

WARREN M. BILLINGS

“Send us . . . what other Lawe books you shall thinke fitt”

Books That Shaped the Law in Virginia, 1600–1860

Historians of the book have greatly enlarged awareness of early American print culture. They have said much about readers and owners, printers and booksellers, type founders and paper makers, and the intricacies of the global book trade. Nevertheless, their preoccupation with literary genres has led them to ignore law books whose historical influence in Virginia, say, was only slightly less than that of John Foxe’s *Book of Martyrs*, the King James Version of the Bible, or the Book of Common Prayer.¹ The omission is misplaced, given that generations of Virginians routinely found inspiration in all manner of law books. Dipping into that trove reveals ways that law books gave figure and embellishment to Virginia’s legal order from the founding of Jamestown to the eve of the Civil War.²

Centuries before the age of bits and bytes, books were the principal means of categorizing and locating English law, although access to medieval law books was limited. There were not that many of them, they were costly, and they were also cast chiefly in Latin or law French. (The latter was a bastard variant of Norman French that arose in England after 1066 to become the written language of judicial proceedings, pleadings, and other legal papers.) Consequently, unless one commanded one or both languages, law books were unintelligible to all but the most erudite reader.³

The making of English law books changed forever after William Caxton introduced Britons to moveable type and printing presses late in the fif-

Warren M. Billings is Distinguished Professor of History, Emeritus, at the University of New Orleans and Visiting Professor of Law at the College of William and Mary Law School.

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teenth century. Written increasingly in the vernacular tongue thereafter, law books comprised an ever-widening circle of subjects as Caxton's imitators hustled to satisfy a burgeoning demand that went hand in hand with the rise of the early modern world. The numbers grew to the point where hundreds of titles circulated in 1600. There would be many hundreds more by 1860.⁴

Seventeenth-century Virginians who launched the journey of English law to America shared a salient trait that led them repeatedly to this great storehouse. They were amateurs and attorneys but seldom, if ever, lawyers. The distinction between "lawyer" and "attorney" may strike a modern reader as strange, given that the two are regarded synonymously nowadays. Four hundred years ago they conveyed separate meanings, the content of which frequently eludes modern legal historians. In seventeenth-century usage an attorney was anyone who represented the legal interests of someone else. A lawyer, by contrast, possessed formal legal education that he undertook at one of the Inns of Court in London or at the universities of Oxford and Cambridge before being admitted to practice in the central courts at Westminster. Probably no more than a dozen lawyers immigrated to Virginia before 1700, largely because the pickings were few and because of colonial hostility to them.⁵

A lack of formal professional schooling, however, did not equate with legal illiteracy. No English man or woman, however humble or grand, was ignorant of the rules that bound them into society with one another, and in those laws they recognized cultural markers that distinguished their kingdom from foreign ones. Whether of genteel station or commercial backgrounds, they garnered a self-taught comprehension through experience with and reading about that extraordinarily complex, numbingly arcane mix of judicial decisions, parliamentary statutes, customary rules, and ancient habits that they identified collectively as "the common law of England" and that became a lively part of the cultural baggage that shipped to Virginia.⁶

Books, experience, and memory worked in concert once colonists started bending their knowledge to a Chesapeake setting, especially after the Virginia Company of London introduced a healthy measure of self-rule that provided for local jurisdictions and a general assembly. That effort prompted Councillor of State George Thorpe to beseech company treasurer Sir Edwin Sandys "to send us the newe booke of the abrigement of Statutes and

Stamfords please of the Crowne and mr west presidents and what other Lawe books you shall thinke fitt.”⁷ The need grew ever more palpable after the Company busted and King Charles I proclaimed the colony a crown dominion in 1625. Those constitutional shifts threw the settlers mostly upon their own devices as they crafted suitable laws over the ensuing six decades.⁸

Thorpe’s entreaty also signifies how law books got to Virginia throughout the colonial era. Numerous settlers did as Thorpe did—they begged from acquaintances back in England. Others brought their books when they set off for America. Some dealt with London legal printers, booksellers, or commodity merchants. And still others inherited their law libraries.⁹

Private libraries, whose owners were chiefly magistrates, legislators, merchants, and a smattering of ordinary planters, varied from tiny to sizable but got bigger as the century passed. The Council of State and the county courts maintained libraries too. George Thorpe seems to have founded the council library around the time he wrote to Sir Edwin Sandys in 1621, whereas the earliest county law libraries dated from the 1640s.¹⁰ Furthermore, an act of the General Assembly in 1666 required the council and the local courts to augment their collections by buying “all the former statutes at large and those made since the beginning of the raigne of his sacred majestie that now is [Charles II] and a few other approved bookes of law.” That mandate probably contributed to their being among the larger libraries in Virginia before 1700, although precise volume counts are elusive owing to the disappearance of books and lists of holdings. No matter their size, these “public” law libraries—public in the sense of taxpayer support—were meant primarily to edify the magistrates, but they were likely also available to anyone with business before the provincial and local courts.¹¹

Tips from the assembly’s legislation, Thorpe’s letter, and estate inventories add up to a reliable snapshot of which books stamped what marks on an emergent legal architecture. Copies of all kinds of law books wound up in Virginia before 1700. The range of subjects included full text compilations and digests of case reports and statutes, books of entries, books about conveying real property, dictionaries, ecclesiastical law, formularies, how-to manuals, judicial biography, maritime law, parliamentary procedure, and treatises.¹² Far and away, though, the most influential were John Cowell’s, *A Law Dictionary: Or the Interpreter of Words and Terms*; William Lambarde’s

Eirenarcha; or of the Office of the Justices of the Peace; John Rastell's *Termes de la Ley*; Henry Swinburne's *Treatise of Testaments and Last Wills*; William West's *Symboleographie: Which May Be Termed the Art, or Description, of Instruments and Presidents*; Michael Dalton's *Countray Justice; Containing the Practice of Justices of the Peace Out of Their Session*; and his *Office and Authority of Sheriffs*.¹³

Even hasty glimpses into the contents of these seven volumes readily reveal their widespread preeminence and consequent influence. They contained superior treatments of specific aspects of law. Styled in plain, sometimes saucy English, they were easily imbibed and digested by any reader. (Nowadays they afford invaluable insights into the mindset of seventeenth-century Virginia lawmakers.) Practical works all, they underscored the centrality of local law and the primacy of the rural squirearchy that enforced order throughout England. Of equal importance, their accents upon the local conjured up the colonial lawmakers' past experiences. Those highlights strengthened convictions that English customary law best suited Virginia, and they reinforced a persistent localism that pervaded colonial politics and governance for most of the seventeenth century. Ultimately, the seven contributed significantly to courts and proceedings that, in the words of Secretary of the Colony Thomas Ludwell, rendered Virginia "Lawes and pleadings upon them easy & obvious to any man's understanding."¹⁴

All seven books dwindled in importance after 1700. Newer treatments lessened their authority. Giles Jacob's *The Compleat Court-Keeper* was decidedly more up-to-date than West's *Symboleographie*.¹⁵ Another of Jacob's works, *A New Law-Dictionary*, effectively rivaled Cowell's *Interpreter* and Rastell's *Termes de la Ley*.¹⁶ Because it spoke directly to actual legal proceedings in the colony, George Webb's *Office and Authority of a Justice of the Peace and also the Duty of Sheriffs . . . Adapted to the Constitution and Practice of Virginia* reduced the utility of Dalton's *Justice* and *Office of Sheriffs* as well as Lambarde's *Eirenarcha*.

