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## A University in 1693: New Light on William & Mary's Claim to the Title "Oldest University in the United States"

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A UNIVERSITY IN 1693: NEW LIGHT ON WILLIAM & MARY'S  
CLAIM TO THE TITLE "OLDEST UNIVERSITY IN THE  
UNITED STATES"

THOMAS J. MCSWEENEY,\* KATHARINE ELLO\*\* &  
ELSBETH O'BRIEN\*\*\*

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## INTRODUCTION

William & Mary has traditionally dated its transformation from a college into a university to a set of reforms of December 4, 1779.<sup>1</sup> On that date, Thomas Jefferson and his fellow members of the Board of Visitors reorganized William & Mary, eliminating the grammar school and the two chairs in divinity and creating chairs in law, modern languages, and medicine.<sup>2</sup> Five days after the reforms were adopted, a William & Mary student wrote that “William & Mary has undergone a very considerable Revolution; the Visitors met on the 4th Instant and form’d it into a University....”<sup>3</sup> Just over three years later, when Jefferson received an honorary doctorate in civil law from William & Mary, his Latin diploma stated that it was granted by the “president and professors of the *university* or College” (*universitatis seu collegii*) of William & Mary in Virginia.<sup>4</sup> In the late 1770s and early 1780s, there certainly seems to have been a campaign to broadcast William & Mary’s status as a university, and William & Mary grounds its claim to be the oldest university in the United States in that historical moment.<sup>5</sup> There is a strong argument to be made, however, that William & Mary became a university long before the reforms of 1779. In fact,

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1. See Cortney Langley, *The College That’s a University*, 82 WM. & MARY ALUMNI MAG., no. 2, Winter 2017, at 35.

2. *Id.*

3. *Id.* at 36.

4. THOMAS JEFFERSON, 6 THE PAPERS OF THOMAS JEFFERSON 221 (Julian P. Boyd et al. eds., 1952) (emphasis added); see also Langley, *supra* note 1, at 35, 37.

5. A plaque on the exterior of the Wren building at William & Mary titled “PRIORITIES OF THE COLLEGE OF WILLIAM AND MARY” lists “First College to become a University, 1779.”

There are references to William & Mary as a university that predate the 1779 reforms, however. A letter from Virginia published in the *London Post Boy* in 1700 referred to “the University which has been lately founded there.” Thad W. Tate, *The Colonial College, 1693-1782*, in 1 THE COLLEGE OF WILLIAM & MARY: A HISTORY 36 (Susan H. Godson et al. eds., 1993). In an anonymous letter published in the *Virginia Gazette* in 1745 and signed “Common Sense,” the author argued that the judges of Virginia’s county courts needed a better education in the laws of England. He suggested that the legislature employ “a skillful Professor” of law at “Our own University” and to “admit none to practice who had not taken their Degrees therein.” *Common Sense*, VA. GAZETTE, Oct. 10, 1745, at 1; see also W. Hamilton Bryson, *Introduction to ESSAYS ON LEGAL EDUCATION IN NINETEENTH CENTURY VIRGINIA* 9, 13 (1998).

it was granted the status of a university in its royal charter of February 8, 1693.

Few scholars appear to have noticed the relevant language in the charter.<sup>6</sup> There are good reasons for that. The term used in the charter is not one that is familiar to us today. The drafters did not use the word “university.” Instead, they used a technical term for a university that developed in the Middle Ages, one that had gone out of regular use in the British Isles even by the seventeenth century. Moreover, it only really becomes clear that William & Mary was granted the status of a university in the Latin version of the charter. In the English version, the terminology is hidden behind an overly literal translation. In the English version of the charter, the one that is read every year at William & Mary’s Charter Day celebration, William III and Mary II declare that they are granting their license “to make, found, and establish a certain Place of universal Study, or perpetual College of Divinity, Philosophy, Languages, and other good Arts and Sciences.”<sup>7</sup> The key words are “place of universal study.” In the English, they do not look significant. But they

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6. The one exception we have found is Edward Eggleston who, in a footnote, discusses the 1736 printed edition of William & Mary’s charter and statutes and says, “The phrase ‘studium generale’ has a sense hardly appreciated by those who copied it from the ancient charter for William and Mary.” EDWARD EGGLESTON, *THE TRANSIT OF CIVILIZATION FROM ENGLAND TO AMERICA IN THE SEVENTEENTH CENTURY* 272 (1901).

7. HENRY HARTWELL ET AL., *THE PRESENT STATE OF VIRGINIA, AND THE COLLEGE 72 (1727)* [hereinafter 1727 CHARTER]. There are several surviving English versions of the charter, each with minor variations. See FRANK B. EVANS, *THE STORY OF THE ROYAL CHARTER OF THE COLLEGE OF WILLIAM AND MARY* 12-13 (1978). The Harvard copy appears to have been one of several copies of the charter made in the English chancery for James Blair to take back to Virginia. *Id.* at 15-19. The Andros copy, the one most often displayed, is a manuscript copy that was made in Virginia for Governor Andros. It may have relied on the Harvard copy or another, similar text, as the texts agree with each other in most respects, but the translator chose to translate certain phrases differently from the Harvard copy of the charter. See *id.* at 18. The charter was printed twice in the eighteenth century. The English version of the charter printed in Williamsburg in 1736, in a book that contains both the English and the Latin charters, diverges from the Harvard version in ways that seem to indicate that its author was “correcting” the English text to conform more closely to the Latin. See WILLIAM PARKS, *THE CHARTER AND STATUTES OF THE COLLEGE OF WILLIAM AND MARY, IN VIRGINIA, IN LATIN AND ENGLISH* 2 (1736) [hereinafter 1736 CHARTER]; see also EVANS, *supra*, at 14-15. Here we quote from the version printed in London in 1727. Evans thought that this version was the closest to the English versions issued by the chancery, as it agrees with the Harvard copy of the charter, which is badly damaged and illegible in places, in most respects. See EVANS, *supra*, at 14-15. All versions contain the relevant “place of universal study” language.

are a translation of a very significant phrase that appears in the Latin charter: *studium generale*.<sup>8</sup>

### I. THE MEANINGS OF *STUDIUM GENERALE*

*Studium generale* emerged as a term of art in the thirteenth century and was used throughout the Middle Ages. As Patrick Zutshi notes, it “is the nearest to a technical term used to describe a university” in the Middle Ages.<sup>9</sup> In his *Universities of Europe in the Middle Ages*, Hastings Rashdall likewise said that “the term which most nearly corresponds to the vague and indefinite English notion of a University as distinguished from a mere School, Seminary, or private educational establishment, is not *Universitas*, but *Studium Generale*.”<sup>10</sup> *Studium generale* was a coveted title. Applying the term *studium generale* to a school was a way of recognizing that it was one of the premiere schools in the Latin West. It is particularly difficult to translate into English in either pithy or elegant language. *Studium* translates as “eagerness” in classical Latin, but by the Middle Ages its semantic range had widened to encompass the meaning of “study.” By the early thirteenth century, its meaning had been extended once again, to mean a place where one studies.<sup>11</sup> *Generale* means “general” or “universal.” There is scholarly debate about what medieval people meant when they called a school a *universal* school.<sup>12</sup> People sometimes spoke of a *studium generale* as universal in the sense that it drew students from a number of different kingdoms, not just from its own locality, and this appears to have been the original meaning of the phrase.<sup>13</sup> The Dominican Order used it in this sense. It had a hierarchy of *studia* for its members defined by their catchment areas. Schools designated as *studia generalia* were at the

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8. 1736 CHARTER, *supra* note 7, at 2.

9. Patrick Zutshi, *When Did Cambridge Become a Studium generale?*, in *LAW AS PROFESSION AND PRACTICE IN MEDIEVAL EUROPE: ESSAYS IN HONOR OF JAMES A. BRUNDAGE* 153, 155 (Kenneth Pennington & Melodie Eichbauer eds., 2011).

10. HASTINGS RASHDALL, 1 *THE UNIVERSITIES OF EUROPE IN THE MIDDLE AGES* 7-8 (1895).

11. OLGA WEIJERS, *TERMINOLOGIE DES UNIVERSITÉS AU XIIIÈ SIÈCLE* 42-45 (1987).

12. For a good summary of the scholarship on the semantic range of the term *studium generale* in the Middle Ages, see *id.* at 34-40.

13. *Id.* at 35.

pinnacle of the hierarchy and were defined by the fact that they took students from all of the order's provinces.<sup>14</sup> Some scholars have also pointed to instances in which the word *generale* appears to refer to the breadth of study offered at the institution.<sup>15</sup> Indeed, in determining whether a school could be considered a *studium generale*, it seems to have been important that it have, in addition to a faculty of arts, one or more of the higher faculties of medicine, civil law, canon law, or theology.<sup>16</sup> Scholars have argued that, at least by the later Middle Ages, the *studium generale* was considered universal in a third sense: it was a school founded by one of the two universal authorities of Christendom, the Pope or the Emperor.<sup>17</sup> It could thus claim universal recognition, as its status derived from a universal authority.

*Studium generale* was also a privileged status. It was associated with the *ius ubique docendi*: the right of a person who had advanced to the degree of master or doctor in one of the school's faculties to teach in any other school without further examination.<sup>18</sup> From the later thirteenth century, schools actively sought recognition of their

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14. WILLIAM A. HINNEBUSCH, *THE HISTORY OF THE DOMINICAN ORDER, VOLUME TWO: INTELLECTUAL AND CULTURAL LIFE TO 1500*, at 37, 39, 43-44 (1973); WEIJERS, *supra* note 11, at 39-40. The school just below the *studium generale* in the hierarchy was called the *studium particulare*, because it accepted students only from its own province. M.W. Sheehan, *The Religious Orders 1220-1370*, in *THE HISTORY OF THE UNIVERSITY OF OXFORD, VOLUME 1: THE EARLY OXFORD SCHOOLS 192*, 199 (J.I. Catto ed., 1984).

15. G.M. Monti has emphasized this use of the phrase. WEIJERS, *supra* note 11, at 36.

16. RASHDALL, *supra* note 10, at 9. It is worth noting that William & Mary offered instruction in divinity (*sacrosancta theologia* in the Latin charter), one of the higher studies. 1727 CHARTER, *supra* note 7, at 72. James Blair's original proposal for the college divided it into three "schools:" the schools of grammar, philosophy, and divinity. *Papers Relating to the Founding of the College*, 7 WM. & MARY Q. 158 (1st series) (1899) [hereinafter *Founding of the College*]. Although the charter does not specify which subjects each of the "six Masters, or Professors" would teach, Blair's proposal called for two professors of divinity, and when Blair did finally bring the College up to its full complement of six masters or professors in 1729, it included two professors of divinity. 1727 CHARTER, *supra* note 7, at 72; Tate, *supra* note 5, at 69; *Founding of the College*, *supra*, at 159.

