

HARVARD COLLEGE: AMERICA'S PIONEER ELEEMOSYNARY CORPORATION

Harvard College, which was chartered in 1636, is almost invariably referred to in efforts to justify the essential Americanness of our nonprofit institutions. It is true that Harvard is the nation's oldest corporation. It is incontestable that it enjoyed early support from individual benefactors both in the colonies and in England. But, as the following documents will show, its evolution towards being a private nonprofit institution as the term is commonly understood was painfully slow and fiercely contested. Because its governing boards were dominated by ministers of the tax-supported established churches of the Boston area and elected officials until the mid-nineteenth century, it is difficult to consider it a privately-governed institution. Moreover, before 1845, government contributions to Harvard ranged between a third and two-thirds of its annual revenues (Foster 196_; Harris, 1970, 242)....

To further complicate matters, even the most fundamental issues of the college's governance were subjects of intense controversy for the first two centuries of its history. One major conflict detailed here involved the conflict between the Fellows, who in the seventeenth and early eighteenth centuries were resident graduate scholars at the College, to assert their preeminence and to govern the institution as English universities had been. They were opposed by liberal ministers and wealthy laymen, who wanted the college to operate under their guidance. Later, in early nineteenth century, conflicts would develop between the Overseers, who were mostly ministers and ex-officio members of the legislature, and the Fellows, which had become a self-perpetuating lay board dominated by merchants and lawyers. The plot would be further thickened by the legislature's repeated efforts to treat Harvard as a public institution. These matters were not finally resolved until 1865.

In 1643, Henry Dunster (1609-1658/9), who had succeeded to Harvard's presidency, wrote his own appeal for funds, a pamphlet entitled New England's First Fruits which, like similar efforts of the period, was directed at wealthy and benevolent Puritans who had remained in England. The text, in referring to the regular presence of the Overseers at the students' monthly recitations and disputations, suggests that the governing board took its oversight responsibilities very seriously indeed -- a practice of "hands-on" management by directors of charitable enterprises that would remain characteristic until the end of the nineteenth century. The pamphlet's rhetoric also

suggests that the Overseers saw themselves as representing the public interest and as assuring accountability of the college to the public.

During Harvard's first decade, the college received generous support from both public and private sources. The General Court celebrated the beginning of Dunster's presidency by granting Harvard the revenues of the Boston-Charlestown ferry (which it continued to receive until the construction of a bridge across the Charles River in 1785). In 1644, four of the New England colonies recommended that each family contribute a peck of wheat or a shilling in cash to Harvard for the support of students. For a decade or so, the revenues of the "College Corne" were sufficient to support the entire teaching staff of the college, as well as a dozen scholars. In 1654, the General Court would impose a special tax on the citizens to underwrite the president's salary. Private donations during this period included bequests and gifts from England (the Holworthy, Pennoyer, and Mowlston bequests), as well as from New England (an example of which is the Keayne bequest, which is discussed at length in this volume). The college's management of these revenues was highly uncertain and would remain so until the late eighteenth century, when American lawyers and jurists began following English legal precedents and practices regarding charitable property).

NEW ENGLAND'S FIRST FRUITS (1643)

I. After God had carried us safe to *New England*, and wee had builded our houses, provided necessaries for our liveli-hood, rear'd convenient places for Gods worship, and settled the Civill Government: One of the next things we longed for, and looked after was to advance *Learning* and perpetuate it to Posterity; dreading to leave an illiterate Ministry to the Churches, when our present ministers shall lie in the Dust. And as wee were thinking and consulting how to effect this great Work; it pleased God to stir up the heart of one Mr. *Harvard* (a Godly Gentleman, and a lover of Learning, there living amongst us) to give the one Halfe of his Estate (it being in all about 1700,l) toward the erecting of a Colledge: and all his Library: after him another gave 300.l others after them cast in more, and the publique hand of the State added the rest: the Colledge was, by common consent, appointed at *Cambridge*, (a place very pleasant and accomodate) and is called (according to the name of the first founder *Harvard College*. . . .

. . .Over the Colledge is master Dunster placed, as President, as learned conscionable and industrious man, who hath so trained up, his Pupills in the toungues and Arts, and so seasoned them with the principles of Divinity and Christianity, that we have to our great comfort, (and in truth) beyond our hopes, behelde their progresse in Learning and Godlinesse also; the former of these hath appeared in their publique declamations in *Latine* and *Greeke*, and Disputations Logicall and Philosophicall, which they have wonted (besides their ordinary Exercises in the Colledge-Hall) in the audience of the Magistrates, Ministers and other Schollars, for the probation of their growth in Learning, upon set dayes, constantly once every month to make and uphold. . . .