More was at play than the mere obsolescence of seven aged law books, however. The Virginia of 1700 was a decidedly different place from the one George Thorpe had known in 1621. No longer a thinly stretched line of tenuous outposts, the colony verged on being a little England and the largest of Britain's mainland colonies. The crown's successful grab for greater control

in the waning decades of the 1600s steered the play of politics away from intensely parochial matters toward broader imperial issues. Secure in their place, eighteenth-century magistrates and legislators were not the novices their forebears once were. For them, making Virginia more like England in every respect was good, right, and a proper thing. Tending in that direction, too, were immigrant lawyers who elbowed themselves into the great planter class and who by the mid-1700s succeeded in refining the practice of law once made easy for Secretary Ludwell's "any man" into a highly professional calling fit for the sons of gentlemen.¹⁷

A harbinger of such changes happened in 1699, when a committee of councillors and burgesses commenced the revision of the colony's statutes in force, which took six years to accomplish.¹⁸ That committee specifically sought to bring Virginia law nearer to England's, and as a help to that purpose, it ordered a modern edition of Ralph de Hengham and Simon Theolall's *Registrum Brevium Tam Originalium, Quam Judicialium* (London, 1687); an updated version of William Rastell's *Entries of Declarations, Bars; Replications, Rejoinders, Issues, Verdicts, Judgments, Executions, Process, Continuances, Essoyns, and Divers Other Matters . . .* (London, 1670), a work first printed in 1566; the recent, anonymously authored *A Book of Entries of Declaration, Pleas, Replications, Rejoinders, Issues, Demurrers, and other Parts of Pleadings . . . With Divers other Material Points of Clerkship, Necessary to be known by the Attornies, Entering Clerks, and Sollicitors, as well in the Courts of Record at Westminster, as other inferiour Juridictions* (London, 1694); and Richard Garnet's *The Book of Oaths, and the Severall Forms Thereof, both Antient and Modern . . .* (London, 1649). All four contained compilations of writs and other documents that moved suits through the royal common law courts at Westminster.¹⁹

Thereafter, nearly seven hundred additional titles wended their way to Virginia.²⁰ Londoners supplied most of those volumes. George Wythe, for instance, routinely shopped for books at the mercantile house of John Norton and Sons, from which he also obtained household goods and items of personal refinement. On the other hand, council clerk Nathaniel Walthoe relied upon his brother John, who ran one of the larger legal print shops in London.²¹ By mid-century, however, Irish and Scots booksellers also competed for a market share by offering cheap pirated editions of London

imprints to Virginians, including Patrick Henry. Philadelphia printers also developed a Virginia clientele.²² One of them, Robert Bell, even rounded up some ninety Virginians as subscribers to the first American edition of Sir William Blackstone's *Commentaries on the Laws of England*, which came off his press in 1771.²³

Printing arrived in Virginia in 1729 when William Parks set up shop in Williamsburg on Duke of Gloucester Street a few doors down from the capitol. The founder of the *Virginia Gazette*, Parks became a consequential legal publisher, albeit something of a niche marketer. George Webb's *Virginia Justice* was among the earliest of his legal imprints. What attraction drew publisher and writer to one another is lost to history, though one might reasonably conclude that Parks, aware of Webb's erudition, purposely sought him out and talked him into the job, much as he did with his other authors.²⁴

Webb is a significant, though baffling, legal Virginian about whom little is known and more will likely never be found. He lived in New Kent County, one of the so-called "hopelessly burned record counties" whose early archives were completely destroyed during the Civil War, so all there is to tell of him can be put down in just a few words. He owned a fair amount of land and at some point operated a ferry on the Pamunkey River that docked near his plantation, which was a perquisite of his being justice of the peace. The *Virginia Justice* offers other hints. Its dedication to Sir William Gooch suggests that he owed his seat on the New Kent bench to the lieutenant governor-general. The text itself speaks to a thorough understanding of colonial legal practice, his solid command of relevant English law, and a good appreciation of the connections between the two, and those attributes would explain why Parks sought him out. His appointment as clerk of the committee of the General Assembly appointed to revise the statutes in force likewise hints at the depth of his legal knowledge. Then too, Webb revealed an open pride of authorship when he reminded his readers that the *Virginia Justice* was "the First in its Kind hitherto Produced in these Parts of the World."²⁵

Virginia Justice is remarkably suggestive of the extent to which English precedents had become engrafted onto Virginia local law by the time of its publication in 1736. Consequently, it ought to attract far greater attention

than it has received. Surviving copies are exceedingly rare. They rest in research libraries or in private hands and are not readily available for research purposes. Lately, however, access has been eased, providing one is willing to turn to an on-demand facsimile reprint or to rely on an online digital version that is available via Google Books.²⁶

Parks himself prepared *A Collection of all the Acts of Assembly, Now in Force, in the Colony of Virginia*. An up-to-date compilation, the Parks volume supplanted three older English full-text editions of the Virginia statutes. The eldest was the handiwork of Deputy Governor-General Francis Moryson and Clerk of the House of Burgesses Henry Randolph. Called *The Lawes of Virginia Now in Force: Collected out of the Assembly Records, and Digested into One Volume. Revised and Confirmed by the Grand Assembly held at James-City . . . the 23d of March 1661 [1662]*, it contained the statutes that came into force upon the restoration of King Charles II. Governor-General Sir William Berkeley, who was in London on Virginia business at the time, arranged for its publication in 1662. A second compilation, entitled *A Complete Collection of all the Laws of Virginia Now in Force. Carefully Copied from the Assembly Records . . .* (London, 1684), was an unauthorized but enlarged version of Moryson and Randolph that is often referred to as “Purvis”—so named after its supposed undertaker, the ship captain John Purvis. Third was the anonymously composed *Acts of Assembly, Passed in the Colony of Virginia, from the Year 1662* (London, 1727 and reissued in 1728). Then there was also *An Exact Abridgment of the Publick Laws of Virginia, in Force and Use, June 10. 1720 . . .* (London, 1722), whose authorship is often attributed to the historian Robert Beverley. Copies of each of those works seldom show up in eighteenth-century libraries or estate inventories, which suggests scarcity may well have inspired Parks to make his compilation.²⁷

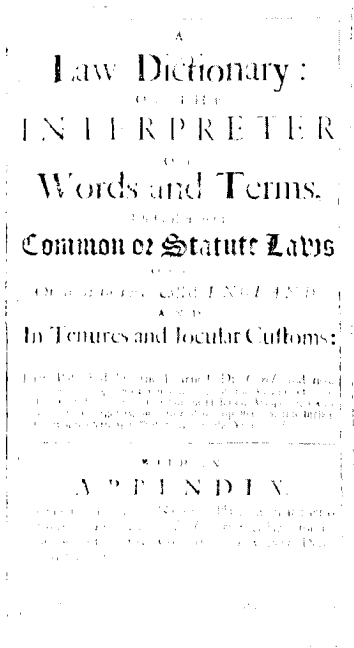
Parks grabbed another opportunity when he engaged John Mercer to produce *An Exact Abridgment of all the Public Acts of Assembly of Virginia*. That he should turn to Mercer was natural enough. They were long-time acquaintances who had collaborated in the 1720s on an edition of Maryland laws. A well-versed advocate, Mercer was well known throughout Virginia because of his extensive legal practice across the colony. Despite his lawyerly skills, outbursts of temper, an arrogant demeanor, and an uncontrollable urge to hector county justices of the peace got him into trouble with the

General Court, which withdrew his license more than once. Just such an interruption afforded him the time it took to prepare the *Exact Abridgment*, which came off Parks's press in 1737. Another suspension resulted in his composing *A Continuation of the Abridgment*, which Parks brought out in 1739.²⁸

As Virginia's printer of record, Parks routinely issued runs of session laws and General Assembly journals. Noticeably absent from his output, though, were English case reports. An explanation for the absence is plain enough. Neither Parks, nor any other printer in colonial America, for that matter, could compete with British printers, who had the advantage of proximity, and they did not try.

