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## The Rise of Benjamin Waller: 1716-1786

John Starr Greenman

*College of William & Mary - Arts & Sciences*

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THE RISE OF BENJAMIN WALLER:

1716-1786

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A Thesis

Presented to

The Faculty of the American Studies Program

The College of William and Mary in Virginia

In Partial Fulfillment

Of the Requirements for the Degree of

Master of Arts

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by

John Starr Greenman

1994

APPROVAL SHEET

This thesis is submitted in partial fulfillment of  
the requirements for the degree of

Master of Arts

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Approved, July 1994

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DEDICATION  
TO MY SONS  
JONATHAN STARR GREENMAN  
AND  
GILBERT O'KEEFE GREENMAN

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## ABSTRACT

Gentlemen's sons rose to prominence through social standing, classical education, and their ability to attract a wealthy patron who had access to financial resources and political appointments. Other factors, such as a prudent marriage and Anglican faith also helped, but these advantages were insufficient to win preferment without application and self discipline. A successful candidate for public office had demonstrated his ability to manage his own affairs and apply himself to business.

This thesis argues that Benjamin Waller typifies this model of gentry development. The fourth son of a mid-level gentleman, Benjamin followed the example of his father's outstanding record of public service, having obtained the patronage of the Secretary of the Colony, John Carter, who brought him to Williamsburg as a ten-year-old boy in 1726 and enrolled him in the grammar school of the College of William and Mary. Once he had completed his studies at the college, the youth became a clerk-apprentice to Secretary Carter who obtained for him the privilege of reading law in the late Sir John Randolph's library.

While completing his education, the young man caught the attention of Governor William Gooch who with Secretary Carter, appointed him to one office after another. Passing the bar in 1738, Waller was appointed clerk of James City County and clerk of the General Court. In 1744, he succeeded Lewis Burwell as burgess of James City County, a post he held for seventeen years. Waller's success, however, was not measured by the many offices he held alone, but by how he fulfilled the duties of these offices. Clues to his clients' trust have been obtained from a study of the seventeen decedents who chose Waller as executor of their estates in York County. While the first six men and women who entrusted Waller with their estates from 1739 to 1750 were not persons of means, the four men all held minor public offices, and one was clerk of York County.

Waller's ability to manage the affairs of ordinary men and women gained the notice of both entrepreneurs and great planters in the 1760s and 1770s. Three of the entrepreneurial group held provincial office and all eight were ambitious men at the top of their trades or professions. Moreover, among the decedents who chose Waller

as executor there was an upward trend in the personal wealth of the clients attesting to the increased influence of their attorney. Along with two men of middling income among the eleven who asked Waller to handle their estates between 1750 and 1773, there were three gentlemen of great planter families, one of whom was a member of the Virginia council. The reputation Waller had built for financial responsibility was also reflected in his repeated appointment to committees for drawing money bills and overseeing the currency in the House of Burgesses. His probity also demonstrated in his fidelity to the trust of his British merchant clients during the Revolution.

Not by privilege alone, but by unstinting labor did Benjamin Waller earn a place of influence for himself and his family in the colonial capital. His talents survived the challenge of a new order.



THE RISE OF BENJAMIN WALLER, 1716-1786

## INTRODUCTION

During the flowering of culture in the middle 1700s known as the golden age of Virginia the colony reached a stature never before attained largely due to its ability to produce leaders capable of assuming responsibility for government. This process of selection depended on restricting the distribution of wealth to a few leading families who groomed their sons for public life.<sup>1</sup> The model of successful achievement which emerges from examining the lives of wealthy Virginians can be described as follows: 1. Gentry families positioned their sons for public office by affording them prospects of superior education, land and slaves. These advantages qualified privileged youths but did not guarantee access to elective or appointive office which could only be attained by unstinting labor. 2. In addition to personal attainments, young gentlemen in search of preferment required a patron, either their fathers or wealthier men, who could provide advice, financial

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<sup>1</sup>Charles S. Sydnor, American Revolutionaries in the Making: Political Practices in Washington's Virginia (New York, 1965), 14,15,75,90.

assistance, and influence.<sup>2</sup> 3. When a privileged son reached the age of majority, he usually became the head of a household and assumed responsibility for his family and landed estate. If he succeeded in managing his own plantation, he was often chosen by his neighbors for additional responsibilities such as witnessing wills or deeds, standing security for a bond or acting as executor for an estate. He cultivated a reputation for integrity so as to attract a nomination to the county bench. 4. As a justice of the peace, he recommended the more capable freeholders for lesser office and public contracts. He expected his clients to vote for him when he stood for election. 5. The work of a gentleman in public office was made easier by the friendship of prominent men who could provide access to political and financial resources. Alliance by marriage with one of the greater families of Virginia insured the future of the next generation. 6. In the local parish church, the gentlemen distinguished themselves from others by their demeanor, prominent seating, and election to the parish vestry. Vestrymen did not restrict themselves to the upkeep of the church buildings and the paying of the clergyman's salary. They were required by law to safeguard the propriety of the parish by

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<sup>2</sup>Eric R. Wolf, "Kinship, Friendship, and Patron-client Relations in Complex Societies," in The Social Anthropology of Complex Societies, Michael P. Banton, ed., (London, 1966).

monitoring the behavior of the congregation and disciplining the minister if necessary.<sup>3</sup>

In the following pages, Benjamin Waller's life will be measured against this model of success. Strategically located as bureaucrat and lawyer, Waller built a network of friends and clients among gentry and middling sorts. He left personal and real property sufficient to allow most of his ten children to marry well. His record of public service spanned nearly a half century, but his staunch fiscal and political conservatism placed him among those who only reluctantly accommodated themselves to unwanted change. This thesis traces the life of one particular Virginia gentleman in order to shed light on a traditional style of leadership which became a legacy to later generations.

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<sup>3</sup>See Rhys Isaac, The Transformation of Virginia, 1740-1790 (Chapel Hill, NC, 1982), 144, for a discussion of the clergy's plight.

CHAPTER ONE  
YOUNG GENTLEMAN

Benjamin Waller was a man with a strong sense of family, who honored his lineage and strove to maintain the status it had enjoyed in England. His paternal grandparents, Doctor John and Mary Pomfrett Waller, made their home in the village of Pagnell in the hundred of Newport in Buckinghamshire. Dr. John Waller was a wealthy physician whose wife bore him nine children: William, John, who emigrated to Virginia, Mary, Thomas, Steven, Benjamin, Edmund, James, and Jemima. The repetition of first names across three generations suggests a shared sense of family identity. The Virginian John Waller, hereafter known as Colonel John Waller, named his first child Mary after his mother and sister and his five sons after his father and brothers: John, Thomas, William, Benjamin, and Edmund. Benjamin, (1716-1786), and his wife, Martha Hall Waller, (1728-1780), had ten surviving children, several of whom bore first names of previous generations: Martha, Mary, John, Dorothy, Benjamin Carter, and William.<sup>1</sup>

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<sup>1</sup>Andrew Lewis Riffe with notes by Clayton Torrence, "The Wallers of Endfield, King William County, Virginia, Part I," Virginia Magazine of History and Biography, LIX

Benjamin of Newport Pagnell became co-executor of his father's will with his sister, Jemima. Another uncle, William, attended Oxford and Cambridge and was ordained an Anglican priest, serving as Rector of Walton, Bucks, where "John Waller, an Attorney," presented him. Dr. John Waller may have practiced both medicine and law.<sup>2</sup> Uncle William, Rector of Walton, died in 1750, aged eighty, and was "buried in the church-yard, under the east window of the chancel."<sup>3</sup> Yet another uncle, Edmund, followed his father to Cambridge and also became a physician. When this Edmund died in 1745, he was buried in the chapel of St. John's College, Cambridge. These facts suggest a high standard of achievement within the family.

Land and legacies also passed between generations. The uncle named Benjamin received all his father's lands plus a legacy of £50.<sup>4</sup> The father's will also contained this item: "To my son John Waller who liveth in Virginia over and above what I have already given and lent him, £20 and to his eldest daughter Mary, £10 and to the rest of his

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(1951), 339-40, 350-52.

<sup>2</sup>Ibid. 339n. cites the surmise of John G. Herndon, William and Mary Quarterly, 2nd Ser., XXII (1942), 213.

<sup>3</sup>Riffe, "Waller's of Endfield, Part I," VMHB, LIX (1951), 339 n.

<sup>4</sup>"Waller's of Endfield, Part II," 491-493 Ibid.

children, £5 apiece."<sup>5</sup>

The clause "over and above what I have already given and lent him," may mean that the father financed his son's purchase of 1039 acres on the Mattapony River in Virginia.<sup>6</sup> The date of the son's emigration to Virginia is unknown, but the deed to the above lands was recorded in June 1696.

Colonel John Waller of Virginia (1673-1754) married Dorothy King (circa 1675-1759) in 1697 or 1698. The family seat where their six children were born was known as "Endfield." Benjamin Waller's father established himself as a public figure when he became a justice of the peace in King and Queen County in 1698/99 and sheriff in 1699-1701/2.<sup>7</sup> When the county was divided in 1701, and King William County was formed on the south side of the Mattapony River, John Waller was named a major in the militia and a justice on the new county's bench. Although he petitioned the council for appointment as clerk of King William, the council decided that he should continue on the commission of the peace. Citing "his diligence and fidelity" of service,

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<sup>5</sup>"Waller's of Endfield, Part I," 343. Ibid. The will included additional legacies of money and goods to these and other family members. A brother, Thomas, living in Virginia, received £20.

<sup>6</sup>Ibid., 348.

<sup>7</sup>Ibid., 347. Riffe cites H. R. McIlwaine, ed., Executive Journals of the Council of Colonial Virginia (Richmond, VA, 1925), I, 411, 446, II, 135.

they appointed him sheriff for the year 1702.<sup>8</sup>

His good reputation helped him two years later, when he brought two Chicahominy Indians before the council by its order. He was not ashamed to ask for payment for this service in lands allegedly belonging to William Bates whereupon Governor Francis Nicholson granted his claim immediately.<sup>9</sup> Following his election to the House of Burgesses in 1710, Waller qualified for a seat on the committee for propositions and grievances which had to reach agreement with council on bills passed by the house. Twice during the 1710-1712 session, Colonel Waller was appointed representative of the house to confer with members of the council. Once he was among those appointed to carry resolves to council rejecting a conference on an act for funding an Indian war.<sup>10</sup>

His role as intermediary continued after he was reelected to the assembly in 1712 and 1720. For example, the house appointed him to the committee to inform Governor Alexander Spotswood that it had elected a speaker and to inquire when the house should present him. Colonel Waller served on a committee to examine the accounts for building the governor's house. He served on several committees to

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<sup>8</sup>Ibid., 225.

<sup>9</sup>Ibid., 368, 370.

<sup>10</sup>H. R. McIlwaine and J. P. Kennedy, eds., Journals of the House of Burgesses of Virginia (Richmond, VA, 1912), IV, 275, 287, 337, 347, 356.



prepare addresses to Governor Spotswood and on another one to prepare an address on the accession of his majesty, King George I. But the King William County burgess did not direct all his attention to the executive. He reported amendments to a bill for preventing frauds in tobacco payments and for improving the staple crop. He was also member of a committee to inspect temporary laws and helped draft bills to extend them. Again his diligence was rewarded when he was placed on the powerful committee of privileges and elections.<sup>11</sup>

Once more Colonel Waller took up residence in a newly formed county. Although there is no record of when he moved, in April 1726 he patented one thousand acres on the south side of Middle River of the Mattapony, in St. George's Parish, Spotsylvania County.<sup>12</sup> He called his plantation "Newport" after the Buckinghamshire home of his father, who had died in 1723. Colonel John Waller at last had attained his ambition when he was appointed Spotsylvania's first clerk in 1722. He served as clerk of the county for twenty years. He was also a vestryman of St. George's Parish and was named to the first board of trustees for the town of

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<sup>11</sup>Ibid., V, 3, 8, 18, 29, 61, 37, 49, 82, 251.

<sup>12</sup>Riffe, "Waller's of Endfield Part I," VMHB, LIX (1951), 348 and 349, gives a concise account of Colonel Waller's land and public office holdings in Spotsylvania County. The source for the land patent is Patent Book No. 12 347 in Division of Archives, Virginia State Library, Richmond.

Fredericksburg.<sup>13</sup>

The fact that Benjamin Waller's career so closely paralleled his father's argues strongly for the father's influence. Both men held county clerkships; both had enviable records in the assembly serving on the same committees; both became vestrymen in their parish churches and trustees of their city or town.<sup>14</sup> Colonel Waller's affectionate letters to Benjamin and Littleton Waller Tazewell's memoir both imply paternal influence although Tazewell emphasized Secretary of the Colony John Carter's role. A struggle for the boy's allegiance developed between his parents and the secretary. Tazewell tells how John Carter, on the way to his own plantation, Corotoman, was forced by high water on the Mattaponi River to take refuge

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<sup>13</sup>Riffe, "Waller's of Endfield, Part I," VMHB, LIX (1951), 349. Fredericksburg was established by act of the Virginia General Assembly, Mar. 22, 1727/8 and approved by Governor Gooch Mar. 20, 1728; McIlwaine and Kennedy, eds., Journals of the House of Burgesses, VI, 52; H. R. McIlwaine, ed., Legislative Journal of the Council of Colonial Virginia (Richmond, VA, 1918), II, 745; "An Act for erecting a Town, in each of the Counties of Spotsylvania and King George," Feb. 1, 1727, 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 ([Richmond, VA 1819 - 1823] Charlottesville, VA, 1969), IV, 234.