. . .Over the Colledge are twelve Overseers chosen by the generall Court, six of them are of the Magistrates, the other six of the Ministers, who are to promote the best good of it and (having a power of influence into all persons in it) are to see that every one be diligent and proficient in his proper place.

One of Dunster's most important actions was to obtain for Harvard a formal charter of incorporation. Until that point, the legal status of the college was, at best, indeterminate. The 1650 charter was an attempt both to give Harvard a distinct identity as a corporate entity distinct from the State: this would not only secure its control of properties that had been entrusted to it, but would also provide it greater autonomy in managing its own affairs. The 1650 charter created the basic framework under which Harvard still operates.

The document is notable in a number of respects. First and foremost, the drafters took unusual care to specify the nature and extent of corporate powers, giving particular attention to the distinction between the persons who might serve as officials of the corporation and their role as officers. While this distinction might seem obvious to us, to those emerging from feudalism it could not be assumed. Thus, for example, pains were even taken to specify that "Officers & Servants" would, after death or removal, be chosen by the Corporation -- since traditional usage would have permitted these positions to be passed on by will.

Also notable is the charter's division of governance between two bodies -- the President and Fellows, who would actually be the corporation -- and the Overseers,

whose power was effectively restricted to vetoing decisions of the Fellows and to intervening in cases where the Fellows were deadlocked. This served to underscore the distance that the drafters were trying to place between themselves and the public as represented by the ministers and magistrates who served as Overseers. It was assumed that, as in the English universities, the Fellows would not be laymen, but would be resident scholars in the institutions. As we shall see, this would prove to be a debatable assumption.

The charter's restriction on the college possessing property "in excess of five hundred pounds per annum" is doubtless a trade-off for this autonomy. With the memory of the tendency of charities in England to accumulate huge amounts of property, the General Court no doubt want to ensure that Harvard, unlike the monasteries, did not grow too powerful.

Finally, Harvard's 1650 charter is notable for its granting the school, as well as its officers and students, exemption from taxation. Once again, this was a limited exemption in both cases -- if the institutions or those connected with it should prove to hold too much property, they would be subject to taxation. Note too that the taxes referred to were not merely monetary obligations, but obligations of military service, "watchings and wardings," and, presumably, obligations to work on town highways and other public works.

Few issues in public policy towards nonprofits in our own time are more troublesome than the question of the tax exemption. There has been a persistent tendency to view it as an inalienable and unchanging entitlement of charitable and educational institutions. The language of Harvard's 1650 charter suggests that its drafters carried no such assumptions. They did not seek to justify Harvard's tax privileges by reference to English legal precedents which generally exempted certain kinds of institutions from taxation. Rather, they specifically provided for it in the college's charter -- and hedged it with restrictions, suggesting the extent to which they saw the subsidy as a contingent one.

THE HARVARD CHARTER OF 1650

WHEREAS THROUGH THE good hand of God many well devoted persons have been and daily are moved and stirred up to give and bestow

sundry gifts, legacies, lands, and revenues for the advancement of all good literature, arts, and sciences in Harvard College in Cambridge in the County of Middlesex and to the Maintenance of the President and Fellows and for all accommodations of buildings and all other necessary provisions that may conduce to the education of the English & Indian youth of this Country in knowledge: and godliness. IT IS therefore ordered and enacted by this Court and the authority thereof that for the furthering of so good a work and for the purposes aforesaid from henceforth that the said College in Cambridge . . . shall be a corporation consisting of seven persons (to wit) a President, five Fellows, and a Treasurer or Bursar. . . . And that the said seven persons or the greater number of them procuring the presence of the Overseers of the College and by their counsel and consent shall have power and are hereby authorized any time or times to elect a new President, Fellows, or Treasurer so often and from time to time as any of the said person or persons shall die or be removed, which said President and Fellows for the time being shall for ever hereafter in name and fact be one body politic and corporate in Law to all intents and purposes, and shall have perpetual succession, and shall be called by the name of President and Fellows of Harvard College; and shall from time to time be eligible as aforesaid; and by that name they and their successors shall and may purchase and acquire to themselves or take an receive upon free gift and donation any lands, tenements or hereditaments within this jurisdiction of the Massachusetts not exceeding the values of five hundred pounds per annum and any goods and sums of money whatsoever to the use and behoof of the said President and Fellows, and Scholars of the said College and also may sue and plead or be sued and impleaded by the name aforesaid in all courts and places or judicature within the jurisdiction aforesaid; and that the said President with any three Fellows shall have power and are hereby authorized when they shall think fit to make and appoint a Common Seal for the use of the said Corporation. And the President and Fellows or the major part of them from time to time may meet and choose such Officers & Servants for the College and make such allowance to them and them also to remove and after death or removal to choose such others and to make from time to time such orders and bylaws for the better ordering & carrying on the work of the College as they shall think fit. Provided the said orders be allowed by the Overseers. And also that the President and Fellows or major part of them with the Treasurer shall have power to make conclusive bargains for lands & tenements to be purchased by said Corporation for

