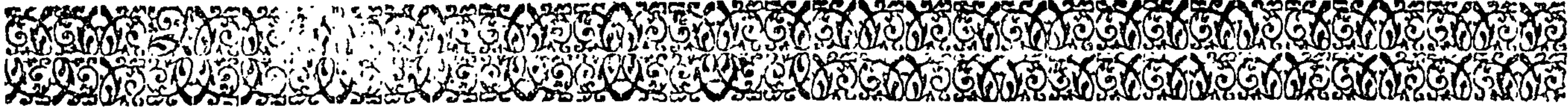
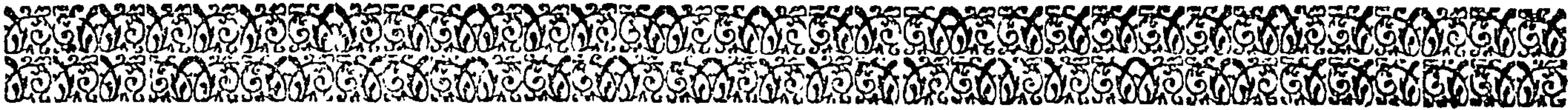


17. The Constitution and a ...  
to ...

18. His note on p 25 is by Thomas  
Primer, but the corrections are by Arthur  
Primer himself. A.M.



THE  
Constitution *and* Government  
OF  
*Harvard-College.*



By James Freeman

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# An ACCOUNT

*Of the Constitution and Government of  
Harvard-College, from its first Forma-  
tion in the Year 1636 to the Year 1742.*

**T**HE subsequent Collection of Laws, which founded the Government of *Harvard-College*, was made on a late extraordinary Case, wherein the Overseers of said College assumed to themselves a SOVEREIGN Power over that College, and the SOLE Right to judge and censure and *dismiss* the PRESIDENT or ANY Member of the Corporation of said College, without the *Consent* or any *Act* of that Corporation for the same. This *occasion'd* the following Examination into the Constitution and Government of *Harvard-College*, beginning at the first Formation of that College in the Year 1636 and ending with the present Year of our Lord 1742, wherein all the Laws that constitute the Government of said *College* are laid together and compared; and then from these Laws an Argument is formed to prove “What Powers belong to the *Corporation* and to the Overseers of said *College*; and what Powers over that College *still* remain in the GENERAL COURT. And from the whole 'tis finally concluded “Who are the VISITORS of said *College* and have the Right at ALL *Times* to look into the State of the COLLEGE-STOCK and see that it is not *embezzled* or any Part of it *alienated* from its proper Uses. I. The

## I.

THE First Erecting a SCHOOL or COLLEGE at *Newtown* ( afterwards *Cambridge* ) before the General Court in 1642 appointed OVERSEERS for said College.

Taken from the Court Records.

Sept. 1636. " The Court agreed to give 400 *l.* towards a SCHOOL or COLLEGE, whereof 200 *l.* to be paid the next Year, and 200 *l.* when the Work is finished ; and the next Court to appoint *where* and *what* Building. Court Rec. B. I. P. 183.

Anno 1637. " The College is ORDERED to be at *Newtown*. Court Rec. B. I. P. 204.

" For the College ; \* The Governour Mr. *Winthrop*, the Deputy Mr. *Dudley*, the Treasurer Mr. *Bellingham*, Mr. *Humphry*, Mr. *Herlackendon*, Mr. *Stoughton*, Mr. *Cotton*, Mr. *Wilson*, Mr. *Dampart*, Mr. *Wells*, Mr. *Shepherd*, Mr. *Peters* ; these or the greater Part of them, whereof Mr. *Winthrop*, Mr. *Dudley* or Mr. *Bellingham*, to be *always* one ; to TAKE ORDER for a College at *Newtown*.

Court Rec. B. I. P. 213.

May 1638. " It is ordered that *Newtown* shall be henceforth called *Cambridge*.