<sup>14</sup>Riffe, "Waller's of Endfield, Part I," VMHB LIX (1951) 350-351n. Benjamin's brothers also held office. John was vestryman of St. George's Parish and served as sheriff of Spotsylvania County; William served as vestryman of the same parish and colonel of horse. He succeeded his brother Edmund as third clerk of Spotsylvania County. William was elected burgess of the same county and served in the house simultaneously with his brother Benjamin.

at Colonel Waller's house. A familiar motif of "Littleton Waller Tazewell's Sketch of His Own Family" unfolded as the secretary questioned young Benjamin "upon the subjects of his school exercises."<sup>15</sup> Well satisfied with the ten-year-old boy's recitation, the secretary announced that he would take Benjamin with him to Williamsburg and enroll him in the grammar school of the College of William and Mary, but the parents demurred. When Carter later returned from Corotoman by way of the Waller home, he was incensed that the lad had not been readied for the trip to the capital and insisted on taking him along just as he was.<sup>16</sup>

Once in Williamsburg, Benjamin Waller's path to power lay through the good offices of his patron. The eldest son of "King" Carter was a man of immense wealth. John Carter

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<sup>15</sup>Linda Rees Heaton, "Littleton Waller Tazewell's Sketch of His Own Family...1823: Transcribed and Edited" (M.A. thesis, College of William and Mary, 1967), 133-134, 145-151, 161-162. Interrogation of candidates or students by their examiners was a traditional method of finding out their knowledge. But Tazewell thought the method relied too much on his teacher's powers and not enough on his own.

<sup>16</sup>Ibid., 130-131. Note the contrast drawn by Tazewell between "old Mr. Waller," who had twenty-eight years to live at that time, and Secretary Carter. The father "was a plain planter, who altho' he possessed a competent fortune, was not wealthy and had a numerous family." The secretary was "a man of immense wealth, and whose office placed him in a situation inferior to none in Virginia, save only that of the Royal Governor himself...[Ibid., 130]." Later, Tazewell portrayed the Waller home as being less advantaged than, say, the Carter's when the secretary supposed that Benjamin was "a boy of uncommon parts which could not probably be fully developed in this situation, for want of proper education...[Ibid., 131]." Tazewell did not treat Colonel John Waller's career. Hence he exaggerated the contrast between Benjamin's father and the secretary.

*See emphasis  
must*

had already purchased the office of secretary of state with his father's assistance. The records are silent as to the form of John Carter's patronage of Benjamin Waller during the latter's college years. Perhaps the Secretary paid for Waller's education. Thanks to the restoration of the college building and the skillful leadership of President James Blair and his ally, Robert King Carter, prominent families began returning their sons to the college in the 1720s and 1730s. Situated in the capital under the eyes of the governor and legislators, the college educated students in the classical English manner.<sup>17</sup> The historian, Louis Wright, argued that Virginia gentry perpetuated the aristocratic ideals of the English squirarchy, particularly in regard to education.<sup>18</sup> Great planters' sons were often educated at English schools, but some of them also attended the College of William and Mary. Most gentlemen's sons who attended the Virginia college later held public office. In fact, of twelve men who appear to have attended during Benjamin Waller's years, ten attained provincial office later in life. These ten men served in the assembly and two of them, on the council. All twelve men were from prominent

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<sup>17</sup>J. E. Morpurgo, Their Majesties' Royall College: William and Mary in the Seventeenth and Eighteenth Centuries (Williamsburg, VA, 1976), 75-76.

<sup>18</sup>Louis B. Wright, The First Gentlemen of Virginia: Intellectual Qualities of the Early Colonial Ruling Class (San Marino, CA, 1940), 38-62.

Virginia families, (see Appendix I).<sup>19</sup>

Benjamin Waller's fellow alumni John Blair, Richard Corbin, and Robert Carter Nicholas, to name a few, all served in government.<sup>20</sup> One of the faculty, Joshua Fry, gained prominence as surveyor, map-maker, treaty-negotiator, burgess, and military officer. Benjamin Waller associated with resourceful young men during his adolescence. He finished "his college education when he was between seventeen and eighteen years of age, [1733 or 1734]."<sup>21</sup> During the next twenty years, he capitalized on his college contacts by cultivating friendship with several of the above named gentlemen.<sup>22</sup>

The coming of age of the colonial legislature corresponded with the rise of the gentry elite, and these events together comprise what is arguably the most important

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<sup>19</sup>Earl Greg Swem, comp., A Provisional List of Alumni, Grammar School Students, Members of the Faculty, and Members of the Board of Visitors of the College of William and Mary in Virginia from 1693 to 1888 (Richmond, VA, 1941). See previous list of students in The History of the College of William and Mary From its Foundation, 1660 to 1874 (Richmond, VA, 1874), 83-84. The names of leading burgesses are listed in appendix 3 of Jack P. Greene, The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776 (Chapel Hill, NC, 1963), 467-474.

<sup>20</sup>Swem, comp., Provisional List, 7, 14, 30; John Blair, listed as "before 1713" became Waller's fast friend in later life; Richard Corbin is listed "after 1720" and Robert Carter Nicholas, "about 1745."

<sup>21</sup>Heaton, "Tazewell's Sketch," 132.

<sup>22</sup>McIlwaine and Kennedy, eds. Journals of the House of Burgesses, VII, vii and ix, VIII, vii, IX, vii.

development during the pre-revolutionary period. Jack P. Greene, who has traced this trend throughout the southern colonies, notes that in Virginia the era was a comparatively tranquil one characterized by capable governors, such as Hugh Drysdale, William Gooch, Francis Fauquier, and Norborne Berkeley, Baron de Botetourt, who "achieved an extraordinary popularity by allying themselves with the gentry and governing with prudence and moderation." Rivalries were personal rather than sectional with an absence of faction within the house or conflict between assembly and council. Virginia gentry were united by family ties no matter where they lived or what offices they held. "Indeed," Greene concludes, "there is no evidence of any major dissatisfaction with gentry leadership or of any group intent on challenging it in the years before 1763."<sup>23</sup>

The older generations of the gentry families were invigorated by new blood; men such as Benjamin Waller and Edmund Pendleton were sponsored by prominent families.<sup>24</sup> Others, like George Wythe, Patrick Henry, or Dr. Thomas Walker rose through their study of law or medicine. A few, such as John Lomax and Dr. George Nicholas, married into gentry families. Family connection, wealth, education, Anglican religion, and British nationality were critical

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<sup>23</sup>Jack P. Greene, The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776, (Chapel Hill, NC, 1963), 29-30.

<sup>24</sup>Ibid., 24.

factors in the elevation of one hundred burgesses who served on leading committees in the house from 1720 to 1776. But the political acumen to make use of these advantages also mattered as did the knowledge of a local constituency through local office holding before entering the house.<sup>25</sup>

Benjamin Waller's practical education in the law began as soon as he left college. As a clerk apprentice in the secretary's office, Waller became familiar with the legal routine of bureaucracy. According to Tazewell whose paternal grandfather also served in the secretary's office, it issued:

all grants of land, and inquisitions, the Commissions of all officers, and all other letters patent of the Colony. In this [office] were kept the records of the old general court... To this office the Clerks of the different County Courts were constrained by law to return abstracts of all their most important records, to the end that their matter might be here recorded, and so preserved in a single place of deposit, to which all might have easy access. Here too the County Court Clerks were compelled to return an annual account of their fees, to certain portions of which the Secretary was entitled... [Moreover], the Secretary had claimed and exercised the powers of appointing all the Clerks... The multifarious and very laborious duties of [the secretary's office required] a great number of Clerks

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<sup>25</sup>Jack P. Greene, "Foundations of Political Power in the Virginia House of Burgesses, 1720-1776," *WMOQ*, 3d Ser., XVI (1959) 491. Of the 100 dominant burgesses, either before or after their terms in the house, well over four-fifths served as justices of the peace, over half were vestrymen, and nearly two-fifths were county militia officers. "A few had also been clerks, king's attorneys, sheriffs, surveyors, and coroners in the counties. Some had served as town officials; no fewer than five had been mayors of Williamsburg. [Ibid., 491]."

constantly....To secure to [the secretary] a sufficient stock of these, derived from sources liable probably to the fewest objections and at the same time upon the best terms, every respectable gentleman of the Country, who thought proper to send his son to this office, and to maintain him there at his own expense for a term of seven years, was at liberty to do so.<sup>26</sup>

The secretary balanced his urgent need for a corps of clerks against the necessity for qualified candidates of good social standing.

Secretary Carter had recruited Benjamin Waller and may have paid his expenses until Waller completed his apprenticeship. Littleton Tazewell, paternal grandfather of Littleton Waller Tazewell was apprenticed by his father, William Tazewell, who presumably paid for his son's living.<sup>27</sup> If the apprenticeship was completed successfully, the young clerk could stay on as a paid journeyman or retire and await a vacancy to his liking among the county courts. Littleton Tazewell, paternal grandfather to the author of "Tazewell's Sketch," waited until the Brunswick County court needed a clerk and took the post because it was in the neighboring county to his fiancée.<sup>28</sup> Benjamin Waller probably accepted the offer of James City County because of its prestige and because he was already well known there. Indeed, he had been appointed deputy

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<sup>26</sup>Heaton, "Tazewell's Sketch," 60-61.

<sup>27</sup>Ibid., 59-60.

<sup>28</sup>Ibid., 66.



clerk of that county by Secretary Carter in November 1737 at the age of twenty-one.<sup>29</sup>

Benjamin Waller began reading the law formally while he was still serving his term in the secretary's office. Mr. Carter obtained permission of Lady Randolph, widow of Sir John Randolph, for his protege to read in the "excellent law library" of the late attorney general. This was a singular privilege for the twenty-year-old, and Waller took full advantage of it studying "indefatigably at every leisure moment when the business of the secretary did not require his attention to other subjects."<sup>30</sup>

Waller's talent was quickly recognized. Governor Gooch appointed him registrar of the court of vice admiralty in 1737, even before Waller had passed the bar. Waller applied to the governor and council for leave to practice as an attorney in the county courts on April 22, 1738. The petition was referred to the attorney general and Mr. Benjamin Needler "or either of them to Examine [his] qualifications and Report the same to this Board," but there is no further reference to the license in the Executive Journals of the Council.<sup>31</sup> On July 17, 1738 however,

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<sup>29</sup>"Appointment of Benjamin Waller as Deputy Clerk of James City County," Waller Family Papers, (1737-[1759] 1912), Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

<sup>30</sup>Heaton, "Tazewell's Sketch," 132-133.

<sup>31</sup>McIlwaine, ed., Executive Journals of the Council, IV, 416.

Benjamin Waller "produced a Commission from the Honble Wm. Gooch Esqur. appointing him an Attor., & having taken the usual oaths to the Government & Subscribed the Test was Sworn an Attor." according to the York County records.<sup>32</sup>

Secretary Carter made Waller first, deputy clerk (November 7, 1737) and then full clerk of James City County, (December 10, 1739). In the meantime, the governor had appointed Waller deputy king's attorney in Gloucester County, (May 18, 1738), and in James City County, (December 4, 1739). Waller took oaths as clerk of the General Court and deputy king's attorney in York County on the same day, December 17, 1739. Thus Waller served as both clerk and king's attorney in James City County at once.<sup>33</sup>

Littleton Waller Tazewell's assertion that appointment as clerk of James City County "was not expected at all" by Waller can hardly have been the case since Waller had already been deputy clerk to an ailing Matthew Kemp, clerk

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<sup>32</sup>All references to the York County records came from the York County master biographical file which was compiled under grants RS-00033-80-1604 and RO-20869-85 from the National Endowment for the Humanities to the Department of Historical Research at the Colonial Williamsburg Foundation. The particular reference to Benjamin's license to practice law in York County will be found in York County, Virginia, Orders, Wills and Inventories, July 17, 1738.

<sup>33</sup>"Appointment of Benjamin Waller as Deputy Clerk of James City County, November 7, 1737," "Appointment of Benjamin Waller as King's Attorney in James City County, December 7, 1739," "Appointment of Benjamin Waller as clerk of James City County, December 10, 1739," Waller Family Papers, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

of James City County, for over two years. Benjamin Waller was appointed clerk of the General Court "so soon as James City Court adjourned" as Tazewell said, but Waller had already been made clerk of the oyer and terminer courts by Governor Gooch on the same day that Secretary Carter had appointed his protege to the clerkship of James City County. Again, the secretary's second appointment of Waller to high office can have surprised Waller little. He was already clerk for the high court in June and December: why not in April and October as well?<sup>34</sup>

Waller's rise was more gradual but also more broad-based than Tazewell later said, for the grandson omitted mention of Waller's appointments as deputy king's attorney in Gloucester, James City, and York counties. Tazewell also failed to note that Waller became clerk assistant of the House of Burgesses on April 21, 1740, and clerk of the two most powerful committees of the house, propositions and grievances, and privileges and elections, on May 8, 1742.<sup>35</sup> Once again Tazewell ignored the role of Waller's father, Colonel John Waller, who preceded Benjamin into the house. Tazewell also emphasized the role of Secretary Carter at the expense of Governor Gooch who may have had a hand in Waller's appointment as clerk of James City County.