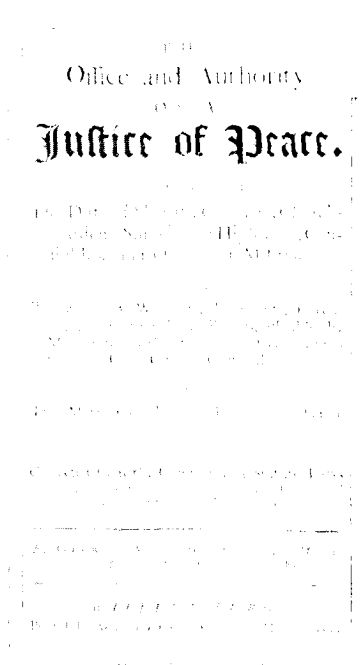
On the eve of the Revolution, a pair of Parks's successors, Alexander Purdie and John Dixon, issued Richard Starke's *The Office and Authority of a Justice of Peace Explained and Digested, Under Proper Titles*, which they clearly intended as a replacement for George Webb's earlier manual. Purdie and Dixon probably enlisted Starke, an even more shadowy figure than Webb. The book itself is singularly silent about him or its origins, and it is now extremely rare. About all there is to relate of Starke is that he had some legal accomplishments, that he started the project around the year 1770, and that he died in 1773 before finishing his task. Having no wish to lose their investment, Purdie and Dixon employed several unidentifiable "gentlemen" who assisted in finishing the job, rather hastily, it must be said, because the text is rife with errors that are compounded by sloppy typesetting and careless proof reading. And so the influence of Starke's *Justice* is mysterious because citations to it are sparse, and it hardly, if ever, shows up in catalogues of law libraries of the period.²⁹

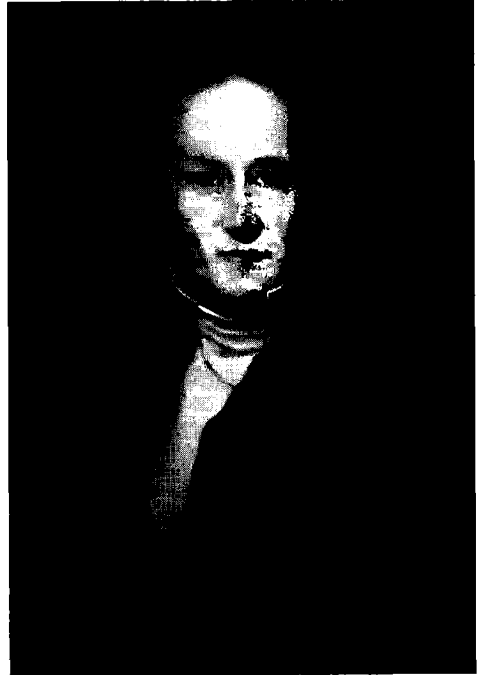
William Byrd of Westover, Robert "King" Carter, John Mercer, George Wythe, Patrick Henry, Thomas Jefferson, and the Council of State kept some of the largest law libraries in pre-revolutionary Virginia, and the sway of their collections extended far beyond whatever uses their owners made of them. The council library was open to advocates in the General Court and to students at the College of William and Mary, members of the House of Burgesses, and the governors-general, who all borrowed pretty much at will. John Mercer's library was the sole source of formal education for his nephew George Mason, who drafted the Virginia Declaration of Rights.³⁰ George



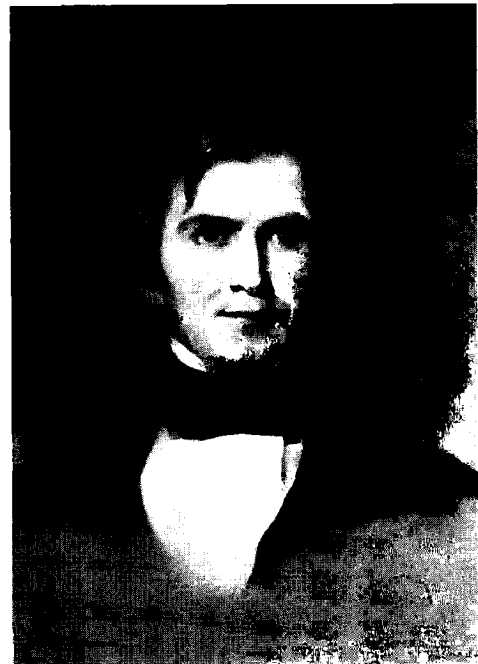
John Cowell's *A Law Dictionary: Or the Interpreter of Words and Terms . . .* (1607) was one of the most influential of the early English law books available in Virginia. It along with other volumes from the period contributed significantly to courts and proceedings in the commonwealth. The 1708 printing is shown here. (*Virginia Historical Society, Rare K41.C8 oversize*)

George Webb's *The Office and Authority of a Justice of the Peace . . .* (1736) was among the earliest of the legal imprints produced by Williamsburg printer William Parks. Webb's work is remarkably suggestive of the extent to which English precedents had become engrafted onto Virginia local law by the time of its publication. (*Virginia Historical Society, Rare K77.V81.W38*)





Shown here are (clockwise from top left) St. George Tucker (1752–1827), Henry St. George Tucker (1780–1848), and Conway Robinson (1805–1884). These Virginians, starting in the 1790s, began a homegrown line of legal writing that gradually supplanted English texts by 1860. Their body of work makes for an accurate gauge of Virginia’s transit to legal independence. (*Virginia Historical Society*, 2011. 1.94; 1946.4; 1929.3)



Wythe shared his library with Jefferson and his other pupils.³¹

The holdings that Byrd and the others accumulated fell into four broad groupings that one might find represented in any eighteenth-century Virginia law library. Reported decisions of the crown courts at Westminster constituted the largest of the four, primarily because reports were the universal undergirders for pleadings in both the general and county courts. As a class, reports were also the oldest type of printed English law book in existence. Starting with the fifteenth-century compiler Nicholas Statham, they were the handiwork of beves of compilers who hustled to keep up with demand.³² None commanded greater authority than those of the Elizabethan jurist Sir Edward Coke, whom learned Britons cherished not only for the range of his erudition but also chiefly for his unflinching advocacy of their ancient constitution and the common law as moats defensive of English liberties.³³

Printed Virginia reports did not exist before the Revolution. Two reasons explain why that was so. Colonial General Court judges habitually delivered their rulings orally from the bench, whereupon the clerk merely summarized their judgments in the court minute books. Then too, their decisions seem to have carried no value as precedents in the county courts or in the General Court itself, meaning that there was no need to disseminate them in writing. Thus, no Virginian ever attempted to emulate Coke before 1776.³⁴

Statutory compilations, either in full text or in digested form, composed another large category.³⁵ Digests, then called “abridgments,” were cheaper to prepare, shorter in length, and therefore handier to use than full-text editions. Among them, Mathew Bacon’s *A New Abridgment of the Law* was especially prized because of its lucid summaries and its learnedly logical arrangement of all branches of English law.³⁶ Ease of use likely explains a comparable preference for John Mercer’s *Abridgement* over William Parks’s *Collection of all the Acts of Assembly, Now in Force, in the Colony of Virginia*. Parliamentary debates, practice manuals, formularies, dictionaries, encyclopedias, guides to conveying real property, and explications of criminal, ecclesiastical, foreign, or maritime law comprised a third grouping.³⁷

