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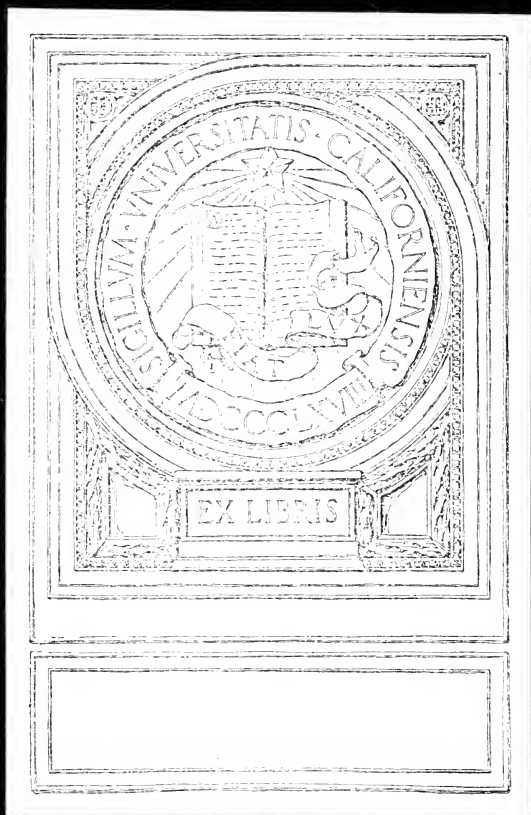
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UNIV. OF  
CALIFORNIA

# NOTES

ON

# COLLEGE CHARTERS



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## NOTES ON COLLEGE CHARTERS†

### LIST OF COLLEGES ESTABLISHED IN UNITED STATES PRIOR TO 1820.

The following are included in the notes:

- \*Harvard University, Mass. (1638)
- \*Yale University, Conn. (1701)
- University of Pennsylvania. (1740)
- Princeton University, N. J. (1746)
- Washington & Lee University, Va. (1749)
- Columbia University, N. Y. (1754)
- Brown University, R. I. (1764).
- Rutgers College, N. J. (1766)
- Dartmouth College, N. H. (1769)
- \*Dickinson College, Pa. (1783)
- Williams College, Mass. (1793)
- Bowdoin College, Maine. (1794)
- \*Union College, N. Y. (1795)
- Middlebury College, Vt. (1800)
- \*Hamilton College, N. Y. (1812)

The following are not included in the notes:

- Hampton-Sidney College, Va. (1776).
- Washington College, Md. (1783).
- University of Nashville, Tenn. (1785).
- St. Johns College, Md. (1789).
- Georgetown University, D. C. (1791).
- Greeneville & Tusculum College, Tenn. (1794).
- Washington College, Tenn. (1795).
- Washington & Jefferson College, Pa. (1802).
- Moravian College, Pa. (1807).
- Mount St. Mary's College, Md. (1808).
- Allegheny College, Pa. (1815).
- Colgate University, N. Y. (1819).
- Maryville College, Tenn. (1819).

OTHER COLLEGES OF LATER DATE INCLUDED IN  
THE NOTES.

\*Amherst, Mass. (1821)

\*Trinity, Conn. (1823)

\*Wesleyan, Conn. (1831)

The \* denotes that the college has an alumni representation on its governing board. In the case of Harvard, Yale, and Amherst this was secured to the alumni by transfer of such appointing power as the charters of these institutions accorded to the State. In several other colleges nominations to trusteeship are made by the alumni.

The above lists do not include colleges now maintained as state institutions.

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†Prepared by Thomas S. Barbour; read and approved by George E. Horr; submitted as a Report to the Committee on Charter Revision, February, 1910; subsequently submitted for verification to officials of the several colleges.

## HARVARD UNIVERSITY (1638)

Harvard College originated in action of the General Court or Legislature of the Colony of Massachusetts Bay in 1636, when suffrage was restricted to members of the Colonial Church. In 1637 twelve of "the most eminent men of the Colony" were appointed by the General Court "to take order for a college at Newtowne" (Cambridge). In 1642 the general administration of the college was committed to a Board of Overseers which included "the Governor and magistrates of the Colony" and "the teaching elders" of the six towns "next adjoining" the locality of the college.

The Board of Overseers having proved too large for effectiveness, a charter was granted in 1650, twelve years after the founding of the college, by which the college was made a Corporation under the name "President and Fellows of Harvard College." The Corporation included the president, five fellows and a treasurer, and was self-perpetuating. It was provided "that all orders and by-laws of the Corporation shall have the consent of the overseers."

After the War of the Revolution, in 1780, when the constitution of the new Commonwealth of Massachusetts was framed, articles were introduced "securing to the president and fellows of Harvard College the perpetual enjoyment of all their vested rights and powers" and "providing for" the organization of the Board of Overseers. From the outset the Corporation was held to be free from control by the civil power except as this was exercised by the Board of Overseers who continued, ex-officio, representative of the State and of the Congregational churches, which, after extension of the civil suffrage under the charter of King William in 1692, were separated from the colonial organization. The Board of Overseers, thus composed originally of representatives of the State, was from the outset subject to legislative control. The constitution of 1780, in the article relating to overseers, provided that all power of control resident in the colonial legislature should be recognized as transferred to the legislature of the Commonwealth, and that nothing in the provisions of the act should be so construed as to prevent the legislature from exercising such power as it deemed conducive to the advantage of the University.

In 1810, by action of the legislature, the Board of Overseers was made mainly elective, instead of ex-officio. It was provided that,

in addition to the Governor, Lieutenant-Governor and Councillors, the President of the Senate, the Speaker of the House, fifteen ministers of Congregational churches, and fifteen laymen, all resident in the State, should be chosen by ballots of the Overseers. It was provided that this act should take effect when ratified by the Overseers and the Corporation.

Two years later, in 1812, the act of 1810 was repealed by the legislature. This action was strongly resisted by the Corporation which urged that its inviolable rights were invaded by any change made without its consent in the constitution of the body to whose control it was subject. The protest of the Corporation prevailed, and in 1814 the act of 1812 was repealed and the act of 1810 again became operative. A provision prevailing prior to 1810 was restored, that members of the Senate of the Commonwealth should be members of the Board of Overseers. All changes made since 1814 by the legislature have been made with the concurrence of the governing boards of the institution.