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<sup>34</sup>Heaton, "Tazewell's Sketch," 133-134.

<sup>35</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses, VII, 8.

The correspondence of Gooch belies the impression that the governor stood aloof from appointments of clerks to the county courts. In a letter to the Bishop of London, June 20, 1734, the Governor offered an inspector's place to a Mr. Gibson whom the Bishop had recommended for a favor. Gibson declined but solicited the appointment for a friend. A naval officer's post also proved inconvenient. "We now fell into discourse about a Clerk's place," the Governor continued, "and I told him whenever a Vacancy hap'ned convenient to him, he might depend upon it I would procure it for him. They are in the Gift of the Secretary of the Colony with which he was well satisfied."<sup>36</sup> Gooch lamented that he had so far failed to help Gibson, but the governor later may have acted favorably towards Waller.

The chronology of Waller's early life does not support Tazewell's contention that Waller had "a very extensive and profitable" law practice by the time he accepted appointments as clerk of James City County and clerk of the General Court in December of 1739. Waller had entered the grammar school at the College of William and Mary at the age of ten in 1726, and completed his studies at age seventeen or eighteen. If he was only seventeen when he became a clerk apprentice in the secretary's office, he would have

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<sup>36</sup>"Governor William Gooch to Bishop Edmund Gibson, June 20, 1734," Fulham Palace Papers, Lambeth Palace, London, photostatic copy, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia. Perhaps the favor-seeker was a kinsman of the Bishop.

been there three years when Tazewell reports that the secretary advised him to study law in 1736. Two years was not too long to read law, especially when Waller had the use of Sir John Randolph's books, and in due course, he was licensed attorney in 1738. But he could not have been practicing "a few years" before appointment to the James City County clerkship as Tazewell says, for he had only applied to the governor and council for leave to practice law on April 22, 1738 which is the earliest day his commission as attorney could have been granted, just twenty-one months before his appointment to the clerkships of James City County and the General Court.

When Waller was elected to the House of Burgesses in 1744, he set about making it more convenient for general court lawyers to practice in the surrounding counties. Although the general court clerkship kept him from practicing law in the high court, he sponsored a 1748 licensing act in the House of Burgesses which allowed general court lawyers to practice in the counties surrounding Williamsburg. Perhaps he relished the competition of knowledgeable and skillful opponents in York County where he was a civil lawyer, as well as deputy king's attorney. Or perhaps he was currying favor with the powerful general court attorneys.<sup>37</sup> Since he was barred

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<sup>37</sup>A. G. Roeber, "The Scrutiny of the Ill Natured Ignorant Vulgar: Lawyers and Print Culture in Virginia, 1716 to 1774," VMHB, XCI (1983), 393.

from a general court practice, Waller established himself among the top rank of attorneys by cultivating a clientele of wealthy English merchants, for Tazewell noted that he collected their debts from Virginians at the merchants' exchange held twice yearly after the sessions of the General Court.<sup>38</sup>

Waller was no orphan when he came to Williamsburg. He retained the support of a father with a competent fortune and an enviable record in public service. But Williamsburg was the focus for Benjamin's talents first as student at the college and later as a promising apprentice to the secretary and young appointee to public office. When Secretary Carter and Governor Gooch found Benjamin able and willing to accept these responsibilities, they appointed him to one office after another. He ascended the prescribed ladder of preferment rapidly with application, but without personal wealth. He relied on his own knowledge and skill to win the regard of his patrons and the trust and cooperation of his friends. He worked diligently and was rewarded with greater opportunities to advance himself. He made use of the network of associations in place in Williamsburg at a time when the capital was bustling with a new generation of lawyers, merchants, tavernkeepers, artisans, and gentleman planters.

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<sup>38</sup>Heaton, "Tazewell's Sketch," 135.

CHAPTER TWO  
BURGESS AND LAWYER

Having benefited from the patronage of the governor and secretary, Benjamin Waller himself set the model of a patriarchal style of leadership as a lawyer and entrepreneur for a wide spectrum of gentlemen and tradesmen. Through his distinguished family, college training, and clerk apprenticeship, he commanded most of the advantages required for success at the time, except for wealth, and he had only to play his hand skillfully to prove himself a financial winner also. The continued attraction of Williamsburg, particularly among the artisan group provided an opportunity for those willing to sell lots to these new arrivals. But the burning of the capitol threatened the position of the city as a mecca for skilled laborers who needed permanent homes. With the destruction of the first capitol building in 1747, Waller sought to keep the seat of government in Williamsburg. His successful campaign to see the capitol rebuilt returned a profit to him because it enabled him to sell lots from a tract he had purchased. As a key member of the House of Burgesses, he was able to win annexation of his improved lots within the city bounds. That he was

successful in establishing his own branch of an aristocratic family in Williamsburg may be attributed to his willingness to employ every legitimate means to that end including calling upon influential friends and clients.

At first, he looked for some strong coattails to ride. On March 24, 1737/8, the Virginia Gazette announced that Mr. Benjamin Waller, at the secretary's office, in Williamsburg, was holding the papers of all those who had employed Mr. William Acrill, deceased, as their attorney.<sup>1</sup> The fact that Mr. Acrill had been a leading member of the assembly in 1736 lent credence to Benjamin Waller's bid to establish himself as a trusted legal professional.<sup>2</sup>

If Acrill's name reflected well on Waller, the apprentice clerk could hardly have done better than to assist Mr. John Mercer. The fiery attorney had once been disbarred by the Prince William court, but he was an experienced practitioner with a library of fifteen hundred volumes, one-third of them legal books.<sup>3</sup> The young clerk

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<sup>1</sup>Virginia Gazette, (Williamsburg, VA), March 24, 1737/8.

<sup>2</sup>H. R. McIlwaine and J. P. Kennedy, eds., Journals of the House of Burgesses of Virginia, (Richmond, VA, 1910), VI, 244-45. William Acrill was appointed to two influential committees in the house: privileges and elections and propositions and grievances. His name was associated with legislation on tobacco, duties on imported slaves and liquors, regulation of the militia, the term of apprenticeship, and the trial of slaves.

<sup>3</sup>David J. Mays, Edmund Pendleton: A Biography, 1721-1803 (Richmond, VA, 1952), I, 26.



apprentice must have met Mercer when the latter was in town to plead causes at the General Court. Since Waller was reading law at Sir John Randolph's library in Williamsburg, he would have held the scholarly Mercer, author of The Abridgement of the Laws of Virginia, in high esteem.

Waller, not quite twenty-two, must have appreciated his association with the thirty-three year old Irishman, who was a graduate of Trinity College in Dublin. While the latter's good nature won him friends, his "Irish pugnacity" won him court battles.<sup>4</sup> Although delivery of the newly printed copies of The Abridgement had been disrupted, Mercer had protected his interests by explaining his difficulties in the July 1738 Virginia Gazette and placing his Williamsburg business in the capable hands of Benjamin Waller.<sup>5</sup>

Whether or not Waller was befriended by his predecessor in the House of Burgesses, Lewis Burwell, is unknown. But the Kingsmill resident was burgess for Jamestown and a member of the committees of privileges and elections and propositions and grievances, of which Waller was clerk.<sup>6</sup> In March of 1739/40, Waller was bound as surety in the amount of £100 current money for Lewis Burwell who was

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<sup>4</sup>H. R. McIlwaine ed., Executive Journals of The Council of Colonial Virginia (Richmond, VA, 1930), IV, 318, 328, 348, 432, 443.

<sup>5</sup>Virginia Gazette, July 14, 1738.

<sup>6</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses, VI, ix, 244, 245, 301, 321, 322, 393.

appointed administrator of the estate of John Rawley. Burwell was directed by the court to "make a true & perfect inv[entory]" and "keep a true acc[ount] of his actions & deliver up his Letters of Adm[inistration] if a will is found" or "forfeit the bond."<sup>7</sup>

Colonel Burwell was elected burgess from James City County in 1742. On September 7, 1744, the house ordered that the governor be requested to issue a writ of election for James City County for the seat of Lewis Burwell, deceased. Five days later, Benjamin Waller became the late colonel's successor.<sup>8</sup> He did not attain office by right as more affluent gentlemen did. He labored as a clerk apprentice, registrar of the vice admiralty court, deputy king's attorney, and practicing lawyer to earn the respect of his influential friends and of county freeholders.

*connected to CH 9* Samuel Hyde of York County was one such freeholder who reposed trust in Benjamin Waller. Judging from Samuel Hyde's carefully drawn will, March 1740, he was a man of moderate means and could not guarantee his younger children a living. All three of them had to be apprenticed out.<sup>9</sup> Waller was to receive a legacy of five pounds for his

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<sup>7</sup>"March 17, 1739/40, Order," York County, Virginia, Orders, Wills, and Inventories 18, 585-586.

<sup>8</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses VII, 81, 86.

<sup>9</sup>"Mar. 18, 1744/5, Order," York County, Virginia, Orders, Wills and Inventories 19, 360.

service as guardian, trustee of the estate, and overseer of the will. The executors were advised to consult with him "in all things of difficulty which may happen the Course of the Administration of my Estate."<sup>10</sup>

Benjamin Waller would take charge of estates seventeen times in York County during the thirty-three year period, 1740 to 1773, (see appendix II). He served as either trustee, administrator, co-executor, guardian of orphans or legatee. Taken together, his first six fiduciary clients in the late 1730s and 1740s were men and women of moderate means; only Ralph Graves or Matthew Hubbard might be considered of lesser gentry status. In 1745, Waller became executor of Matthew Hubbard's estate. Hubbard also left too little land to support his children even though he had been clerk of York County for eleven or twelve years before his will was probated.<sup>11</sup> Four years later, Waller was trustee of the estate of Ralph Graves who was paying quit rents on fifteen hundred acres when he died.<sup>12</sup> Graves' will made bequests of land to his four sons and gave the use of his mansion house and one-third of his plantation to his wife

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<sup>10</sup>"Mar. 17, 1739/40, Will," York County, Virginia, Wills and Inventories 18, 591.

<sup>11</sup>"Nov. 18, 1745, Will," York County, Virginia, Wills and Inventories 20, 7; "Sept. [15], 1733, Appointment as Clerk of York County," York County, Virginia, Orders, Wills and Inventories 18, 65-66.

<sup>12</sup>"Ralph Graves, 3," York County Project Biography, Department of Historical Research, Colonial Williamsburg Foundation, Williamsburg, Virginia.

according to common law.<sup>13</sup> Graves' landholdings and family background indicate he was a person of some social status. But his personal property, appraised at only £557.18.0, amounted to only £92.18.6 for each of the six surviving family members.<sup>14</sup> Ralph Graves had busied himself as land surveyor, juror, grand juror, constable, surveyor of the roads, and appraiser, but his modest wealth and lack of prominent office indicate that he was not a true member of the gentry.<sup>15</sup>

Two women, neither of them wealthy, were also among those who chose Waller as executor during the 1740s. In 1743, Thomasine Carter, widow of the public jailer, John Carter, died leaving the residue of her estate after the debts had been paid to her four sons.<sup>16</sup> In February, 1746/47, Agnes Hilliard, widow, left her minor son, John, the remainder of her estate "if there shall be any overplus."<sup>17</sup>

One of widow Carter's sons, Thomas (ca. 1727-1776),

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<sup>13</sup>"May 15, 1749, Will," York County, Virginia, Wills and Inventories 20, 147.

<sup>14</sup>"June 18, 1750, Estate Division," York County, Virginia, Wills and Inventories 20, 178.

<sup>15</sup>"Ralph Graves, 3," York County Project Biography, Department of Historical Research, Colonial Williamsburg Foundation, Williamsburg, Virginia.

<sup>16</sup>"Sept. 19, 1743, Will," York County, Virginia, [Orders] Wills and Inventories 19, 228-229.

<sup>17</sup>"Feb. 16, 1746/47, Will," York County Virginia, Wills and Inventories 20, 56-57.

became Waller's clerk. In October 1751, Thomas Carter witnessed the lease drawn between Henry Wetherburn and the immigrant Daniel Fisher. But Fisher later charged that since Carter was in debt to Wetherburn, he conveniently forgot Wetherburn's promise to renew Fisher's lease and to repair the premises. Carter's loss of memory assisted Waller in shielding his client, Wetherburn, from a potential suit by Fisher for breach of contract.<sup>18</sup> Fisher went without the necessary guarantees of Wetherburn's good faith. On April 20, 1756, however, Fisher vented his anger against Waller whom he blamed for favoritism in a libelous letter to Waller that also included "opprobrious Reflections" on the House of Burgesses. When informed of the letter, that body declared Fisher guilty of a breach of its privileges and ordered him to appear before its bar, but there is no record that he did.<sup>19</sup>

Of the forms of patronage that Waller extended, economic assistance is the easiest to verify. According to Fisher, Waller's client Henry Wetherburn lent money to Thomas Carter, Waller's clerk. Public notice that Carter continued to work for the wealthy tavernkeeper appeared in the announcement that Carter was to act for Wetherburn in

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<sup>18</sup>Louise P. du Bellet, Some Prominent Virginia Families (Lynchburg, VA, 1907), II, 776.