17. See WEIJERS, *supra* note 11, at 36-37. The emperor referred to is the figure that we would call the Holy Roman Emperor today. *Id.*

18. See ALAN B. COBBAN, *THE MEDIEVAL ENGLISH UNIVERSITIES: OXFORD AND CAMBRIDGE TO C. 1500*, at 5 (1988); George L. Haskins, *The University of Oxford and the 'Ius Ubique Docendi'*, 56 ENG. HIST. REV. 281-83 (1941). Rashdall notes that the *ius ubique docendi* "was usually, but not quite invariably, conferred in express terms by the original foundation-bulls; and was apparently understood to be involved in the mere act of erection even in the rare cases where it is not expressly conceded." RASHDALL, *supra* note 10, at 11-12; see also WEIJERS, *supra* note 11, at 47.

status as *studia generalia*.<sup>19</sup> In 1318, King Edward II successfully petitioned the Pope on behalf of the University of Cambridge to grant the university the status of a *studium generale* (or possibly to confirm an already-existing status).<sup>20</sup> For reasons that are not well understood, the papacy never explicitly recognized the University of Oxford as a *studium generale* and never granted it the *ius ubique docendi*, even in the face of several petitions from bishops and kings requesting the right for the university.<sup>21</sup> The status could also be granted to a newly founded institution by the Pope or the Emperor.<sup>22</sup> In 1495, the founders of a new university at Aberdeen in Scotland—later to be known primarily by the name of its sole college, King’s College, Aberdeen—acquired a papal bull establishing a *studium generale*, which was granted certain privileges “just as in Paris and Bologna and in any other *studia generalia*.”<sup>23</sup>

## II. AN OLD-FASHIONED TERM

William & Mary was established in the tradition of the British universities and colleges.<sup>24</sup> As we will see, the College took much of its institutional structure from the single-college universities of Scotland—particularly those attended by its founder, James Blair—and its charter follows the standard format for the charter of an Oxford or Cambridge college.<sup>25</sup> It is, therefore, somewhat surprising that its charter uses the phrase *studium generale*. *Studium generale* was an old-fashioned term in the British Isles by 1693; it had not been used in the founding of a new institution in England, Ireland,

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19. See Haskins, *supra* note 18, at 283.

20. Zutshi, *supra* note 9, at 163.

21. COBBAN, *supra* note 18, at 61-62; Haskins, *supra* note 18, at 283-87. Jurists of the Middle Ages did recognize, however, that the status could be acquired by custom; if a *studium* had all of the attributes of a *studium generale*, it could acquire the status without a grant or confirmation, and although Oxford never received the coveted papal confirmation, it was widely recognized as a *studium generale*. COBBAN, *supra* note 18, at 3, 40-41; Zutshi, *supra* note 9, at 162. It still speaks to the importance of the status that the scholars of Oxford continued to petition the Pope for recognition.

22. Haskins, *supra* note 18, at 281-82.

23. FASTI ABERDONENSES: SELECTIONS FROM THE RECORDS OF THE UNIVERSITY AND KING’S COLLEGE OF ABERDEEN, 1494-1854, at 11 (1854) [hereinafter FASTI ABERDONENSES] (translation by author).

24. See Tate, *supra* note 5, at 12.

25. See *infra* notes 41-45 and accompanying text.

or Scotland in almost 200 years.<sup>26</sup> The English Crown assumed the powers of both the Pope and the Emperor at the Reformation. By declaring that “this realm of England is an empire,” Henry VIII signified that the King of England had complete sovereignty within the realm of England and simultaneously denied that these two universal authorities had any power within England.<sup>27</sup> Presumably the Crown’s newly professed power included the power to establish *studia generalia*.<sup>28</sup> The Crown did not use the term when creating new foundations, however.<sup>29</sup> Although the title *studium generale* was still used by the papacy when founding universities in Catholic kingdoms and their colonies in 1693, it had fallen out of use in Protestant countries, probably because of its association with the

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26. See *infra* note 30 and accompanying text.

27. See Ecclesiastical Appeals Act, 1532, 24 Hen. 8, c. 12. Two years later Henry made his assumption of the Pope’s powers within England even more explicit when he declared that the King “shall have and enjoy, annexed and united to the imperial crown of this realm, as well the title and style thereof, as all honors, dignities, preeminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of the supreme head of the same Church [i.e., the Church of England] belonging and appertaining.” See Act of Supremacy, 1534, 26 Hen. 8, c.1. The idea that the “king is an emperor in his own kingdom” was also advanced in Scotland, where several universities were established in the sixteenth century. See ANDREW R.C. SIMPSON & ADELYN L.M. WILSON, SCOTTISH LEGAL HISTORY, VOLUME ONE: 1000-1707, at 184-85 (2017).

28. Some of the Pope’s powers in the realm of education were assumed by the secular powers in England. The Pope had the power to award academic degrees, a power assumed by the crown at the Reformation and then delegated by parliament to the archbishop of Canterbury. See Noel Cox, *Dispensations, Privileges, and the Conferment of Graduate Status: With Special Reference to Lambeth Degrees*, 18 J.L. & RELIGION 249, 249 (2002-03).

After the Ecclesiastical Licenses Act of 1533 transferred to the archbishop of Canterbury the power to award “suche licences dispensacions composicions faculties delegacies rescriptes instrumentes or wrytynges have byn accustomed to be had, at the See of Rome or by auctorytie therof,” the archbishop began to award what are known today as degrees of Lambeth. Ecclesiastical Licenses Act (1533), 25 Hen. 8, c. 21; see Cox, *supra*, at 249, 261-62.

29. A case could be made that the phrase *studium generale* would not have seemed appropriate to a ruler, such as the King of England, who did not claim universal jurisdiction over the whole world, given that it purported to be a universal status. Some kings did claim the right to establish *studia generalia* within their own kingdoms, however. See WEIJERS, *supra* note 11, at 39. In the thirteenth-century law code known as the *Siete Partidas*, King Alfonso X of Castile laid out a legal argument for his ability, on par with that of the Pope and the Emperor, to create *studia generalia*. *Id.* Medieval jurists did not recognize these as true *studia generalia*, instead calling such an institution a “*studi[um] generale respectu regni*,” a *studium generale* with respect to a particular kingdom. *Id.*



papacy.<sup>30</sup> When the first university was established in the Netherlands in 1425, the University of Leuven, it was established as a *studium generale* by papal bull.<sup>31</sup> When the second university, the University of Leiden, was established in 1575 as a Protestant alternative to Leuven, it was established by the States General of Holland and Zeeland as a “free public school and university” (“*eene vrye openbaere schole ende universiteyt*”).<sup>32</sup> In the Protestant German lands and Scandinavia, the humanist term *academia*, rather than the decidedly non-Classical *studium generale*, became the preferred term for new foundations.<sup>33</sup>

The latest use of the term *studium generale* we have found in the founding document of an institution in England, Ireland, or Scotland was in the papal bull that established the University of Aberdeen in 1495, 198 years before it was used in the William & Mary charter. The founding documents of the universities established in the British Isles between the Reformation and 1693 use different terms. The 1571 act of parliament that re-incorporated the Universities of Oxford and Cambridge refers to the institutions as “universities;” it does not use the phrase “*studium generale*” or any English equivalent.<sup>34</sup> Nor does the term appear in Charles I’s “Great Charter” of 1636 to the University of Oxford.<sup>35</sup> The 1592 charter of Trinity College, Dublin refers to the college as the “mother of a university” (*mater universitatis* in Latin), not of a

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30. Willem Frijhoff, *Patterns*, in A HISTORY OF THE UNIVERSITY IN EUROPE, VOLUME II: UNIVERSITIES IN EARLY MODERN EUROPE (1500-1800) 43, 47 (Hilde de Ridder-Symoens ed., 1996); John Roberts, Águeda María Rodríguez Cruz & Jurgen Herbst, *Exporting Models*, in A HISTORY OF THE UNIVERSITY IN EUROPE, VOLUME II: UNIVERSITIES IN EARLY MODERN EUROPE (1500-1800) 261, 262-5 (Hilde de Ridder-Symoens ed., 1996).

31. ERIK VAN MINGROOT, SAPIENTIE IMMARCESSIBILIS: A DIPLOMATIC AND COMPARATIVE STUDY OF THE BULL OF FOUNDATION OF THE UNIVERSITY OF LOUVAIN 268 (1994).

32. JOS. M.M. HERMANS & MARC NELISSEN EDS., CHARTERS OF FOUNDATION AND EARLY DOCUMENTS OF THE UNIVERSITIES OF THE COIMBRA GROUP 63-64 (2d ed. 2005); WILLEM OTTERSPEER, BASTION OF LIBERTY: LEIDEN UNIVERSITY TODAY AND YESTERDAY 22-23 (Beverly Jackson tr., 2008). Oddly enough, the States General issued the charter in the name of their Catholic overlord, King Philip II of Spain, despite the fact that they were in rebellion against him. This was apparently standard diplomatic practice in Holland and Zeeland at the time. HERMANS & NELISSEN, *supra*, at 62.

33. Frijhoff, *supra* note 30, at 47-48.

34. Oxford and Cambridge Act 1571, 13 Eliz. 1 c. 29 (Eng.).

35. STRICKLAND GIBSON, THE GREAT CHARTER OF CHARLES I TO THE UNIVERSITY OF OXFORD (Oxford University Press trans., 1932).

*studium generale*.<sup>36</sup> The 1593 charter of Marischal College, Aberdeen, uses four separate terms to refer to the institution being founded—*collegium*, *universitas*, *gymnasium*, and *academia*—but it does not use *studium generale*.<sup>37</sup> In 1633 and 1670, the Scottish parliament enacted statutes confirming the privileges of King's College, Aberdeen.<sup>38</sup> Both statutes translate portions of the 1495 papal bull into Scots, translating the phrase *studium generale* as “university,” although each contains one instance where the phrase is translated more literally as “general study.”<sup>39</sup> Although it could still be found in old statutes and charters and occasionally in works of history (usually in English translation), *studium generale* had clearly been overtaken by other terms by 1693.<sup>40</sup>

### III. DRAFTING THE CHARTER

*Studium generale* was an odd term to choose for a Protestant institution in an English colony in 1693. There is no direct evidence to tell us who placed it in the charter and why. Indirect evidence, however, suggests that James Blair, who would become William & Mary's first president, was the key figure in the drafting of the charter. Blair was a Scottish Episcopalian who had studied at Marischal College, Aberdeen, and the University of Edinburgh.<sup>41</sup> After losing his parish in Scotland due to his refusal to take an oath required by the Scottish Test Act of 1681, he went to London, where

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36. HERCULES H.G. MACDONNELL, CHARTAE ET STATUTA COLLEGII SACROSANCTAE ET INDIVIDUAE TRINITATIS REGINAE ELIZABETHAE JUXTA DUBLIN 2 (1844).