The final category embraced the nature of English law, the rights of the subject, and the very idea of law itself. Books from it are the most engaging because of their vividly compelling witness to lessons that shaped the revo-

lutionaries of 1776. Wythe, Henry, Jefferson, Mason, and their compatriots cut their teeth on Coke's *Institutes of the Laws of England*. The insights they pulled from that outsized, rumpled skein of Coke's overpowering knowledge of common law became part of their intellectual DNA.³⁸ None acceded to Sir William Blackstone's robust assertions of parliamentary supremacy in the *Commentaries*; they disdained his innate conservatism but found much to admire otherwise; and they absorbed those "good" parts into their thinking.³⁹ Through John Rushworth's *Historical Collections* they could vicariously relive and learn from the tussles between the early Stuarts and the House of Commons that led to civil war, the overthrow of the monarchy, and attempts at turning Britain into a republic.⁴⁰ Algernon Sidney's *Discourses Concerning Government* spoke to them eloquently about republicanism as an organizing principle of polity. Of equal importance, the *Discourses* served as a sharp reminder of the inherent risks in printed words because King Charles II had unjustly used Sidney's to bring him to the block.⁴¹ Charles-Louis Secondat, baron de La Brede et Montesquieu's *The Spirit of the Laws* reinforced their understanding of mixed governments, constitutionalism, and separation of powers, whereas Jean Jacques Burlamaqui's *Principles of Natural Law* exposed them to the proposition that people were natively endowed with rights.⁴²

Independence dissolved the political bands that held Virginia to England, but it did no more than slacken the legal ties that bound them. It therefore fell to post-Revolutionary Virginians to confront the strenuous chores of grounding written constitutions and statutes in republican principles. Those were vital steps toward distancing Virginia from its legal ancestry. They took years to accomplish, however. And so the question arises: "When was the common law of the Old Dominion no longer the common law of England but a law unto itself?"⁴³ Most likely, four, possibly five, decades passed before legal independence was a reality, and books played a vital part in making it so. Although this surmise is no more than a hunch at this telling, it is defensible nonetheless. Consider this.

For some years after 1776, Virginians had little choice but to rely upon English texts owing to the scant number of indigenous post-Revolutionary titles. That dependence rankled because, in the words of the first American legal lexicographer, John Bouvier, English law books "were written for

another country possessing laws different from our own, and it became a question how far they were or were not applicable here.”⁴⁴ Mindful of such frustrations, Virginia legal writers, starting in the 1790s, began a home-grown line of literature that gradually supplanted English texts by 1860. That body of work makes for an accurate gauge of Virginia’s transit to legal independence, and it merits a more thoroughgoing investigation than is possible in this essay. Even so, examples taken from the writings of St. George Tucker, William Waller Hening, Henry St. George Tucker, and Conway Robinson suffice to illustrate the point.⁴⁵

Bermuda-born St. George Tucker distinguished himself as a poet, legislator, revolutionary, soldier, statesman, jurist, and teacher of law.⁴⁶ He succeeded his mentor George Wythe as professor of law at the College of William and Mary, and like Wythe, he relied upon Blackstone’s *Commentaries* as his textbook. His house, near Palace Green, lodged his extensive library, so he met his students at home rather than on campus. He taught them by reading aloud from his exhaustively extensive annotated copy of Blackstone. For a time, he contemplated turning those marginalia into formal lectures, but Tucker gave up on the idea as being too burdensome. Instead, he turned out a five-volume edition of the *Commentaries* that is chockablock with his notes and appendices. Generally, he strove to inculcate in his readers an understanding of the elemental precepts of American government, which he regarded as the basis of state and federal law. More particularly, he paid considerable attention to those areas of Virginia law that remained unchanged and those that diverged from England. In other notes, Tucker used Blackstone as the point of departure for explaining how the founding of republican governments and their progress wrought alterations to shared legal traditions that distanced Virginia from England. Heavy reading though it surely may have been, Tucker’s *Blackstone* achieved high praise and national prominence for its author, and it quickly became a favorite of law students and practicing lawyers who relied on it as a textbook and a reference work deep into the nineteenth century.⁴⁷

William Waller Hening, a protégé of Thomas Jefferson, held several legislative and judicial positions.⁴⁸ An active writer, his magnum opus, *The Statutes at Large; Being a Collection of all the Laws of Virginia, From the First Session of the Legislature in the Year 1619*, provided the first comprehensive

edition of early legislation, and to this day it remains the basic source for laws the General Assembly enacted between 1619 and 1792. Less remembered are three of his other Virginia-related volumes.⁴⁹ *The New Virginia Justice: Comprising the Office and Authority of a Justice of the Peace, in the Commonwealth of Virginia*, his first book, met a need for a modern manual for local magistrates. Published in 1792, it superseded the outdated works by George Webb and Richard Starke. Measured against both Webb and Starke, *The New Virginia Justice* is revealing of just how much the Revolution changed the county courts. It went through three subsequent editions before obsolescence overtook it in the 1820s, and it disappeared from print.⁵⁰ (Now, *The New Virginia Justice* stands as a fruitful introduction to the formalities of the county courts in Hening's day.) Hening teamed with William Munford between 1804 and 1814 to edit the four-volume *Report of Cases Argued and Determined in the Supreme Court of Virginia: With Select Cases Relating Chiefly to Points of Practice Decided by the Superior Court of Chancery for the Richmond District*. Then he joined Munford and Benjamin Watkins Leigh as one of the redactors of *The Revised Code of the Laws of Virginia: Being a Collection of all such Acts of the General Assembly, of a Public and Permanent Nature as are in Force*, which the General Assembly promulgated in 1819.⁵¹

Henry St. George Tucker was bred to the law under his father's tutelage at William and Mary. After completing his studies, he set up practice in Winchester. Then he sat for several terms in the General Assembly and Congress before accepting a district judgeship that took him back to Winchester, where he busied himself with judging and teaching at the Winchester Law School, which he founded in 1824. Although Tucker built the school into the largest in the commonwealth, he abruptly shuttered it in 1831 to become presiding judge of the Virginia Court of Appeals. After a decade, he traded that bench for a professorship at the University of Virginia law school, where he remained until his death.⁵²

Tucker published five books. The first—*Notes on Blackstone's Commentaries: For the Use of Students*—appeared in 1826, and by design it acquainted Tucker's pupils with changes to Virginia law that had happened in the years that followed his father's edition of Blackstone.⁵³ Next, he brought out *Commentaries on the Laws of Virginia, Comprising the Substance*

of the *Course of Lectures Delivered to the Winchester Law School*.⁵⁴ He patterned his *Commentaries* on Blackstone's, but neither his father nor Sir William Blackstone might have recognized much of a resemblance between his book and theirs because he freely pared away the elder Tucker's notes and discarded Blackstone's chapters on the crown, Parliament, the clergy, criminal law, and numerous other large chunks that he deemed irrelevant to the practice of Virginia law.⁵⁵ Tucker based his other books on his courses at the University of Virginia law school.⁵⁶ Useful as they may be as insights into his thinking and methods of instruction, they achieved far less recognition than his *Commentaries*, which in the considered judgment of W. Hamilton Bryson and E. Lee Shepard "was for fifty years, the mainstay and primary legal resource of the Virginia bench and bar."⁵⁷

Conway Robinson had a career that spanned more than six decades.⁵⁸ Accomplished, versatile, and energetic, he practiced law while doing stints as a railroad president, an antiquarian, a founder of the Virginia Historical Society, an historian, a court clerk, an appellate court reporter, a member of the General Assembly, a Richmond city councilman, and a drafter of the Revised Code of 1849.⁵⁹ He wrote prolifically as well. His first book, *A Collection of Forms Used by the Clerks of Courts of Law and Equity in Virginia*, updated the original version, which his father published in 1809.⁶⁰ As the title implies, *A Collection of Forms* contained modernized texts of the paperwork one needed to litigate cases in post-Revolutionary Virginia. That book anticipated another, *The Practice in the Courts of Law and Equity in Virginia*, arguably the most influential of all of Robinson's legal *oeuvre*.⁶¹ Recognizing that Virginia lawyers were often at "a loss to discover in what respects our practice varies from the English," Robinson set out to clarify the departures. He therefore reviewed "all the judicial decisions of this state which have been published, or which exist in manuscript reports to which I could have access" in search of examples of all "the practice of our courts." He arranged those illustrations systematically, adding his own explanations "where the difference between our practice and the English did not appear by any statute or judicial decision."⁶²