<sup>19</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses, VIII, 373.

collecting the debts of the late James Shields.<sup>20</sup> Another middling sort, John Collett, doorkeeper of the governor's council, mortgaged his city lot, 262, to Waller on February 8, 1744/5 for £43 current money.<sup>21</sup> If Collett repaid the loan with interest by December 25, 1746, he could redeem the lot on which he lived with his wife, Susannah. There is no record that Collett paid off the mortgage before he died in 1749.<sup>22</sup> But on May 18, 1752, Waller recorded his sale of the same lot to James Carter, apothecary and surgeon of Williamsburg, another of Thomasine's sons, whose brother, Thomas Carter, witnessed the deed.<sup>23</sup> Collett also named Waller his sole executor and recipient of the rest of his estate including lot 262 after Susannah died. Perhaps because the several legacies mentioned in the will further reduced the small estate, Susannah Collett renounced the will. Waller refused the executorship, and the sheriff sold the property, which allowed Susannah to buy back some of her household goods.<sup>24</sup> None of the first six men and women who

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<sup>20</sup>Virginia Gazette, Mar. 27, 1752.

<sup>21</sup>"Feb. 18, 1744/45, Order," York County, Virginia, Orders and Wills 19, 344; "Feb. 18, 1744/45, Deed," York County, Virginia, Deeds and Bonds 5, 117-119.

<sup>22</sup>"Dec. 9, 1749, Will," York County, Virginia, Wills and Inventories 20, 174.

<sup>23</sup>"May 18, 1752, Deed," York County, Virginia, Deeds and Bonds 5, 475-77.

<sup>24</sup>"May 20, 1751, Estate sale," York County, Virginia, Wills and Inventories 20, 215-217.

chose Waller as executor, with the possible exception of Ralph Graves, because of his landholding, were persons of means. All the men saw service in government as lesser officials with Matthew Hubbard, clerk of York County, the only ranking officer, and John Collett, who worked at the capitol as doorkeeper of the council where he regularly came in contact with Waller. Widow Carter's son Thomas was directly employed by Waller, and Collett mortgaged the city lot on which he dwelt to the deputy king's attorney. All these individuals demonstrated their respect for Waller's skills.

However, the attorney's sphere of influence was not limited to established residents of the city. Newcomers arrived in the 1740's intending to make their homes in the colonial capital. These arriving middling sorts offered opportunities to land speculators to profit from those seeking permanent residence.<sup>25</sup> Aware of the potential market, Waller purchased 745 acres from Mann Page in 1743 on the eastern boundary of the city. But, because the land was entailed, an act of entitlement which had to be approved by the king, was needed to secure Waller's title.<sup>26</sup> William

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<sup>25</sup>Cathleen B. Hellier and Kevin Kelly, "A Population Profile of Williamsburg in 1748," Occasional Papers from the Research Division, Department of Historical Research, Colonial Williamsburg Foundation, Williamsburg, Virginia, 1987, 4-5.

<sup>26</sup>"An Act, to enable Mann Page, Esq. to sell and dispose of certain entailed lands..." Sept. 18, 1744, William Waller Hening, ed., The Statutes at Large; Being A

Keith, a tailor, also anxious to speculate, convinced Waller to sell £190 worth of the tract. Because it was also contingent upon the king's approval, Keith did not have clear title to the land when he died in 1744. His creditors, led by merchant, John Lidderdale, sued Waller as co-plaintiff with Keith's widow and heirs for the £190. On March 16, 1746/47, the York County court ruled that "the tract of land in the bill mentioned lying in this county...ought to be liable to the demands of the plts...." After some claims of creditors against the Keith estate were allowed and others disallowed, the court ordered that Keith's portion of the land was to be auctioned off "or so much thereof as will be sufficient to satisfy & pay the sum of £82.3.10½ & 359 lbs of nett tob[acco] due to the plts...." On the following June 15, the sheriff reported selling eighty-one and two-thirds acres to Thomas Penman for £89.10.4½ and listed debts paid "out of the money arising from said sale..."<sup>27</sup>

This case was settled after a battle in chancery. It

Collection of All the Laws of Virginia, from the first Session of the Legislature, in the Year 1619 ([Richmond, VA 1819] Charlottesville, VA, 1969) V, 277.

<sup>27</sup>"Mar. 16, 1746/47, Order," York County, Virginia, Land Causes (1746-69) 48; "Mar. 16, 1746/47, Order," York County, Virginia, Judgments and Orders 1, 3, and 4; "June 15, 1747, Account of sale," York County, Virginia, Land Causes (1746-69) 49-50; "June 15, 1747, Account of sale," York County, Virginia, Judgments and Orders, 1, 17-18. The sale of 81 acres 5 ch[ains] between Waller and Penman took place Aug. 13, 1747 according to the "Deed," York County, Virginia, Deeds and Bonds 5, 219-224.



shows Waller's involvement with an upwardly mobile trademan's family. In his answer to the chancery case, Waller stated that he was "wearied out with the frequent importunities of Wm. Keith [to sell him land]" before the original agreement had been reduced to writing. Reluctantly, Waller had agreed with the incessant tailor, to sell "as much of the sd land lying btwn the road to the Capitol Landing the lands of John Coke, Thomas Cobbs, and John Custis, esqur and the northern bounds of the city of Wmsbg as £190 would amount to at the rate of 28s curr mon per acre..."<sup>28</sup> Waller declared that he had received £160 from Keith who was bonded for the full £190 and that Keith had taken possession of the land before he died. In August, 1747, Waller entered into a five-part indenture with Keith's three surviving sons and his deceased wife's executor conveying to the latter fifty-two acres, ten chains and allowing the sale of eighty-one acres, five chains to Thomas Penman to cover Keith's debts. Finally, twenty more acres were sold to Andrew Anderson for £35 current money for a grand total of 154 acres.<sup>29</sup>

Entangled with Keith who was heavily in debt, Waller escaped the tailor's creditors by selling some land at

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<sup>28</sup>"Jan. 28, 1745/46, Answer to bill of complaint," York County, Virginia, Land Causes (1746-69), 34-37.

<sup>29</sup>"Aug. 11, 1747, Deed," York County, Virginia, Deeds and Bonds 5, 212-216; "Aug. 14, 1747, Deed," Ibid., 217-219.

auction to Thomas Penman. But Penman resold it immediately to Matthew Moody, an ordinary keeper. Moody developed this tract adjacent to the city as Waller would later do with the land he retained. Penman was still a landlord at his death because his will bequeathed his lots and houses "now in the tenure and occupation of James Craig, jeweller," to his wife and afterwards to his grandson, Thomas Hay. Thomas Penman's 1759 will reveals he was a lot owner, but his minor holdings did not make him a major player in the Williamsburg land market. His daughter, Elizabeth Penman, however, was first wife of Anthony Hay, rising cabinet maker, who acquired enough wealth to purchase the prestigious Raleigh Tavern in 1767.<sup>30</sup>

Waller would sell smaller parcels and single lots in the future with careful specifications for building. His change of approach may have been due to his difficulties with Keith, an eager but impecunious investor. But legal troubles were not the only obstacles in the way of Waller's land sales. The burning of the capitol in late January of 1747 jeopardized Williamsburg's future. A large faction in the assembly voiced its desire to rebuild the capitol farther inland. The city fathers mounted determined resistance to removal by laying a petition before the

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<sup>30</sup>"Aug. 12, 1759, Will," York County, Virginia, Wills and Deeds 20, 527; "Jan. 1, 1767, Deed," York County, Virginia, Deeds 7, 216-218.

assembly.<sup>31</sup> Those who favored a more central location pressed for removal and hoped to gain support by helping pass an allowance for the relief of the people of Williamsburg.<sup>32</sup> But the governor's natural sympathy for the inhabitants, reinforced by the impact of the smallpox epidemic of 1747-1748 on the town, swayed him in the direction of building on the old foundations. Though there is no record of Waller's sentiments on the subject, Charles Hansford, Waller's protege whose poems Waller preserved, ridiculed Charles Carter, burgess from King George County, for supporting the removal.<sup>33</sup> After several attempts, the burgesses in favor of retaining the capital at Williamsburg eked out a narrow victory. The council concurred, and the governor announced his approval on December 17, 1748.<sup>34</sup>

The Act appointed Benjamin Waller one of the eight persons "to covenant, agree with, hire, and employ such and

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<sup>31</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses VII, 244-245 cited by Linda H. Rowe, "Peopling the Power Structure: Urban Oriented Officeholders in York County Virginia," (M.A. thesis, College of William and Mary, 1989), 18.

<sup>32</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses, VII, 243, 283-84.

<sup>33</sup>James A. Servies and Carl R. Dolmetsch eds., The Poems of Charles Hansford (Chapel Hill, NC, 1961), 56.

<sup>34</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses, VII, 301, 328, cited by Cathleene B. Hellier, "The Character and Direction of Urban Expansion in Williamsburg," Final Report, National Endowment for the Humanities Project #RO-20869-85, Department of Historical Research, Colonial Williamsburg Foundation, Williamsburg, Virginia, 64.

so many undertakers, workmen, and labourers, and to provide, furnish, and buy such materials as any five of them shall think proper... and to give such necessary orders and directions therein, from time to time, as they shall see cause until [the capitol] shall be finished."<sup>35</sup> The other members were John Blair, William Nelson, and Philip Ludwell, Carter Burwell, Edward Digges, Peyton Randolph, and Beverley Whiting. Blair and Nelson had been members of the council since August and October 1745 respectively.<sup>36</sup> The others were burgesses: Ludwell from Jamestown, Burwell and Waller from James City County, Digges from York County, Randolph from Williamsburg, and Whiting from Gloucester County.<sup>37</sup> All were from the counties surrounding the capital city and could be counted on to be supportive overseers of the construction of the building.

Waller's friend John Blair watched the construction progress of the second Williamsburg capitol with care. On

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<sup>35</sup>"An Act for re-building the Capitol in the City of Williamsburg," Oct. 22, 1748, Hening, ed., Statutes at Large, VI, 197 cited in Eleanor Graham, "Benjamin Waller House Historical Report, Block 1, Building 16," Summary of Material Listed in Swem's Index on Benjamin Waller (1710-1786), Illustration 2, 1945, Colonial Williamsburg Foundation Library Research Report Series-1000, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia, 1990, 2.

<sup>36</sup>Wilmer L. Hall, ed., Executive Journals of the Council of Colonial Virginia, November 1, 1739 - May 7, 1754 (Richmond, VA, 1945), V, 185, 187.

<sup>37</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses VII; ix.

April 1, 1751, he declared to his diary that he had laid a foundation brick, but on September 14, he complained that the structure was "not at all advanced." Perhaps Blair voiced his dissatisfaction to the builders, for progress was rapid afterwards. On December 12, Blair exulted, "This afternoon I laid the last top brick on the capitol wall, and so it is now ready to receive the roof..." He then reminisced about having laid a foundation brick at the first capitol over fifty years earlier.<sup>38</sup>

The rebuilding of the capitol was the zenith of the new generation of Virginia leaders that came of age at mid-century. In the 1740s, Waller had been among the rising stars of the Gooch administration. A decade later, he was a seasoned burgess, jurist, and city father. In 1753, Waller's friend, Henry Wood, referred to him in retrospect as an "Armiger by Gooch created" who like his chief "with only one broke Shin thought proper not to venture in [to battle]."<sup>39</sup> Waller preserved Wood's satirical letters complete with personal jabs. In a letter in 1752, Wood requested that Waller convey thanks to The Rev'd William

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<sup>38</sup>Dec. 12, 1751, "The Diary of John Blair," William and Mary Quarterly, 1st Ser., VIII (1899), 16.

<sup>39</sup>"Henry Wood to Benjamin Waller, Dec. 4, 1753," Waller Family Papers, #5, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

Stith for a copy of a sermon.<sup>40</sup> Stith, who was chaplain to the assembly and first cousin to Peyton Randolph, had felt the wrath of the governor when the cleric led a fight in the House of Burgesses against Dinwiddie's tactless proposal for a pistole fee on each land title signed.<sup>41</sup> Perhaps this was the battle Wood had accused Waller of avoiding for there is no evidence that Waller took sides.

In the same month that the capitol burned, Waller married Martha Hall.<sup>42</sup> An unverified tradition has it that she was cousin of the attorney, Stephen Dewey, in whose household she may have been residing when she met Benjamin. Probably about this time, Waller occupied a house on Francis Street which he enlarged to meet the needs of a growing family. The Wallers' first child, Martha, was stricken with the small pox in 1748, and though she recovered, her brothers, Robert and Benjamin, perished in infancy.<sup>43</sup> The Wallers were comforted by John Blair who noted the date of a son's death in his diary as August 31, 1751. The next day Blair wrote, "Mr. Waller's son, Benjamin, buried this day.

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<sup>40</sup>"Wood to Waller, Dec. 5, 1752," Waller Family Papers, #4, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

<sup>41</sup>William Stith, The History of The First Discovery and Settlement of Virginia, ([Williamsburg, VA, 1747], New York, 1969) v-vii.

<sup>42</sup>"Records of the Waller Family: Communicated by Robert Page Waller of Norfolk, VA from a copy of Benjamin Waller's Bible," WMO, 1st Ser., XIII (1904-1905), 175.

<sup>43</sup>Ibid., 176.