37. A. Bailey Cutts, *The Educational Influence of Aberdeen in Seventeenth Century Virginia*, 15 WM. & MARY Q. 229, 231 (1935); 1 FASTI ACADEMIAE MARISCALLANAE ABERDONENSIS: SELECTIONS FROM THE RECORDS OF MARISCAL COLLEGE AND UNIVERSITY 39-42, 55 (Peter John Anderson ed. 1889).

38. FASTI ABERDONENSES, *supra* note 23, at 145, 169.

39. *Id.* at 170.

40. For its use in the statutes of Cambridge colleges, always refer to the University of Cambridge, not to the colleges themselves, see 2 DOCUMENTS RELATING TO THE UNIVERSITY AND COLLEGES OF CAMBRIDGE 121, 151 (1852) (Clare College); *Id.* at 447 (Corpus Christi College); and *Id.* at 607 (King's College). For the use of the phrase “universal study” in historical works, see *infra* notes 84-86 and accompanying text.

41. Blair began his studies at Marischal College in 1667, at the age of twelve. In 1669, he moved to the University of Edinburgh, where he took his M.A. in 1673 and then studied divinity for a further six years before his ordination. PARKE ROUSE JR., JAMES BLAIR OF VIRGINIA 8-15 (1971).

he gained the patronage of Henry Compton, the bishop of London.<sup>42</sup> Compton, who was responsible for the Anglican Church in England's colonies, sent Blair to Virginia in 1685 to serve as rector of the parish of Varina in Henrico County and, in 1690, appointed Blair his commissary in Virginia.<sup>43</sup> Shortly after receiving news of his appointment as commissary, Blair called a convocation of Virginia's clergy for July of 1690.<sup>44</sup> The earliest set of concrete proposals for what would become the College of William & Mary in Virginia came out of that convocation, and they were probably written by Blair; the institution described in them bears striking similarities to Blair's own *almae matres*.<sup>45</sup> These proposals contain many of the elements that would go into the charter, even to the extent that specific words and phrases from the proposals made their way into the charter, although the phrase *studium generale* does not appear in them.<sup>46</sup>

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42. The test act required public officials to take an oath denouncing Catholicism and certain forms of nonconforming Protestantism. Act anent religion and the Test, 1681, (RPS) (Scot.), <https://www.rps.ac.uk/trans/1681/7/29> [<https://perma.cc/8VKN-Y7KL>]. Blair presumably had no objection to the form of the oath. He was an ardent defender of the established Scottish episcopacy and hostile to the idea of a Catholic monarch. His objection was to the act itself, which exempted the royal family from the duty to take the oath and therefore would allow James II to succeed King Charles II as head of the Scottish Church despite the fact that he was Catholic. Danielle Moretti-Langholtz & Buck Woodard, "To Be Supported and Maintained in all time coming": A Reassessment of the Establishment of the Brafferton Indian School at the College of William & Mary, in BUILDING THE BRAFFERTON: THE FOUNDING, FUNDING AND LEGACY OF AMERICA'S INDIAN SCHOOL 38, 48-49 (Danielle Moretti-Langholtz & Buck Woodard eds., 2019).

43. Moretti-Langholtz & Woodard, *supra* note 42, at 49-50.

44. *See id.* at 51, 53.

45. Marischal College and the University of Edinburgh were both organized as single-college universities divided into schools of philosophy and divinity. Each also had a closely affiliated grammar school. Students were expected to progress from the grammar school to the philosophy school to the divinity school. Alexander Irving of Drum, for instance, in a will executed in 1629, left £10,000 for "four scholleres at the Grammar scoole of Aberdene," "four scolleres at the Colledge of New Aberdene and studentes of Philosophie thairat," and "tua Scolleres who have past thair cours of Philosophie being laureate Maisteres and are become studentes of Divinitie in the said new college of Aberdeen." 1 FASTI ACADEMIAE MARISCALLANAE ABERDONENSIS, *supra* note 37, at 207-09. The grammar school, while a separate institution, was physically very close to Marischal College. Steven John Reid, *Aberdeen's 'Toun College': Marischal College, 1593-1623*, 58 THE INNES REVIEW 173, 194-95 (2007). In Edinburgh, the town's high school served as a preparatory school for the university, where students advanced from a four-year course in philosophy to the study of divinity. *See* 1 ALEXANDER GRANT, THE STORY OF THE UNIVERSITY OF EDINBURGH DURING ITS FIRST THREE HUNDRED YEARS 177-78 (1884); ROUSE JR., *supra* note 41, at 13-15. The 1690 proposal adopted this model for William & Mary. *Founding of the College*, *supra* note 16, at 158.

46. *See infra* note 119 for the inclusion of the phrase "masters and professors" in the final

Blair continued to play a role in the drafting of the charter over the next two and a half years. The Virginia General Assembly commissioned Blair to travel to London to procure a charter for his college, and it assumed that Blair would have a hand in the final version when it instructed him to “peruse ye best Charters in England, whereby Free Schools & Colledges have been founded” and to use them as templates for his own charter.<sup>47</sup> He appears to have done this, as in his accounting of the money he spent in London procuring the charter he lists money “Spent at the Rolls in taking Presid<sup>ts</sup> [precedents] of Charters and Copies,” meaning that he had spent the money acquiring copies of other institutions’ charters from the patent rolls, the administrative records of letters patent that had been issued by the chancery.<sup>48</sup>

Blair had some help in drafting the charter. He accounted to the General Assembly for money “paid [to] the Lawyers for advice in drawing the Charter.”<sup>49</sup> We may even be able to identify the lawyers Blair consulted. Francis Nicholson, the royal governor of Virginia, wrote to Blair to suggest that he hire “Mr. Robert Sawyer & Mr. Finch” so that the charter “might be strong & firm.”<sup>50</sup> By “Mr. Robert Sawyer & Mr. Finch,” Nicholson probably meant Sir Robert Sawyer and Heneage Finch, who had served as attorney general and solicitor general, respectively, in the 1680s.<sup>51</sup> This was good advice on Nicholson’s part. If anyone knew how to make a charter “strong & firm,” it was Sawyer and Finch, who had worked together to deprive Britain’s boroughs and overseas colonies of their charters.

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version of the charter. This terminology was unusual in the context of a college charter, so the fact that it also appears in Blair’s 1690 proposals would seem to indicate that it made its way into the charter due to Blair’s influence.

47. *Founding of the College*, *supra* note 16, at 162.

48. *William and Mary College: Recently Discovered Documents*, 10 WM. & MARY Q. 239, 245 (1930) [hereinafter *Recently Discovered Documents*] (letter from James Blair). Blair likely had some familiarity with the patent rolls, as he had worked in the English chancery as a clerk to the Master of the Rolls from 1682 to 1685. ROUSE JR., *supra* note 41, at 19-21.

49. *Recently Discovered Documents*, *supra* note 48, at 246.

50. *Papers Relating to the Administration of Governor Nicholson and to the Founding of William and Mary College*, 7 VA. MAG. OF HIST. & BIOGRAPHY 153, 158-59 (1899) [hereinafter *Administration of Governor Nicholson*].

51. Finch was the second son of the more famous Heneage Finch, who was Lord Chancellor of England and is better known as Lord Nottingham. Paul D. Halliday, *Finch, Heneage, first earl of Aylesford*, OXFORD DICTIONARY OF NATIONAL BIOGRAPHY (2004) [hereinafter *Finch*, ODNB].

As part of a program to centralize control under the Crown, Sawyer and Finch strong-armed dozens of boroughs into relinquishing their charters in exchange for new ones, with diminished privileges and rights of self-governance.<sup>52</sup> They were also the architects of the royal program to eliminate England's proprietary colonies—which operated in a semi-independent manner, under their own charters—and to combine them into larger provinces under direct royal control; it was Sawyer and Finch who successfully brought suit to have the charter of the Massachusetts Bay Colony annulled in 1684, for instance.<sup>53</sup> Sawyer and Finch were charter-makers and charter-breakers. They also may have known something of university and collegiate charters. Sawyer served as a member of parliament for the University of Cambridge in 1689 and 1690, while Finch did the same for the University of Oxford from 1689 to 1703.<sup>54</sup> We do not know whether Blair succeeded in securing their services. In any event, Sawyer would only have been able to work with Blair in the early stages of the quest for the charter. He died in July of 1692, a

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52. See Paul D. Halliday, *Sawyer, Sir Robert*, OXFORD DICTIONARY OF NATIONAL BIOGRAPHY (2004) [hereinafter *Sawyer*, ODNB].

53. See Nikolas Bowie, *Why the Constitution Was Written Down*, 71 STAN. L. REV. 1397, 1454-55 (2019); Philip S. Haffenden, *The Crown and the Colonial Charters, 1675-1688: Part II*, 15 WM. & MARY Q. 452, 452, 457-58 (1958); *Sawyer*, ODNB, *supra* note 52. Nicholson was likely familiar with Sawyer's and Finch's role in the revocation of the colonial charters because his previous post, immediately before assuming the lieutenant governorship of Virginia, was that of lieutenant governor of the Dominion of New England, the entity that was created as a direct result of the revocation of the charters of New England's proprietary colonies. See Kevin R. Hardwick, *Nicholson, Sir Francis*, OXFORD DICTIONARY OF NATIONAL BIOGRAPHY (2004). Nicholson also seems to have been familiar with the two lawyers' later work, as he wrote that they were "great Lawyers and Church of England men & were every way qualify'd for him to make use of & that I supposed they would take little or no fee." *Administration of Governor Nicholson*, *supra* note 50, at 159. Sawyer and Finch had gained something of a reputation as defenders of Anglicanism. After they were dismissed from their government posts, they became Protestant heroes when they successfully defended seven bishops accused of seditious libel in 1688 for their opposition to King James II's Declaration of Indulgence, which extended religious tolerance to Catholics and dissenting Protestants. *Finch*, ODNB, *supra* note 51; *Sawyer*, ODNB, *supra* note 52.

