

VIRGINIA AND THE TRADITION OF PUBLIC PHILANTHROPY

The mid-eighteenth century witnessed the emergence of a number of specialized institutions for the care of the poor and dependent. Whether supported by a combination of private contributions and government grants, as was the Pennsylvania Hospital (1751), or publicly, as were the almshouses in Boston (1662), New York (1700), and Philadelphia (1756), the creation of such agencies constituted a significant departure from colonial traditions, which had required families to look after their own and, if the poor or dependent person's family were unable to do so, to place him or her in the care of a household which would be reimbursed for its expenses. In addition to incorporated institutions, in the second half of the eighteenth century individual physicians began to supplement their incomes by operating proprietary hospitals for administering smallpox inoculations and the care of the chronically ill.

The founding of hospitals, asylums, and other public welfare institutions was, first of all, a response to growing needs: the increased numbers and mobility of the colonial population in this period, combined with continuing immigration into the colonies, had begun to strain older family and community-based traditions of caring for the poor and dependent. Often, the needy had no families or friends in the locality to care for them and, because their presence was increasingly deemed to be a threat to public order, the public was forced to take responsibility.

However, institution-building response was not merely a response to necessity; it was also an expression of the new spirit of rational humanitarianism that accompanied the dissemination of Enlightenment ideas -- the notion that society could and should act to better order and improve itself. Finally, the most active promoters of this movement were physicians, who at this time were just beginning to organize themselves as a profession and for whom such institutions not only a recognized place in the occupational order, but also additional income.

Institution building, like the ideas which supported it, originated in England. At the beginning of the eighteenth century, hospitals scarcely existed in England. But by 1760, London's six great general hospitals had been established, along with sixteen others in the provinces. Many of these were supported in whole or in part by private contributions, much of it coming from the rising mercantile and manufacturing classes. Not surprisingly, the colonies where hospitals and almshouses were established in the mid-eighteenth century were those most closely tied commercially and politically to the

mother country -- Pennsylvania and Virginia. (Boston, where Enlightenment ideas were still restrained by the more fatalistic strains of Puritanism, would decline efforts to establish a hospital, despite a generous bequest left by merchant Thomas Hancock in 1764).

Philadelphia's efforts to found a hospital acknowledged the British example: the 1750 proposal to the assembly was entitled "A Proposal for an Infirmary, or Hospital, in the manner of several lately established in Great Britain." But the impulse was more than mimetic, for Franklin's evocative philanthropic rhetoric ran through it and several proposals that followed. Writing in January of 1751, he presented a petition urging specific actions on behalf of the mentally ill:

. . .the Numbers of People distempered in Mind and deprived of their rational Faculties, hath greatly increased in this Province.

That some of them going at large are a Terror to their Neighbours, who are daily apprehensive of the Violences they may commit; And others are continually wasting their Substance, to the great Injury of themselves and Families, ill disposed Persons wickedly taking Advantage of their unhappy Condition, and drawing them into unreasonable bargains, &c.

That few or none of them are so sensible of their Condition, as to submit voluntarily to the treatment that their respective Cases requires, and therefore continue in the same deplorable state during their Lives; whereas it has been found, by the experience of many Years, that above two Thirds of the Mad people received into Bethlehem Hospital, and there treated properly, have been cured (Franklin 1754, 4).

The Assembly responded in May of 1751, by passing an act "to encourage the establishing of a Hospital for the Relief of the Sick Poor of this Province, and for the Reception and Cure of Lunticks." Its preamble, once again, is illuminated both by a deep concern with suffering that was grounded in religion (especially in Pennsylvania's Quaker traditions) and in the vibrant practical humanitarianism of the Enlightenment, with its conviction that timely and well-conceived interventions could improve the lot of humanity and society:

WHEREAS, the saving and restoring [of] useful and laborious Members to a Community is a Work of publick Service, and the Relief of the Sick Poor is not only an Act of Humanity, but a religious duty: AND WHEREAS there are frequently in many Parts of this Province poor distempered Persons, who languish long in Pain and Misery, under various Disorders of Body and Mind, and being scattered abroad in different and very distant Habitations, cannot have the Benefit of regular Advice, Attendance, Lodging, Diet and Medicine, but at a great Expense and therefore often suffer for Want thereof; which inconveniency may be happily removed by collecting the Patients into one common provincial Hospital, properly disposed and appointed, where they may be comfortably subsisted, and their Health taken Care of at small Charge, and where by the Blessing of God or the Endeavours of skillful Physicians and Surgeons, their diseases may be cured and removed (Franklin 1754, 4).