My Coach carried the Bearers, Mr. Blair, Mr. Basset, Mr. Allen & my son who carried him to his grave on Napkins."<sup>44</sup> The son of the clerk of the General Court was solemnly buried. The web of relationships connecting gentry families held firm. The loss of a child is in a sense the loss of the future. Although it is not known how the parents expressed their grief, they did not despair of future happiness. Benjamin's legal and entrepreneurial talent and Martha's remarkable fecundity--she bore him thirteen children--prevailed.<sup>45</sup>

With the assurance that Williamsburg would remain the capital, Waller proceeded to sell his lots east of the city. In February, 1748/9, he sold a half acre lot, 25, in his subdivision to Alexander Craig, a saddler, for £10, sixteen times the price per acre Waller had paid for the tract. The deed specified that "a good house 16' by 20', at least, [be built] with a brick chimney, the house to front in a line with that row of lots 6' from the extreme south bounds of that lot." If not built upon within three years, the lot reverted to Waller. Finally, he was allowed to take wood or trees from the lot for one year.<sup>46</sup> These specifications

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<sup>44</sup>Sept. 1, 1751, "Diary of John Blair," WMO 1st Ser., VII (1898-1899), 145, 152.

<sup>45</sup>"Waller Family," WMO, 1st Ser., XIII (1904-05), 177.

<sup>46</sup>"Feb. 17, 1748/9, Deed," York County, Virginia, Deeds and Bonds 5, 278-280; "Jan. 28, 1745/46, Answer to bill of complaint," York County, Virginia, Land Causes (1746-69), 34-37. The original agreement called on Waller to pay Mann

were typical of deeds of his subsequent sales. In April 1749, Benjamin's brother, William, a burgess from Spotsylvania County drew a carefully numbered a map of the lots in the Waller subdivision.<sup>47</sup>

The era of land sales was driven in part by the increasing population of the city. Between 1747/8 when Dr. John De Sequeyra recorded the toll of the small pox on a list of Williamsburg households and the 1775 census, the population of the capital more than doubled.<sup>48</sup> According to the study of Hellier and Kelly, the largest occupational group (28.9 percent) coming to Williamsburg were "mature skilled workers who at least intended to make a permanent home here."<sup>49</sup> The influx of these tradespeople skewed the profile of settlers in the newly available areas near the city in their direction. While social status within all neighborhoods remained somewhat diverse, by mid century, neighborhoods "tended to serve one purpose more than

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Page 20s sterling per acre, i.e., 10s per half acre. Craig paid £10 Va. curr. or 200s per half acre. Since £1 sterling was worth £1, 5 shilling Va. curr., Craig's £10 Va. curr. was worth £8 sterling. Waller paid ½£ to Craig's £8 or £1 sterling to Craig's £16 sterling so Craig paid sixteen times what Waller paid. "Sept. 13, 1743, Agreement," Waller Family Papers, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

<sup>47</sup>"Apr. 1749, Map," York County, Virginia, Deeds and Bonds 5, between 334 and 335.

<sup>48</sup>Hellier and Kelly, "Population Profile," 2.

<sup>49</sup>Ibid., 7.



another."<sup>50</sup> The pattern of Waller's sales in the 1750s reveals his subdivision to be "mainly one of middling status."<sup>51</sup> In 1756, the assembly passed a bill accepting the improved lots into the city; so that purchasers who had built upon their lands according to the specifications of the conveyance became enfranchised.<sup>52</sup>

Waller land sales during the 1750's and 1760's established the owners as freeholders of the city. Like their contemporaries in the country, some of those who took charge of their private affairs as heads of households were offered positions of public trust. Benjamin Powell, who made a habit of buying and selling Waller lots, established himself as a successful entrepreneur. In 1767, Powell, along with Alexander Craig, saddler and fellow purchaser of a Waller lot in 1748, were elected to the common council of the city along with silversmith, James Geddy.<sup>53</sup> Subsequently, Powell became keeper of the keys at the capitol, twice member of the committee of safety for Williamsburg, marshall of the court of admiralty, and

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<sup>50</sup>Cathleene B. Hellier, "Private Land Development in Williamsburg, 1699-1748: Building a Community," (M.A. thesis, College of William and Mary, 1989), 81.

<sup>51</sup>Hellier, "Urban Expansion," 71.

<sup>52</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses VIII; 392; "An Act for adding certain Lands, therein mentioned, to the City of Williamsburg," Mar. 29, 1756, Hening, ed., Statutes at Large, VII, 54 cited by Hellier, "Urban Expansion," 68n.

<sup>53</sup>Purdie and Dixon, Virginia Gazette, Dec. 3, 1767.

justice of the peace.<sup>54</sup> His public works included construction of the steeple of Bruton Parish Church and the building of the public hospital. On September 14, 1769, Benjamin Waller was among the sitting vestrymen of Bruton Parish who "agreed with Benjamin Powell to build a Steeple and repair the Church..."<sup>55</sup> Waller was named to the court of directors of the public hospital by act of assembly in June, 1770, but his name did not appear in Rind's Virginia Gazette for August 2, 1770, which announced the committee to receive proposals for construction. "The Committee formerly appointed," received its orders again in July 1772 after an unexplained delay. On September 4, 1773, after several payments had been made to the builder, the court of directors' minutes noted that the completed hospital was examined "and finding it finished according to the Agreement, the same was received of Benjamin Powell, the Undertaker."<sup>56</sup> Because of his past experiences overseeing

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<sup>54</sup>Purdie and Dixon, Virginia Gazette, Dec. 22, 1774; Pinkney, Virginia Gazette, Nov. 9, 1775, for members of committees of safety; Purdie, Virginia Gazette, Aug. 30, 1776; Nicholson's Virginia Gazette and Weekly Advertiser, (Richmond, Va.) Feb. 15, 1787, for marshall [of the Court of Admiralty]; and "Jan. 20, 1783, Order," York County, Virginia, Orders and Bonds (1774-1784), 4, 312 for magistrate of the York County court.

<sup>55</sup>John C. McCabe, "Sketches of Bruton Parish, Williamsburg, Virginia," Church Review and Ecclesiastical Register VIII, (1856), 615-616.

<sup>56</sup>Eastern State Hospital Court of Directors' Minutes, Dec. 10, 1770-July 23, 1801, photostatic copy at Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

public works, Benjamin Waller was undoubtedly present on such occasions. He had been one of the directors for rebuilding the capitol in 1748, and he was appointed in 1755 a director "to treat and agree with workmen, to erect a high and strong brick wall, to inclose the ... magazine and to building a guard house convenient thereto."<sup>57</sup> Due to Waller's previous experience, his opinion about the undertakers' work would have been taken seriously.<sup>58</sup>

On October 21, 1754, Benjamin Waller and others were appointed "to agree with workmen to rebuild the bridge over Queen's Creek at the place where the old bridge stands at the charge of the county."<sup>59</sup> Eight months later, a bond was recorded between Christopher Ford, joiner, who had bought five Waller lots in 1752, Matthew Moody, and the same gentlemen for £140 to rebuild the bridge. The directors

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<sup>57</sup>"An Act for raising the sum of forty thousand pounds, for the protection of his majesty's subjects on the frontiers of this colony," Aug. 29, 1755, Hening, ed., Statutes at Large, VI, 528.

<sup>58</sup>Waller offices were clerk of the General Court, (May, 1740) WMQ, 1st Ser., XXI (1912-1913), 96; WMQ, 1st Ser., III (1893), 180; vestryman, Bruton Parish, (1744), director of public hospital, (June, 1770), not appointed to deal with the undertakers, (July, 1770), in Patricia A. Gibbs and Linda H. Rowe, "The Public Hospital 1766-1885," 1974 [(Colonial Williamsburg Foundation Library Research Report Series-240, Colonial Williamsburg Foundation Library, Williamsburg, Virginia, 1990) 4-8; "An act constituting the Court of Admiralty," May 3, 1779, Hening, ed., Statutes at Large, X; and York County, Virginia, Judgments and Orders 2, 501, 98-101.

<sup>59</sup>"Oct. 21, 1754, Order," York County, Virginia, Judgements and Orders 2, 501.

agreed to pay Ford £69.10.0 if the one-hundred foot long span was completed within two weeks. James Speirs, another Waller lot owner, witnessed the bond.<sup>60</sup> Samuel Spurr, bricklayer, who later bought three Waller lots, was hired to build a wall around the Bruton Parish Church in July, 1752. Because Emory Hughes had failed to complete the work for £290, Spurr was paid £320 for his trouble.<sup>61</sup> Benjamin Powell, who undertook to build the public hospital, sublet the brickwork to Samuel Spurr. On October 3, 1771, Spurr advertised in Purdie and Dixon's Virginia Gazette for two or three journeyman bricklayers to work on the hospital. Additional work came Spurr's way when the court of directors decided to add "half a brick in thickness to the Walls of the Hospital." Significantly, action on the addition could not be taken until the entire court of directors was present.<sup>62</sup> Still another of Waller's lot buyers, Alexander Finnie, a tavernkeeper, petitioned the House of Burgesses in 1759 for compensation for improvements he had undertaken in August of that year to the military supply road west to Pittsburgh. The petition was referred to John Randolph, Richard Henry Lee, George Washington and Benjamin Waller whose recommendation that Finnie receive £100 was approved

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<sup>60</sup>"June 16, 1755, Bond," York County, Virginia, Deeds 6, 23-24.

<sup>61</sup>McCabe, "Sketches of Bruton Parish," Church Review, VIII (1856), 614.

<sup>62</sup>Gibbs and Rowe, "Public Hospital, 1766-1885," 20.

by the council and signed by Governor Francis Fauquier.<sup>63</sup>

Raised to emulate his father, Benjamin Waller followed the paternal path into a county clerkship, a city trusteeship, and the House of Burgesses. Along the way, he was befriended by Secretary Carter and Governor Gooch who rewarded his diligence with many appointments to high office. By becoming executor of several middling estates and selling convenient lots, he cultivated a group of upwardly mobile artisans and tavernkeepers, who could be relied upon to perform the services he required as a working bureaucrat in return for the favor of his influence. And yet, this canny man was not content to be a leader of local operatives, as his other alliances show. He patronized the public printers in the interests of efficiency in government and erudition in society. He socialized with the scholarly George Wythe, his kinsman by marriage, at Ann Pattison's tavern.<sup>64</sup> Waller trained in the law Robert Bolling of Chillowe, poet, essayist, and wealthy planter of Buckingham County, who was educated in England and "wrote equally well

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<sup>63</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses, IX, 139, 143, 152.

<sup>64</sup>"Jan. 1743/4; Jan. and Feb. 1744/5," Ann Coke Pattison Tavern Account Book, 1743/4-1748/9, Richmond, VA, Mss 5:3P2783:1, Virginia Historical Society, Richmond, VA; photostatic copy PH72, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

in Latin, French, and Italian."<sup>65</sup> Colonel John Waller wrote to thank his son, Benjamin, for "procuring the Clerks place for your Bror William on the resignation of your Bror Edmund." His father noted that the dispatch with which the business was carried out disappointed the "discontented who do not wish our family well."<sup>66</sup> But some deals were not so quickly arranged. Henry Wood, Waller's Goochland County friend, had to ask the clerk of the General Court whether the secretary of the colony had said anything about the favor for his son, probably a clerk apprenticeship. The correspondent reminded Waller that the matter was no longer in Wood's hands, "I must be passive and shall acquiesce."<sup>67</sup>

Inequality of land and office holding was a condition of life in mid-century Williamsburg. "... Opportunities were not equal and the framework for a degree of interdependence was in place."<sup>68</sup> Waller made up the

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<sup>65</sup>"The Ancestors and Descendants of John Rolfe with Notices of Some Connected Families: Bolling of Virginia," Virginia Magazine of History and Biography, XXII (1914), 332.

<sup>66</sup>"Dec. 3. 1751, Orders," Spotsylvania County, Virginia, Order Book 1749-1755. 139; "At the same court William Waller gave bond as surveyor of Spotsylvania County." cited by Torrence in Andrew Lewis Riffe with Clayton Torrence, "The Wallers of Endfield, King William County, Virginia, Part II," Virginia Magazine of History and Biography, LIX, (1951), 462.

<sup>67</sup>"Wood to Waller, n.d.," Waller Family Papers, #3, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

<sup>68</sup>Cathleene B. Hellier, "Private Land Development," 83.

difference between middle and upper gentry status by loyalty to his patrons and faithfulness to their trust. He formed a friendship with John Blair, president of the council.<sup>69</sup>

But Waller also formed alliances with up-and-coming tradesmen. Benjamin Powell, who became a York County justice, and Thomas Penman, carpenter and joiner, and public jailer, who bought William Keith's share of Waller's lands.<sup>70</sup> Waller probably assisted Thomasina Carter's sons to secure their economic advantage.

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<sup>69</sup>"[Blair] owned at least 16 city lots including his multiple lot residence with its notable garden," Emma L. Powers, "Landlords, Tenants, and Rental Property in Williamsburg and Yorktown 1730-1780," (M. A. thesis, College of William and Mary, 1990), 31.

<sup>70</sup>"Aug. 12, 1759, Will," York County, Virginia, Wills and Inventories, 20, 527, 528.