Co. R. B. I. P. 221.

March 1638,9. " It is ordered that the College agreed on formerly to be built at *Cambridge*, be called HARVARD COLLEGE. Court Rec. B. I. P. 241.

Anno 1639. " The Court granted to Mr. *Nathanael Eaton* 500 Acres of Land, if he continue his Employment, for his Life, to be to him and his Heirs. Court Rec. B. I. P. 252.

" Mr. *Nathaniel Eaton* being accused for cruel and barbarous beating of Mr. *Naz. Brisco*, and for other neglecting and misusing of his Scholars, || It was ORDERED that Mr. *Eaton* should be DISCHARGED from keeping School with us without License. And Mr. *Eaton* is fined to the Country 66 *l.* 13 *s.* 4 *d.* which Fine is respited to the next Court, unless he remove in the mean while ; the Court agreed Mr. *Eaton* should give Mr. *Naz. Brisco* 30 *l.* for Satisfaction for the Wrong done him, and to be paid presently. Capt. *Jennison* and Mr. *Mayhew* were appointed † to call Mr. *Eaton* to Account the beginning of next Week, and to desire Mr. *Samuel Shepherd* and Mr. *Joseph Cook* to help them the best they can. Court Rec. B. I. P. 262,3.

Anno 1640. " The FERRY between *Boston* and *Charlestown* is granted to the College.

Court Rec. B. I. P. 288.

The

† It here seems that Mr. *Eaton* was not to be called to Account the next Week for his Fine to the Country, for that was respited to the next Court, and not to be paid at all if he removed in the mean while. Nor was it for the Satisfaction-Money which he was to pay Mr. *Briscoe*, for that was to be paid presently. It therefore was for the College-Stock that the Court here ordered he should be called to Account. For that Stock ( as appears, Coll. Rec. No. B. ) was put into his Hands. So that the Court alone had the proper Right, in these early Times, to dispose of that Stock.

\* This Committee of the Court must have appointed Mr. *Eaton* to be the Master of this publick School. For on this Year, when the said College or School was under the ordering of this Committee, he was appointed Master or Professor of it ; as appears from College Records No. B. Now No Record says BY WHOM he was appointed ; but since no Overseers, or any other standing Power over this College, were as yet appointed by the Court, there could be none but the Court or Committees from them, that had Power to do this in a Collegewhich appears to be from the Beginning, and now was, the College of the GENERAL COURT ; For that Court built it and named it and ordered where it should be built and what kind of Building it should be ; and appointed the abovesaid Committee on this Year to take Order for such a College ; and this Committee seem to be of some Continuance, for the Governour, Deputy Governour, or the Treasurer of the Province, were always to be one of them. 'Tis true that the next Year after Mr. *Eaton* was dismiss'd, the Magistrates and Elders of the Colony invite Mr. *Dunster* to be President of said College, as appears from the College Records No. D. But it does not appear from any Record "How these Magistrates & Elders came by such a Power." They could not give it to themselves over a College that, as above, appears to be the College of the General Court ! Nor had these Magistrates

## I.

THE First Erecting a SCHOOL or COLLEGE at *Newtown* ( afterwards *Cambridge* ) before the General Court in 1642 appointed OVERSEERS for said College.

Taken from the College Records.

A. *Sept.* 1636. " At a General Court held at *Boston*, The Court voted for the erecting a *publick* SCHOOL or COLLEGE in *Cambridge* 400 *l.* to be paid out of the Country Treasury.

Coll. Rec. B. 3. P. 1.

B. *Anno* 1637. " Mr. *Nathaniel Eaton* was chosen Professor of *said* SCHOOL. To whose Care the Management of the *Donations* were betruſted; for the erecting ſuch Edifices as were meet and neceſſary for *A College* and for his own Lodgings.

Col. Rec. B. 3. P. 2.