In 1834, when the denominational restrictions in the choice of overseers was removed, membership in the Board of Overseers was opened "to all denominations of Christians." In 1851 provision was made for the grouping of the members of this board into six classes to be chosen by the legislature for a service of five years each. In 1865 organic connection between the college and State ceased in the passage of an act by which vacancies in the Board of Overseers were to be filled by the alumni of the college. In 1880 residents of other States were made eligible to appointment.

The Board of Overseers now consists of thirty members divided into six classes and chosen by the alumni. The Corporation continues in its original form, acting under the original charter of 1650 confirmed by the special section embodied in 1780 in the constitution of the State.

#### YALE UNIVERSITY (1701).

Yale College, like Harvard, originated as a feature of the colonial life. It was, however, unlike Harvard in that at the date of its founding civil suffrage was no longer restricted to church members. The original charter, granted by the General Assembly



of the Colony of Connecticut in 1701, contemplated a collegiate school, which at the first was established for a time in Saybrook, Connecticut. Ten ministers of the colony, chosen apparently by their fellow ministers with the general consent of the people, were empowered as trustees to carry on the school "within his Majesty's Colony of Connecticut," and to perpetuate their own body. By an additional act in 1723, the "Rector" of the school was made a trustee ex-officio. In 1745 the present charter was granted by the General Assembly. This charter reviews the action granting the preceding charters and recognizes the existing board of eleven members with the provision that "they and their successors shall and may elect and appoint a president or fellow in the room and place of any who may die."

In 1763 an attempt was made to secure by action of the Legislature appointment of a body of Overseers for control of the work of the Trustees. The effort was successfully resisted as an invasion of the chartered rights of the college. But in 1792, a grant of money was proffered by the State and was accepted upon the condition, "that the Governor, Lieutenant-Governor and six senior assistants in the Council of this State" should be added to the Board of Trustees, constituting with them a single corporation. This proposition, apparently after much debate, was accepted by the college. In accepting it the college secured from the State an act by which self-perpetuating power was continued to the original group of Trustees, and this was now definitely declared to be perpetual. "In case of vacancy, by the death, or resignation of any of the present Fellows of said college, and their successors, or in any other way, every such vacancy shall forever hereafter be supplied by them, and their successors, by election..."

At a later time, six senior members of the Senate of the State were substituted for the six senior members of the Council in the group of trustees added to the body in 1792. In 1872, by request of the Corporation, an act was passed providing for the substitution of representatives chosen by the alumni in the place of the six Senators of the State.

The Corporation is now composed of nineteen members comprising (1) a self-perpetuating group—the president and ten Fellows

who are officially known as "Successors of the Original Trustees," (2) six members elected by the alumni from graduates of five years' standing, who serve for a term of six years each, (3) the Governor and Lieutenant-Governor *ex-officiis*. The entire Corporation acts in the choice of the president of the University, though not acting in the election of the other ten fellows included in the self-perpetuating group.

An official of the college writes, "There is no denominational name in the charter or any of the official legislative documents regarding Yale. As a matter of fact, the Successors of the "Original Trustees," until comparatively recently, were all Congregational ministers of Connecticut. This was because the Original Trustees were Congregational ministers, they being the only clergymen in the State at the time, and naturally the leaders in education. At present two of the Successors of the Original Trustees are laymen, and one is not a Congregationalist. Yale has always been legally an entirely undenominational institution, but it has never forgotten, and it is to be hoped never will forget, the obligation which it is under to the Congregational ministers of Connecticut, to whom its strength in its early days was mainly due."

## UNIVERSITY OF PENNSYLVANIA (1740).

In 1749 twenty-four "public spirited citizens" of Philadelphia associated themselves for the purpose of establishing an academy, thereby "laying a foundation for posterity to erect a seminary of learning more extensive and suitable to their future circumstance." A building constructed under a trust established in 1740 and intended for use as a "charity school and a house of public worship" was conveyed to them, and the academy was opened in 1750. Two years later a charter was secured from Thomas Penn and Richard Penn, proprietaries and governors-in-chief of the province of Pennsylvania. Twenty-four Trustees were created who with "such others as shall be from time to time chosen, nominated or elected in their place and stead shall be one corporation" "to have continuance forever" by the name of the "Trustees of the Academy and Charitable School in the Province of Pennsylvania."

After two years the proprietaries were asked to convert the academy into a college. Authority was given to the Trustees of the academy to organize the institution. Later (1761-1764) funds were raised in England for an endowment for the college.

In 1764 a letter was received by the Trustees from the Archbishop of Canterbury, Thomas and Richard Penn, and others, advising them as to their future procedure. This letter, after stating that the institution was originally founded and carried on for the benefit of a mixed body of people and that its faculty represented several Christian communions, advised that, as jealousies had arisen lest the foundation should be narrowed and some party exclude the rest or one be put on a worse footing than others, "a fundamental rule or declaration be adopted as a safeguard against this danger." The Trustees adopted a statement declaring that they would "keep this plan closely in their view and use their utmost endeavors that the same be not narrowed nor the members of the Church of England or those dissenting from them," (in future election of members to the offices mentioned in the letter) "be put on any worse footing in this seminary than they were at the time of obtaining the royal brief."

In 1779 this resolution was construed by the Legislature as a narrowing of the foundation of the institution and was made a pretext for confiscating all rights and properties of the college which were given to a new organization "Trustees of the University of the State of Pennsylvania." Ten years later these rights and properties were restored. In 1791 an act was passed amalgamating the old college with the new university under the name "The University of Pennsylvania." Each of the Boards was to elect twelve persons who with the Governor as president should constitute the new Corporation.

Since 1791 no change has been made in the Constitution of the Corporation or in the Charter of the University.

## PRINCETON UNIVERSITY (1746).

Princeton University, known until 1896 as the College of New Jersey, was founded by members of the Presbytery of New York which then included New Jersey. Chartered by the

Province of New Jersey in 1746, the college was opened at Elizabethtown in 1747. No copy of the original charter is recorded, but from an official summary published in the Pennsylvania Gazette and the Pennsylvania Journal in 1747 it appears that the Board of Trustees consisted of twelve members, (three laymen and nine Presbyterian ministers) with power of "perpetual succession to continue forever," and also power to make any laws, etc., for the government of the college not repugnant to the statutes of the realm and the laws of the Province, "provided, that no person be debarred any of the privileges of the said college on account of any speculative principles of religion; but those of every religious profession" to have "equal privilege and advantage of education in the said college." No denominational restriction was placed upon the Trustees.