CHAPTER THREE  
EXECUTOR AND GUARDIAN

A choice of an executor or guardian evinces associations between those appointed and their clients. While the precise meaning of those associations cannot be known, they do posit a degree of trust between the decedent and the person chosen to handle his or her affairs. The choice of Waller, and his agreement to serve as executor or guardian for this particular group of clients is, in a sense, an index of the growing recognition of his responsibility, for the trend was from poorer clients earlier in his career to wealthier or more prominent clients later. In all, Waller assisted seventeen estates. The first six, all handled before 1750, were men and women of modest means. Even Matthew Hubbard, a former York County clerk who died in 1745, did not possess an estate equal to his office. But after 1750, the status of Waller's clients notably changed. Five were what could be termed entrepreneurs, successful merchants or well-to-do artisans who advanced to the top of their professions. Four were middle, local-level gentry and three were large landowners with colony-wide influence. These post-1750 clients



included an aldermen and a mayor, a justice of the peace, and even a member of the governor's council. With a few exceptions, the men who entrusted their estates or children to Waller's care progressed in status and wealth until Waller retired from practice as executor in 1773. The turning point came in 1750 and 1751 when Waller agreed to help administer the estates of the printer William Parks and James City County justice, Thomas Bray. (see Appendix II).

William Parks, Virginia's first permanent public printer, already established in Maryland, seized the opportunity to expand his business by opening a printing office in Williamsburg in 1730. At the Virginia capital, he kept a post office on lot 48 where he sold books and stationary, operated a bindery, and after 1736 printed the Virginia Gazette. In 1743, he had a paper mill built on a branch of College Creek, and by 1746, in addition to lot 48 in Williamsburg he owned 249 acres in James City County. Parks also owned a Hanover County estate appraised at his death at £545.11.2 and an interest in twenty-thousand acres in Orange County. He was receiving an annual salary of £280 as public printer by 1744, and five years later, the House of Burgesses agreed to pay him £1250 for printing the revised laws.<sup>1</sup> His choice of Benjamin Waller and William Prentis as his executors, (in addition to his son-in-law,

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<sup>1</sup>H. R. McIlwaine and J. P. Kennedy, eds., Journals of the House of Burgesses of Virginia (Richmond, VA, 1909), VII, 389, 401, 406.

John Shelton), shows the growing respect for Waller as a careful and responsible administrator.<sup>2</sup>

According to the will, Waller was to receive £20 as executor and was to settle several accounts left open.<sup>3</sup> Three years later, Parks' journeyman, William Hunter, paid the executors £359 currency or £288 sterling for "one of the larger and more adequately equipped [printing houses] of the period."<sup>4</sup> But next year, the gross worth of Parks' estate was only £600 with several large outstanding debts.<sup>5</sup> After William Parks' death, his wife, Eleanor Parks, renounced her deceased husband's will. She had received no mention in the will except that she and her son-in-law, John Shelton, should "carry on printing the laws of Virginia." All of Parks' estate, real and personal, was willed to his daughter, Eleanor Shelton.<sup>6</sup> His daughter and son-in-law,

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<sup>2</sup>Linda H. Rowe, "Peopling the Power Structure: Urban Oriented Officeholders in York County, Virginia 1699-1780," (M. A. thesis, College of William and Mary, 1989), 35. As justice and sheriff of James City County and alderman and mayor of Williamsburg, Parks had reached the top local offices.

<sup>3</sup>"Mar. 30, 1750, Will," York County, Virginia, Wills 20, 183.

<sup>4</sup>Lawrence C. Wroth, The Colonial Printer (Charlottesville, VA, 1931), 67.

<sup>5</sup>"June 17, 1754, Settlement," York County, Virginia, Wills 20, 323-326. John Shelton is listed as "acting ex[ecutor]." Benjamin Waller, "and other arbitrators," ordered 3 slaves, livestock, and furniture "delivered to Mrs. Packe by Agreement with Mr. Parks."

<sup>6</sup>"Mar. 20, 1750, Will," York County, Virginia, Wills 20, 183.

however, were unable to meet the debts of the estate. On October 15, 1754, John Shelton and his wife, Eleanor of Hanover County, Eleanor Parks and Benjamin Waller of the one part and Paul Tilman of Hanover County of the other part entered into an indenture. The 550 acres Parks had held in Hanover County "where the Court house of the said County is erected" had descended to the printer's daughter, but the tract was taken in an execution against Parks' estate by John Lidderdale, et al. merchants of Bristol. It was purchased by John Shelton, and mortgaged to Benjamin Waller, "for a considerable sum of money," but Shelton was unable to redeem the land; so he sold it to Paul Tilman for £1,000 current money. Part of this sum (£811.18.02 with interest) went to Waller to pay the balance of the mortgage, and the remainder went to John Shelton. Waller relinquished any claim to the land along with Eleanor Parks and Eleanor Shelton.<sup>7</sup>

The amount of interest, if any, Waller received for holding the mortgage is not given. Certainly, he stood to gain financially from the transaction. But his willingness to put up "a considerable sum of money," not less than £811,

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<sup>7</sup>"Indenture Between John Shelton and Eleanor, his wife of Hanover County, Eleanor Parks, widow of William Parks, and Benjamin Waller of the one Part and Paul Tilman of Hanover County of the other Part, Oct. 15, 1764," Shelton-Winn-Oliver Papers #24827, Archives Division, Virginia State Library, photostatic copy, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

on the Hanover County land implied a paternalistic interest in the printer's family. As Parks' executor, it seems likely that Waller protected the land from sale to preserve the estate for the heir. Waller also may have financed the mortgage out of gratitude for the printer's work.<sup>8</sup>

Thomas Bray, of one of the great land owning families of Virginia, was Benjamin Waller's neighbor on the tract known today as the Bassett Hall property. Bray's son, James, who inherited 1280 acres called "Littleton" and "Utopia" in 1744, married, and shortly afterward died. The property reverted to his father, Thomas, who died in 1751. While Thomas' will is not extant, his executors, Benjamin Waller and William Prentis, undertook to manage the estate. A ten year court battle ensued between James Bray's remarried wife and his married sister. The sister, Elizabeth Bray, who married Philip Johnson, appears to have inherited most of the lands.<sup>9</sup>

Waller was closely allied with Henry Wetherburn who was Waller's next estate client. Wetherburn parlayed a fortunate marriage to Mary Bowcock, a tavernkeeper's widow, in 1731, into a successful career as keeper of the Raleigh

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<sup>8</sup>Wroth, Printer, 190, states that the printer gained power in the community because "his office...took him far outside the artisan class to which he normally belonged."

<sup>9</sup>Mary A. Stevenson, "A Record of The Bray Family 1658-ca.1800," Research Report, Department of Historical Research, Colonial Williamsburg Foundation, Williamsburg, Virginia, 1963, 11.

Tavern. Not content merely to ply his trade, Wetherburn purchased lots 20 and 21 across from the tavern on Duke of Gloucester Street in 1738 and moved his business there five years later. He continued to acquire property, including eight lots at Capitol Landing. Perhaps Mary disapproved of her husband's free-spending ways. She may have hidden away something for herself in case Henry died first.<sup>10</sup> When she died in 1751, John Blair remarked of her husband, "He has found her hoard, they say."<sup>11</sup> Within ten days after Mary's funeral, Henry married Ann Marot Shields, daughter of one tavernkeeper and widow of another, James Shields. Ann's son inherited a plantation and "all [his father's] houses and lands in the city of Williamsburgh" when his mother died or married.<sup>12</sup> Henry Wetherburn was named executor of Ann's husband and he may have managed properties belonging to Ann's remaining children.<sup>13</sup> If he did, their holdings added to his influence in the game of property acquisition.

Wetherburn died late in 1760. An estate appraisal taken in December of that year details his personal property

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<sup>10</sup>Conversation with Patricia A. Gibbs and Emma L. Powers, May 10, 1994, Department of Historical Research, Colonial Williamsburg Foundation, Williamsburg, Virginia.

<sup>11</sup>July 3, 1751, "Diary of John Blair," William and Mary Quarterly, 1st Ser., VIII (1898-1989), 8.

<sup>12</sup>"Dec. 17, 1750, Will," York County, Virginia, Wills and Inventories 20, 195.

<sup>13</sup>Patricia A. Gibbs, "Shields' Tavern Memorandum, Feb. 25, 1986," Department of Historical Research, Colonial Williamsburg Foundation, Williamsburg, Virginia, 1-2.

in York and James City counties: his York County estate was valued at £1,236.6.11 including £826.6.11 in goods and £410.0.0 for eleven slaves while his total James City County evaluation was £708.19.0 with £168.19.0 in goods and £540 in slaves. (The number of slaves is not given). These goods and slaves were at "Windhills" and "Peters," (probably quarters). Wetherburn thus was worth almost £2,000 in personal property exclusive of real estate. His will allowed his "friends" William Prentis and Benjamin Waller £30 apiece as executors "for their care and trouble," and they were to give no security. He ordered them to spend up to £100 on the education of his wife's grandson, Harry Armistead "who now lives with me."<sup>14</sup>

Wetherburn, much like William Parks, was an aggressive, acquisitive entrepreneur. So too was William Hunter, the next person that requested Waller's fiduciary services. Hunter, born to a well-to-do Hampton merchant family,<sup>15</sup> learned the business of printing under William Parks, and succeeded him as public printer and postmaster. In fact,

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<sup>14</sup>"Nov. 13, 1760, Will," York County, Virginia, Wills and Inventories 21, 23-25; Mar. 16, 1761. Appraisement, York County, Virginia, Wills and Inventories 21, 36-43; Mar. 16, 1761, "Appraisement," York County, Virginia, Wills and Inventories, 21, 43-45.

<sup>15</sup>Virginia Gazette (Williamsburg, VA,) Oct. 19-26, 1739.

Hunter became deputy postmaster general.<sup>16</sup> When Hunter died in 1761, he left to his executors the responsibility for determining his natural son William's care. The executors, Benjamin Waller, Thomas Everard, and James Tarpley, were instructed to "enter into partnership with Joseph Royle who now lives with me" for the purpose of operating the printing business for the equal benefit of himself and William Hunter, Jr. until the latter came of age. Hunter Sr. left his son half the stock, profits, and advantages of the projected partnership with Joseph Royle and a legacy to Royle should he undertake it. The son also received all his father's "Stock in Partnership with James Tarpley together with all the Profits arising therefrom; as also my Houses and Lott in Williamsburgh, No. 48, provided he shall live to the Age of Twenty-one Years," (otherwise the property was to be divided among Hunter Sr's brother and sisters).<sup>17</sup> Of course, Royle agreed to the partnership and continued to operate the business until his death in 1766 as

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<sup>16</sup>McIlwaine and Kennedy, eds., Journals of the House of Burgesses, VIII, 30, 32. From Dec. 31, 1751, the public printer's annual salary was £300, Ibid. IX, 29 145. On Nov. 13, 1759, the public printer's annual salary increased to £350. A salary of £600 per annum was granted to Benjamin Franklin and William Hunter when they were appointed jointly "Deputy Postmaster and Manager of All His Majesty's Provinces and Dominions on the frontier of North America.... [Aug. 10, 1753]." Mary Goodwin, "The Printing Office," Research Report, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia, 1952, xviii.

<sup>17</sup>"Aug. 17, 1761, Will," York County, Virginia, Wills and Inventories 21, 70-73.

did subsequent printers until Hunter Jr. reached majority in 1775. But Hunter Sr.'s. executors were the vital link between son and partner. Their oversight continued with estate settlements yielding a gross value of £8,614 against debits of £8,554 in 1764 and a balanced statement at £1,811 in 1773.<sup>18</sup> William Hunter Sr. referred to them as "my Worthy Friends" and bequeathed each of them £100 and a mourning ring plus a ring each to John Hunter, Esqu., Mrs. Emelia Hunter, Benjamin Franklin, George Wythe, Nathaniel Walthoe, and William Small "as a Token of my Friendship."<sup>19</sup> Presumably, this circle of friends could be relied upon to sustain Hunter's son in case of need with local oversight resting upon the executors.

Guardianship of children implied a benevolent association between guardian and ward. Obviously, the management of the ward's financial estate benefitted the child, but in addition, proper guidance in behavior and education was frequently specified. The will of William Prentis, recorded the last day of 1761, manifests a concern for the welfare of his children. Until his wife's death, all William's real and personal property was for her use except for £7,114 set aside to be divided into seven parts:

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<sup>18</sup>"Oct. 15, 1764, Estate Settlement," Ibid, 214-217; "Mar. 1, 1773, Estate Settlement," York County, Virginia, Wills and Inventories 22, 154-157; Goodwin, "Printing Office," xx-xxx.

<sup>19</sup>"Aug. 17, 1761, Will," York County, Virginia, Wills and Inventories 21, 70-73.



one to the mother and one to each of the six children as they reached majority. Management of these shares was entrusted to William Prentis' eldest son, John, one of the executors. But John Prentis "must account to the executors regularly" according to the will, which thus codified the supervisory role of the two older executors, Benjamin Waller and Robert Carter Nicholas. These "friends" were also appointed guardians of the underage children and relieved of giving security for the execution of the will.<sup>20</sup>

The men who chose Waller to help administer their estates or oversee the care of their children during the 1750s and early 1760s were, with two notable exceptions, not members of Virginia's first families, or even the large landed planter class. They were, however, ambitious men who achieved sufficient wealth and position to put them above the level of the ordinary sort. Several held important county and city political offices. Two held posts of public trust at the provincial level. William Parks and William Hunter were public printers, while Hunter was deputy postmaster general. It is not surprising that these men who achieved their position through hard work and entrepreneurial skill would turn to Waller after he demonstrated convincingly his abilities by careful management of the estates of some less well-to-do decedents.