C. *Sept.* 1639. " Mr. *Nathaniel Eaton* appearing in the Court held at *Boston*, and being *there* convicted of ſundry Abuses and inhumane Severities, by him acted towards the Scholars under his Charge, † was openly *ſentenced* and *removed* from his *abovesaid* Trust. The Care of carrying on the Building begun by Mr. *Eaton* was † *then* committed to the Management of Mr. *Samuel Shepherd*; and † the *College-Stock* put into his Hands.

Coll. Rec. B. 3. P. 2.

D. *Aug.* 27. 1640. At a Meeting of the *Magistrates and Elders* at *Boston*, " The Reverend Mr. HENRY DUNSTER was by them *invited* to accept the Place of President of the College, which he accordingly accepted; to whom was committed the Care and Trust of finishing the College Buildings and his own Lodgings, and the Custody of the *College-Stock*, and ſuch *Donations* as might further be added to the Increase thereof.

Coll. Rec. B. 3, P. 3.

gistrates and Elders an original or proper Right to that *College-Stock* which ( as in No. D. ) they put into Mr. *Dunster's* Hands, together with the Care of carrying on the College Buildings; for it appears ( No. C. compared with the Court Records, Mark † ) that the Year before, the general Court put that Stock, and the Care of carrying on the College Buildings, into the Hands of Mr. *Shepherd*; and 'tis plain by what Mr. *Dunster* ſays in his Resignation ( hereafter inserted ) that the General Court looked on these Magistrates and Elders, to have NO Authority to do these Things, or to invite him to be President! And so they did these Things only on Sufferance or Permission of the Court. From all therefore 'tis certain that, till Overseers were appointed in 1642, the College was under the immediate Government of the General Court and those Committees whom the Court appointed to take Order about it, and how far the Act of 42 gave the Overseers a Power over the President and Fellows of said College ( after they were made a Corporation; ) may plainly appear by what shall be said hereafter.

¶ And No. C. From these two Records compared, it appears that what the Court did in discharging Mr. *Eaton* from keeping School &c. Had a primary and direct Reference to his keeping the School of the College abovesaid. And that the Court alone ( and not the said Magistrates and Elders ) dismissed Mr. *Eaton* from his Presidency in the College. --- And thus the next President Mr. *Dunster* who resigned his Place in the Year 1654, resigned it first to the Court alone; Now this was after the Overseers and Corporation of said College were appointed by the Acts of 42 and 50; and yet the said Magistrates and Elders of the 6 neighbouring Towns ( tho' THEN Overseers; ) had nothing to do with Mr. *Dunster's* Resignation till the general Court gave them Power finally to receive it. ( And as to the Corporation of said College, They never had any Thing to do with it at all; ) So certain is it that the General Court, who constituted the said Overseers and Corporation, never looked on those Acts, which constituted them to be such, as empowering these Overseers and Corporation, to dismiss a Member of that Corporation. And if they had NO such Right THEN, 'tis certain they have never had it in themselves SINCE, and so have no Power to do it NOW.

## II.

The Act of the General Court in 1642, which constituted and appointed OVERSEERS to said Harvard-College, before that College was made a CORPORATION.

“ WHEREAS through the good Hand of God upon us, there is a College founded in Cambridge in the County of *Middlesex* †, called HARVARD COLLEGE; For the Encouragement whereof this Court hath given the Sum of 400 *l.* and also the Revenue of the FERRY betwixt *Charlestown* and *Boston*, and that the well-ordering and managing of the said College is of great Concernment.

“ It is therefore ordered by this Court and the Authority thereof, that the Governour and Deputy Governour, for the Time being, and all the Magistrates of this Jurisdiction, together with the teaching Elders of the six next adjoining Towns, viz. *Cambridge, Watertown, Charlestown, Boston, Roxbury and Dorchester*, And the President of the said College, for the Time being, SHALL from Time to Time Have Full Power and Authority to make and establish all such Orders, Statutes and Constitutions as they shall see necessary for the instituting guiding and furthering of the said College, and the several Members thereof, from Time to Time, in Piety Morality and Learning: And also to Dispose, Order and Manage to the Use and Behoof of the said College, and Members thereof, all Gifts, Legacies, Bequeaths, Revenues, Lands and Donations, as either have been, are, or shall be conferred, bestowed, or any Way shall fall, or come to the said College.