54. *Finch*, ODNB, *supra* note 51; *Sawyer*, ODNB, *supra* note 52. When the universities petitioned King James I for the right to send representatives to parliament, one of the arguments made in favor of university representation was that the burgesses for the universities would be familiar with the statutes of the universities and their colleges, and could advise when either university or college business came before the House of Commons. They did assist in the drafting of new college charters from time to time. Kenneth Fincham, *Oxford and the Early Stuart Polity*, in THE HISTORY OF THE UNIVERSITY OF OXFORD, VOLUME IV: OXFORD IN THE SEVENTEENTH CENTURY 179, 196-97 (Nicholas Tyacke ed., 1997).

little over ten months after Blair arrived in England, but seven months before the charter was issued.<sup>55</sup> Blair did hire someone, however, and Sawyer and Finch are likely candidates.<sup>56</sup> Blair, at the very least, acknowledged Nicholson's advice; he wrote back to Nicholson thanking him for his "advice about the Lawyers."<sup>57</sup>

*Studium generale* and "place of universal study" are absent from the earliest documents associated with William & Mary. The earliest proposals refer to the proposed institution only as a "Colledge."<sup>58</sup> Virginia's General Assembly, in the instructions it gave to Blair before he set off for England and in its petition to King William and Queen Mary, refers to the institution as a "Free Schoole and Colledge," the free school language referring to the grammar school that was to be part of William & Mary.<sup>59</sup> Blair himself used the phrase "free school and college" fairly regularly in his correspondence in 1691 and 1692, and even used it occasionally after the charter was granted.<sup>60</sup>

The *Studium generale* language appears for the first time, as "place of Universall Study," in the royal warrant, the first of several official documents produced by the King's administration in the complex process of issuing a royal charter.<sup>61</sup> The warrant was a command from the King to the attorney general to draft the next document in the chain, called the King's bill.<sup>62</sup> Since Blair was asking for significant financial support for his new college, the King had sent Blair to the treasury to negotiate the terms of the charter.<sup>63</sup> After months of negotiation, on September 1, 1692, the treasury issued a report in favor of the establishment of a "free

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55. See Sawyer, ODNB, *supra* note 52.

56. See *Administration of Governor Nicholson*, *supra* note 50, at 158-59.

57. *Id.* at 159.

58. See *Founding of the College*, *supra* note 16, at 158-59.

59. See *id.* at 162-64.

60. *Recently Discovered Documents*, *supra* note 48, at 241, 244.

61. Swem Library at William & Mary has a certified copy of the royal warrant, made in the nineteenth century. Copy of the Warrant from the King to the Attorney General Authorizing Him to Draw Up the Charter of the College of William and Mary Made in 1828 from the Original in the Rolls Chapel, Royal Charter Collection, Box 1, Special Collections, Swem Library, College of William and Mary [hereinafter Copy of Royal Warrant]; see EVANS, *supra* note 7, at 8. Much of the language that appears in the English versions of the charter as we have them today appears first in the royal warrant.

62. EVANS, *supra* note 7, at 11.

63. See ROUSE JR., *supra* note 41, at 71.

School and Colledg,” as the treasury was still calling it at this point.<sup>64</sup> That set the process of drafting the royal warrant into motion. The warrant, which was written in English, was prepared at the treasury and contained what was essentially a full draft of the charter.<sup>65</sup> When the treasury presented the warrant for the King’s signature on January 25, 1693, it was not a warrant for a “Free Schoole and Colledge,” however, it was for a “place of Universal Study, or a perpetuall College.”<sup>66</sup> Somehow, between September 1, 1692, and January 25, 1693, the “place of universal study” language had made its way into the proposal for William & Mary.

Although the idea to use this language may have come from someone at the treasury, this was also a time when Blair and his lawyers were actively engaged in the drafting of the charter. Blair lists the money he spent at the chancery obtaining copies of charters to use as precedents as having been spent between October 1st and October 15th.<sup>67</sup> He then accounts for money spent in “Solliciting and drawin the warrant at the Treasury” and “paid to the Lawyers for advice in drawing the Charter” as having been spent between October 15th and January 28th.<sup>68</sup> We cannot be sure who put this language in the charter, but Blair and his lawyers are likely candidates.

#### IV. A DELIBERATE CHOICE

Although the phrase first appears in the record in English, there are strong reasons to believe that Blair and his lawyers first selected the Latin phrase *studium generale* and then translated it into English. First, there is a possibility that the text of the charter was first drafted in Latin. Frank Evans argued that the charter was negotiated and drafted in English first and then translated into Latin because Latin was required for the document that came next after the royal warrant, the King’s bill.<sup>69</sup> There are indications in

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64. *Founding of the College*, *supra* note 16, at 170; Tate, *supra* note 5, at 12.

65. EVANS, *supra* note 7, at 11; *see* Copy of Royal Warrant, *supra* note 61.

66. Copy of Royal Warrant, *supra* note 61, at 1; *see* EVANS, *supra* note 7, at 11.

67. *Recently Discovered Documents*, *supra* note 48, at 245.

68. *Id.* at 245-46.

69. EVANS, *supra* note 7, at 13-14; *see* Shelagh Bond & Norman Evans, *The Process of Granting Charters to English Boroughs, 1547-1649*, 91 ENG. HIST. REV. 102, 107-10 (1976).

the royal warrant itself, however, that it is a translation of a Latin text, suggesting that Blair and his lawyers produced their initial draft in Latin and then produced an English translation of that draft for the warrant. When the warrant says that the college is to be situated “on the south side of a certaine river, commonly called York river,” that language is likely translated from Latin.<sup>70</sup> The structure of this sentence is derived from a format standard in Latin charters, used when the author opts to give a word or a name in English instead of (or in addition to) Latin.<sup>71</sup> When Latin-language charters give place names, they often contain a version of the place name rendered in Latin and then specify what the place is “commonly called” in English.<sup>72</sup> Thus, in the 1624 charter of Pembroke College, Oxford, we find “*infra Aulam Lataeportensem in praedicta Universitate Oxoniensi, communiter vocatam Broadgates Hall.*”<sup>73</sup> The drafter makes an attempt to render “Broadgates” into Latin (*Lataeportensem*), but, presumably so that the reader will understand what is being referred to, he gives the name in English, prefaced by “*communiter vocatam*” (commonly called).<sup>74</sup> In the case of the William & Mary charter, where the English-language warrant has “on the South Side of a certain River, commonly called York River,” we find exactly what we would expect in the Latin versions of the charter.<sup>75</sup> In one case we find, “*super australem partem fluminis Eboracensis vulgo vocati York River.*”<sup>76</sup> Here we have an attempt to render “York River” into Latin (*fluminis Eboracensis*) followed by the name of the river in English.<sup>77</sup> In another part of the charter we find, “*super australem partem fluminis cujusdam communiter vocati York River.*”<sup>78</sup> If the authors had been drafting in English, there

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70. Copy of Royal Warrant, *supra* note 61, at 2. This appears again, in slightly different wording, as “on the South side of the River comonly called Yorke river.” *Id.* at 4.

71. See, e.g., *Royal Patent of Foundation of Pembroke College, Oxford*, in 3 STATUTES OF THE COLLEGES OF OXFORD v (1853).

72. See *id.*

73. *Id.*

74. *Id.*

75. 1736 CHARTER, *supra* note 7, at 4.

76. *Id.* at 10.

77. See *id.*

78. *Id.* at 5. Evans noted these instances, but thought that the stilted Latin phrasing was evidence that the drafters of the charter had drafted the text in English first and then rendered it, with some trouble, into inelegant Latin. EVANS, *supra* note 7, at 14. Evans appears to have been unaware that these types of phrases were standard charter diplomatic.



would have been no need to use an English version of a Latin formula that warns the reader that an English word is about to be used.<sup>79</sup> There is at least one other indication in this passage that the royal warrant might be a translation of a Latin text: the lack of a definite article before “York River.”<sup>80</sup> Latin has no definite article.<sup>81</sup> None of this is conclusive evidence that the charter was originally written in Latin; charter-drafters drafting in English could adopt constructions found in Latin charters, even when they were not strictly necessary, simply because they were conventional constructions.<sup>82</sup> It seems possible, however, that the drafters of the warrant were working from a now-lost Latin draft that had been made by Blair and his lawyers between September 1, 1692 and January 25,

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79. Indeed, Evans made this same argument about the English version of the charter printed in Williamsburg in 1736, that the translator’s decision to translate these phrases from the Latin charter as “the south side of a certain river commonly called York River” was a sign that the author had translated the phrase from a Latin version of the charter. EVANS, *supra* note 7, at 15. He seems to have been unaware that this phrasing also appears in the royal warrant, the earliest surviving English version of the charter. See *supra* note 70 and accompanying text. Although we think some of Evans’s conclusions were incorrect, we are indebted to him for his detailed research and analysis, which we build upon here.

80. 1736 CHARTER, *supra* note 7, at 10.

81. David N. Wigtil, *Latin Definiteness and English Articles*, 86 CLASSICAL WORLD 467, 467 (1993).

82. These kinds of constructions appear fairly regularly in English-language charters, although it is difficult to know whether that is due to translation from a Latin original or to drafting conventions that brought Latin constructions into English-language charters. The 1691 charter of Massachusetts Bay adopts this convention, referring to “a great River there comonly called Monomack ats Merrimack and a certaine other River there called Charles River being in a Bottom of a certaine Bay there comonly called Massachusetts.” 1 THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE UNITED STATES 943 (Benjamin Perley 2d ed., 1878). More probative is William Sheppard’s *Of Corporations, Fraternities, and Guilds*, the first book on the English law of corporations, which contains a few examples of English-language charters that use “commonly called” formulations. See NANCY L. MATTHEWS, WILLIAM SHEPPARD, CROMWELL’S LAW REFORMER 133 (1984). Sheppard’s work was written during the Commonwealth, at a time when the use of Latin had been temporarily abolished in the Chancery. See H.C. MAXWELL-LYTE, HISTORICAL NOTES ON THE USE OF THE GREAT SEAL OF ENGLAND 239 (1926). At one point Sheppard gives the sample language, “That the Hospital of the said City commonly called, &c.” WILLIAM SHEPHEARD, OF CORPORATIONS, FRATERNITIES, AND GUILDS 22 (1659). At another, he has “a Tenement within the same city, commonly called Guild Hall.” *Id.* at 134.