In 1748 a new charter was granted, increasing the possible number of trustees to twenty-three, the Governor of the Province to be included *ex-officio*. The college then was removed to Newark and in 1757 to Princeton. The new charter gave the Trustees power to fill vacancies "so that the whole number of Trustees exceed not twenty-three," and it provided that the Corporation "may have perpetual succession and continue forever." In this charter also no religious test or denominational restriction of any kind was required, nor was any proportion between lay and clerical trustees specified. Of the original trustees under this charter eleven (including the Governor) were laymen, and twelve were Presbyterian ministers. Among the laymen were represented the Presbyterian, Episcopal and Quaker denominations.

Changes in the charter, or acts of legislature affecting constitution of all colleges in the State appear in 1780, 1781, 1786, 1796, 1799, 1864, 1866, 1868, 1889, 1894, 1896, 1901 and 1905.

The changes relate to the number constituting a quorum, to extension of the limit of property holdings and to increase in the number of Trustees, — which was twelve in 1746, and twenty-three in 1748; in 1868 the number was increased to twenty-seven, and in 1901, by a general act of the legislature applying to all colleges in the State, was made subject to the will of the governing body.

The Board of trustees consists now (1910) of the Governor of the State, the President of the University, twenty-five life trustees who fill their own vacancies, and five alumni trustees, the latter elected one each year by the alumni of the University for a term of five years and eligible to re-election.

Except for the ex-officio membership of the Governor of the State in the Board of Trustees, the University has no connection with the State.

## WASHINGTON AND LEE UNIVERSITY (1749).

Washington and Lee University, Lexington, Virginia, grew out of an institution known at first as Augusta Academy. The Charter of the college dates from 1782. In 1796 gifts of valuable stock were made by General Washington, which were changed by the Legislature into an interest-bearing fund of \$50,000, the name being changed to Washington College. In 1865 General Robert E. Lee became President, and after his death, in 1870, the institution received its present name. The records furnished by the officers of the college do not give the provisions of the original charter.

In January, 1876, an act was passed by the Virginia Legislature modifying the charter. A group of fifteen trustees was continued with the provision that they and their successors should fill vacancies so that their number "shall not exceed fifteen." It was provided further that "They may associate with themselves such other persons as associate Trustees not exceeding nine in number" as they might deem advisable, who should be elected "in such manner and for such term and shall have such qualifications" as the Board of Trustees should prescribe. The act was to be in force after its acceptance by a majority of the Trustees.

The act of the General Assembly was adopted by the Trustees with provision for appointment by the Board of three Associate Trustees who were to hold their office for three years under election by the Board, not more than one being a resident of any one State and the choice being confined so far as practicable to the alumni of the University.

## COLUMBIA UNIVERSITY (1754).

The institution was originally chartered by King George II. in 1754, under the name "The Governors of the College of the Province of New York in the City of New York in America" and was popularly known as "King's College." The movement originated in action of the General Assembly of the Colony in 1746, which authorized the opening of a lottery whose proceeds should be held for the purpose of "founding a college for the education of youth in such manner as should thereafter be directed by the Governor, Council and General Assembly."

The charter approved the acceptance of a "parcel of ground" given as a site for the college by the body now known as "Trinity Church." It constituted a group of Trustees which included the Archbishop of Canterbury, the Lieutenant-Governor of the Province of New York, and others in civil and ecclesiastical positions among whom were the Rector of Trinity Church and the ministers of the "Reformed Protestant Dutch Church," the "Lutheran Church," the "French Church," the "Presbyterian Congregation," to whom were to be added the president of the college and twenty-four other persons. The Trustees were given power to elect a president who should be "in communion with the Church of England" and to elect successors to their number in so far as these did not hold their membership by virtue of their official or ecclesiastical position. The charter provided that no person should be excluded from the College on account of his religious views.

In 1784, after the interruptions suffered during the War of the Revolution, "The Regents of the University of the State of New York" were incorporated, and the control of the college was vested in this corporation, the name of the institution being changed to "Columbia College."

The Governor and other leading officials of the State were constituted perpetual Regents by virtue of their offices, other Regents to the number of twenty-four being created and provision being made that "the clergy of each of the religious denominations" of the State might name an additional Regent. Vacancies were to be filled by the Governor of the State with the consent of the Council. In

this charter no limitation appears as to the religious connection of the President.

In 1787 the management of the property of the college was restored to an independent Board of Trustees, and all provisions for representation of official or other positions were eliminated from the Charter. A group of twenty-nine trustees was constituted with the provision that, when by death or resignation the number should be reduced to twenty-four, these should continue as trustees with self-perpetuating power. In 1810 a new act "relative to Columbia College in the State of New York" repeals the act of 1787 and names a group of twenty-four trustees with self-perpetuating power. The act provides that the ordinances and by-laws of the Corporation shall not make the religious tenets of any person a condition of admission to any privilege or office in the college. "A majority of the Trustees have usually been members of the Episcopal Church but the College has never been sectarian in its teaching or in its appointments."

Since 1810 amendments have related to incidental matters of convenience, to the holding of real estate, the establishing of a Museum and Arboretum in Bronx Park, and the union of the College of Physicians and Surgeons with the Trustees of Columbia College.

#### **BROWN UNIVERSITY (1764).**

"In 1762, the Philadelphia Baptist Association, in view of the disabilities attaching to Baptist students in most of the existing American colleges, welcomed a proposal offered by the Rev. Morgan Edwards, a clergyman of Welsh birth, at that time pastor of the First Baptist Church in Philadelphia, to found a college in Rhode Island." James Manning, who had just been graduated from Princeton, was appointed by the Association as its agent in realizing this aim.

In 1764 a charter was secured from the General Assembly of Rhode Island. The denominational relation of the college was secured through the constitution of the governing boards. But the charter "enacted and declared that into this liberal and catholic institution shall never be admitted any religious tests: But, on the contrary, all the members hereof shall forever enjoy

full, free, absolute, and uninterrupted liberty of conscience: And that the places of Professors, Tutors, and all other Officers, the President alone excepted, shall be free and open for all denominations of Protestants: And that youth of all religious denominations shall and may be freely admitted to the equal advantages, emoluments and honors of the College or University; and shall receive a like, fair, generous, and equal treatment during their residence therein."