“ And whereas it may come to pass that Many of the said Magistrates and said Elders may be Absent, or otherwise Employed about other weighty Affairs, when the said College may need their present Help and Counsel, it is therefore ordered that the greater Number of Magistrates and Elders which shall be present with the President shall have the Power of the Whole; PROVIDED that if any Constitution Order or Orders by them made shall be found hurtful unto the said College or the Members thereof or to the Wealpublick; Then upon APPEAL of the Party or Parties grieved unto the Company of Overseers first mentioned, they shall repeal the said Order or Orders (if they see Cause) at their next Meeting, or Stand Accountable thereof to the Next GENERAL COURT.

† Called Harvard-College, viz. by the General Court. For the Court by Law gave it that Name, ordering that it should be called Harvard-College; as appears from the Court Records Anno 1638, 9. Dr. Ayliffe in his Account of the University of Oxford ( Vol. 2. P. 3. ) when he comes to define a College, has these Words, “ A College is a Legal Body or Corporation. The Persons who are incorporated hereinto are a Body formed to last and endure in perpetual Succession of Time, and thus every College must have its legal Commencement or Beginning.” Now according to this Definition, or Account of such a Society, Harvard-College was a College improperly so called, till the Act or Charter of 1650 which made it a Legal Body or Corporation, and which incorporated the President and Fellows as a Body to last and endure in perpetual Succession of Time. So that from the Date of that Charter the said College MUST have its Legal Commencement or Beginning. And accordingly the General Court declare, on common Law, in the last and most exact Regulation they made of said College in Dec. 1707, “ That the FIRST Foundation and Establishment of that College and of the Government thereof had its ORIGINAL from an Act of the Court made in the Year 1650 which had not been repealed or nulled.” So that the above cited Act of 42 is beyond the FIRST Foundation of the present College and of the GOVERNMENT thereof; and therefore the present incorporated College, or Harvard College as a College properly so called, seems to have nothing to do with this Act of 42 or with any POWERS contained in it, but only with the incorporating Act of 1650 as its FIRST Foundation. This Act now follows.

III. The

III.

The Colony Law or Charter which *incorporated* said Harvard-College, *May 31. 1650.*

“ WHEREAS thro’ the good Hand of God many well-devoted Persons have been and daily are moved and stirred up to give and bestow sundry Gifts, Legacies, Lands and Revenues, for the Advancement of all good Literature, Arts and Sciences, in *Harvard-College* in *Cambridge* in the County of *Middlesex*, and to the Maintenance of the President and Fellows, and for all Accommodations of Buildings, and all other necessary Provisions, that may conduce to the Education of the English and Indian Youth of this Country in Knowledge and Godliness,

“ It is therefore *Ordered* and *Enacted* by this Court, and the Authority thereof, that for the furthering so good a Work and for the Purposes aforesaid, from HENCEFORTH, that the said COLLEGE in *Cambridge* in *Middlesex* in *New-England* shall be a CORPORATION consisting of seven Persons, to wit, a President, five Fellows and a Treasurer or Burser; and that HENRY DUNSTER shall be the first President, *Samuel Mather*, *Samuel Danforth* Masters of Art, *Jonathan Mitchel*, *Comfort Star* and *Samuel Eaton* Batchelors of Art, shall be the five Fellows, and *Thomas Danforth* to be present Treasurer; all of them being Inhabitants in the Bay, and shall be the first *Seven* Persons of which the said Corporation shall consist.