Institution building in Virginia focused on efforts to establish a public hospital for the care of "Ideots, Lunatics, and other persons of unsound minds." They were apparently influenced both by English examples and, more directly, by Franklin, whose language was echoed in Governor Francis Farquier's 1766 address to the House of Burgesses on the subject:

It is expedient I should . . . recommend to your Consideration and Humanity a poor unhappy set of People who are deprived of their Senses, and wander about the country, terrifying the Rest of their Fellow Creatures. A legal confinement and proper Provision ought to be appointed for these miserable Objects, who cannot help themselves. Every civilized Country has an Hospital for these People, where they are confined, maintained and attended by able Physicians, to endeavour to restore to them their lost reason (Journals 1769, V: 12).

Farquier was amazingly persistent in his efforts. When the Assembly, though favoring his request, delayed its execution, he again brought the "case of the poor lunaticks" to the Burgesses' attention in April of 1767. When they continued to delay, he forced their hand, by ordering the confinement of the insane in the Williamsburg jail. Finally, in 1769, the Assembly took appropriate action, authorizing the founding of the second hospital to be established in the colonies and the first to be devoted to the mentally ill. The hospital began receiving patients in the fall of 1773.

The act establishing the Eastern Lunatic Asylum reveals the southern colonists' inexperience with and ambivalence about the corporate form. While the responsibilities of the hospital's trustees were clearly spelled out as far as succession, mode of meeting, decision by majority vote, and capacity to make by-laws, they were not formally constituted as a "corporation or body politic." Nothing was said about who would actually own the hospital's property, how that property should be managed, or even the trustees' capacity to receive private donations. Despite the Assembly's L1200 appropriation, nothing was said about whether the hospital would be supported by fees, government grants, or contributions.

These ambiguities were resolved in practice. After a series of irregular grants through the 1770s, the Assembly in 1782, acknowledging that "great inconveniencies have arisen from the want of proper funds to support the hospital," ordered the treasurer of the commonwealth to "pay annually . . . such sum or sums of money as shall be by law appropriated for the repairing of the said hospital, the payment of salaries to the keeper and matrons, and also to the nurses, guards, physicians, or surgeons, . . . and any additional sum not exceeding twenty-five pounds per annum, for the support and maintenance of each person that shall be confined in the said hospital (Laws, Ch. 38, October 1782, 101)."

In effect, by virtue of the Assembly's decision to defray the asylum's expenses by annual appropriation, it became a state institution. This pattern of public enterprise which used forms of governance resembling those of private corporations, would become characteristic of the South and of places where southerners settled in any number.

An act to make provision for the support and maintenance of Ideots, Lunatics, and other persons of unsound minds.

(Anno Regni decimo GEORGII Tertii Regis, A.D. 1769)

I. WHEREAS several persons of insane and disordered minds, have been frequently found wandering in different parts of this colony, and no certain provision having been yet made either towards effecting a cure of those whose cases are not become quite desperate, nor for restraining others who may be dangerous to society: *Be it therefore enacted, by the Governour, Council, and Bugesses of this present General Assembly, and it is hereby enacted by the authority of the same,* that the honourable *John Blair, William Nelson, Thomas Nelson, Robert Carter, and Peyton Randolph, Esquires, and Robert Carter Nicholas, John Randolph, Benjamin Waller, John Blair, jun. George Wythe, Dudley Digges, jun. Lewis Burwell, Thomas Nelson, jun. Thomas Everard, and John Tazewell, Esquires, be,* and they are hereby constituted trustees for founding and establishing a public hospital, for the reception of such persons as shall from time to time, according to the rules and orders established by this act, be sent thereto. And the said trustees shall be called and known by the name and style of the court of directors of the public hospital, for persons of insane and disordered minds.