The institution was known for forty years as Rhode Island College. It was established first as a Latin school in the town of Warren, Rhode Island. This choice, however, was not from the outset regarded as a permanency, and after a spirited contest for the honor among the leading towns of the colony, Providence was chosen as the home of the institution.

Funds to the amount of \$4500 had been raised in England and Ireland by the Rev. Morgan Edwards in 1767-8. These were constituted a permanent fund of the college. Other funds raised in Rhode Island and other sections, including gifts from the Philadelphia, Charleston and Warren Baptist Associations and a special subscription to the amount of \$2500 secured by Rev. Hezekiah Smith in South Carolina and Georgia, were applied to the erection of a college building and a house for the president and to the support of the college. To these funds contributions were made not only by Baptists, but by others who were attracted by the liberal foundation of the college. The buildings were erected in the year 1770. The work of the college was interrupted in December 1776 by the War of the Revolution, and was not resumed until the fall of 1782. Meanwhile, University Hall was used as a barrack and hospital for the American and French troops. Nine years later, at the death of President Manning, the college had a graduate roll of one hundred forty-nine, with a graduating class of twenty-two.

The charter provides for the creation of two governing bodies constituting one body corporate and politic to be known as the Trustees and Fellows of the college. It was ordained that these bodies "shall at all times sit and act by separate and distinct powers and in general in order to the validity and consummation of all



acts there shall be in the exercise of their respective, separate and distinct powers the joint concurrence of the Trustees and Fellows by their respective majorities except in adjudging and conferring the academical degrees, which shall forever belong exclusively to the fellowship." The instruction and immediate government of the college were "forever to be and rest in the president and fellows or fellowship." The Corporation of the college was to be self-perpetuating, vacancies in the two boards being filled by concurrent favorable action of the two bodies. It was provided that "the number of the Trustees shall and may be thirty-six of which twenty-two shall forever be elected of the denomination called Baptists or Anti-pedoBaptists, five shall forever be elected of the denomination called Friends or Quakers, four shall forever be elected of the denomination called Congregationalists, and five shall forever be elected of the denomination called Episcopalians," and that "the succession in this branch shall be forever chosen and filled up from the respective denominations in this proportion and according to these numbers which are hereby fixed and shall remain to perpetuity immutably the same." It was further provided that the number of Fellows, "exclusive of the president who shall always be a Fellow, shall and may be twelve, of which eight shall forever be elected of the denomination called Baptists or Anti-pedoBaptists and the rest indifferently of any or all denominations."

A single change has been effected in the legal status of the college as established by its charter. In 1863 the legislature passed an act modifying the exemption of the president, professors, tutors and students of the college from "taxation, serving on juries and menial services," by the provision that, so far as the families of president and professors were involved, the exemption should extend only to property of a value of ten thousand dollars in each case. This act was made subject to its acceptance by the Corporation of the college. It was accepted by the Corporation as a manifestation of its "cordial compliance with a reasonable wish." This constituted a virtual, though not formal, amendment of the college charter.

#### **RUTGERS COLLEGE (1766).**

A royal charter for an institution of learning to be called "Queen's College" was granted by George the Third through William

Franklin, Governor of the Province of New Jersey, in 1766. The petitioners were ministers and members of the Reformed Dutch Church, who desired an institution in which young men might be prepared for the ministry in order that their congregations might be supplied with educated pastors. The purpose expressed in the charter is "for the education of youth in the learned languages, liberal and useful arts and sciences, and especially in divinity, preparing them for the ministry and other good offices."

The charter constituted as Trustees four men from "the city of New York, seventeen from the Province of New York, and the Governor, the President of the Council, the Chief Justice and the Attorney-General, together with sixteen others from the Province of New Jersey." Apparently no copy of this charter exists; but before it went into operation, an amended charter was given in 1770. This charter constituted "the Trustees of Queen's College in New Jersey," appointing the Governor, the President of the Council, the Chief Justice, the Attorney-General, with fifteen others from the colony of New Jersey, twenty from the Province of New York, and two from the Province of Pennsylvania, as Trustees. The Board was made self-perpetuating and limited to a membership of forty-one, of whom not above one-third should at any time be "of those ordained ministers of the Gospel" and was empowered to appoint professors, tutors and any inferior officers or ministers which it "should judge necessary for the use of the college." No restriction as to place of residence or church connections of any Trustees is prescribed by the charter. It is provided, however, that they do appoint "a qualified person, being a member of the Dutch Reformed Church . . . . to be the President."

In 1781 the charter was amended by the substitution of oaths of allegiance in conformity with the new relation to the State of New Jersey, and removal of the restriction as to the number of ministers upon the Board and as to the officiating of civil officers other than the Governor at its meetings. In 1799 a further amendment prescribed the oath to support the Constitution of the United States. In 1825 authority was given to the Board to change the time of the college commencement and to transact business without a specified form of advertisement in the newspapers.

By this act also the name of the college was changed from "Queen's College" to "Rutgers College."

In 1869 an extension was made of the limit of property holdings, and all limit is now removed by general laws of the State of New Jersey.

## DARTMOUTH COLLEGE (1769).

Dartmouth College is an outgrowth of a school opened in 1754 by Rev. Eleazer Wheelock in his home in Lebanon, Connecticut for the Christian education of Indian youth. Funds for the school were received from various sources including private individuals, and the General Courts of Massachusetts Bay and New Hampshire. An endowment was secured chiefly through the effort of an Indian preacher, one of Dr. Wheelock's students who visited England in 1765. £10,000 was thus raised and committed to a board of Trustees with the Earl of Dartmouth at its head. It was now determined to extend the work of the school to the training of English as well as of Indian youth. Removal to New Hampshire simplified the problem of a charter which thus far it had been difficult to secure. The draft of the charter prepared by Dr. Wheelock was modified in important ways by the Governor of the province who in particular rejected the suggestion of a co-ordinate Board of Trustees in Great Britain and incorporated the institution as a college rather than as a school or academy.