The 1681 Charter of the Province of Pennsylvania contains an interesting case of the reverse; it refers to the statute *Quia Emptores* as “[t]he Statute made in the parliament of Edward, sonne of king henry, late king of England, our predecessor, commonly called The Statute Quia emptores terrarum.” CHARTER TO WILLIAM PENN AND LAWS OF THE PROVINCE OF PENNSYLVANIA 88 (John Blair Linn et al. eds., 1879).

1693.<sup>83</sup> If that is the case, then the “place of universall study” found in the warrant is a translation of the Latin term *studium generale*.

But even if the charter was originally drafted in English, there is good reason to believe that Blair and his lawyers selected the phrase *studium generale*. The English phrase “place of universal study” does not seem to have been a phrase with any kind of independent meaning in the seventeenth century; it seems to have been a fairly conventional translation of *studium generale*. The only occurrence of the phrase “Place of universal study” in the Early English Books Online Database is a post-1693 reference to William & Mary.<sup>84</sup> “Universal study” does appear in seventeenth-century texts, but when it does, it is usually a translation of *studium generale*. Edward Leigh began a chapter of his book on religion and learning titled “Of the Universities of Germany, Denmark, and Sweden” with a description of “the famous University of Athens,” which “was the universall Study of all the world.”<sup>85</sup> “Place of universall study” looks like a slightly more stilted way of translating the Latin *studium generale*, a phrase that is difficult to translate into elegant English. Where the Scottish parliament captured the sense of the term with the word “university,” the authors of the charter chose a more literal translation of the two words.<sup>86</sup> Thus, even if the drafters of the

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83. That Latin draft may have been used by the attorney general in drafting the King’s bill. See *supra* notes 69-82 and accompanying text. Recipients of charters were often involved in the drafting of the bill. Bond & Evans, *supra* note 69, at 110.

84. It appears in a 1694 letter from Governor Nicholson lauding the King for his “gracious Grant and Charter for the propagation of the Colledge or Place of universal Study in that your Majesty’s said Colony.” THOMAS READING, *ALL THE LAWS OF MARYLAND NOW IN FORCE* 39 (1700).

85. EDWARD LEIGH, *FOELIX CONSORTIUM; OR, A FIT CONJUNCTURE OF RELIGION AND LEARNING, IN ONE ENTIRE VOLUME, CONSISTING OF SIX BOOKS* 67 (1663). For other examples of the phrase “universal study” used as a translation of *studium generale*, see W. CROOK, *THE HISTORIANS GUIDE IN TWO PARTS* 19 (1676) (“The Universal Study established by Charles the Great”); RANULF HIGDEN, *THE CRONYCLES OF ENGLONDE WITH THE DEDES OF POPES AND EMPEROURS, AND ALSO THE DESCRIPCYON OF ENGLONDE* lxiii (1528) (sixteenth-century printing of an English translation of a fourteenth-century text); and JOHN JEWEL, *A DEFENCE OF THE APOLOGIE OF THE CHURCHE OF ENGLANDE* 378 (1567) (“The Courte of Rome hath an Universal Studie”).

86. The translation of *studium* as “place of study” appears in some works of the period as well. We find it in Robert Mulcaster’s 1567 translation of Sir John Fortescue’s *De Laudibus Legum Angliae*. In his Latin text, written in the fifteenth century, Fortescue explains why the laws of England are not taught in the universities, but says that they are taught in a certain “*studio publico*” composed of the Inns of Court and Chancery in London. SIR JOHN FORTESCUE, *DE LAUDIBUS LEGUM ANGLIAE* 112 (John Selden ed., 1616) [hereinafter FORTESCUE 1616].

charter selected the words “place of universal study” in English first, they were likely thinking of the Latin phrase *studium generale*.

They appear to have chosen that phrase with some deliberation. This does not appear to be a case of blind copying from another charter. Whoever drafted the charter clearly did peruse prior charters; the William & Mary charter follows the standard diplomatic practice for the charters of Oxford and Cambridge colleges, charters that Blair could have acquired copies of from the rolls.<sup>87</sup> The charter uses phrases that were peculiar to the charters of English colleges. In the 1624 charter of Pembroke College, Oxford, King James I stated that he was granting his license to establish

A perpetual college for those zealous for divinity, civil and canon  
law, the medical art, and other good arts and languages; and the

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Mulcaster translated this as a “certaine place of publique or common studie.” SIR JOHN FORTESCUE, A LEARNED COMMENDATION OF THE POLITIQUE LAWES OF ENGLANDE 112 (Robert Mulcaster tr., 1567) [hereinafter FORTESCUE 1567]. The similarity to the “place of universal study” construction we find in the William & Mary charter, with the adjective placed between “place” and “study,” is interesting. John Selden maintained this translation in his 1616 edition of *De Laudibus*. See FORTESCUE 1616, *supra*, at 112. Both authors translate *studium* as “place of study” throughout the text. See, e.g., FORTESCUE 1567, *supra*, at 112; FORTESCUE 1616, *supra*, at 112.

Fortescue’s use of *studium publicum* to collectively describe the Inns of Court and Inns of Chancery is also interesting for the ways in which it alludes to the phrase *studium generale*. On the one hand, Fortescue distinguishes these institutions from the universities to explain why the common law is not taught in universities. On the other hand, in an explicit comparison to the universities, he describes the rank of serjeant-at-law as a degree similar to that of doctor of law. FORTESCUE 1616, *supra*, at 116-17. Fortescue seems to be trying to stress that the educational institutions of the common law are of similar stature to the universities while recognizing that they are different types of institutions. By using the phrase *studium publicum*, Fortescue, who was writing before the Reformation, evokes the phrase *studium generale*. At the same time, he avoids applying that technical term to the Inns. We would like to thank J.H. Baker for bringing this passage and its use of the phrase *studium publicum* to our attention.

87. Parke Rouse states that Blair “studied [the charters] of English and Scottish universities.” ROUSE JR., *supra* note 41. Although, as we suggest below, the Scottish universities and Trinity College, Dublin probably served as models for William & Mary, it is not clear that Blair would have had access to their charters. While he would have been able to acquire copies of the charters of English colleges and universities at the chancery in London, he probably would have had to travel to Edinburgh and Dublin, home to the Scottish and Irish chanceries, to find enrolled copies of these institutions’ charters. Blair would have had personal knowledge of the organization of both Marischal College, Aberdeen and the University of Edinburgh from the time he spent at those two institutions, however. See *supra* note 41 and accompanying text.

same college [will be] of one master, ten fellows, and ten scholars, graduates and non-graduates, more or less, according to the statutes and ordinances of the same college.<sup>88</sup>

Compare that to the William & Mary charter, in which the eponymous monarchs granted their license to establish

a certain Place of universal Study, or perpetual College, for Divinity, Philosophy, Languages, and other good Arts and Sciences, consisting of one President, Six Masters or Professors, and an Hundred Scholars, more or less, Graduates and Non-Graduates, as abovesaid, according to the Statutes and Orders of the said College.<sup>89</sup>

The charters differ in the details, but the format is very similar. The Pembroke charter continues in a similar manner to the William & Mary charter, telling us that the foundation “shall ever be called and denominated the College of Pembroke in the University of Oxford.”<sup>90</sup> But the drafters would not have found the phrase *studium generale* while perusing college charters; it never appears in the charters of colleges.<sup>91</sup> Note that where the William & Mary charter says “a certain Place of universal Study, or perpetual College,”<sup>92</sup> the Pembroke charter simply says “a perpetual college.”<sup>93</sup>

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88. “*Collegium perpetuum sacrae theologiae, juris civilis et canonici, artis medicae, et aliarum bonarum artium et linguarum studiosis; idemque Collegium de uno Magistro, decem Sociis et decem scholaribus graduatis et non graduatis, aut pluribus aut paucioribus, juxta ejusdem Collegii statuta et ordinationes.*” *Royal Patent of Foundation of Pembroke College, Oxford*, *supra* note 71, at vi (translation by author).

89. 1736 CHARTER, *supra* note 7, at 8. Here we have used the translation that appears in the text printed in Williamsburg in 1736, because that text conforms more closely to the Latin than other English translations of the charter. The Latin charter has “[*Quoddam Studium generale, sive collegium perpetuum sacrosanctae theologiae, philosophiae, linguarum aliarum bonarum artium & scientiarum, de uno praeside, sex magistris sive professoribus, & centum scholaribus, pluribus seu paucioribus, graduatis et non-graduatis, ut praedictum est, juxta ejusdem collegii ordinationes & statuta.*” *Id.* at 9-10. The same language appears at pages 2-5 with slight alterations.

90. *Royal Patent of Foundation of Pembroke College, Oxford*, *supra* note 71, at vi (translation by author).

91. It does occasionally appear in the *statutes* of Oxford and Cambridge colleges, but when it does, it is always used to refer to the University. See *supra* note 40.

92. 1736 CHARTER, *supra* note 7, at 8.

93. See *Royal Patent of Foundation of Pembroke College, Oxford*, *supra* note 71, at vi (translation by author).

The particular form of words we find in William & Mary's charter, "[s]tudium generale, sive collegium," does not appear in any charter related to a British institution that we have found.<sup>94</sup> The drafters thus diverged from their precedent charters when they wrote these words. And if the drafters did discover the phrase *studium generale* in their perusal of charters, that would suggest that they were looking at the charters of universities, and not just free schools and colleges, as models for the charter of this new institution in Virginia. But it is unlikely that they would have encountered it even in the charters of universities, as it had not been used in a foundation document for a university in the British Isles since 1495.<sup>95</sup> It did not appear in the foundational documents of either of Blair's own *almae matres*, the University of Edinburgh and Marischal College, Aberdeen.<sup>96</sup> *Studium generale* was not completely unknown in England in the seventeenth century—the authors who used the English translation "universal study" in their works appear to have been familiar with it as a term for a university—but it would not be accurate to say that the term was widespread; it had clearly been overtaken by the term *universitas*.<sup>97</sup> The use of *studium generale* was probably not an accident of copying. This phrase was likely selected deliberately for the charter.