II. AND for the better and more regular ordering [of] the business of the said hospital, the said directors shall, at their first meeting, proceed to the choice of a president, who, with any six of the other directors, shall hold a court for the despatch of business, and in case of the absence, sickness, or death of the said president, the other members of the said court may choose another president, either perpetual or temporary, as the exigency of affairs may require; and in case of the death, resignation, or absence out of the colony for the space of two years of one or more of the said directors, the president, for the time being, and the rest of the directors, continuing in office, shall and may proceed to the choice of other fit and able persons, to supply all such vacancies.

III. AND *be it further enacted, by the authority aforesaid,* that the said court of directors be, and they are hereby empowered to purchase a piece or parcel of land, not exceeding four acres, the most healthy in situation that can be procured, and as convenient as may be to the city of *Williamsburg*, and to contract for the building thereon a commodious house or houses, fit for the reception and accommodation of such disordered persons as are described by this act, and to provide a proper keeper and matron of the said hospital, with necessary nurses and guards, and, as occasion may require, to call on any physicians or surgeons, for the assistance and relief of such poor patients, and to provide all necessaries for their comfortable support and maintenance, and in general, from time to time, to make and ordain all such rules, orders, and regulations, for the better establishing and governing of such hospital, as to them shall seem fit and necessary. And for the better and more regular determining who are the proper objects of this act.

IV. BE *it further enacted, by the authority aforesaid,* that any Magistrate of the quorum, in any county within this colony, or any chief Magistrate or any city or borough, either upon his own knowledge, or on proper information, that any such disordered person is going at large i his county, city, or borough, shall, and he is hereby required to issue his warrant to the sheriff, or any one of the constables of the said county, city or borough, commanding him to bring such person before him, or any other Justice of the Quorum, and any other two Magistrates, which three Magistrates being assembled, may examine the said person supposed to be disordered in his or her senses, and take such evidence in writing, touching his or her insanity, and the causes of it, as they can procure; and if it shall appear expedient and necessary to such Magistrates, or a majority of them, they shall forthwith, by warrant under their hands and seals, transmit such disordered person, together with the depositions taken before them, either with or without a guard, as may seem necessary, to the public hospital, to be delivered to the keeper of the said hospital, who shall give a receipt for such person, and immediately give notice to the president of the directors, who shall in convenient time summon his court to consider what is further necessary to be done; and if it shall appear to such court, that such person is a proper object of this act, they shall enter his name in a book to be kept for this purpose, and pursue such measures as his or her case may require.

V. PROVIDED *always,* if any friend of such person will appear before such Magistrates, or such court of directors, and give sufficient security that proper care shall be taken of such person, and that he or she shall be restrained, or secured from going at large till he or she is restored to his or her senses, it shall and may be lawful for such Justices, or such court, to deliver such insane person to his or her friend (Public Acts 1785, 13-14).

Once Virginia had joined the colonies in declaring their independence and while their armies still locked in battle with the British, legislators in the newly independent states faced the task of reframing their government and of reconstructing the legal order. Some states, like Connecticut, would retain the governments set forth in their colonial charters while others, like Pennsylvania, would radically restructure their polities. States varied too in their willingness to retain English statutes and court precedents -- the Common Law -- as the basis for their own legal systems. The New England states tended to accept the Common Law with relatively little alteration. Virginia, on the other hand, would completely overhaul its laws and would, in 1792, act to annul "all statutes or acts of the parliament of Great Britain, heretofore in force within this commonwealth."

Thomas Jefferson (1732-1826) would take the lead in Virginia's efforts to create an indigenous legal system that was consistent in its purposes and goals with those of republican government. This radical endeavor required a thoroughgoing review not only of the fundamental principles underlying the ownership of property, but of the laws and institutions (such as primogeniture, entail, and charitable trusts) that might permit the "dead hand" of the past to prevent its free circulation among the living. Although the "Revisal of the Laws of Virginia" only took Jefferson and his committee three years to complete, the legislature took nearly fifteen years to consider and act on their recommendations.