Robinson aimed at making the book "such a work as would be acceptable to senior as well as junior members of the profession."⁶³ He hit his mark. *The Practice of the Courts* swiftly came to occupy a prominent place in

law libraries across the commonwealth. In the opinion of his contemporary and fellow legal author Alexander H. Sands, *The Practice of the Courts* gave “Mr. Robinson a hold upon the legal fraternity rarely secured in Virginia. For more than a third of a century [it was] quoted and relied on as authority in the inferior, superior and supreme courts of the state.” Its singular strength, according to Sands, lay in its “discussions of a practical character to which no other treatises had been devoted, and [it was] almost totally free from error.”⁶⁴

The advent of books such as these was by no means unique to the Old Dominion. Their creation was but the Virginia variation on a countrywide demand for law books of American invention that gathered enormous pace after the Revolution. Innovations in print technologies reduced production costs and resulted in the industrial book, which put cheap texts within reach of potential authors and buyers, a possibility made real with the emergence of a trade in law books that relied upon national, regional, and local marketing networks. Virginia practitioners, jurists, and teachers still retained their preference for Virginia-specific titles, but as of the 1830s, they were looking increasingly to other American writers as well. Which of those authors' books wound up in Virginia law libraries is an open question because they remain little known, aside from the works of such nationally esteemed authorities as David Hoffman, James Kent, John Bouvier, or Joseph Story. Nevertheless, that the resort to such work represented another step along the way to legal independence seems self-evident.⁶⁵

So too it might be said of the turn to the literature of continental European civil law authorities when post-Revolutionary Virginians tackled the strenuous chore of criminal law reform and grappled with the inherent possibilities of codification, each of which distanced Virginians ever farther from English law books. Here again, however, more investigation is needed before a fuller measure of that distancing emerges.⁶⁶

Although such precise yardsticks do not exist at the moment, they might be fashioned readily enough by emulating current studies of colonial reading habits and by drawing upon the methods of book historians, who have unraveled the culture of reading and book ownership. Clues to printeries, sales figures, the law book trade, and records of book ownership, for example, document the accumulations of private collections. Systematic analyses

of those data would allow for exacting calculations of the range of titles in circulation and the proportion of English authors to foreign, Virginia, or American writers, which would ultimately pinpoint when Virginia law ceased being a derivative of its British antecedents and at last became a law unto itself.

This essay began with the premise that for more than two and a half centuries Virginians routinely found inspiration in all manner of law books. Their main source of books was Great Britain down to 1776, but after independence they increasingly relied upon an indigenous body of literature and foreign works that replaced British texts as authoritative sources as they transformed English common law into a distinctively Virginia common law. Thus, to overlook the evidentiary value of law books is to diminish a correct understanding of how the printed word defined Virginia law and culture.



NOTES

This article is dedicated to the memory of my friend Sara B. Bearss, who died in March 2012. I delivered a shorter version of this essay at the Fifth Virginia Forum, which met in Lexington, Va., in April 2011. Thanks are due David A. Rawson, who very kindly lent me a number of his unpublished studies that broadened my comprehension of printeries and the book trade in eighteenth- and early nineteenth-century Virginia. I am equally indebted to Brent Tarter for providing a copy of his manuscript essay on the law library of the colonial Council of State. A word of appreciation goes to Carol D. Billings, Linda Tesar, and Frances Pollard for their close commentary and helpful suggestions.

1. Properly entitled *Actes and Monuments of These Latter and Perillous Dayes, Touching Matters of the Church, Wherein are Comprehended and Described the Great Persecutions and Horrible Troubles, That Have Bene Wrought by the Romish Prelates, Speciallye in this Realme of England and Scotlande, from the Yeare of Our Lorde a Thousande unto the Tyme Now Present . . .* (London 1561), the book became commonly known as *The Book of Martyrs*. Its author, the Rev. John Foxe, supervised three additional printings before his death. Another six appeared before 1700, followed by an American edition of 1794 and various nineteenth- and twentieth-century impressions. The King James Version has remained in print ever since the royal printer, Robert Barker, published the first impres-

sion in 1611. The most recent iteration is *The Holy Bible, Quatercentenary Edition: An Exact Reprint in Roman Type Page for Page, Line for Line, and Letter for Letter of the King James Version, Otherwise Known as the Authorized Version Published in the Year 1611, with an Anniversary Essay by Gordon Campbell* (Oxford, 2010).

2. Hugh Amory and David D. Hall, eds., *The Colonial Book and the Atlantic World* (New York, 2000) and Scott E. Casper, Jeffrey D. Groves, Stephen W. Nissenbaum, and Michael Winship, eds., *The Industrial Book in America, 1840–1880* (Chapel Hill, 2007), both of which barely mention law books. Michael H. Hoeflich's *Legal Publishing in Antebellum America* (New York, 2010) is the first book-length treatment of the printing and distribution of legal texts before the Civil War, but it gives little notice to southern developments. Nevertheless, it might well serve as an exemplary model for what a comparable study of legal publishing in Virginia or the South at large might look like.

3. Andrew Pettegree's *The Book in the Renaissance* (New Haven, 2010) is a sparkingly informative treatment of the medieval book and its transformation from manuscript to print.

4. On Caxton, see N. P. Blake, "William Caxton (1415x24–1492)," in H. C. G. Mathew and Brian Harrison, eds., *Oxford Dictionary of National Biography* (cited hereafter as *ODNB*) (Oxford, 2004), <http://www.oxforddnb.com/index/4/101004963> (accessed 6 Dec. 2010). Richard Pynson, a contemporary of Caxton, was perhaps the first English printer to specialize in printing and selling legal texts. By 1506, he held the post of king's printer, which gave him even greater access to the legal market. See Pamela Neville-Sinton, "Richard Pynson (c. 1449–1529/30)," *ibid.*, <http://www.oxforddnb.com/view/article/22935> (accessed 4 Dec. 2010).

5. This conclusion proceeds from data that I compiled for clerks of the county courts, justices of the peace, sheriffs, clerks of the House of Burgesses and Council of State, burgesses, and councilors in the period 1619–99. The data come from manuscript court records and genealogical sources. They include vital statistics, places of origin, arrival dates, kin connections, occupations, offices held, and landholdings. On the difference between attorney and lawyer, see John Cowell, comp., *A Law Dictionary: Or, the Interpreter of Words and Terms Used either in the Common or Statute Laws of Great Britain, and in Tenures and Jocular Customs* (1607; repr., London, 1727), s.v. "attorney" and "lawyer." Unless noted otherwise, citations to this and other law books mentioned throughout this essay are to copies of the particular impressions that are in my library. On the early Virginians' animus toward lawyers, see Warren M. Billings, "Justices, Books, Laws and Courts in Seventeenth-Century Virginia," *Law Library Journal* (cited hereafter as *LLJ*) 85 (1993): 289–90.

6. H. A. Holland, "English Legal Authors Before 1700," *Cambridge Law Journal* 9 (1946–47): 242–330; Howard J. Graham, "The Rastells and the Printed English Law Book of the Renaissance," *LLJ* 47 (1954): 6–26; Richard Beale Davis, *Intellectual Life in the Colonial South, 1585–1763* (3 vols.; Knoxville, 1978), 2:500–14; Warren M. Billings, "The Transfer of English Law to Virginia, 1606–1650," in K. R. Andrews, P. E. H. Hair, and N. P. Canny, eds., *The Westward Enterprise: Essays in Tribute to David Beers Quinn* (Liverpool, 1978), 215–45; and Warren M. Billings, "English Legal Literature as a Source of Law and Practice for Seventeenth-Century Virginia," *Virginia Magazine of History and Biography* (cited hereafter as *VMHB*) 87 (1979): 403–17.