“ And that the said seven Persons or the greater Number of them, *procuring* the Presence of the OVERSEERS of the College and by their *Council* and *Consent* shall have Power and are hereby authorized at any Time or Times to ELECT a new President, Fellows or Treasurer *so oft and from Time to Time* as any of the said Person or Persons shall DIE or be REMOVED.

} Overseers.

“ Which said President and Fellows for the Time being shall for ever hereafter in Name and Fact be one Body Politick and Corporate in Law to ALL Intents and Purposes; and shall have perpetual Succession, and shall be called by the Name of “*President and Fellows of Harvard College*” and shall from Time to Time be eligible as aforesaid, and by that Name they and their Successors shall and may purchase and acquire to themselves, or take and receive upon free Gift and Donation, any Lands, Tenements or Hereditaments within this Jurisdiction of the *Massachusetts*, not exceeding the Value of 500*l.* per *Annum*, and any Goods and Sums of Money whatsoever, to the Use and Behoof of the said President, Fellows and Scholars of the said College; and also may sue and plead or be sued and impleaded by the Name aforesaid in all Courts and Places of Judicature within the Jurisdiction aforesaid.

“ And that the said President with any three of the Fellows shall have Power, and are hereby authorized, when they shall think fit, to make and appoint a common Seal for the Use of the said Corporation

“ And the President and Fellows or the major Part of them, from Time to Time, may meet and CHUSE such *Officers and Servants* for the College, and make such Allowance to them and THEM also to REMOVE, and after DEATH or REMOVAL to CHUSE such *others*, and to make from Time to Time such ORDERS and By-Laws for the better ordering and carrying on the Work of the College, as they shall think fit. Provided the said ORDERS be allowed by the OVERSEERS.

} Overseers.

“ And also that the President and Fellows or major Part of them with the Treasurer shall have Power to make conclusive Bargains for Lands and Tenements to be purchased by the said Corporation for valuable Consideration.

“ And for the better ordering of the Government of the said College and Corporation, be it enacted by the Authority aforesaid, that the President and three more of the Fellows shall and may from Time to Time, upon due Warning or Notice given by the President to the rest, hold a Meeting for the debating and concluding of Affairs concerning the Profits and Revenues of any Lands, and disposing of their Goods; provided that all the said Disposings be according to the Will of the Donors; and for Direction in all emergent Occasions, Execution of all Orders and By-Laws, and for the procuring of a *General Meeting* of ALL the OVERSEERS and SOCIETY in GREAT and DIFFICULT Cases and in Cases of NON-AGREEMENT; in ALL which Cases aforesaid, the Conclusion shall be made by the major Part,

} Overseers.

Overseers } “ Part, the said President having a casting Voice, *the OVERSEERS consenting thereunto.* And that all  
 “ the aforesaid Transactions shall tend to and for the Use and Behoof of the President, Fellows, Scholars  
 “ and Officers of the said College, and for all Accommodations of Buildings, Books, and all other ne-  
 “ cessary Provisions and Furnitures, as may be for the Advancement and Education of Youth in all  
 “ manner of good Literature, Arts and Sciences.

The two remaining Clauses of this Charter have no Relation to the Overseers of said College, but only exempt the Estate of the College and Scholars from Rates, Toll and Excise ; and the Corporation, Scholars, and Servants of said College, from civil and military Offices and Services ; and the Estates of said Servants, to 100 l. a Man, from Country Rates.

#### IV.

The Appendix to the College Charter of 1650.  
 At a General Court held at *Boston*, Oct. 1657.

“ In Answer to certain *Proposals* presented to this Court by the OVERSEERS of Harvard-College ; As  
 “ an Appendix to the College-Charter, it is Ordered :

“ The Corporation shall have Power from Time to Time to make such Orders and By-Laws for the  
 “ better ordering and carrying on of the Work of the College as they shall see Cause without *De-*  
 “ *pendance* on the Consent of the Overseers foregoing ; *Provided* always that the Corporation shall  
 “ be *responsible* unto and those Orders and By-Laws shall be *alterable* by the Overseers according to  
 “ their Discretion.