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94. See 1736 CHARTER, *supra* note 7, at 9. There is an interesting construction in the statutes of Corpus Christi College, Cambridge, that could have provided some inspiration for the phrasing in the William & Mary charter. The statutes describe the college as "in Cambridge in the aforesaid diocese of Ely, where a *studium generale* is discerned to thrive, a certain House or College (*Domum sive Collegium*) of the Body of Christ and the Blessed Mary." 2 DOCUMENTS RELATING TO THE UNIVERSITY AND COLLEGES OF CAMBRIDGE, *supra* note 40, at 447 (translation by author). Here we find the University of Cambridge referred to as a *studium generale* and, a few words later, the *Domum sive Collegium* construction, which parallels the *Studium Generale sive Collegium* construction of the William & Mary charter. This may be a coincidence, or it may be that one of the drafters was familiar with these statutes. There is also an interesting parallel in Emperor Maximilian I's 1502 decree founding the University of Wittenburg. That decree uses the phrase "*studium generale sive universitatem aut gymnasium in civitate Wittenburg*." Ulrich Köpf, *The Educational System during the Confessional Period*, in HEBREW BIBLE/OLD TESTAMENT: THE HISTORY OF ITS INTERPRETATION, VOLUME II: FROM THE RENAISSANCE TO THE ENLIGHTENMENT 649, 656, n.47 (Magne Sæbø ed., 1996).

95. See *supra* notes 24-26 and accompanying text.

96. See 1 ALEXANDER BOWER, *The History of the University of Edinburgh* 396 (1817); *supra* notes 37-39 and accompanying text.

97. See *supra* notes 37-39 and accompanying text.

The phrase *studium generale* would have been a useful one to have in the charter of the new college. A *studium generale* was, by definition, a university, and would have the powers of a university, including the power to award degrees.<sup>98</sup> Colleges were not degree-granting institutions in 1693.<sup>99</sup> Although today we tend to think of a college as a university on a smaller scale, in medieval and early-modern Britain colleges and universities were distinct types of institutions.<sup>100</sup> The Universities of Oxford and Cambridge each had, and still have, a number of constituent colleges.<sup>101</sup> The same person might be a master of the university and a fellow of a college, but the two roles were distinct. Scotland and Ireland had a number of single-college universities in the seventeenth century, in which there was a great degree of overlap between the officers of the college and of the university. Indeed, the modern American usage of referring to higher education in general as “college” rather than “university” (as in “my daughter is going to college”), appears to have originated in the single-college universities of Scotland.<sup>102</sup> But even at those institutions the college and the university were usually, at least officially, distinct entities. King’s College, Aberdeen, for instance, had a papal bull establishing the University (or *studium generale*) of Aberdeen and a separate charter from the bishop of Aberdeen establishing King’s College, even though the two entities essentially operated as a single institution, which was sometimes referred to as the “university and college of Auld

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98. See *supra* notes 9-10 and accompanying text.

99. The one exception to this rule, Harvard College, is discussed below. See *infra* notes 104-05 and accompanying text.

100. See *infra* note 103 and accompanying text.

101. See, e.g., *What Is an Oxford College?*, <https://www.ox.ac.uk/admissions/graduate/colleges/introducing-colleges?wssl=1> [<https://perma.cc/ZVE7-B2E4>].

102. *College*, OXFORD ENGLISH DICTIONARY (2d ed. 1989).

Aberdeen.”<sup>103</sup> It was the university that had the power to grant

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103. FASTI ABERDONENSES, *supra* note 23, at 3, 53, 173; DAVID STEVENSON, KING’S COLLEGE, ABERDEEN 1560-1641: FROM PROTESTANT REFORMATION TO COVENANTING REVOLUTION 26 (1990). The post-Reformation universities of the British Isles all followed different models, but it would appear that each single-college university claimed to be both a college and a university, at least in part so that it would be clear that the institution had the power to confer degrees. Blair’s first *alma mater*, which he attended for about a year before moving to the University of Edinburgh, was Marischal College, Aberdeen. Marischal did not have separate founding documents for the college and the university, but its charter used both the words “*collegium*” and “*universitas*” to describe the institution being founded and it was often referred to as a college and a university. 1 FASTI ACADEMIAE MARISCALLANAE ABERDONENSIS, *supra* note 37, at 39, 42, 56, 382.

Trinity College, Dublin, was established by a charter of Elizabeth I in 1592. JOHN PENTLAND MAHAFFY, AN EPOCH IN IRISH HISTORY: TRINITY COLLEGE, DUBLIN, ITS FOUNDATION AND EARLY FORTUNES, 1591-1660, at 63, 65, 165 (1903). Trinity’s charter says that it will be the “mother of a university” and provides for university officers—a chancellor, vice-chancellor, and proctors—but the university was not really a separate institution. MACDONNELL, *supra* note 36, at 1-2, 8. It had no charter of its own and no seal, and the officers of the university were appointed by the college. *See id.* at 8; MAHAFFY, *supra*, at 64-65, 162-63, 165. Nevertheless, people spoke of a separate “University of Dublin,” and King James I’s charter of 1613 granting parliamentary representation to Trinity referred to it as the “College and University in Dublin.” MACDONNELL, *supra* note 36, at 309-10. Even today, when students graduate from Trinity College, their degrees are awarded by the University of Dublin.

The University of Edinburgh, where Blair took his M.A., has an even stranger institutional history. Edinburgh’s 1582 charter does not say whether the institution being founded is a college or a university. It simply grants to the town council the power to acquire buildings for the use of “professors of schools of grammar, of humanity and languages, of philosophy, theology, medicine, and laws, or of all other liberal sciences,” and then empowers the council to hire those professors. BOWER, *supra* note 96, at 396 (translation by author); 1 ALEXANDER GRANT, THE STORY OF THE UNIVERSITY OF EDINBURGH DURING ITS FIRST THREE HUNDRED YEARS 122-23 (1884). The charter to the town did not use the word “university” and said nothing of the power to award degrees. This new body of professors and students was commonly referred to as the “Tounis College.” D.B. HORN, A SHORT HISTORY OF THE UNIVERSITY OF EDINBURGH, 1556-1889, 5 (1967). In his chronicle of the University of Edinburgh, Thomas Craufurd, writing in 1646, recorded that during a 1617 visit to Scotland, King James announced that “I will be godfather to the Colledge of Edinburgh, and have it called the Colledge of King James,” although Craufurd himself refers to the institution as both a college and a university in this passage. THOMAS CRAUFURD, HISTORY OF THE UNIVERSITY OF EDINBURGH FROM 1580 TO 1646, at 85 (1808). A 1621 act of the Scottish parliament confirmed Edinburgh’s 1582 charter and declared the “said Colledge in all tyme to cum to be callit King James Colledge.” ALEXANDER MORGAN & ROBERT KERR HANNAY, CHARTERS, STATUTES, AND ACTS OF THE TOWN COUNCIL AND THE SENATUS, 1583-1858, at 52 (1937). And yet, Edinburgh awarded degrees in the first decade of its existence. *See* 1 GRANT, *supra*, at 151. But it seems that this college also claimed to be a university and awarded degrees as one. The earliest surviving diploma from the University of Edinburgh, dating to 1674, the year after Blair took his M.A. there, says that it has been issued by the “Principal, professors, and regents of the *University* of King James in Edinburgh.” HORN, *supra*, at 27. Even if it was commonly known as the Town’s College or the College of King James, the officials of that college were issuing diplomas as if it were a university. *See id.*

degrees, not the college.

Harvard College was the exception to the rule that colleges were not degree-granting institutions; it started awarding degrees in the 1640s, but anxiety over whether it had the authority to do so appears to have bubbled up in the 1690s, around the same time Blair was negotiating for a charter for William & Mary. Harvard's 1650 charter said nothing about the ability to award degrees, but in 1692 and 1697 Harvard sought and acquired new charters from the government of the Massachusetts Bay Colony that included a provision that explicitly granted Harvard the power to award degrees. After both of those charters were disallowed by the Crown—for reasons unrelated to the provisions on degrees—Increase Mather, the president of Harvard, expressed concern about Harvard's ability to award degrees going forward.<sup>104</sup> Mather appears to have assumed that Harvard could not grant degrees without a charter specifically authorizing it to do so when he asked, in 1700, “[i]s it not much more eligible to have the Colledge turned into a school for Academical Learning without privilege of Conferring degrees” than to accede to the Crown's demands and accept a charter that would give the Crown significant oversight.<sup>105</sup> By stating that his new

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As an aside, the idea of naming the new college in Virginia after its royal patrons may have come from Blair's experience at Edinburgh. Although Blair is unlikely to have had access to documents relating to the “University of King James in Edinburgh” when he was in London negotiating the charter, as they would have been in Scotland, he may have taken some inspiration from his *alma mater* when he named William & Mary. He need not have looked any farther than his own diploma.

104. The Crown's objection to the charters of 1692 and 1697 was that neither gave the king the power to appoint a visitor, an official who had general oversight of the college's activities. SAMUEL ELIOT MORISON, *HARVARD COLLEGE IN THE SEVENTEENTH CENTURY PART II* 509-11, 517 (1936). The first charter made no mention of a visitor, while the second placed the power of visitation not in the king, but in the governor and his council. *Id.* at 511. It may be a sign of the greater favor shown to William & Mary, as an Anglican institution, that the Crown did not demand this kind of direct control over William & Mary. The Virginia General Assembly directed James Blair to ensure that his college “bee under noe other Visitation then by y<sup>e</sup> s<sup>d</sup> Govern<sup>r</sup> & their Successours,” meaning the original set of trustees named in the charter. *Founding of the College*, *supra* note 16, at 164. The Crown raised no objection to this, and the original body of governors or trustees named in the General Assembly's instructions, along with their successors, were named the “true, sole, and undoubted Visitors and Governors of the said college for ever.” 1736 CHARTER, *supra* note 7, at 26-29. The current Board of Visitors is a continuation of that body.

105. MORISON, *supra* note 104, at 526-27. After these charters were disallowed, the governor and legislature of Massachusetts Bay opted to declare that the charter of 1650, which was generally assumed to have been revoked by the annulment of the Massachusetts



“College of William and Mary in Virginia”<sup>106</sup> was both a college *and* a *studium generale*, Blair may have been trying to make it clear that his new foundation in Virginia would have the power to award degrees, on par with that of the universities of the dominions of England, Scotland, and Ireland.