valuable consideration. AND for the better ordering of the government of the said College and Corporation be it enacted by the authority aforesaid that the President and three or more or the Fellows shall and may from time to time upon due warning or notice given by the President to the rest hold a meeting for the debating and concluding of affairs concerning the profits and revenues of any lands and disposing of their goods. Provided that all the said disposings be according to the will of the donors. And for direction in all emergent occasions execution of all orders and bylaws and for the procuring of a general meeting of all the Overseers & society in great and difficult cases, and in cases of nonagreement, in all which cases aforesaid the conclusion shall be made by the major part, the said President having a casting voice, the Overseers consenting thereunto. And that all the aforesaid transactions shall tend to & for the use and behoof of the President & Fellows, Scholars, and Officers of the said College, and for all accommodations of buildings, books and all other necessary provisions & furnitures as may be for the advancement & education of youth in all manner of good literature, arts, and sciences. AND further be it ordered by this Court and the authority thereof that all the lands, tenements, or heriditaments, houses or revenues within this jurisdiction to the aforesaid President or College appertaining, not exceeding the values of five hundred pounds per annum shall from henceforth be freed from all civil impositions, taxes & rates; all goods to the said corporation or to any Scholars thereof appertaining shall be exempt from all manner of toll, customs & excise whatsoever. And that the President, Fellows & Scholars, together with the servants & other necessary Officers to the said President or College appertaining not exceeding ten, viz., three to the President and seven to the College belonging, shall be exempted from all personal, civil offices, military exercises or services, watchings and wardings, and such of their estates not exceeding one hundred pounds a man shall be free from all Country taxes or rates whatsoever and none others. IN WITNESS whereof the Court has caused the Seal of the Colony to be hereunto affixed. Dated the one & thirtieth day of the third month called May, Anno 1650.

With its foundations laid solidly, Harvard grew steadily until 1686, when the colony's charter was suspended. While the President and Council for New England, as the new government styled itself, reaffirmed the old charter, the governmental crisis set off a decades-long struggle over control of the college. This was part of a broader set of conflicts over the direction of New England's development. Until the 1680s, the

colonies had been pretty much left to go their own way. But the later Stuart kings, ever needy for revenue, began to look to the colonies as an untapped source of wealth.

Consolidating and rationalizing the colonies' polities was part of a more ambitious plan to develop their economies. As this plan was implemented, power began to shift towards the merchants and away from the ministers and magistrates. And Harvard and its charter became a locus of contention between the factions.

The restoration of the colony's government in 1692 opened a decade of struggle over control of the college and the definition of its corporate powers. On one side, the Congregational Church, led by Harvard President Increase Mather, strove to keep the college under the control of the Congregational Church, and free of political influence. On the other side, was the Royal Governor and his political allies, most of them merchants from the coastal towns. The church party favored eliminating the Board of Overseers, which, as a body half of whose members were elected officials, would necessarily have included a certain number of Anglicans and possibility members of other sects. In the Charter of 1692, they placed government of the College in the hands of a President and a relatively large Corporation, eight to fourteen fellows, of whom only two were resident tutors and the rest Congregational ministers. This charter was annulled in 1697, when the Governor and his friends persuaded the King to disallow it because it reserved no power of visitation to the Crown -- and along with it a right to intervene in college affairs. The Charter of 1697 attempted compromise: the power of visitation was conferred on the Governor (who represented the Crown) and the Council, an elected body. This too was disallowed. A 1699 charter was defeated by the General Court because of a clause requiring that the college president be a member of the Congregational Church.

After several other attempts to satisfy the contenders, the General Court threw up its hands and allowed the College to operate with a de facto Corporation, over which the mercantile element gradually gained control. Led by John Leverett, who would serve as Harvard's President from 1708 to 1724, the old charter of 1650, which provided for a seven member Corporation (the President and Fellows) and a Board of Overseers composed equally of ministers and magistrates.

