1708). Middlesex Co. Order Book (1705–10), 228.

183. Richmond Co. Order Book (1704–8), 60.
184. Middlesex Co. Order Book (1694–1705), 538.
185. Middlesex Co. Order Book (1705–10), 96.
186. Ibid., 202. The total Middlesex budget for November 1707 to November 1708 was 8,384 pounds of tobacco.
187. Ibid., 240.
188. Joseph Keble, *The Statutes at Large, in Paragraphs, and Sections or Numbers, from Magna Charta, to the End of the Session of Parliament, March 14, 1704, In the Fourth Year of the Reign of Her Majesty Queen Anne,* 3 vols. (London, 1706). Volume 1 contained 963 pages; volume 2 had 1,037 pages; and volume 3 had 1,005 pages.
189. *A Supplement to the Statutes at Large, Beginning with the Seventh and Eighth Years of the Reign of King William III, And Continued to the End of the Last Session of Parliament, March 14, 1704, in the Fourth Year of the Reign of Her Majesty Queen Anne* (London, 1706), 731 pages.
190. *Addenda to the Third Volume of the Statutes at Large, Beginning with the Fourth Year of the Reign of Queen Anne, and Continued to the End of the Last Session of Parliament, April 1, 1708, in the Seventh Year of Her Majesties Reign* (London, 1708), 270 pages.
191. Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill, NC, 1969), 297; Nelson, *Common Law in Colonial America,* 3:37–38, 50.
192. Berkeley to Francis Moryson, 11 Feb. 1677, in Billings, *Papers of Sir William Berkeley,* 583.