“ And when the Corporation shall hold a Meeting for agreeing with College Servants, for making  
 “ of Orders and By-Laws, for debating and concluding of Affairs concerning the Profits and Reve-  
 “ nues of any Lands or Gifts and the disposing thereof ( *Provided* that all the said *Disposals* be according  
 “ to the Will of the Donors ) for managing all emergent Occasions, for the procuring of a GENERAL  
 “ Meeting of the OVERSEERS and SOCIETY in *great* and *difficult* Cases and in Cases of *Non-Agree-*  
 “ *ment*, and for all other College Affairs to them pertaining, in all these Cases the Conclusion shall  
 “ be valid being made by the *major Part* of the Corporation, the President having a casting Vote ;  
 “ *Provided* always that in these Things also they be *responsible* to the Overseers aforesaid.

“ And in Case the Corporation shall see cause to call a Meeting of the Overseers, or the Over-  
 “ seers shall see good to meet of themselves ; it shall be *sufficient* unto the *Validity* of College Acts that  
 “ Notice be given to the Overseers in the six Towns mentioned in the printed Law Anno 1642, when the  
 “ rest of the Overseers by Reason of the Remoteness of their Habitations cannot conveniently be ac-  
 “ quainted therewith.

This APPENDIX, or the greater Part of it, seems to be NULLED by a succeeding Law of the Colony ( called the College Charter of 1672 ) which ends with this Sanction of the Court. “ *All*  
 “ *and every of which Premises we do ordain and enact to be FULLY established for LAW ; any Law,*  
 “ *GRANT, or Usage to the CONTRARY, in any wise notwithstanding.*” Now the greater Part of said  
 Appendix is *contrary* to this posteriour Law of 72. And indeed this latter Law is the most *proper*  
 Appendix to the Charter of 50 ; for in express Terms 'tis grounded on said Charter as on its Foun-  
 dation ; nor does it alter any Thing in that Charter but in some few Cases. So there is no Oc-  
 casion to insert it here, *Reference being had thereto in the Court Records.* The greatest Alteration it  
 makes in said Charter of 50 is that in some Things it gives *more* Power to the Corporation of said  
 College, and *less* to the Overseers, than the Charter of 50 does. Which may be one Reason why  
 this Law of 72 was not entered in *due* Form into some College Records, as the said Appendix of 50  
 has been.

PRACTICES upon the Preceding Laws of 42 and 50, which originally constituted the Overseers and Corporation of *Harvard-College*.

The four preceding Laws of 42, 50, 57, 72, were all the standing Laws, on which the Government of said College was founded, in old Charter Times. And since Practices upon ancient Laws, nearest the Times wherein such Laws were made, do best explain and interpret them ; here are subjoined some Acts of the Court, in those early Times, which show what Sense the Court put upon these two Laws which originally constituted the Overseers and Corporation of said College ; and what Powers the Court, without Reserve to themselves, had been *pleased* to grant in these Laws to the Overseers and Corporation of said College. Thus ;

*Anno* 1654. After the Court had constituted the Overseers and Corporation of said College ; it appears from the Province Records, ( Vol. 3. P. 245 ) That the Court “ on Perusal of the RETURN “ of the *Committee* appointed to consider of the College-Business, ORDER that all the STOCK ap- “ pertaining to the College should be committed to the *Care* and TRUST of the *Overseers* of said “ College.” Now by the Act of 42 the Overseers had the *College-Stock* given to them ; but afterwards the Charter of 50 takes it out of their Hands and puts it into the Hands of the Corpora- tion ; and now in 54 the Court in an extraordinary Case INTERPOSE and *suspend* the Powers of the Charter, and, for a Time, put that Stock back again into the Hands of the Overseers.---At first View this may seem an *extraordinary* Act in the Court, who by a solemn *Grant* of the Charter of 50 had vested the *Property* of that Stock in the said Corporation. But there is really *nothing extraordinary* in this Act. For as VISITORS, of *their own College*, the Court had a Right at ALL Times to see that *this Stock was well taken Care of!* And therefore this Year when the said Corporation were so few in Number, and President *Dunster* being now about to quit his Place, and so the said College be left without a HEAD : In this weak State of that Society, the Court seem for the SECURITY of that Stock to *commit* it, for a Time, to the *Care* and TRUST of the Overseers. This was an Act that, in *Common Law*, the VISITORS of a College had a Right to do.