7. George Thorpe and John Pory to Edwin Sandys, 15 and 16 May 1621, in Susan Myra Kingsbury, ed., *The Records of the Virginia Company of London* (4 vols.; Washington, D.C.,

1906–35), 3:447; William S. Powell, “Books in the Virginia Colony before 1624,” *William and Mary Quarterly* (cited hereafter as *WMQ*), 3d ser., 5 (1948): 177–84. Those books requested by Thorpe included William Rastell, *A Collection, in English, of the Statutes Now in Force . . .* (London, 1615); Sir William Staunford, *Les Pleees del Coron Divisees in Plusiours Titles and Common Lieux . . .* (London, 1583); and William West, *Symboleographie: Which May Be Termed the Art, or Description of Instruments and Presidents . . .* (London, 1647).

8. Warren M. Billings, *A Little Parliament: The Virginia General Assembly in the Seventeenth Century* (Richmond, 2004), 5–25.

9. Louis B. Wright, *The First Gentlemen of Virginia: Intellectual Qualities of the Early Colonial Ruling Class* (San Marino, Calif., 1940), 146, 202, 264; “An Inventory of the Goods Chattells and Merchandizes belonging to the Estate of Arthur Spicer,” Richmond County Deeds, Wills, and Inventories, 1699–1701, fols. 36–41 (microfilm), Library of Virginia, Richmond; William Fitzhugh to Richard Lee, 5 May 1679 and William Fitzhugh to Ralph Wormeley, 9 June 1683, both in Richard Beale Davis, ed., *William Fitzhugh and His Chesapeake World, 1676–1701: The Fitzhugh Letters and Other Documents* (Chapel Hill, 1963), 65–67, 152–60. See also George K. Smart’s pioneering study “Private Libraries in Colonial Virginia,” *American Literature* 10 (1938): 24–52 and W. Hamilton Bryson, *Census of Law Books in Colonial Virginia* (Charlottesville, 1978).

10. Brent Tarter, “The Library of the Council of Colonial Virginia” (unpublished). Conway Robinson noted the existence of an early inventory of that collection, which Secretary of the Colony Thomas Ludwell compiled in 1661. Sadly for later scholars, Ludwell’s inventory burned in the fire that destroyed the Richmond warehouse district in the waning days of the Civil War (see Conway Robinson, comp., “Notes and excerpts from the records of Colonial Virginia, 1624–1689,” 176, Virginia Historical Society, Richmond [cited hereafter as VHS] and Billings, “English Legal Literature,” 414).

11. William Waller Hening, ed., *The Statutes at Large: Being a Collection of All the Laws of Virginia, from the First Session of the Legislature, in the Year 1619 . . .* (13 vols.; Richmond, 1809–23), 2:246.

12. This classification derives from a scheme devised by eighteenth-century English bibliographer/bookseller John Worrall and published in his *Bibliotheca Legum: Or, A Catalogue of the Common and Statute Law Books of this Realm . . .* (London, 1771).

13. Billings, “English Legal Literature,” 403–17.

14. Thomas Ludwell to Henry Bennet, 1st earl of Arlington, 12 Feb. 1666/67, Colonial Office Papers, class 1, vol. 21, fols. 37–38, National Archives, Kew, United Kingdom; Warren M. Billings, “The Growth of Political Institutions in Virginia, 1634 to 1676,” *WMQ*, 3d ser., 31 (1974): 225–42; and Warren M. Billings, “Pleading, Procedure, and Practice: The Meaning of Due Process of Law in Seventeenth-Century Virginia,” *Journal of Southern History* 46 (1981): 569–84.

15. Mathew Kilburn, “Giles Jacob (1686–1744),” *ODNB*, <http://www.oxforddnb.com/view/article/14565> (accessed 17 Jan. 2011). On Jacobs’s popularity in colonial America in general and Virginia in particular, see Herbert A. Johnson, *Imported Eighteenth-Century Law Treatises in American Libraries, 1700–1799* (Knoxville, 1978).

16. The London legal printers Elizabeth and Richard Nutt published the *New Law-Dictionary* in 1729, and it went through many printings thereafter. The Nutts also issued the last impression of *The Interpreter*, which came off their press in 1727.

17. Billings, *A Little Parliament*, 49–63, 213–15; Emory G. Evans, *A "Topping People": The Rise and Decline of Virginia's Old Political Elite* (Charlottesville, 2009), 3–23; J. A. Leo Lemay, "Robert Beverley's *History and Present State of Virginia* and the Emerging Political Ideology," in J. Gerald Kennedy and Daniel Mark Fogel, eds., *American Letters and the Historical Consciousness: Essays in Honor of Lewis P. Simpson* (Baton Rouge, 1987), 67–112; Alan McKinley Smith, "Virginia Lawyers, 1680–1776: The Birth of an American Profession" (Ph.D. diss., Johns Hopkins University, 1968); and Anton-Hermann Chroust, *The Rise of the Legal Profession in America* (2 vols.; Norman, Okla., 1965), 1:278–84.
18. Hening, ed., *Statutes at Large*, 3:229–481 and Billings, *A Little Parliament*, 195–98.
19. Committee order, 7 July 1699, in H. R. McIlwaine, ed., *Legislative Journals of the Council of Colonial Virginia* (3 vols.; Richmond, 1918–19), 3:1518–20. Standardized versions of these instruments were in print as early as 1531, and they went through various impressions thereafter (see Worrall, *Bibliotheca Legum*, 81–89).
20. Bryson, *Census of Law Books*, xi.
21. Frances Norton Mason, ed., *John Norton and Sons: Merchants of London and Virginia, Being the Papers from Their Counting House for the Years 1750 to 1795* (Richmond, 1937), 133–34 and Tarter, "Library of the Colonial Council," 6. A detailed reckoning of who bought what from whom, from whence, and from what period of time remains to be tallied.
22. Amory and Hall, eds., *Colonial Book and the Atlantic World*, 30–34, 152–224; Kevin J. Hayes, *The Mind of a Patriot: Patrick Henry and the World of Ideas* (Charlottesville, 2008), 113; and Peter J. Parker, "The Philadelphia Printer: A Study of an Eighteenth-Century Businessman," *Business History Review* 40 (1966): 24–46.
23. "Subscribers in Virginia to Blackstone's Commentaries on the Laws of England, Philadelphia, 1771–1772," *WMQ*, 2d ser., 1 (1921): 183–85.
24. A. Franklin Parks, "William Parks," *American National Biography Online* (cited hereafter as *ANBO*), <http://www.anb.org/articles/16/16-02491.html> (accessed 19 Dec. 2010); Calhoun Winton, "The Southern Book Trade in the Eighteenth Century," in Amory and Hall, eds., *Colonial Book and the Atlantic World*, 224–231; and David A. Rawson, "'Guardians of Their Own Liberty': A Contextual History of Print Culture in Virginia Society, 1750 to 1820" (Ph.D. diss., College of William and Mary, 1998), 71–122.
25. "Burned Records Counties (VA-NOTES)," Library of Virginia, http://www.lva.virginia.gov/public/guides/va22_burnedco.htm (accessed 19 Apr. 2012). The datum about Webb's ferry comes from an advertisement in the 6 Sept. 1780 issue of the *Virginia Gazette*, which Neil R. Hening brought to my attention. Webb's appointment comes from An Act, for the Revisal of the Laws, 5 Feb. 1745/46, in Hening, comp., *Statutes at Large*, 4: 321. (The University of Virginia Press produced a facsimile edition in 1969, a set of which is in my library.) See "To the Honourable William Gooch; His Majesty's Lieutenant-Governor and Commander of VIRGINIA" and "To the Reader," in Webb, *Virginia Justice*, iii–vi, vii. In the near future, I intend to publish an analysis of the ways in which Webb's book reveals the extent of those grafts.
26. I worked with an on-demand facsimile reprint that resides in my library.
27. None is in my library.
28. J. A. Leo Lemay, "John Mercer," *ANBO*, <http://www.anb.org/articles/01/01-01169.html>

(accessed 18 Apr. 2012). Mercer brought out a second, updated edition, which a Glasgow printer issued in 1759.