Thomas Jefferson, "Revisal of the Laws of Virginia" (18__)

. . .when I left Congress, in '76, it was in the persuasion that our whole code must be reviewed, adapted to our republican form of government; and now that we had no negatives of Councils, Governors, and Kings to restrain us from doing right, it should be corrected, in all its parts, with a single eye to reason, and the good of those for whose government it was framed. Early, therefore, in the session of '76, to which I returned, I moved and presented a bill for the revision of the laws, which was passed. . . . The first question was whether we should propose to abolish the whole existing system of laws, and prepare a new and complete Institute, or preserve the general system, and only modify it to the present state of things. Mr. Pendleton, contrary to his usual disposition in favor of ancient things, was for the former proposition, in which he was joined by Mr. Lee. To this it was objected, that to abrogate our whole system would be a bold measure, and probably far beyond the views of the legislature; that they had been in the practice of revising, from time to time, the laws of the colony, omitting the expired, the repealed, and the obsolete, amending only those retained, and probably meant we should now do the same, only including the British statutes as well as our own: that to compose a new Institute, like those of Justinian and Bracton, or that of Blackstone, which was the model proposed by Mr. Pendleton, would be an arduous undertaking, of vast research, of great consideration and judgment; and when reduced to a text, every word of that text, from the imperfection of human language, and its incompetence to express distinctly every shade of idea,

would become a subject of question and chicanery, until settled by repeated adjudications; and this would involve us for ages in litigation, and render property uncertain, until, like the statutes of old, every word had been tried and settled by numerous decisions, and by new volumes of reports and commentaries; and that no one of us, probably, would undertake such a work, which to be systematical, must be the work of one hand. . . . (Lipscombe & Bergh 1905, I: 53-62).

Despite these objections, a committee of three (Jefferson, George Wythe, and George Mason) set to the task, which they completed in the spring of 1779. "We had in this work," Jefferson continued,

brought so much of the Common Law as it was thought necessary to alter, all the British statutes from *Magna Carta* to the present day, and all the laws of Virginia, from the establishment of our legislature, in the 4th Jac. I to the present time, which we thought should be retained, within the compass of one hundred and twenty-six bills, making a printed folio of ninety pages only. Some bills were taken out, occasionally, from time to time, and passed; but the main body of the work was not entered on by the legislature until after the general peace, in 1785, when, by the unwearied exertions of Mr. [James] Madison, in opposition to the endless quibbles, chicaneries, perversions, vexations, and delays of lawyers and demi-lawyers, most of the bills were passed by the legislature, with little alteration (Lipscomb & Bergh 1905, I: 62-67).

In the course of this process, Jefferson took a particular interest in three matters: the law of descents (which involved inheritance and other issues of transferring the ownership of property between generations), religious freedom, and education. These led him to reevaluate the state's charitable and educational traditions:

The acts of Assembly concerning the College of William and Mary, were properly within Mr. Pendleton's portion of our work; but these related chiefly to its revenue, while its constitution, organization and scope of science, were derived from its charter. We thought that on this subject, a systematical plan of general education should be proposed, and I was requested to undertake it. I accordingly prepared three bills for the Revisal, proposing three distinct grades of education, reaching all classes. 1st. Elementary school, for all children generally, rich and poor. 2d. Colleges, for a middle degree of instruction, calculated for the common purposes of life, and such as would be desirable for all who were in easy circumstances. And, 3d, an ultimate grade for teaching the sciences generally, and in their highest degree. The first bill proposed to

lay off every county into Hundreds, or Wards, of a proper size and population for a school, in which reading, writing, and common arithmetic should be taught; and that the whole state should be divided into twenty-four districts, in each of which should be a school for classical learning, grammar, geography, and the higher branches of numerical arithmetic. The second bill proposed to amend the constitution of William and Mary college, to enlarge its sphere of science, and to make it in fact a University. The third was for the establishment of a library. These bills were not acted on until the same year, '96, and then only so much of the first as provided for elementary schools. The College of William and Mary was an establishment purely of the Church of England; the Visitors were required to be all of that Church; the Professors to subscribe its thirty-nine Articles; its Students to learn its Catechism; and one of its fundamental objects was declared to be, to raise up Ministers for that church. The religious jealousies, therefore, of all the dissenters, took alarm lest this might give an ascendancy to the Anglican sect, and refused acting on that bill. Its local eccentricity, too, and unhealthy autumnal climate, lessened the general inclination towards it. And in the Elementary bill, they inserted a provision which completely defeated it; for they left it to the court of each county to determine for itself, when this act should be carried into execution, within their county. One provision of the bill was, that the expenses of these schools should be borne by the inhabitants of the county, every one in proportion to his general tax rate. This would throw on wealth the education of the poor; and the justices, being generally of the more wealthy class, were unwilling to incur that burden, and I believe it was not suffered to commence in a single county (Lipscomb & Bergh 1905, I: 70-72).