The Governor of the State and eleven others were named as Trustees under the provision, "The whole number of said Trustees consisting and hereafter forever to consist of twelve and no more."

Dr. Wheelock was made president of the college with power to appoint such person as he should choose to succeed him. Thereafter power to fill vacancies in the presidency was held by the trustees. Vacancies in the Trustees were to be filled by the body in such a way that eight should be residents of New Hampshire and seven should be laymen.

Changes in the charter, so far as indicated are,—removal of all limitations as to the property holding powers of the body, provision that a legal meeting might be held subject to such notice

as was prescribed by the rules of the Trustees, and requirement that seven, instead of eight, Trustees should be residents of New Hampshire.

At present there are twelve trustees including the President. But one is a clergyman. In addition to these, five Councillors of the State of New Hampshire, the President of the Senate, the Speaker of the House of Representatives and the Chief-justice of the Supreme Court are "Ex-officio trustees of the college in relation to funds given by the State of New Hampshire."

The Legislature of New Hampshire in 1816 passed an act changing the name of the college to "Dartmouth University," enlarging the body of Trustees, constituting a Board of Overseers for reviewing the work of the Trustees and giving appointing power to the State. The Trustees were opposed to the change and brought an action before the Supreme Court of the State, from whose decision in support of the action of the Legislature appeal was taken to the Supreme Court of the United States. By this body the judgment of the lower Court was reversed—and the act of the Legislature was pronounced unconstitutional.

#### DICKINSON COLLEGE (1783).

Dickinson College was founded in Carlisle, Pa., 1783. An official of the College writes as follows: "It was chartered as a non-sectarian institution 'on the petition of a number of persons of established reputation for patriotism, integrity, ability and humanity.' Frequently aided by appropriations from the treasury of the State, the College came eventually to be regarded as an institution of the Presbyterian Church. This relation, however, was not one of denominational ownership and control, but rather one of a strong, sympathetic interest. In 1833, the College came by amicable arrangement under the friendly auspices of certain Conferences of the Methodist Episcopal Church, but without change in any of the non-sectarian features of its charter. This is the relation now existing."

The charter provided that the college should be "under the management of a number of Trustees not exceeding forty," that they should be self-perpetuating, that neither the Principal (Presi-

dent) nor members of the faculty while they remain such "shall ever be capable of the office of Trustee," that persons of every religious denomination might be made Trustees, that the number of clergymen thereby appointed Trustees shall never be lessened. It was further provided that "the constitution. . . . shall remain the inviolable constitution of the said college forever and the same shall not be altered or alterable by any ordinance or law of the said Trustees or in any other manner than *by the act of the legislature of the State.*"

In 1826 the charter was amended with the provision that "not more than one-third of the Trustees shall at any time be clergymen" (the act to take effect when ratified by the Trustees).

In 1834 it was provided that the Principal of the college should be ex-officio President of the board with all rights of other Trustees, that the places of members absent from meetings of the board for two years should be vacant and that the faculty should have certain disciplinary powers.

In 1879 "at the term of the Court of Common Pleas of Cumberland County, the Trustees of the college petitioned that the charter be amended in such manner that the term of office of each Trustee be limited to four years and the body be divided into four equal classes, the term of one of which should close each year." By order of the Court it was "declared and decided that the amendments to the said charter are hereby granted and that the amendment should be a part of the charter of the Trustees of Dickinson College."

At the term of the same Court in 1889, the Trustees petitioned that the requirement of an oath or affirmation be changed to subscription in a permanent record book. This also was incorporated with the charter.

In 1890 the Trustees asked for authority "to increase the number of Trustees from forty to fifty, six of the additional ten to be elected by Trustees at large and four by the alumni." This was ordered by the Court.

The College has received recognition by the Trustees of the Carnegie Foundation. This, the President of the College states, was "because of the clearly non-sectarian character of its charter,

and the declaration of the Trustees that, while definitely under the friendly auspices of, and maintaining a strongly sympathetic relation with, the Methodist Church, it has nevertheless a self-perpetuating Board of Trustees, that no Conference of the said Church has official representation on the Board, and that in no way is the College under official denominational control."

### WILLIAMS COLLEGE (1793).

The college owes its origin to an educational bequest for the purpose of establishing a "free school" in Williamstown. The charter of this school granted in 1785 recites the provisions of the will which directs that money obtained by sale of lands shall be used "to maintain a free school forever, provided the township shall fall within the jurisdiction of the Province of Massachusetts Bay." It was provided further that, in case the provisos were not complied with, the money should be appropriated "to some pious and charitable uses." The executors being uncertain whether the township had so far fallen within the designated territory that the funds might legitimately be used for the purpose, the Legislature decreed that the money be used for a free school in Williamstown.

A Corporation was created with the provision that it should "always be constituted of not less than seven or more than nine" members. Vacancies were to be filled by the "Supreme Judicial Court of Massachusetts." The Corporation and the donation were to be under the "visitation and direction of the Supreme Judicial Court" which was to determine "all matters of doubt or dispute touching the duties of the trustees and the use of monies."

In 1792 the trustees of the school in a petition to the Legislature expressed the conviction that circumstances were "peculiarly favorable to a seminary of a more public and important nature." By action of the Legislature a college "in the County of Berkshire" was established. The Board of Trustees of the Free School were constituted Trustees of the college, and the funds of the college including the proceeds of the legacy were vested in them. But the college was considered a new institution and a new charter was granted to it. This provides that the Trustees shall be self-

perpetuating and that their number "shall never be greater than seventeen nor less than eleven."

The Legislature reserved to itself a power of change in the charter.

In 1796 an additional act was passed by the Legislature declaring that the new Corporation is so far invested with the powers of the Trustees of the Free School that it may prosecute any suit or action (apparently in relation to the proceeds of the original legacy) which those trustees had begun.

Apparently no changes have been made in the charter of Williams College, except the according of permission to hold special meetings without the limits of Massachusetts and to increase its property holdings. The peculiar interest of the history of the college attaches, not to change of charter, but to the use of the legacy left for establishment of a free school. It does not appear whether the sanction of this use of the funds by the Legislature was on the ground that the purpose of the donor was substantially served, or on the ground of the direction given in the will that, in case the provisos were not complied with, the money should be devoted "to some pious and charitable uses."