#### V. THE POLITICS OF UNIVERSITY CHARTERS

If Blair’s intention was to establish an institution that was both a college and a university, why use an archaic phrase for “university?” Why not say that William & Mary was a “*universitas sive collegium*?” This may have simply been an aesthetic choice. Blair or his lawyers may have preferred *studium generale* to *universitas*. One of them may have had an antiquarian streak. It is also possible that the phrase’s relative obscurity was actually its virtue in Blair’s eyes. Perhaps Blair did not want it to be too obvious that he was requesting university status for his new institution. Blair or his lawyers may have worried that someone in the government would object to such a grant. Harvard’s charters of the 1690s are evasive when it comes to whether the institution is a university. Harvard’s 1692 and 1697 charters, the ones that were ultimately disallowed by the Crown, do explicitly state that Harvard will have the power to award degrees, but they avoid describing Harvard as a university. The provision on degrees in the 1692 charter reads as follows:

[W]hereas it is a laudable Custome in the Universities whereby Learning has been Encouraged and Advanced to confer Academical Degrees or Titles on those who by their Proficiency as to Knowledge in Theology, Law, Physick, Mathematicks or Philosophy have been judged worthy thereof, It is hereby Enacted and Ordained, That the President and Fellowes of the said Colledge shall have power from time to time, to grant and admit to Academical Degrees, as in the Universities in England....<sup>107</sup>

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Bay Company charter in 1684, was still in force, as it had “not been repealed or Nulled.” *Id.* at 556, 660-61. That charter contained no mention of a degree-granting power.

106. 1736 CHARTER, *supra* note 7.

107. MORISON, *supra* note 104, at 656.

The wording here appears to have been designed to imply that Harvard College had the status of a university without ever actually saying it. Perhaps the drafters had reason to worry that an overt statement that Harvard was a university would encounter opposition from the Lords of Trade in London, who had the power to disallow charters issued by the colonial government. Blair may have been trying to do the same thing through the use of the outdated phrase *studium generale*, to avoid overtly asking for more than he thought he was likely to get. It is worth pointing out that Harvard had particular reasons for treading lightly in the 1690s that did not necessarily apply to William & Mary. Imperial officials were not always friendly to Harvard, a Puritan school that trained Puritan leaders. In 1683, Edward Cranfield, the royal governor of New Hampshire, a royal colony that had been created in 1679 to curtail that influence of the Puritan colony of Massachusetts Bay, wrote two letters to officials in England decrying the

pernicious and Rebellious principles which flowes from their College at Cambridge which they call their Vniversity from whence all the Townes both in this and the other Colonys are supplied with factious and Seditious Preachers who stirr up the people to a dislike of his Majestie and his Gouvernement and the Religion of the Church of England.<sup>108</sup>

He asserted that “this Country can neuer bee well settled or the people become good Subjects, till their Preachers bee reformed and that Colledge suppressed.”<sup>109</sup>

Cranfield was probably something of an outlier in the intensity of his hatred of Harvard, but it would certainly not be too strong to say that Harvard did not advance the Crown’s imperial mission in the same way an Anglican institution like William & Mary would.<sup>110</sup>

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108. *Id.* at 475.

109. *Id.*

110. Increase Mather, while president of Harvard College, was in England from 1688 to 1692 to seek a royal charter for Harvard. *Id.* at 483. Mather reported that James II, in response to his request for a charter, told him that he would ensure that the property and liberties of Harvard would be respected, and that the college would not come under Anglican control. *Id.* Mather did not get any further with James, however, because three weeks later William of Orange landed in England. *Id.* When the dust of the Glorious Revolution had settled, Mather wanted to petition William III for a royal charter for Harvard, but was

William & Mary was to be a bulwark of Anglicanism, and therefore offered no threat to the Crown's imperial project; indeed, with its close connections to the Anglican hierarchy in England and its mission to train Anglican ministers and to evangelize the native peoples of North America, it clearly advanced the imperial project.<sup>111</sup> Still, Blair may have worried about asking for more than the Crown was willing to give. Opposition from Oxford and Cambridge was also a possibility, as the two English universities could be particularly jealous of their privileges. In 1657, Oliver Cromwell's government issued a charter for "The Master or Provost, Fellows, and Scholars of the College of Durham," a foundation not unlike William & Mary, which included a free school and provision for four professors who would teach higher studies.<sup>112</sup> In 1659, the college petitioned for a charter granting it the status and powers of a university, including the power to award degrees. In response, Oxford and Cambridge

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advised by "some great Ministers of State" that he would likely be unsuccessful. *Id.* at 487. William does not appear to have been wholly opposed to Harvard, however. Mather reported that, in a 1692 audience, William promised that he would "cast a favorable aspect on that society." *Id.* at 487-88. Of course, this did not prevent the Crown from later annulling two charters in a row on the ground that they did not give the Crown enough control over Harvard. *See supra* note 104 and accompanying text.

111. Blair was receiving support from the highest levels of the Church of England. After losing his parish in Scotland, Blair found patronage in London among a group of clerics who were staunch defenders of Anglicanism, such as Gilbert Burnet and Henry Compton. Moretti-Langholtz & Woodard, *supra* note 42, at 48-49. Most of Blair's London circle were deprived of their positions within the Church under James II and subsequently worked to oust James and bring William III and Mary II to the throne. *See id.* at 51. They were rewarded with high positions in the Church once William and Mary were crowned in 1689. Burnet, for instance, served as William's chaplain and gave the coronation sermon. The King and Queen rewarded him for his loyalty by making him bishop of Salisbury. *Id.* at 51. When Compton was restored to his bishopric, which had supervision of the Church in the colonies, he very quickly appointed Blair his commissary for the Church in Virginia. *Id.* at 51. When Blair arrived in London to petition for the charter, he found his friends and supporters the leaders of the Anglican Church under the new king and queen. *Id.* Mather could not count on such support for Harvard.

Blair and Mather may have been in some competition with each other. They were in London at the same time, seeking royal charters for their institutions. They were likely aware of each other, as they both sought, and received, money from Robert Boyle's executors to establish Indian schools. MORISON, *supra* note 104, at 485-86. Blair's rhetoric stressing the Anglican nature of William & Mary was certainly intended to demonstrate that its mission was in line with the Crown's imperial projects, but it could also have served as an implicit condemnation of Puritan Harvard.

112. J.T. FOWLER, DURHAM UNIVERSITY: EARLIER FOUNDATIONS AND PRESENT COLLEGES 17-20 (1904).

both petitioned the government to prevent such a charter from being issued.<sup>113</sup> They were successful in delaying the issuance of the charter, and the issue became moot when the college was dissolved upon the Restoration of Charles II in 1660.<sup>114</sup> Just how much power Oxford and Cambridge would have had to frustrate Blair's project—particularly given that it was a colonial project that did not directly threaten their monopoly in England—is open to question, but Blair may still have been inclined to tread lightly to avoid any complications to what were already delicate negotiations.<sup>115</sup> The phrase *studium generale*, not being a term in regular use in 1693, could have allowed William & Mary to avoid opposition.

The charter emphasizes the *collegiate* aspects of William & Mary and generally refers to its status as a university in oblique ways. The charter uses the word “college” eighty-eight times.<sup>116</sup> It only uses the phrase “*studium generale*” three times and never uses the word “*universitas*” or “university.”<sup>117</sup> The charter declares that this new institution “shall be called and denominated, for ever, the College of William and Mary, in Virginia.”<sup>118</sup> However, the charter does hint that William & Mary was also intended to be a university. Although the charter, in most respects, follows the standard charter diplomatic for *colleges* at Oxford and Cambridge, it diverges from

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113. See C.E. WHITING ET AL., *THE UNIVERSITY OF DURHAM: 1832-1932*, at 28-29 (1932). Some of the arguments made against granting Durham the power to award degrees would have applied equally or with greater force to William & Mary. The University of Oxford complained in its petition that Durham had too small a staff to adequately examine any given candidate for a degree. See *id.* at 28. William & Mary was designed to have a faculty of six. See *Founding of the College*, *supra* note 16, at 158-59.

114. See WHITING ET AL., *supra* note 113, at 29.

115. The University of Cambridge complained in 1659 that, by granting university status to Durham, the Protectorate would be encroaching upon its own privileges. See *id.* at 29. An argument could be made that granting a university charter to William & Mary would not run counter to the privileges of Oxford and Cambridge in the same way. The College of Durham was, like Oxford and Cambridge, located in the Kingdom of England. See FOWLER, *supra* note 112, at 2. William & Mary, like Trinity College, Dublin, which had been founded just over a century earlier, in 1592, would be located in another of the crown's dominions. See *Founding of the College*, *supra* note 16, at 159-60; see also MACDONNELL, *supra* note 36, at 1. On the other hand, William & Mary's charter would, like charters granting privileges to Oxford and Cambridge, issue from the English chancery. See 1736 CHARTER, *supra* note 7, at 121. Trinity's had issued from the Irish chancery. See MACDONNELL, *supra* note 36, at 1.

116. See 1736 CHARTER, *supra* note 7.

117. See *id.*

118. *Id.* at 19.

that format when it gives the corporate name of the new institution as, “the President, and Masters, or Professors, of the College of William and Mary, in Virginia.”<sup>119</sup> “President” (*praeses* in the Latin charter) was a title used for the head of a college in the seventeenth century.<sup>120</sup> After that, however, the charter diverges from the standard practice for college charters; we would expect to find “President and fellows (*socii*),” not “President and Masters, or Professors,” in the charter of an Oxford or Cambridge college.<sup>121</sup> Harvard’s 1650 charter and the failed charters of the 1690s follow the standard English practice for a college, naming the corporation “the President

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119. *Id.* at 19. The “Masters, or Professors” language is one instance in which we can be fairly certain that Blair was behind the language. *See, e.g., Founding of the College, supra* note 16, at 158-59. Blair likely drafted the propositions for the founding of a college that a convocation of Virginia clergy sent to the Virginia general assembly in 1690. *See id.* at 159. It used the phrase “masters and professors” throughout, and lays out the composition of the faculty: “That Care be taken for y<sup>e</sup> providing able & fitting Mast<sup>rs</sup> and Profes<sup>rs</sup> for the said Schooles, Viz: for the Grammar School, a Master, & an able Usher. For the Phylosophy school, two able Profes<sup>rs</sup>, one for Logick & natural Phylosophy, & the other for y<sup>e</sup> Mathematicks; for the Divinitie schoole one able Professor, skill'd in y<sup>e</sup> Orientall Languages, & one able & grave divine, to be President of the Colledge who may be fitting in case of mortalitie, or Disabilitie of any of the said Profes<sup>rs</sup> to supply their place while another may be procured.” *See id.* at 158-59.

120. 1736 CHARTER, *supra* note 7, at 18. At the time the charter was written, Queens’ College, Cambridge and Corpus Christi, Magdalen, St John’s, and Trinity colleges at Oxford had presidents. *See* 3 DOCUMENTS RELATING TO THE UNIVERSITY AND COLLEGES OF CAMBRIDGE 1 (1852) (Queens’ College, Cambridge); 2 STATUTES OF THE COLLEGES OF OXFORD v (1853) (Magdalene College and Corpus Christi College); 3 COLLEGES OF OXFORD, *supra* note 71, at 13 (St. John’s College). Harvard College also had a president. *See* MORISON, *supra* note 104, at 3.