29. I worked with an on-demand facsimile reprint that resides in my library.

30. Warren M. Billings, "‘THAT ALL MEN ARE BORN EQUALLY FREE AND INDEPENDENT’: Virginians and the Origins of the Bill of Rights," in John P. Kaminski and Patrick T. Conley, eds., *The States and the Bill of Rights, 1607–1791* (Madison, Wisc., 1992), 337–43.

31. Tarter, "Library of the Colonial Council," 6–7; Edwin Wolf, "The Dispersal of the Library of William Byrd of Westover," *Proceedings of the American Antiquarian Society* 68 (1958): 19–106; Bryson, *Census of Law Books*, xviii–xxii; Inventory of Robert Carter’s estate, 1732, *VMHB* 6 (1898): 145–52, 260–70; Johnson, *Imported Eighteenth-Century Law Treatises*, 76–83; Hayes, *Mind of a Patriot*, 32–47; and Linda Tesar, "George Wythe’s Library: The Man and Books That Shaped Virginia Law" (paper, Fifth Annual Virginia Forum, Virginia Military Institute, Lexington, 26 Mar. 2011).

32. A justice of the peace for Derbyshire and a member of Parliament, Nicholas Statham (d. 1472) was an accomplished lawyer who compiled an abridgement of cases that Richard Pynson published in 1490. The volume soon became known simply as *Statham*. It never was reprinted inasmuch as it was soon surpassed by later compilations that afforded users fuller, more up-to-date coverage (see J. H. Baker, "Nicholas Statham [d. 1472]," in *ODNB*, <http://www.oxforddnb.com/view/article/26321> [accessed 8 Apr. 2011]).

33. Coke brought out the first of his reports in 1600 and another ten by 1615, all in law French. Thereafter the *Reports* went through numerous printings before an English translation appeared in 1658, with many more to follow. A complete list of editions, both abridged and in full, is in John William Wallace, *The Reporters, Chronologically Arranged: With Additional Remarks Upon their Respective Merits*, 3d ed. (Philadelphia, 1855). On Coke himself, see Catherine Drinker Bowen, *The Lion and the Throne: The Life and Times of Sir Edward Coke* (Boston, 1957) and Allen D. Boyer, "Sir Edward Coke, (1552–1634)," in *ODNB*, <http://www.oxforddnb.com/view/article/5326> (accessed 8 Apr. 2011). Whether Coke actually thought that colonials enjoyed the benefits and privileges of common law is a matter of debate (see Daniel J. Hulsebosch, "The Ancient Constitution and the Expanding Empire: Sir Edward Coke’s British Jurisprudence," *Law and History Review* [cited hereafter as *LHR*] 21 [2003]: 439–82).

34. Despite the fact that General Court judges did not issue written opinions, lawyers who argued before them sometimes made notes of arguments and rulings in cases they prosecuted. Likely, they shared their notes with colleagues, but few are known to exist any longer. However, there are two extant sets that Sir John Randolph and Edwards Barradall compiled respectively. After Randolph and Barradall died, their notes slipped into obscurity, where they remained until Robert T. Barton transcribed and published them a century ago (see 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, 1720–1741* [2 vols.; Boston, 1909]).

35. Tarter, "Library of the Colonial Council," 32, 34.

36. The first three volumes were available by 1740 (see N. G. Jones, "Mathew Bacon [1700?–1757?]," *ODNB*, <http://www.oxforddnb.com/view/article/64033> [accessed 19 Jan. 2011]).

37. One edition of debates that circulated in the colony was [John Torbuck, ed.?], *A Collection of*

the Parliamentary Debates in England from the Year 1668 to the Present Time (Dublin and London, 1739–45). It ran to twenty-four octavo volumes, but Virginia owners rarely held complete sets. (It is not in my library.) Exemplary titles on formularies, practice manuals, and dictionaries are listed throughout Bryson, *Census of Law Books*. Formularies appear under the rubric “Treatises.” Thomas Wood’s *An Institute of the Laws of England; Or, the Laws of England in Their Natural Order, According to Common Use* (London, 1720) was one of several encyclopedias that circulated in Virginia. A popular treatise on conveying real property was William Sheppard’s *The Touch-Stone of Common Assurances; Or, a Plain and Familiar Treatise, Opening the Learning of the Common Assurances or Conveyances of the Kingdom* (London, 1651), a copy of which was in the Council of State’s law library. Sir Matthew Hale’s *Pleas of the Crown: or, a Methodical Summary of the Principal Matters Relating to That Subject* (London, 1694) and his *Historia Placitorum Coronae: The History of the Pleas of the Crown* (London, 1736) were both highly regarded treatments of English criminal law that found their way into eighteenth-century Virginia law libraries. Hale was Chief Justice of the Court of Common Pleas and a prolific author, though most of what he wrote came to print posthumously (see Alan Cromartie, “Sir Mathew Hale [1609–1676],” *ODNB*, <http://www.oxforddnb.com/view/article/11905> [accessed 9 Apr. 2011]). The *Historia* was perhaps his finest work. Sollom Emlyn, a member of Hale’s inn (Lincoln’s Inn), edited the published version. Emlyn’s preface contains a discussion of his editorial methodology and a biographical sketch of Hale. Elizabeth and Richard Nutt and R. Gosling, whose shop was a significant early eighteenth-century publisher of law books, produced the *Historia* in a large folio, two-volume set. They artfully combined paper, typography, and design into a singularly beautiful example of the English legal printer’s craft. On ecclesiastical and foreign law, see Richard Burn, *Ecclesiastical Law* (London, 1763) and Jean Domat, *The Civil Law in Its Natural Order; Together with the Publick Law Written in French by M. Domat and Translated into English by W. Strahan, to Which are Added, Remarks on Some Material Differences Between the Civil Law and the Law of England*, 2d ed. (2 vols.; London, 1737). Those books that concerned themselves with issues of maritime law are cataloged in Bryson, *Census of Law Books*, items 309, 370, 428, 434, 485, 535, 547, 550, 596.

38. Published in four parts, first editions appeared between 1628 and 1634. At least a dozen subsequent impressions of each circulated in Britain and around the Atlantic rim before 1776.

39. First published at Oxford between 1758 and 1763, it was also printed in Dublin and Philadelphia.

40. Properly entitled *Historical Collections of Private Passages of State, Weighty Matters of Law, Remarkable Proceedings in Five Parliaments, Beginning in the Sixteenth Year of King James Anno 1618 and Ending the Fifth Year of King Charles, Anno 1629*, the Council of State library held the 1701 abridgment that also included a transcript of the trial of Charles I. (It is not in my library.)

41. The first edition appeared in 1698, and there was a later impression from 1768 that was in common use across Virginia. The latter incorporated some of Sidney’s letters, a record of his trial, his apology from the scaffold, and biographical information (see also Jonathan Scott, “Algernon Sidney [1623–1683],” <http://www.odnb.com/view/article/25519> [accessed 26 Jan. 2011]).

42. Montesquieu’s work was originally published anonymously as *De L’Esprit des Lois* (Geneva, 1748). Thomas Nugent issued the first English translation in 1750, and it was the one familiar to Virginians of the day who could not read French. Burlamaqui’s volume was first printed in French as *Principles du Droit Naturel* (Geneva, 1747). Thomas Nugent brought out the initial English translation in 1748, which went through various printings thereafter.