## BOWDOIN COLLEGE (1794).

The situation in Bowdoin College is in some respects unique. Here, as at Harvard, and doubtless because of the form of organization at Harvard, two administrative bodies were created,—the Trustees and the Overseers. Both bodies were empowered to fill vacancies in their number, with the provision that the number of Trustees, including the President and Treasurer of the College, "shall never be greater than thirteen or less than seven" and the number of Overseers "shall never be greater than forty-five nor less than twenty-five." The provision was made at the outset that the Legislature might "alter or annul the powers vested in the Corporation as shall be judged necessary to promote the best interest of the said College." The provision that the number of Trustees and Overseers as indicated should never be altered would appear to

indicate that the reservation of power of change as made by the Legislature pertained to the *powers* of the governing Boards and not to their constitution. When the separation of the District of Maine from Massachusetts proper occurred, it was provided that the powers accorded to the Legislature should be accorded to the Legislatures of the two States.

The one change made in the charter relates to an extension of the legal limits of property holdings. Action to this effect was taken by the two Legislatures. The adjustment of conditions at the institution to the requirements of the Carnegie Trustees did not relate to the charter, but to conditions under which certain gifts had been accepted. These conditions in two cases were altered, and one gift of \$50,000 was returned to the donor. The issue of charter revision did not arise.

A remarkable episode in the history of the College—its temporary administration by an enlarged body of Trustees and Overseers belongs to the year 1821-1833. The provision of the "Act of Separation" (1819) that the powers accorded to the Legislature of Massachusetts should thereafter be exercised by the conjoint action of the two Legislatures, was incorporated in the Constitution of the State of Maine. But this Constitution in another article made the granting of endowments for colleges within its territory conditional upon the right to enlarge or restrict the powers exercised by their governing bodies. In view of this provision, Bowdoin College sought from the two Legislatures permission to concede to the State of Maine the right which the "Act of Separation" had accorded to the two Legislatures. Action was taken by the two bodies and, in 1821, the Legislature of Maine, assuming that a right of independent action was now secured to it, passed an act enlarging the two Boards of the College and giving power of appointment of their members in part to the Governor and Council of the State. Other legislative changes were followed in 1831 by an act limiting the term of the President of the College to a single year, and giving power of removal to the Boards at their pleasure. A vacancy having occurred under this ruling, the President brought suit in the U. S. Circuit Court for recovery of



salary. Justice Story held that the action of the State beginning with that of 1821 was illegal. His opinion was based upon the grounds, that the action of the Maine Legislature, by which the power originally held jointly was accorded to the State of Maine independently, was defective in that it had not been submitted for specific ratification to the Legislature of Massachusetts—that the action of Massachusetts contemplated only changes proposed by the College and not initiation of changes by the Legislature, that the action of the Maine Legislature in the extensive changes made far exceeded the authority contemplated in the enabling act since this, in harmony with the original charter of the College, proposed only the exercise by the State of the right to enlarge or restrict the powers and privileges conferred by the charter upon the Corporation and *that* “only in such degree as should be judged necessary to promote the best interest of the College.” As respects the action in 1831, he held that the College had expressed only acquiescence in the act and not approval, and that if approval had been given, this could not give validity to action which was in itself a violation of the terms of the charter. “The Legislature and Boards are not the only parties in interest upon such constitutional questions. The people have a deep and vested interest in maintaining all the constituent limitations upon the exercise of legislative power, and no private arrangements between such parties can supersede them.”

#### UNION COLLEGE (1795).

The charter of Union College was secured in 1795 in response to the appeal of citizens of the State residing mainly in Schenectady. The name chosen was “indicative of the union of the various evangelical sects engaged in its foundation.” The charter was granted by the Regents of the University of the State of New York. It provided that the Trustees shall always be twenty-four in number. No indication is given as to the method of continuance of Trustees, the one provision being that “the said Trustees and their successors shall be a body corporate and politic and shall have perpetual succession.”

In 1805 an act for *endowment* of the college was passed by the legislature of the State "upon the express condition and stipulation that the said trustees of Union College shall make application to the Regents of the University of this State" for such amendment of its charter as should reduce the number of Trustees to twenty-one, and should constitute the Chancellor, the Justices of the Supreme Court and four other officials of the State ex-officio Trustees of the college. The Regents subsequently took action amending the charter, reciting that the Trustees of the college had made application in accordance with the terms of the act. The number of Trustees was thus reduced to twenty-one, of whom eleven were ex-officio representatives. Vacancies occurring in the remaining group of ten were to be filled by the Regents.

In 1823 an act was passed by the Legislature reciting that, by a reduction made in the number of justices of the Supreme Court of the State, the number of Trustees of the college had been reduced, and providing that the Governor and Lieutenant-Governor should be added to the number of the Trustees provided the Board of Trustees should consent to the change.

By the revised State Constitution of 1846, the number of ex-officio Trustees of the college was reduced by elimination of the Chancellor, the Supreme Court Justices and the Surveyor General of the State. The total number of trustees continued to be twenty-one, of whom the Governor, Lieutenant-Governor, Secretary-of-State, Controller, Treasurer and Attorney-General were ex-officio, and fifteen others chosen by the Regents were permanent or life Trustees, and constituted a self-perpetuating body.

In 1871, the charter of the college was so amended (subject to "the power of the said Regents at any time hereafter on cause satisfactory to them to alter or repeal the ordinance") that four additional Trustees were to be elected by the alumni of the college, the voting being restricted to graduates entitled to the Master's degree. The candidate must be a graduate of ten years' standing.

Under the general provisions of the statutes of the State of New York, the Board of Regents has power "to incorporate and to alter or revoke the charters of universities, colleges, academies, libraries or other educational institutions."

## MIDDLEBURY COLLEGE (1800).

The President of the college states that no change has been made in the original charter.

## HAMILTON COLLEGE (1812).

The college was an outgrowth of an academy formed in 1793. Its charter was granted by the Regents of the University of the State of New York in 1812, in response to a petition received from the trustees of "Hamilton Oneida Academy" and many citizens. The charter provided that the Trustees "shall always be twenty-four in number."

It is not distinctly stated that the Board of Trustees shall be self-perpetuating, the one phrase referring to the perpetuation of the body being "The said Trustees and their successors shall be a body corporate and politic by the name of the Trustees of Hamilton College, and shall have perpetual succession."