Despite these disappointments, Jefferson regarded the Revisal as a republican triumph:

I consider four of these bills, passed or reported, as forming a system by which every fibre would be eradicated of ancient or future aristocracy; and a foundation laid for a government truly republican. The repeal of the laws of entail would prevent the accumulation and perpetuation of wealth, in select families, and preserve the soil of the country from being daily more and more absorbed in mortmain. The abolition of primogeniture, and equal partition of inheritances, removed the feudal and unnatural distinctions which made one member of every family rich, and all the rest poor, substituting equal partition, the best of all Agrarian laws. The restoration of the rights of conscience relieved the people from taxation for the support of a religion not theirs; for the establishment was truly the religion of the rich, the dissenting sects being entirely composed of the less wealthy people; and these, by a bill for a general education, would be qualified to understand their rights, to maintain them, and to exercise with

intelligence their parts in self-government; and all this would be effected, without the violation of a single natural right of any one individual citizen. To these, too, might be added, as a further security, the introduction of trial by jury, into the Chancery courts, which have already ingulfed, and continue to ingulf, so great a proportion of the jurisdiction over our property (Lipscomb & Bergh 1905, I: 72-72).

Although during the colonial period Virginia had led the colonies in embracing English practices and precedents, after independence, it went further than any other in rejecting them. This rejection extended to charitable endeavors. But for all of its evident radicalism, the state's approach was, as Jefferson suggests, cautious and experimental. To a certain extent, its efforts were constrained by practical considerations. Disestablishing the Anglican church and placing it on an equal footing with other denominations suggested two possible courses of action: one was to support all denominations; the other was to support none of them. The former course was politically untenable; the latter, however, inevitably required the state to permit congregations to act as voluntary associations with some or all of the powers of corporations. And, since "spreading the word" inevitably involved the operation of schools and colleges, the legislature, whatever it doubts about the wisdom of

permitting corporations, was forced by the logic of its own arguments to issue charters to such denominational entities.

Thus, in the decade following the Revolution, we find Virginia experimenting with privatized models of voluntary association that differed little from those being used in the other colonies. Having turned down Governor Thomas Jefferson's plea for the creation of a publicly-supported school system (embodied in his 1778 "Bill for the More General Diffusion of Knowledge") on the grounds of its expense, the legislature approved a number of charters for private schools and colleges. The first of these was Liberty Hall Academy, an institution founded by Scotch-Irish settlers in Rockbridge County in the Blue Ridge Mountains. Soon after, the Assembly granted charters to Fredericksburg Academy, Hampden-Sydney Academy, and a number of for-profit corporations.

While the language of the Liberty Hall Academy charter was remarkably self-assured for a corporate instrument of this early date, following the forms and prescriptions common to such entities in England, at the same time, it reveals its novelty in the care that it takes to spell out the meaning of the term "perpetual succession" as involving the continuation of the corporation as a legal entity distinct from the personal ownership interest or claims of the individuals who might serve it. While this charter and others like it granted in the 1780s were full grants of corporate powers to private groups, the Assembly ensured the State's hold over them not only by requiring the rector, masters, and tutors to take "an oath of fidelity to the Commonwealth," but also requiring the rector and trustees to be sworn by the justice of the peace to carry out their fiduciary obligations and to file that affirmation in the public records of the county. Another notable feature of the act is its granting exemption from military service to the Academy's officers and students -- and to those of all other schools, public and private, in the state. The real and personal property of the academy was not, however, exempted from taxation.

An act for incorporating the rector and trustees of Liberty Hall Academy (October 1782)

I. WHEREAS it is represented to this present assembly, that a seminary is formed in the county of Rockbridge, and that it will greatly promote the purposes of its institution to incorporate the same with certain privileges, and the general assembly being ever disposed to give aid and encouragement to seminaries of learning, do enact. That the said academy shall be, and the same is hereby stiled Liberty Hall Academy. That the reverend William Graham, rector [and 19 others] . . . and their successors, are hereby constituted a body politic and