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<sup>20</sup>"Dec. 31, 1761, Will," York County, Virginia Wills and Inventories 21, 241-45.

The two exceptions during the middle years of Waller's career as an executor reveal something about his sense of obligation which was another aspect of the reputation for responsibility he had built. The first was Thomas Penman, a carpenter. Although he owned some town lots when he died in 1759, Penman's estate placed him below such neighbors as Parks, Hunter, and Prentis. Yet Penman was a dependable buyer of Waller's lands at a time when they had been ordered auctioned by court order in 1747 to satisfy creditors who were threatening to end Waller's speculative venture at the edge of town. It may be that when Penman requested Waller to administer his estate, Waller felt honor bound to accept. The other exception was his ward, Charles Carter of Corotoman, the son of his former patron, Secretary John Carter. His acceptance of this role may have also been prompted by the need to repay a debt.

On September 18, 1753, Charles Carter's guardians brought a suit against Edward Baker, and a jury awarded the plaintiffs £13.15.0 and costs.<sup>21</sup> Only Benjamin Waller among Carter's six guardians was no kin to the plaintiff. But, of course, Waller had been the protege and appointee of Carter's deceased father. Despite Tazewell's exaggeration of the secretary's role in Waller's rise, the grandson's myth-making contained more than a kernel of truth. A vast

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<sup>21</sup>"June 18, 1753, Order," York County, Virginia, Judgments and Orders 2, 245; "Aug. 20, 1753, Order," Ibid., 219; "Sept. 18, 1753," Ibid., 317.

difference in wealth and power separated the Carters from the Wallers and other middle gentry families whose influence was normally within only one or two counties. By contrast, the Carters, the Ludwells, and other long-tailed families had inter-colonial connections and held the highest offices in Virginia. It was no small thing to be sponsored by a member of such a family.<sup>22</sup> Carter, of course, benefitted as well from the expertise and reputation of the man his father had advanced.

With his association with Philip Ludwell, Waller reached the apogee of his career as executor. Born in 1716, the same year as Benjamin Waller, Philip Ludwell was one of the highest ranking gentlemen in the colony. His paternal grandfather and father, both named Philip, preceded him into the council where only nine families had sent three or more members.<sup>23</sup> On May 7, 1754, Ludwell was named in a grant to twenty-five gentlemen of three million acres on the Ohio River and its waters adjacent to the Ohio Company lands.<sup>24</sup> An appraisal after Ludwell's demise on March 25, 1767, in

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<sup>22</sup>Darrett B. and Anita H. Rutman, A Place in Time: Middlesex County, Virginia 1650-1750 (New York, 1984), 155-157.

<sup>23</sup>Charles Snyder, American Revolutionaries in the Making: Political Practices in Washington's Virginia (New York, 1965), 63.

<sup>24</sup>Benjamin J. Hillman, ed., Executive Journals of the Council of Colonial Virginia (Richmond, VA, 1966) VI, 699. On June 12, 1749, Benjamin Waller, John Shelton, and William Parks were listed among 18 grantees of 4,000,000 acres on New River, *Ibid.*, 697.

England credited him with three large plantations lying on the north side of the James River including the family seat, Greenspring, and one plantation on the south side.<sup>25</sup> He also owned a fine brick house and tenement in Williamsburg and several lots, two of which appeared on William Waller's map in 1749. Ludwell leased from Governor Dinwiddie the governor's land adjacent to his seat in Jamestown (originally a three-thousand acre tract) displacing landowners named in the indenture.<sup>26</sup> In his will of February 28, 1767, Ludwell divided his lands among his three daughters. His executors, Richard Corbin, Esquire, Receiver General of the colony, Robert Carter Nicholas, Treasurer of the colony, John Wayles, and Benjamin Waller, attorneys, were to become guardians of his two younger daughters if they should return to Virginia "during minority or unmarried." The executors were also to sell the household effects except two pieces owned by the oldest daughter, Hannah. This daughter was allowed "£100 to bring over to England and put in a way of getting their living two of my slaves named Jane and Sarah, daughters of Cress, to whom I promised their freedom for the faithful and unwearied care

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<sup>25</sup>"Appraisalment of the Estate of Philip Ludwell Esq. Decd.," Ludwell Papers, Virginia Historical Society, photostatic copy, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

<sup>26</sup>"The Governor's Land," Ludwell Papers, Virginia Historical Society, photostatic copy, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

in nursing my dear little Orphans from the death of their mother."<sup>27</sup>

The last three estates Waller managed in the early 1770s belonged to men who, while not nearly the social equals of Carter or Ludwell, were very much like the entrepreneurs and lesser gentry who turned to Waller as an executor and guardian after mid century. The first of these men was Nathaniel Walthoe. An immigrant to Virginia, Walthoe was named clerk of the council in October, 1743,<sup>28</sup> and he was soon a player in the game of local influence. Walthoe bought land and a storehouse from Robert Crichton on the north side of Duke of Gloucester Street in 1750 for £350 and held it for an unknown purpose until he sold it to a merchant in 1759 for a £50 profit and bought it back three years later at an £85 advantage, i.e., £35 less than the 1750 price. In June, 1764, Walthoe took a mortgage on a half acre lot, slaves, and a parcel of rural land belonging to John Bell and assigned it to John Perrin three years later.<sup>29</sup> Alexander Finnie, who in 1757 sold Walthoe the two lots where Christiana Campbell's tavern stands today,

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<sup>27</sup>Lothrop Withington, Virginia Gleanings in England: Abstracts of 17th and 18th Century Wills and Administrations (Baltimore, MD, 1980) 309-310.

<sup>28</sup>Wilmer L. Hall, ed., Executive Journals of the Council of Colonial Virginia (Richmond, VA, 1945), V, 130.

<sup>29</sup>"Aug. 20, 1764, Deed of Mortgage," York County, Virginia, Deed Book 7, 59-64; "May 16, 1767, Assignment," Ibid., 289.

defaulted on a mortgage to Walthoe. The deceased Finnie's livestock was sold off and also "a Negroe who has been used to waite on a Gentleman."<sup>30</sup> When Walthoe died in August of 1770, Benjamin Waller, one of his executors advertized "a House and a Piece of Ground thereto belonging, in the back street, behind the [Raleigh] Tavern, where Mr. Walthoe lived; and the Coffeeshouse in the main street, next to the Capitol where Mrs. Campbell lives."<sup>31</sup> Walthoe owned the two lots Finnie sold him on the east side of Eastern Street, a dwelling house and a piece of ground on Nicholson Street, and a coffee house on the main street when he died. He willed all his Virginia property to his sister in England, Henrietta Marmillod and her two daughters. But since Henrietta was married to a Frenchman, Marmillod, who now resided separately from her in Denmark, she was still technically feme covert and unable to accept her brother's estate. The House of Burgesses, taking cognizance of Henrietta's separated state, declared that she should dispose of the property as though she were feme sole if the king allowed.<sup>32</sup> Benjamin Waller, acting by power of

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<sup>30</sup>Purdie and Dixon, Virginia Gazette, May 18, 1769.

<sup>31</sup>Ibid., May 16, 1771.

<sup>32</sup>"An act to enable Henrietta Marmillod to sell and dispose of the estate devised to her by her brother Nathaniel Walthoe, esquire, deceased, notwithstanding her coverture," Feb. 11, 1772, 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, ([Richmond, VA, 1819-1823] Charlottesville, VA,

attorney on behalf of Henrietta and her daughters, sold lots 21 and 22 to Christiana Campbell in January of 1774 for £598.10.<sup>33</sup> One of Christiana's three sureties for this amount was Waller's former ward, Charles Carter of Corotoman, burgess of Lancaster County.<sup>34</sup> Waller's job as Walthoe's executor was made much easier because Walthoe's respected position as former clerk of the council assisted Waller in requesting special treatment for his heirs. Carter's cash and ties with Waller helped the executor find a middling buyer for the heirs' prime lots.

The next man who chose Benjamin Waller as his executor was merchant-tailor, Thomas Hornsby. Hornsby, like Henry Wetherburn made a fortunate marriage to a well-connected widow, Mary Hacker. She received ten city lots when she renounced Henry Hacker's will and was assigned her dower.<sup>35</sup>

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1969), VIII, 627-629.

<sup>33</sup>"Jan. [15], 1774, Deed," York County, Virginia, Deed Book 8, 385-86.

<sup>34</sup>"Jan. 16, 1774, Deed of Mortgage," Ibid., 387-389; McIlwaine and Kennedy, eds., Journals of the House of Burgesses of Virginia, XIII, 67.

<sup>35</sup>"Mary Hornsby," York County Project Biography, Department of Historical Research, Colonial Williamsburg Foundation, Williamsburg, Virginia; "Oct. 16, 1740, Will," York County, Virginia, [Orders], Wills and Inventories 19, 142. Henry left to Mary, his wife, use of "all his houses in Wmsbg..." until her death or remarriage. "Feb. 21, 1742/3, Valuation of real Estate to set apart the widow's dower," Ibid., 167. Thomas Hornsby and Mary, his wife received an allotment consisting of a "mansion house with the Kitchen, Meal house, Smoakhouse, Dary, Taylors Shop, Chaisehouse, Well & Garden..." and a third of the profits of the warehouses on Queen's Creek annually, 8 named slaves and

Hacker had died in August, 1742 and his will had been presented the following month, but by December 20, 1742, Mary had married Thomas Hornsby, who backed her renunciation of the will. The will stated that the lots reverted to two male heirs when Mary died, and it is assumed that she had died by the last day of 1750 when the heirs sold one of the lots. Thomas Hornsby never looked back after Mary's death. By February 1756/7, he had remarried, and he financed nine mortgages and became a creditor, and appraiser of estates. He was also a regular jurymen and twice had been chosen executor. His will drawn in March, 1770, named two nephews as coexecutors with Benjamin Waller and John Prentis. There is no mention of a wife or children. His nephew, Joseph, received "all my houses and lots in Williamsburg where I now live," furniture, livestock, "all my plantations in James City County," and all the slaves save one both there and at his York County plantation. There were also handsome legacies to several other family members.<sup>36</sup> Thomas Hornsby's estate appraisal totaled £11,573.05. It was based on his property in town and at three plantations: one in York County and two in James City County. Interestingly, £5,160 of his estate was listed as cash which would have

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1/3rd of the slaves of the estate.

<sup>36</sup>"Mar. 9, 1770," Ibid., 22, 76. Henry Fry received a legacy of £200. Henry was the son of Joshua Fry, deceased, former faculty member at the College of William and Mary, mapmaker, military officer, and burgess of Albermarle County.



covered all but £600 of his £5,760.11.0 outstanding liabilities.

Josiah Johnson, the last man to choose Waller as executor, was not wealthy, but he was a man of social standing. He came to Virginia in 1767 to be the professor of humanities and master of the grammar school at the College of William and Mary. In 1772 he was made Rector of Bruton Parish.<sup>37</sup> His marriage to Mildred Moody, a woman from a well-established local family in 1768,<sup>38</sup> and his election as rector were, singular marks of success. A clue to his character appears in the humble way his will directs his body to be buried "in the most simple manner possible that suit my station and situation." After leaving to his "most dear, most amiable, and most worthy wife," all the real or personal estate "I may happen to die possessed of," pending the payment of debts, Johnson named an impressive array of executors including his "most kind friends," namely, "The Honble. Commessary Camm, the present Treasurer, Mr. Nicholas, Mr. Benjamin Waller, clerk of the General Court, Jacquelin Ambler esq. Collector of York Town, and

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<sup>37</sup>Earl Gregg Swem, comp., Provisional List of Alumni, Grammar School Students, Members of the Faculty and Members of the Board of Visitors of the College of William and Mary in Virginia from 1693 to 1888 (Richmond, VA., 1941), 49; Purdie and Dixon, Virginia Gazette, Mar. 3, 1768; Ibid., July 30, 1772. Ibid., Apr. 8, 1773.

<sup>38</sup>Ibid. May 6, 1768. Mildred's second marriage to a prominent judge of Accomac County evinces her high social standing, see WMO, 1st Ser., XXIII (1914), 71.

Doct. James Carter of Williamsburg."<sup>39</sup> He desired each of them to accept a mourning ring valued at not less than £2 or more than £5 from an estate appraised at £514.07.01.<sup>40</sup> Apparently, these gentlemen returned his esteem, for in the notice of his demise they commented that he "had a most benevolent Heart, and was an excellent Scholar."<sup>41</sup>

Waller's last two terms as executor draw attention to his advocacy of an exemplary clergy and fiscal conservatism, which were hallmarks of his moderate, responsible nature. His concern about the examples the Anglican clergy set was expressed early in a 1744 letter to Commissary Dawson. Waller clearly meant the clergy when he declared that if "the Heads of the Churches would join pious Examples to gentle and charitable Persuasions, those poor Souls who are lead by any blast of vain Doctrine would be more wrought upon than by Severity which they will call Persecution for Conscience Sake."<sup>42</sup> His concern for moderation in church matters is clear in his support of Robert Carter Nicholas's candidate, the Rev. John Bracken, to replace the deceased Rev. Johnson. The unorthodox views

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<sup>39</sup>"Mar. 20, 1773, Will," York County, Virginia, Wills and Inventories 22, 164.