An ordinance to amend the charter of Hamilton College granted by the Regents in 1875, on application by the Trustees of the college, provides that "four additional Trustees shall be chosen by the alumni, who shall possess the same powers and perform the same duties as the other Trustees of the college." Eligibility is restricted to graduates of at least ten years' standing. Trustees chosen by the graduates serve for a term of four years. The term of other Trustees, elected by the Board, is seven years.

The amended charter states "that the said Trustees and their successors forever shall enjoy all the corporate rights and privileges which the Regents of the University are empowered to grant."

As stated in the reference to the charter of Union College, under the general provisions of the statutes of the State of New York, the Board of Regents has power "to incorporate and to alter or revoke the charters of universities, colleges, academies, libraries or other educational institutions."

## AMHERST COLLEGE (1821).

Amherst College was founded in 1821 by a group of Congregationalist ministers and laymen. It was provided that the number

of Trustees, including the President, "shall never be greater than seventeen." It was composed originally of eight clergymen and nine laymen.

The five vacancies first occurring were to be filled by a joint ballot of the Legislature "by whom also the successors of these five" should be appointed "and so on forever." Other vacancies were to be filled by the Trustees in such manner that "the said Board shall, as soon as may be, and forever (hereafter) consist of seven clergymen and ten laymen."

At one time Amherst received a grant of about \$50,000 from the State.

It was provided that "the Legislature may give any further powers to, or alter, limit, annul or restrain any of the powers vested by the act in the said corporation."

One change in the charter only is noted. In 1874, it was provided that "the Trustees of Amherst College heretofore chosen by the legislature shall hereafter be chosen by the graduates of said college." These Trustees were to be graduates of four years' standing. President Harris states that no other action has been taken by the Legislature except the sanctioning of increase in the property holdings of the College.

Like the charters of other colleges originating later than 1819, the date of the Dartmouth College decision, the charter of Amherst is subject to a reserved right of change by the Legislature.

### TRINITY COLLEGE (1823).

The charter of Trinity College was granted in 1823. It was provided that vacancies in the governing body should be filled by the trustees who were empowered to increase their number to twenty-four. The school was opened at Hartford, Conn., in 1824 under the name "Washington College."

In 1845, on petition of the Corporation, the name was changed to "Trinity College."

The charter recites that it was given on petition of "sundry inhabitants of the State of the denomination of Christians called the Protestant Episcopal Church." Originally the Trustees were twenty in number. It was provided that "the said Trustees shall

have power to increase their number from time to time, at their discretion, to the number of twenty-four." The body was made self-perpetuating. A section of the charter provides that no ordinance or by-law shall "make the religious tenets of any person a condition of admission to any privilege in the said college" and that "no president or professor or other officer shall be made ineligible" for his position "by reason of any religious tenet that he may profess," or be "compelled by the by-laws or otherwise to subscribe to any religious test whatsoever."

In 1883, it was provided that three Trustees should be chosen by the alumni for a term of service of three years each. The candidates must be of five years' standing. This provision was to take effect when the act was accepted by the Trustees.

There are now twenty-four Trustees including three elected by the alumni. They include the President, twenty chosen by the Board, and three chosen by the alumni.

An official of the college writes, "The petition of 'sundry inhabitants of the State of the denomination of Christians called the Protestant Episcopal Church' indicated the religious conviction of individuals. The petition had no denominational endorsement from the Church itself, and the original Board of Trustees was not composed exclusively of Episcopalians."

## WESLEYAN UNIVERSITY (1831).

Wesleyan University was founded as an institution under the patronage of the Methodist Episcopal Church, "the leading members of that church being convinced of the need of some institution of collegiate rank which should be under the auspices of their own denomination." (President Foss 1870).

The original charter was granted in 1831. The charter provided for maintenance of a relation to several of the Annual Conferences or to the "General Conference of the Methodist Episcopal Church." All property of the corporation was to be managed for these ecclesiastical bodies. The trustees, originally twenty-one, were to fill vacancies "provided the whole number of said board shall not at any time exceed thirty-nine." It was provided that the Conferences should elect a Board of Visitors, not exceeding

the Board of Trustees in number and constituting with the Trustees a joint board which should be the governing body of the institution. "This charter included a proviso that religious tenets should not be a condition of admission to any privilege or office in the University".

In 1870, a new charter was granted to the college. By a complete change, in which only the enacting clause and the designation of the name of the college was retained, all properties were transferred to a single Board of Trustees. Each annual Conference recognized as a "patronizing Conference" was entitled to appoint "at least one trustee." Of these Conferences, thirteen were named, with provision that others might be added. By this reconstructed charter, the alumni were to elect five members of the Board who must be graduates of three years' standing. The whole number was not to exceed forty including the president. The remainder of the Board was to be chosen by the Board. It was provided that the "majority of the Trustees, the President and the majority of the faculty must be members of the Methodist Episcopal Church." The charter was to become effective when approved by a majority of the present Board of Trustees and Visitors

By an amendment to the charter in 1879 it was provided that the Trustees might elect ten and the alumni body five additional members of the Board. In 1882 the college was given a certain exemption from taxation.

In 1907, it was provided that "no denominational tests shall be imposed on the choice of trustees, officers or teachers, or the admission of students." An official of the College states that this change, while related to correspondence with the Carnegie Foundation, was "the expression of a deep and growing dissatisfaction on the part of trustees, faculty and alumni with the provision that the president and a majority of the trustees and of the members of the faculty must be members of the Methodist Episcopal Church. In the matter of religious tests, the charter of 1907 has simply returned to the spirit of the charter of 1831." The whole number of Trustees of the institution was not to exceed fifty-five, of whom the President should be one. All members were to serve for five years. Ten were to be representatives of the alumni.

Trustees to a number not exceeding one-fourth of the whole number were to be chosen by the Conferences. Aside from the Alumni and Conference representation, the Board of Trustees was to be self-perpetuating. "The constitution of the Board of Trustees is essentially the same in the charter of 1907 as in that of 1870. The Conferences now choose thirteen members out a of board of trustees which when full consists of fifty-five members, the majority of whom are elected by the Board itself."

As in the case of other educational institutions founded since 1819, a power of revision of the charter of the college has remained with the State.