corporate, by the name of the rector and trustees of Liberty Hall Academy; and by that name shall have perpetual succession and a common seal. And that they and their successors, by the name aforesaid, shall be able and capable in law to have, purchase, receive, possess, enjoy and retain to them and their successors forever, any lands, tenements, rents, goods or chattels of what kind soever, which shall be given to, or purchased by them, for the use of the said academy; and the same to sell, grant, demise, alien, or dispose of, in such manner as to them may appear most for the advantage of the said academy. And by the same name to sue and implead, be sued and impleaded, answer and be answered in all courts of law or equity, and from time to time, under their common seal, to make and establish such by-laws, rules and ordinances, not contrary to the constitution or laws of this commonwealth, as by them shall be thought necessary for the good order and government of the professors, masters and students of the said academy. That the said rector and trustees, or any six of them, are hereby authorized and required to meet at the said academy, on some day to be appointed by the rector, before the first day of March next, and then and there select and commission, under their common seal, such number of professors, masters and tutors as they may think necessary for the instruction of the students and the same to remove for good cause shewn; provided that no professor, master or tutor shall be admissible without first taking the oath of fidelity to the commonwealth; and annually to grant to such students, as to their opinion merit the same, testimonials under the common seal, and signed by the rector and three of the trustees at least, reciting their literary degrees. The rector and trustees, or a majority of them, shall elect by ballot, a treasurer for the said academy, who shall give bond and security for the faithful discharge of his office and the trust reposed in him; and shall, when required by the said corporation, render an account of all monies, goods and other chattels received or expended on account of and for the use of the said academy; and on failure or refusal, shall be subject to the like proceedings as is prescribed by law in the case of sheriffs failing to account for and pay the public taxes. The said trustees, or a majority of them, are hereby empowered, upon good cause to them shewn, to remove or suspend the rector, and supply such vacancy. Upon the death, resignation or refusal to act, of the rector or any of the said trustees, it shall be lawful for the remaining trustees, or a majority of them, to supply such vacancies; and the rector and trustees so elected, shall have the same powers and authority as those particularly named in this act. The rector, with the advice of three of the trustees, before they enter upon the execution of the trust reposed in them by this act shall severally take the following oath or affirmation, to be administered by the justice of the peace of the said county of Rockbridge, and by him certified to [in] the court of the said county, there to be recorded, that is to say, "I A.B. do swear and affirm that I will to the best of my skill and judgement, faithfully and truly discharge the duties required of me by an act, intituled, 'An act

for incorporating the rector and trustees of Liberty Hall Academy,' without favor, affection, or partiality. So help me God."

II. *And be it further enacted*, That the rector, professors, masters and tutors, duly elected for, and bona fide acting as such in the said academy, and in all other seminaries and public schools, and also all students thereof, under the age of twenty-one years, shall be, and are hereby exempted from military duty. All property, real and personal, now belonging to the said academy, is hereby transferred to, and vested in the said corporation for the benefit of the said academy (Hening 1823, X: 164-66).

The legislature's willingness to establish private corporations of this type did not preclude its continuing to charter public corporations along the lines of the

Williamsburg Hospital. In 1787, for example, the legislature authorized citizens to establish fire companies but, as the language of the act makes clear, they and their members were to be held strictly accountable to the public authorities.

An act to authorize the establishment of fire companies.

[Passed January 7, 1788]

I. WHEREAS the danger to which the several towns within this commonwealth are exposed from fire is chiefly occasioned by the want of fire companies duly organized, and it is necessary that such companies be incorporated, in order to give them their full effect, *Be it enacted*, That it shall be lawful for any number of persons resident within any town, borough, or corporation within this commonwealth, exceeding forty persons to form themselves into a company or companies for the purpose of extinguishing fire, who on having their names and subscriptions recorded in the court of the county or corporation where they reside, are hereby authorized to make such rules and regulations as to a majority of the said company or companies may seem proper and necessary for the procuring of engines and other necessary implements [for] working the said engines, and exercising the companies raised. And that all fines and forfeitures for non-attendance or delinquency imposed by the said regulations not exceeding twenty-five shillings, shall be recoverable before a single magistrate on proof of such delinquency, which said fines and forfeitures shall be applied to the purposes of their institutions.

II. *Provided always*, That all by-laws or rules to be made by virtue of this act, which are contrary to the constitution or laws of this commonwealth, shall be null and void (Hening 1823, XII, 530-531).