In 1721, the Church party challenged the increasingly secular government of the college by attempting to have it placed under the control of the resident Fellows, as was

the case with English colleges. This effort was not justified as an innovation, but as an expression of the original intent of the General Court when it established the college.

The factors leading to this conflict included not only a series of problems involving political patronage, the discipline of students, and a struggle over the control of a major donation to the college. The first centered around the efforts of Governor Dudley to have his son appointed Treasurer of the college, which the Corporation declined to do. This earned Harvard the enmity of a powerful political clan, which soon joined forces with the colony's most influential ministerial clan, led by the Mathers, to bring the college and its all too independent Corporation to heel. In the meantime, the college was also under attack by the press, chiefly the New England Courant, in whose pages sixteen year old Benjamin Franklin, writing under the name of "Silence Dogood," reviled Harvard for nurturing pride, conceit, extravagance, idleness and ignorance.

The lavish bequest of London merchant Thomas Hollis who, in 1719, gave 1000 pounds for scholarships and for the support of a professorship of divinity, also served to draw lines between contending political factions for control of the college. Hollis's gift, which established the first endowment for the support of a professorship in an American college, as controversial because the donor, a Baptist, had specified that "none be refused [appointment to the chair] on account of his belief and practice of adult baptism," which, in effect, made the Baptists, who rejected the practice of baptizing children, eligible to hold the position. Conservative Overseers, outraged by this breach of orthodoxy, immediately set to work to bend the purposes of the donation -- which were intended to liberalize the college's religious views -- to their own purposes. In the end, the appointee to the chair was compelled to declare his faith in

Ames's Medulla Theologiae, the Westminster Assembly catechism, the Thirty-nine Articles (to which the New England puritans always asserted their faithfulness), the doctrine of the Trinity, the divinity of Jesus, Predestination, "special efficacious grace," and "the divine right of infant baptism!" (Morison 1936, 67)

Against this background, the struggle over the constitution of the college and its form of governance was the final show-down between liberals and conservatives. The conflict originated in 1716, when the Corporation, instead of following earlier precedent by electing tutors to its fellowship, chose three settled ministers -- all of them liberal allies of President Leverett -- to the Fellows. Nicholas Sever, one of the tutors, appealed

to the Board of Overseers, which at that time was controlled by the conservatives, urging the displacement of the "non-resident Fellows" and their replacement by resident Fellows -- the Tutors. Frustrated by the refusal of the Fellows to do its bidding, the Overseers appealed to the General Court to resolve the conflict. In 1723, a joint committee of the upper and lower houses of the legislature reported that "all the tutors of the College, not exceeding five in number, has a charter right to be Fellows of the Corporation; that no Fellows should be at the same time Overseers, and that the Corporation could not fix salaries without the Overseers consent" (Morison, 72). Passed by the General Court, its resolution was sent to the governor, who gave his consent -- but with the proviso that the three non-resident tutors retain their places. Outraged, the legislature demanded that he retract his decision. Governor Shute not only refused to do so, he gave notice that any similar efforts would be disallowed by the King.

During the controversy, President Leverett considered going over the heads of the legislators by obtaining a royal charter from King George I. While this would ensure the College independence from colonial politics, it would have placed Harvard under Anglican supervision -- as was Virginia's College of William and Mary -- and would, in consequence, have ensured that Yale, established in 1701, rather than Harvard would have become New England's chief institution of higher education. Instead, he chose to maintain the college's autonomy as best he could, by insisting that only a non-resident governing board could best assure Harvard's welfare.

John Leverett (1662-1724) was both an ordained minister wealthy merchant and, as such, served as leader of efforts to liberalize the Bay Colony's religious and political life. His response to the legislature's efforts to alter Harvard's charter were a classic statement of the role of governing boards both in securing the independence of corporations from politics and their role in ensuring the accountability of their officials to the public.

...Leverett's argument constitutes a significant departure from English traditions and, in a very real sense, stands as the starting point of a distinctly American method of institutional governance. To argue for governing boards that were neither politically controlled nor wholly self-serving (as government by resident Fellows would have been), but which served not "for any by-ends or self-interest" in order to promote the good of the institution and the public, was an extraordinary assertion. Moreover, it

opened the way for the Harvard Corporation breaking away from the influence of the church, since non-resident Fellows were not by the charter required to be ministers. By the 1780s, the Fellows were almost all wealthy laymen...

Source: Richard Hofstadter and Wilson Smith, eds., American Higher Education: A Documentary History, 2 vols. (Chicago: University of Chicago Press, 1961), I: 5-7, 10-12, 21-32.

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