<sup>40</sup>"May 21, 1773, Estate Appraisement," Ibid., 234-237.

<sup>41</sup>Purdie and Dixon, Virginia Gazette, April 8, 1773.

<sup>42</sup>"Benjamin Waller to William Dawson, Jan. 30, 1744," Dawson Papers 18-20, Library of Congress, microfilm, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

of Bracken's chief rival, the Rev. Samuel Henley, led Nicholas and other conservative vestrymen to actively oppose Henley's appointment as Rector of Bruton Parish in 1773.

As vestryman, Waller held fast to the church he had always known. He probably thought of the worship of the Book of Common Prayer as the bulwark of a moral society just as sound credit was the best defense of a robust economy. As a burgess (1744-1761) he was described by Governor Francis Fauquier as "frequently employed in drawing the acts."<sup>43</sup> Waller's well-established record of participating in preparing bills applied as well to legislation funding the Seven Years' War. During a four year period, (1754-1758), the James City County burgess was named nine times to committees to draft acts for defense of the colony. Waller was appointed in 1755 a director to manage a lottery of £6,000 for the war effort and was a committeeman for the drafting of military supply bills of £20,000, £40,000 and £20,000 in 1754, 1755, and 1756 respectively for a total of £86,000. He also helped settle claims against the treasury for soldiers' pay and the expenditures of military contractors. His efforts to insure sound financial backing of the war with France were rewarded by a reputation for

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<sup>43</sup>Governor Fauquier to the Lords Commissioners of Trade, Sept. 1, 1760, McIlwaine and Kennedy, eds., Journals of the House of Burgesses, IX, 287.

fiscal integrity.<sup>44</sup>

Since his preference for payment of debts at par value was well known, Waller was expected to be cautious in the issuance of paper money, and he was appointed to sign the paper currency five times from 1757 to 1775.<sup>45</sup> Despite the treasurer, John Robinson's loan of £103,000 to a number of his gentlemen friends in paper currency which should have been burned, only £206,757 was outstanding in 1767 of the grand total of £540,000 which had been issued to finance the war.<sup>46</sup> Waller was a member of the committee to superintend the receipt and burning of retired notes four times.<sup>47</sup>

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<sup>44</sup>McIlwaine, ed., Journals of the House of Burgesses, VIII, 181, 266, 302, 328, 356, 482, Ibid., IX, 26, 44, 139; "An Act for raising the sum of £20,000 for the protection of his majesty's subjects against the insults and encroachments of the French," Oct. 17, 1754, Hening, ed., Statutes at Large, VI; 435; 423; "An Act for raising the sum of £25,000, for the better protection of the Inhabitants on the Frontiers of this Colony..." Mar. 25, 1756, Ibid., VII; 9. 13.

<sup>45</sup>"An Act for granting an aid to his majesty for the better protection of this colony..." Apr. 14, 1757, Ibid., VII, 69, 83; "An Act for the defense of the Frontiers of this Colony..." Sept. 14, 1758, Ibid., VII, 171, 175; "An Act for granting an aid to his majesty, for the better protection and defense of this colony..." Feb. 22, 1759, Ibid., VII, 255, 259, 260; "An Act for raising the sum of £32,000 for the relief of the garrison of Fort Loudoun in the Cherokee country," May 19, 1760, Ibid., VII, 355, 360; "An Act for granting an aid to his majesty..." Mar. 30, 1762, Ibid., VII, 495; 498.

<sup>46</sup>Isaac S. Harrell, "Some Neglected Phases of the Revolution in Virginia," WMO, 2nd Ser., V (1925), 168.

<sup>47</sup>"An Act for granting an aid to his majesty for the better protection of this colony..." Apr. 14, 1757, Hening, ed., Statutes at Large, VII, 69, 84; "An Act for granting the sum of £20,000, for the further security and protection

There is no evidence that he knew of Robinson's unauthorized loans or that he overlooked them if he had. It is more likely that Robinson kept Waller and his fellow committeemen in the dark about what he was doing. Waller also served on the committee to examine the state of the treasury in 1766.<sup>48</sup> In fact, his grandson credited him with detecting the fraud in the treasury.<sup>49</sup> Although Tazewell's claim cannot be verified, a restoration of faith in the colony's credit was certainly to Waller's advantage. With a view to that end, Waller joined Richard Corbin, Philip Ludwell, and William Nelson in backing the fiscal conservative Robert Carter Nicholas for the treasurer's post.<sup>50</sup>

The problem with the money was that Virginians were buying too many English goods to maintain an equilibrium between debits and credits. As Virginians' debts to British

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of this colony," Mar. 4, 1760, Ibid., VII, 347, 353; "An Act for further continuing the Regiment in the Service of this Colony," Nov. 3, 1761, Ibid., VII, 463, 466; "An Ordinance for appointing, commissioners to settle the account of the militia lately drawn out into actual service, and for making provision to pay the same, as well as the expense of raising and providing for the forces and minute-men directed to be embodied for the defense of this colony," July 17, 1775, Ibid., IX, 61, 70.

<sup>48</sup>"An Act for appointing a Treasurer," Nov. 6, 1766, Ibid., VIII, 211, 213.

<sup>49</sup>Linda Rees Heaton, "Littleton Waller Tazewell's Sketch of His Own Family...1823: Transcribed and Edited, (M. A. thesis, College of William and Mary, 1967), 137.

<sup>50</sup>Jeffrey Lewis Scheib, "Richard Corbin Letterbook, 1758-1760" (M.A. thesis, College of William and Mary, 1982), 28.

merchants soared, there was increasing public pressure to find sterling credits or hard currency to meet these debts. Furthermore, the adverse balance of payment was depreciating the value of Virginia currency relative to sterling. In 1773, Robert Carter Nicholas complained that he could not keep the usual reserve of £15,000 or £20,000 in bullion in the treasury because it was drained to meet the English debts.<sup>51</sup>

Another example of Waller's fiscal responsibility can be seen in his efforts to assist his British clients in recovering their outstanding debts during the troubled years of the Revolution. After 1776, the fair treatment of British creditors was not popular. In an effort to appear to honor those debts, while at the same time easing the burden for Virginians, the assembly passed the Sequestration Act in 1777. This act allowed Virginians to retire prewar debts to British subjects by depositing paper money in the state loan office. Waller knew that this act would allow Virginians to pay off sterling debts with a currency worth less than the money borrowed. To accept paper in repayment of his clients loans would result in sizable losses to them. Yet to wait for better terms after the war was over was equally risky. In the end, Waller took advantage of the

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<sup>51</sup>Harrell, "Revolution in Virginia" WMQ 2nd Ser. V (1925), 166 cites Robert Carter Nicholas's letter to Purdie and Dixon, Virginia Gazette, Sept. 30, 1773. See also WMQ, 1st Ser., XX (1912), 257.

repayment opportunities the Sequestration Act provided. He admitted to clients Davison and Newman that one reason he did so was the "danger of being accounted a Tory and treated accordingly in case of refusing the Currency." But more importantly he also knew that at the rate paper money was being issued, its worth was bound to collapse. He gambled that by depositing the repayment of his clients loans with the Commonwealth he would be able to secure them from a "total Loss." Fortunately for him and his clients, his gamble paid off. As he reported to Davison and Newman, Virginia, in 1781, repudiated its paper money and called it in at a depreciated rate of one thousand to one. Only those monies already deposited would retain their true nominal value.<sup>52</sup> In all, Waller deposited £14,705, the largest amount of any individual, in the state loan office for seven British merchant firms.<sup>53</sup>

Waller was the quintessential middle man. He was loyal to the king, the church, his greater and lesser friends. He

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<sup>52</sup>"Benjamin Waller to Davison and Newman, July 28, 1783," T. 79/32, Virginia Colonial Records Project, Colonial Williamsburg Foundation Library, Colonial Williamsburg Foundation, Williamsburg, Virginia.

<sup>53</sup>Emory G. Evans, "Private Indebtedness and the Revolution in Virginia 1776 to 1796, WMO, 3d Ser., XXVIII (1971), 355. 353n. See Journal of Receipts Jan. 15, 1777 - Apr. 2, 1782, Virginia State Library; Harrell, "Revolution in Virginia, WMO, 2nd Ser., V (1925), 168, cites auditor's Cash Book 1778-1780, Public Record Office, C. O. 5,1344, Library of Congress Transcripts.

believed in the Book of Common Prayer, the Law, and a sound economy, but he was flexible. In spite of the assertive entrepreneurs he associated with, he knew when to retreat. Littleton Waller Tazewell states that Waller declined reelection to the House of Burgesses in 1761 because "he did not think it right to oppose the measures of the [British] administration and could not reconcile it to himself to oppose those proposed by his countrymen...."<sup>54</sup> Waller was caught in the middle of a conflict which he did not make and in which he felt out of place. He was a man wedded to a past comfortable age. His ten children married well to persons with proper middle and upper gentry status: Bousch, Camm, Corbin, Macon, Page, Taylor, Tazewell, and Smith. Three of Waller's sons followed family tradition to become county clerks. The same three lived in houses on lands inherited from their father. Waller educated his grandson in classical studies and family lore. Measured against the model gentleman, Waller met the criteria of the upper middle gentry in every particular including the wealth he attained by shrewd speculation. His unwavering fidelity to the responsibilities entrusted to him by great gentlemen, entrepreneurial and professional men, artisans, and middling sorts gained him a well-earned reputation for fiscal responsibility and moderation in money and church matters. He was rewarded by long terms in local and provincial office

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<sup>54</sup>Heaton, "Tazewell's Sketch," 136.



and repeated requests for his services as executor and guardian. With a few exceptions, the decedents who chose him to manage their estates rose in wealth and social standing from 1739 to 1773 attesting to the increasing trust he had earned. Even during the Revolution, Waller hewed to the line of fiscal integrity working indefatigably to obtain the best possible terms for his British merchant clients.

Nothing had changed in the 1780s but everything had changed. When Benjamin Waller died in 1786, the royal regime and the established church were gone. The conflicts begun in the seemingly serene Augustan age had come to a head in the Revolution, and there was no longer any doubt which direction the new nation had established. The notion of oligarchy had given way to vox populi; gentlemanly moderation had been replaced by opportunistic pursuit of wealth; the well born had been eclipsed by the born anew.

APPENDIX I

STUDENTS KNOWN TO HAVE ATTENDED THE COLLEGE OF WILLIAM  
AND MARY DURING WALLER'S YEARS, 1726 TO 1733 OR 1734

<u>Name</u>	<u>County/Residence</u>	<u>Later Office</u>
Carter Burwell	James City	Burgess
George Carter	Nomini Hall	
Richard Kennon	Charles City	Burgess
Philip Ludwell, III	Jamestown	Burgess* Councilor
Bernard Moore	King William	Burgess
Beverley Randolph	Williamsburg	Burgess
Beverley Randolph	Henrico	
Peter Randolph	Henrico	Burgess Councilor
William Randolph	Henrico	Burgess
William Randolph	Goochland	Burgess
Robert Tucker	Norfolk	Burgess
Ralph Wormley	Middlesex	Burgess

\* Earl Gregg Swem lists Ludwell as attending the college in 1736, but since Waller and Ludwell were the same age, their attendance probably overlapped. Earl Gregg Swem's A Provisional List of Alumni, Grammer School Students, Members of the Faculty, and Members of the Board of Visitors of the College of William and Mary in Virginia From 1693-1888 (Richmond, VA, 1941), 5-45, and the list in the History of the College, 1660 to 1874 (Richmond, VA, 1874), 83-84, were verified against known and approximate dates of birth in Lyon G. Tyler's Encyclopedia of Virginia Biography I. and II. (New York, 1915), and the biographical files of the York County, Virginia, Records. Office holding was

verified in H. R. McIlwaine and John P. Kennedy, ed., Journals of the House of Burgesses 1742-1769 (Richmond, VA, 1906, 1909), VII-XI., and Wilmer L. Hall and Benjamin J. Hillman, Executive Journals of the Council of Colonial Virginia 1739-1775 (Richmond, VA, 1945, 1966), V, VI.

APPENDIX II

ESTATES FOR WHICH WALLER SERVED AS EXECUTOR

<u>Name of Deceased</u>	<u>Occupation/Status</u>	<u>Waller Named</u>
1. Samuel Hyde*	Planter	1739
2. Thomasine Carter	Widow	1743
3. Matthew Hubbard*	Clerk of York County	1745
4. Agnes Hilliard	Widow	1746/7
5. Ralph Graves*	Planter	1749
6. John Collett**	Doorkeeper of Council	1750
7. William Parks	Public Printer, Postmaster	1750
8. Thomas Bray	Magistrate	1751
9. Charles Carter*	Burgess	1753
10. Thomas Penman*	Carpenter/Joiner, Public Jailer	1759
11. Henry Wetherburn	Tavernkeeper	1760
12. William Hunter	Deputy Postmaster General	1761
13. William Prentis	Merchant, Alderman	1765
14. Philip Ludwell, III	Member of Council	1770
15. Nathaniel Walthoe	Clerk of Council	1771
16. Thomas Hornsby	Merchant-Tailor	1772
17. Josiah Johnson	Rector, Bruton Parish Church	1773

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\* Waller also served as legatee, trustee, guardian

\*\* Waller refused executorship

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