121. We have not discovered any college charters issued before 1693 that use “professors” in the corporate name of the college, although some colleges did call certain of their officers “professors.” The short-lived Durham College had fourteen fellows, four of whom were titled “professors.” FOWLER, *supra* note 112, at 18. Gresham College, a standalone college in London that did not grant degrees, called its teachers “professors.” I.R. Adamson, *The Administration of Gresham College and Its Fluctuating Fortunes as a Scientific Institution in the Seventeenth Century*, 9 HIST. OF EDUC. 13 (1980). The charter of Downing College, Cambridge, granted in 1800, gives the corporate name of the institution as “[t]he Master, Professors, Fellows, and Scholars of Downing College, in the University of Cambridge,” because Sir George Downing provided for the establishment of two professorships, the Downing Professorship of Medicine and the Downing Professorship of the Laws of England, to be associated with the college. 3 DOCUMENTS RELATING TO THE UNIVERSITY AND COLLEGES OF CAMBRIDGE, *supra* note 120, at 601-02, 605-07. This was over 100 years after the granting of the William & Mary Charter, however. *See generally* 1736 CHARTER, *supra* note 7. *See also* SHEPHEARD, *supra* note 82, at 16-17 (giving various sample forms for the corporate names of colleges established within universities, all of which employ the word “fellows” rather than “professors”).

and Fellowes of Harvard Colledge.”<sup>122</sup> “Masters, or professors” is language that one would expect to find in the corporate name of a *university*, however. The 1571 statute reincorporating Oxford and Cambridge gave the corporate name of each university as the “Chauncellor Masters and Schollers” of that university.<sup>123</sup> A royal charter of 1695 in favor of King’s College, Aberdeen in its capacity as a university refers to the charter being made in favor of “the principals, professors, and masters of the said University of Aberdeen.”<sup>124</sup> William & Mary’s corporate name blends the university and collegiate formats.<sup>125</sup>

William & Mary’s charter also grants to the college some of the offices and privileges of a university. It establishes the office of chancellor, which was a university office, not a college office, in England, Scotland, and Ireland.<sup>126</sup> Clause XVIII, granting William & Mary its own seat in Virginia’s House of Burgesses, is clearly modeled on the privileges of the universities of the British Isles.<sup>127</sup> A week before he called his first English parliament in 1604, James I, at the urging of Sir Edward Coke, granted to the Universities of Oxford and Cambridge the privilege of electing two members each

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122. MORISON, *supra* note 104, at 655. The 1697 charter has “the President and Fellowes of Harvard Colledge in New England,” mirroring William & Mary’s charter in the addition of a place-name. *Id.* at 657.

123. Oxford and Cambridge Act 1571, 13 Eliz. 1 c. 29 (Eng.).

124. FASTI ABERDONENSES, *supra* note 23, at 198 (translation by author).

125. This divergence from the ordinary practice in the charters for English colleges may reflect Blair’s Scottish education. A. Bailey Cutts made the point that in Scottish universities the “university professoriate played a large part in the teaching, organization of departments, curriculum and examinations, which fell in Oxford and Cambridge largely to the members of the individual colleges.” Cutts, *supra* note 37, at 230. Endowments at Scottish universities tended to be in favor of professorial chairs rather than college fellowships. *Id.* From Blair’s perspective, calling the teaching staff of a single-college university “professors” might have simply made sense. In Scotland’s single-college universities, where the college and university were not so distinct as they were at Oxford and Cambridge, the professors were sometimes said to be of the college. The town of Aberdeen’s accounts for 1617 refer to a “Professor of Mathematiques within the New College of Ab<sup>d</sup> [i.e., Marischal College].” 1 FASTI ACADEMIAE MARISCALLANAE ABERDONENSIS, *supra* note 37, at 139. Although charters making gifts and endowments in favor of the professors at King’s College, Aberdeen generally refer to them as the professors of the University of Aberdeen, there are instances in which grantors referred to them as “professors of the kings college of Old Aberdeen.” FASTI ABERDONENSES, *supra* note 23, at 200, 205.

126. See 1736 CHARTER, *supra* note 7, at 34-37.

127. See *id.* at 60-63.

to the English House of Commons.<sup>128</sup> In 1613, before his first Irish parliament, James extended the privilege to “the College and University at Dublin,” of returning two burgesses to the Irish parliament.<sup>129</sup> Virginia’s elites liked to think of their colony as the fifth dominion of the Crown, on par with the dominions of England, Scotland, Ireland, and, in theory, France. In the seventeenth century, the colony’s seals bore the motto “*En dat Virginia Quintum*” (Behold, Virginia Gives the Fifth).<sup>130</sup> Perhaps Blair thought it was only fitting that his new foundation have representation in Virginia’s own parliament, just as universities did in William III’s and Mary II’s other dominions. Even if William & Mary was intended to be a college, it was a college with many of the powers and privileges of a university. But the fact that it was called a *studium generale* in the charter itself hints strongly that the drafters intended it to be a university, a single-college university on the model of those Blair had himself attended.

#### CONCLUSION: THE OLDEST UNIVERSITY IN THE UNITED STATES?

William & Mary has a strong claim to the title of oldest university in the United States.<sup>131</sup> There are, of course, many different criteria we could use to determine whether an institution is a university. If we use seventeenth-century criteria for the difference between a college and a university, then Harvard still has a claim to the title of the oldest university in the United States on the basis of the degrees it granted as early as the 1640s. Harvard assumed the power to grant degrees from 1642, a power that a college would not have had.<sup>132</sup> Although Harvard never received recognition from the

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128. MILLICENT BARTON REX, UNIVERSITY REPRESENTATION IN ENGLAND, 1604-1690, 30-31 (1954). The election was conducted at a meeting of the university senate at Cambridge and by the body of the university meeting in convocation at Oxford. *Id.* at 69.

129. The right of electing the burgesses was actually placed in the provost, fellows, and scholars of Trinity College, rather than in the university. MACDONNELL, *supra* note 36, at 309-11. This is probably due to Trinity’s unusual organization. *See id.*

130. EDWARD S. EVANS, THE SEALS OF VIRGINIA 17-18 (1911).

131. We would like to note that those words have been carefully selected. William & Mary is not the oldest university in America. Central America, South America, and the Caribbean already had a number of universities by 1693, many of them established as *studia generalia* by papal bull. *See Roberts et al., supra* note 30, at 264-65.

132. *See MORISON, supra* note 104, at 69-70.

Crown of its right to grant degrees, it did gain some recognition of its degrees before William & Mary was founded. Between 1648 and 1669, the Universities of Oxford and Cambridge admitted a small number of Harvard graduates to Oxford and Cambridge degrees *ad eundem gradum* (at the same degree).<sup>133</sup> Although Increase Mather appears to have been in doubt about his institution's power to grant degrees as late as 1700, we might say that Harvard acquired *de facto* recognition of its status as a university in the 1640s, and could thus claim to be the oldest university in the United States on that ground.

There are other measures, however. Harvard would hint at its university status in the 1690s, in charters that were ultimately annulled by the Crown, but would not officially be designated a university until the Massachusetts constitution of 1780 confirmed the powers and privileges of the "University at Cambridge."<sup>134</sup> Francis Thorpe, writing a history of the University of Pennsylvania for Harper's Weekly in 1895, pointed to the act of the Pennsylvania legislature in 1779 creating the "University of the State of Pennsylvania," one of the institutions that would later merge to form the University of Pennsylvania, as the moment that British North America obtained its first university, "the title not having been applied to Harvard till a year later."<sup>135</sup> The University of Pennsylvania's current website makes a somewhat more cautious claim, that

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133. JAMES AXTELL, *WISDOM'S WORKSHOP: THE RISE OF THE MODERN UNIVERSITY* 119 (2016); MORISON, *supra* note 104, at 299-300. Oxford and Cambridge likely began to recognize degrees from Harvard, a Puritan college, in 1648 because both had recently come under Puritan control as a result of the English Civil War. See Nicholas Tyacke, *Introduction to THE HISTORY OF THE UNIVERSITY OF OXFORD, VOLUME IV: SEVENTEENTH-CENTURY OXFORD*, 1, 21 (1997). The lack of *ad eundem* admissions after 1669 probably does not reflect any particular feeling about Harvard on the part of Oxford and Cambridge scholars. Although Morison only identified one Harvard Graduate who was admitted *ad eundem gradum*, at Cambridge, after the restoration of Charles II in 1660, this was probably due to a general downward trend in *ad eundem* admissions. MORISON, *supra* note 104, at 300. The number of Harvard graduates admitted *ad eundem gradum* was never large and admissions *ad eundem gradum* appear to have been declining in this period in general. Morison notes that, "After 1670 the privilege of incorporation [*ad eundem gradum*] was rarely sought at Cambridge, except by Oxonians, and after 1709 it was confined to alumni of Oxford and Dublin." *Id.* at 300.

134. OSCAR HANDLIN & MARY HANDLIN EDS., *THE POPULAR SOURCES OF POLITICAL AUTHORITY: DOCUMENTS ON THE MASSACHUSETTS CONSTITUTION OF 1780*, at 465 (1966) (Massachusetts Constitution of 1780, chapter V, section I).

135. Francis N. Thorpe, *The University of Pennsylvania*, 542 HARPER'S MAG. 285, 287 (1895).



it is the “the first American institution of higher education to be *named* a university (1779).”<sup>136</sup> This is true in the narrow sense that it is the first institution to bear “university” in its name. But, although William & Mary’s charter says that it “shall be called and denominated, for ever, the College of William and Mary, in Virginia,” that same charter, by granting William & Mary the legal status of a *studium generale*, declared it to be a university.<sup>137</sup> The reforms of 1779 may have been designed, as Jefferson said in his autobiography, to “make it in fact an University,” but William & Mary had been a university by grant, a *studium generale ex privilegio* as the medieval jurists would have said it, since 1693.<sup>138</sup>

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136. *Penn’s Heritage*, UNIV. OF PA., <https://home.www.upenn.edu/about/history> [<https://perma.cc/4LD7-GVFR>] (emphasis added).

137. 1736 CHARTER, *supra* note 7, at 19.

138. THOMAS JEFFERSON, *THE AUTOBIOGRAPHY OF THOMAS JEFFERSON 1743-1790*, at 75 (1914); WEJERS, *supra* note 11, at 38; Langley, *supra* note 1, at 35.