43. This sentence is a play on a passage in Lewis Kerr, *An Exposition of the Criminal Laws of the Territory of Orleans: The Practice of the Court of Criminal Jurisdiction, the Duties of their Officers, with a Collection of Forms for the Use of Magistrates and Others* (New Orleans, 1806), 6 and the title of Warren M. Billings and Mark F. Fernandez, eds., *A Law Unto Itself: Essays in the New Louisiana History* (Baton Rouge, 2001).
44. John Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union, with References to the Civil and other Systems of Foreign Law* (Philadelphia, 1839), v.
45. W. Hamilton Bryson, *Virginia Law Reporters Before 1880* (Charlottesville, 1977); W. Hamilton Bryson, ed., *Virginia Law Books: Essays and Bibliographies* (Philadelphia, 2000); and Morris L. Cohen, ed., *Bibliography of Early American Law* (Buffalo, 1998) are the starting places for such inquiries because they identify all the writers who published by 1860 and list their publications.
46. Tucker's life and career are treated variously in Mary Haldane Begg Coleman, *St. George Tucker: Citizen of No Mean City* (Richmond, 1938); Charles T. Cullen, "St. George Tucker," in W. Hamilton Bryson, ed., *Legal Education in Virginia, 1779–1979: A Biographical Approach* (Charlottesville, 1982), 657–87; Charles T. Cullen, *St. George Tucker and Law in Virginia, 1772–1804* (New York, 1987); Phillip Hamilton, *The Making and Unmaking of a Revolutionary Family: The Tuckers of Virginia, 1752–1830* (Charlottesville, 2003); and Ellen Holmes Pearson, *Remaking Custom: Law and Identity in the Early American Republic* (Charlottesville, 2011), 27–29, 31–74.
47. Published as *Blackstone's Commentaries: With Reference, to the Constitution and Laws of the Federal Government of the United States; and of the Commonwealth of Virginia. In Five Volumes. With An Appendix to Each Volume, Containing Short Tracts Upon Such Subjects as Appeared Necessary to Form a Connected View of the Laws of Virginia, as a Member of the Federal Union by St. George Tucker, Professor of Law, in the University of William and Mary, and One of the Judges of the General Court in Virginia* (Philadelphia, 1803).
48. William J. Van Schreeven, "William Waller Hening," *WMQ*, 2d ser., 22 (1942): 161–64 and Waverly K. Winfree, "Acts Not in Hening's Statutes, With a Biographical Sketch of W. W. Hening" (M.A. thesis, College of William and Mary, 1959).
49. Hening also produced several volumes that were not directly related to Virginia law and practice, and they are listed in Cohen, comp., *Bibliography of Early American Law*, 2:109, 240, 250, 3:397.
50. *Ibid.*, 3:176–78.
51. As legal authors, Munford and Leigh both command greater attention than either has gotten.
52. David M. Cobin, "Henry St. George Tucker," *ANBO*, <http://www.anb.org/articles/11/11-00858.html> (accessed 18 Jan. 2012). See also David M. Cobin, "Henry St. George Tucker: Jurist, Teacher, Citizen," *Winchester-Frederick County Historical Society Journal* 6 (1991–92): 5–41. Tucker's younger brother Nathaniel Beverley taught at the William and Mary law school from 1832 to 1851. The two had sharp disagreements over the nature of the Constitution and the American Union (see Chad Vanderford, "The Divided Legacy of a Founding Father: Henry and Beverley Tucker Confront Nullification and Secession," *VMHB* 119 [2011]: 210–44). On the brief existence of the Winchester Law School, see W. Hamilton Bryson and E. Lee Shepard, "The

Winchester Law School, 1824–1831,” *LHR* 21 (2003): 393–409. That essay includes a list of all the students who attended the school and a table that compares its enrollment with that of other law schools in Virginia and elsewhere in the country.

53. Issued at Winchester.

54. A local newspaper, the *Winchester Republican*, ran two editions in 1836 and 1837, respectively. Copies of both are somewhat rare and extremely fragile because they were printed on highly acidic paper. The Richmond printers Samuel Shepherd and John B. Colin issued a third edition in 1844.

55. Pearson, *Remaking Custom*, 186–93.

56. The titles of Henry St. George Tucker’s other books, all based on his lectures at the University of Virginia, were *Lectures on Constitutional Law* (Charlottesville, 1843), *Lectures on Government* (Charlottesville, 1844), and *A Few Lectures on Natural Law* (Richmond, 1844).

57. Bryson and Shepard, “The Winchester Law School,” 409.

58. Thomas H. Ellis, “In Memory of Conway Robinson, Esquire,” VHS; John Selden, “Conway Robinson,” *Virginia Law Register* 1 (1896): 631–46; E. Lee Shepard, “Conway Robinson,” *ANBO*, <http://www.anb.org/articles/11/110723.html> (accessed 15 Dec. 2009); Richard A. Claybrook, Jr., “Conway Robinson,” in Bryson, ed., *Virginia Law Reporters*, 57–65. Claybrook’s essay lists many of Robinson’s books. See also Warren M. Billings, *Magistrates and Pioneers: Essays in the History of American Law* (Clark, N.J., 2011), 425.

59. Christopher M. Curtis, “Codification in Virginia: Conway Robinson, John Mercer Patton, and the Politics of Law Reform,” *VMHB* 117 (2009): 140–81.

60. Conway Robinson, *A Collection of Forms Used by the Clerks of Courts of Law and Equity in Virginia* (Richmond, 1826). Robinson brought out another edition in 1841 under the title *Forms Adapted to Practice in Virginia*, neither of which is in my library. His father, John Robinson, clerked for various courts in Henrico County and the city of Richmond until his death in 1850.

61. Conway Robinson, *The Practice in the Courts of Law and Equity in Virginia* (Richmond, 1832–39).

62. *Ibid.*, v.

63. *Ibid.*, vi.

64. Alexander H. Sands, “Conway Robinson,” *Virginia Law Review* (cited hereafter as *VLR*) 8 (1884): 257–58.

65. Casper et al., eds., *Industrial Book*, 40–70, 117–148; Hoefflich, *Legal Publishing in Antebellum America*, 4–105, 170–185; and E. Lee Shepard and Kenneth D. McArthur, Jr., “Private Libraries after 1776,” in Bryson, ed., *Virginia Law Books*, 500–509.

66. Susan Lee Foard, “Virginia Enters the Union: A Legislative Study of the Commonwealth, 1789–1792” (M.A. thesis, College of William and Mary, 1966); Charles T. Cullen, “Completing the Revisal of the Laws in Post-Revolutionary Virginia,” *VMHB* 82 (1974): 84–99; Kathryn T. Preyer, “Crime, the Criminal Law, and Reform in Post-Revolutionary America,” *LHR* 1 (1983): 53–85; Kathryn Preyer, “Cesare Beccaria and the Founding Fathers,” in Mary Sarah Bilder, Maeve Marcus, and R. Kent Newmyer, eds., *Blackstone in America: Selected Essays of Kathryn Preyer* (New York, 2009), 239–52; Perry Miller, “The Common Law and Codification in Jacksonian America,”

Proceedings of the American Philosophical Society 103 (1959): 463–68; Peter Stein, “The Attraction of the Civil Law in Post-Revolutionary America,” *VLR* 52 (1966): 403–34; Maxwell Bloomfield, “William Sampson and the Codifiers: The Roots of American Law Reform, 1820–1830,” *American Journal of Legal History* 11 (1967): 234–52; Charles M. Cook, *The American Codification Movement: A Study in Antebellum Legal Reform* (Westport, Conn., 1981); and Curtis, “Codification in Virginia.”