## SUMMARY.

### I. Colleges holding charters subject to revision by the State :

1. By express provision of the charter or by general legislation of the State.

Dickinson; Williams (as to the "powers of Trustees"); Union (through the "Board of Regents of the State of New York"); Bowdoin (as to the "powers of Trustees"); Hamilton (through the "Board of Regents of the State of New York").

To this class belong also : Amherst, Trinity, Wesleyan, and all other institutions founded later than 1819.

2. By such relations originally sustained with the State that freedom in legislative revision of the charter is either undeniable or apparently may reasonably be claimed :

Harvard (as to the "Overseers"); Columbia; Princeton; Washington and Lee; Rutgers.

3. By relations with the State subsequently assumed by the college.

Yale (as to a section of the Board of Trustees added in 1792).

### II. Colleges holding charters as to which the State is without reserved right of revision :

Harvard (as to the Corporation); Yale (as to the "Successors to the original Trustees"); University of Pennsylvania; Brown; Dartmouth; Williams (except as to the "powers of Trustees"); Bowdoin (except as to the "powers of Trustees").

### III. Colleges with unrestricted charters in which changes of a minor character have been made, e. g., the limit of property holdings, the time and place of holding meetings, etc. :

Dartmouth; Williams; Bowdoin.



IV. Colleges with unrestricted charters in which any change of greater importance has been made :

Yale (in the relation entered into with the State in 1792).

V. Colleges holding Charters with provisions declared to be perpetually binding :

Brown; Dartmouth; Williams; Bowdoin; Yale (a provision introduced in 1792 as to the "Successors to the original Trustees").

VI. Changes permanently secured in provisions declared to be perpetually binding in charters unrestricted by a reserved power of the State :

None.

VII. Instances of vital change in unrestricted charters temporarily made but subsequently overruled.

1. Dartmouth (1816-19). Changes enacted by the State but opposed by the Trustees of the College; pronounced by the Supreme Court of the United States unconstitutional.
2. Bowdoin (1822-33). Changes enacted by the State and accepted by the governing Boards of the College; pronounced unconstitutional by Justice Story of the Supreme Court of the United States, when presiding in the Circuit Court.

## CHANGES IN CHARTERS OF COLLEGES AFFECTING DENOMINATIONAL RELATIONS.

I. It appears that only colleges founded prior to 1819—the year of the Dartmouth College decision—afford light upon the main problem of Brown, since after this date, in the founding of colleges all States were careful to reserve a right of revision or amendment of the charter, and gifts were made with this understanding.

II. Colleges founded prior to 1819, having denominational provision in their charters :

In relation to the President.

Columbia.

In relation to Governing Boards.

Harvard; Brown.

The first charter of the college now known as Columbia University provided that the President should be in communion with the Church of England. This provision was discontinued at the time of the constitution of Columbia University. Through its close relation with the college, the State at the time had unquestioned power to make this and other changes.

At Harvard, the denominational provision related not to the Corporation, but to the Board of Overseers whose close relation to the State was recognized from the beginning. From 1810 to 1834, membership of clergymen in the Board of Overseers was restricted to Congregationalists. In the latter year, an act was passed by the Legislature and accepted by the Governing Boards of the College by which membership in the Board was open to clergymen of all denominations.

Brown, it would seem, offers the one instance of proposed change in provisions affecting denominational relations in a charter as to which the State has no reserved power of revision. Apparently, therefore, the peril, alleged or real, of violation of a civil contract is met only in the case of Brown.

III. With respect to recent action of colleges due to conditions imposed by the Carnegie Foundation, the following institutions are mentioned in reports by Dr. Pritchett issued in 1908 and 1909 :

Bowdoin College (Maine), Dickinson College (Pa.).

Randolph-Macon (Women's) College (Va.).

In these cases no change in provisions of the charters was involved. Bowdoin adjusted certain gifts which had been conditioned upon its maintenance of a "Trinitarian Congregational" position and returned to the donor one conditional gift. The other

two colleges claimed that relation to Methodists was only moral and ultimately published statements saying that recognition in the Methodist Year Book was unauthorized. The Randolph-Macon College subsequently withdrew from recognition by the Carnegie Trustees, in the interest of closer affiliation with the Methodist body.

In the following cases, while the change effected or proposed involved alteration in the provisions of charters, a right of change was reserved to the State as was true in general of all institutions founded later than 1819.

#### **BATES COLLEGE—MAINE.**

Founded in 1830. In 1863 the institution reached collegiate grade and secured a new charter. In this there was no denominational provision, though the institution was "to be fostered by Free Baptists." In an amendment of the charter in 1891, it was provided that the President and majority of both boards (Fellows and Overseers) should be members of Free Baptist churches. In 1907 a change to the earlier basis was effected.

#### **FRANKLIN COLLEGE—INDIANA.**

Founded in 1835. After many vicissitudes, the institution was closed and in 1872 it passed into the hands of a Stock Company. A new act of incorporation provided that the majority of the Trustees should be Baptists and that this provision should not be subject to change.

In 1907 the Company was dissolved and the college was reconstituted on an undenominational basis. Consent to this change was sought and obtained from all living subscribers of funds and from the heirs of deceased subscribers.

#### **DRAKE UNIVERSITY—IOWA.**

Founded in 1881. Supported by the "Disciples of Christ" with the understanding and provision that two-thirds of the trustees should be elected by the convention of that body and two-thirds should be members of its churches. Later, citizens of Des Moines became interested in the college and denominational tests were

discontinued, but one-fourth of the Trustees were still to be elected by the Convention.

Being informed by the Trustees of the Carnegie Foundation that "even when the trustees elected by a denominational body were only a minority" recognition could not be given to the college, the college secured the removal of the restrictive provision.

#### **CENTRAL UNIVERSITY—KENTUCKY.**

The college was re-established after the Civil War on a joint foundation representative of the Northern and Southern Presbyterian churches and under their control. The two bodies sought to retain a veto power in the action of Trustees but the Carnegie Trustees declined to sanction this.

#### **DRURY COLLEGE—MO.**

Founded in 1869. The original charter provides that a majority of the Trustees "shall be connected with the family of Christian churches known as Congregationalist." In 1907, upon application by the college, the legislature eliminated denominational restrictions.





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