By the 1790s, Virginia's attitudes towards corporations and other kinds of voluntary associations became more dogmatic and more hostile. The 1792 repeal of the Common Law -- and along with it the Statute of Charitable Uses -- was but the first step towards the development of a body of ideas that would be known as the "Virginia Doctrine." These would not only severely limit further incorporations for charitable, educational, and commercial purposes, but would severely restrict their ability to hold or receive property. On the positive side, following the paradigm sketched in the 1760s with the establishment of the Williamsburgh asylum, the Commonwealth would in 1819 charter the University of Virginia as a public institution. This would not, however, preclude its receiving private support.

In 1818, the Virginia Assembly appointed a commission to consider the location and other matters relating to the proposed University of Virginia. The commission's report gave Thomas Jefferson, its chair and the university's chief proponent, the opportunity to fully expound both his ideal of a university and his mature thoughts on university governance and the relation between education and the State. Jefferson's thoughts are of particular interest because his public life had begun with his service in the 1769 session of the legislature that had established the Williamsburg asylum. Now, nearly half a century later, he was completing his public life by putting the finishing touches on the southern -- or public -- model of philanthropic action.

Note the care with which Jefferson set forth the duties of the Visitors -- as the trustees were called. They included the full range of fiduciary responsibilities, including the ability to receive and hold property in trust. (Although the legislature had suspended the Elizabethan statute, it retained the right to authorize specific institutions to hold and manage charitable trusts). Jefferson also recommended that the university be chartered as a corporation. The key distinctions between the University of Virginia and the institutions developing in New England involved, first of all, its relationship to the legislature -- to which, as Jefferson boldly stated, the "University should in all things, and at all times, be subject" -- and, no less important, the mode of appointing Visitors -- who were not to be self-perpetuating, but would be appointed by the Legislature or whomever it might direct to assume this responsibility. The university was, in sum, a public corporation and the members of its governing board, public trustees, fully accountable to the peoples' representatives for their actions.

Report of the Commissioners on the University of Virginia (1818)

. . .the fifth duty prescribed to the Commissioners, is to propose such general provisions as may be properly enacted by the Legislature, for the better organizing and governing [of] the University. . . .

. . .we are of the opinion [that the following duties] should be entrusted to the Visitors .
. .

The erection, preservation, and repair of the building, the care of the grounds and appurtenances, and of the interest of the University generally.

That they should have the power to appoint a bursar, employ a proctor, and all other necessary agents.

To appoint and remove professors, two-thirds of the whole number of Visitors voting for the removal.

To prescribe their duties and the course of education, in conformity with the law.

To establish rules for the government and discipline of the students, not contrary to the laws of the land.

To regulate the tuition fees, and the rent of the dormitories they occupy.

To prescribe and control the duties and proceedings of all officers, servants, and others, with respect to the buildings, lands, appurtenances, and other property and interests of the University.

To draw from the literary fund such moneys as are by law charged on it for this institution; and in general

To direct and do all matters and things which, not being inconsistent with the laws of the land, to them shall seem most expedient for promoting the purposes of the said institution;

which several functions they should be free to exercise in the form of by-laws, rules, resolutions, orders, instructions, or otherwise, as they should deem proper.

That they should have two stated meetings in the year, and occasional meetings at such times as they should appoint, or on a special call with such notice as themselves shall prescribe by a general rule; which meetings should be at the University, a majority of them constituting a quorum for business; and that on the death or resignation of a member, or on his removal by the President and Directors of the Literary Fund, or the Executive, or such other authority as the Legislature shall think best, such President and Directors, or the Executive, or other authority, shall appoint a successor.

That the said Visitors should appoint one of their own body to be Rector, and with him be a body corporate, under the style and title of the Rector and Visitors of the University of Virginia, with the right, as such, to use a common seal; that they should have the capacity to plead and be empled in all courts of justice, and in all cases interesting to the University, which may be subjects of legal cognizance and jurisdiction; which pleas should not abate by the determination of their office, but should stand revived in the name of their successors, and that should be capable in law and in trust for the University, of receiving subscriptions and donations, real and personal, as well from bodies corporate, or persons associated, as from private individuals.

And that the said Rector and Visitors should, at all times, conform to such laws as the legislature may, from time to time, think proper to enact for their government; and the said University should, in all things, and at all times, be subject to the control of the Legislature (Report of the Rockfish Gap Commission 1818, 9-16). . . .

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