*Anno* 1654. The Court ordered ( Prov. Rec. Vol. 3. p. 274 ) that “ Mr. *Whiting* and Mr. *Cobbet* “ Pastors or Teachers of the Churches of *Dedham* and *Lyn* and Mr. *Norton* an *unsettled* Teacher in Boston, “ should BE Overseers ; and JOIN with the rest of the Overseers, in the Work of the College.” And thus, notwithstanding the Acts of 42 and 50, the Court in the Year 54 made NEW Overseers ; and by the same Power the Court could have unmade the *Former* Overseers. So dependent were the Overseers of the said College in those Times upon the Court. Such a State of Depend- ency, for the *Continuance* of their Being on the Court, does not seem to imply that the Overseers of said College were, in and by their Constitution, the VISITORS of said College ; For Visitors, as *such*, have not a dependent precarious Existence.

*Anno* 1654. Mr. *Henry Dunster*, the President appointed and *named* in the College Charter of 50, resigned his Place ; while that Charter and all the Powers granted in it ( as well as the Powers granted in the Act of 42 to the Overseers ) were so well understood by ALL *Parties concerned!* For the Court had granted that Charter but *four* Years before. Now from the publick Histories of this Country, and from the large Account of that Matter in the College Records, it appears that Mr. *Dunster* ( like Mr. *K---nt* at *M---lb--gh* ) was *forced* either to *resign* his Place or to *recant* some of his religious Tenets, and he chose the former. So this forced Resignation was in effect the same Thing with a *Dismission* of him from his Place. And now let it be observed, “ To WHOM *He resigns* ; and how far the *Overseers* or *Corporation* of said College were concerned in the Business of his Resignation, which here follows,

C

“ The

“ The President’s Resignation exhibited to the GENERAL  
 “ COURT held at *Boston* June 10. 1654.

“ To the Worshipful and Honoured RICHARD BELLINGHAM, Esq;  
 “ Governour of the *Massachusetts* Colony, with the rest of the Honour-  
 “ ed Assistants and Deputies in General Court at *Boston* now assembled.

“ *Worshipful and Honoured Gentlemen and faithful Trustees of your*  
 “ *Colony.*

“ Whereas now at last I understand that the Call or Invitation I had unto my present Business in  
 “ the College, together with the Promises, Encouragements and Allurements thereto on *Aug. 27.*  
 “ 1640, by about *Ten* Gentlemen, whom I then understood to be *Magistrates* with Mr. DUDLEY  
 “ then Governour and about *Sixteen* Ministers or *Elders*, whom I also then took to be and still  
 “ from my Heart do think to continue the Persons that seriously and cordially consult for the Wel-  
 “ fare of the Colony, and that especially in the liberal and learned Education of the Youth of the  
 “ Country; yet seeing that *now* † I FULLY understand that the said Persons had NO Authority to do  
 “ any such Act or Acts as to give such a \* CALL or to promise any such Encouragements or Allure-  
 “ ments; and besides, seeing there be such Laws, Orders or Injunctions ‡ in Part already imposed  
 “ on the Place as be destructive thereto, and that our former Laws and Orders by which we have  
 “ managed our Place, be declared illegal and null, so that all possible Means of managing our Trust to the  
 “ best End is so either made void, interfering and entangled, or at least questionable and offensive,  
 “ that whatsoever we do is to Myself and the Fellows unwarrantable and not secure, and with some  
 “ Principles tending to Dissolution. To mention no further Grounds [ viz. His being an *Anabaptist*,  
 “ which this *Learned and Good Man* really was ]:

“ THEREFORE I here resign up the Place wherein hitherto I have laboured with all my Heart  
 “ (blessed be the Lord who gave it ) serving YOU and YOURS. And henceforth ( that you in the  
 “ Interim may be provided ) I shall be willing to do the best I can for some few Weeks or  
 “ Months to continue the Work, acting according to the Orders prescribed to us; If the Society in the  
 “ Interim fall not to Pieces in our Hands; and what Advice for the present or for the future I can  
 “ give for the publick Good, in this Behalf, with all Readiness of Mind I shall do it, and daily by the  
 “ Grace of our LORD JESUS CHRIST, pray the LORD to help and Counsel us all, in whom I rest.  
 “ Yours faithfully to serve, *Henry Dunster.*

† This FULLY confirms the Remark made at the beginning of this Collection of Laws, P. 4, 5. viz. That be-  
 fore the Year 42 the said College was the College of the GENERAL COURT alone. And that the Court  
 before the Act of 42, looked on none but Themselves, and those whom they appointed to Office  
 IN it, to have ANY Authority over this College.

\* Viz. in Aug. 1640.

‡ There are no such Laws now on Record as were in Part imposed on the College. 'Tis true,  
 that the Charter of 50 imposed on the College some Part of the Old College Laws, which were very  
 difficult to be strictly conformed to in Practice, e. g. *The Overseers consent is requisite by Charter to*  
*the Execution of every By-Law*, i. e. to punish any Undergraduate 6 d. for Absence from Prayers;  
 or for going out of Town without Leave! Such Things as these Mr. Dunster seems here to refer  
 to. And to judge that the Charter half nulled and half confirmed the old College Laws, preceeding the  
 said Charter, in many Cases.

This Resignation President *Dunster* delivered to the Overseers of said College, which being presented to the General Court then sitting, the Court thereon passed the following Order.

“ In Answer to a Writing presented to this Court by Mr. *Henry Dunster*, wherein among other Things he is pleased to make a Resignation of his Place as President, this Court doth ORDER that it shall be LEFT to the Care and Discretion of the *Overseers* of the College to make Provision, in Case he persist in his Resolution more than one Month and inform the Overseers, for some meet Person to carry an End that Work for the present, and also to act in whatever *Necessity* shall call for UNTILL the *next Sessions* of this Court, when we shall be better enabled to settle what will be needful in all Respects with Reference to the College: And that the *Overseers* will be pleased to Make RETURN to this Court at that Time of what they shall do herein. The Deputies have passed this, and desire our honoured Magistrates Consent thereto.

12. 4. 1654.

*William Torrey*, Cler.

Consented hereunto by the Magistrates.

*Richard Bellingham*, Governour.

Court Records Book 3. p. 262. And Overseers Book, No. 2. P. 1.

And thus so near the Time when the College Charter of 50 was granted it appears that the very President named and appointed in that Charter, made not his Resignation to the Overseers and Corporation ( though he put it into the Hands of the Overseers, yet he made it not to them ) but to the General Court; And hereon the Court ORDERED that this Affair should be LEFT with the Overseers ( just as the Court might have ordered that it should be Left with any other Persons ) so that 'tis evident the Overseers acted not in this Affair by any inherent Powers of their own, but by an extrinsick and delegated Power from the Court, and as a temporary Committee of the Court until the next Sessions, when the Court should be better enabled to SETTLE in ALL Respects what was needful for the College; and the Overseers were to make RETURN of what they should do in this Affair, to the Court who had Employed them in it.

And after the Court had thus empowered the Overseers to treat with Mr. *Dunster* they then enter into long and various Conferences with him and address him thus, “ Mr. President; The General Court seem to require of you that you Inform the Overseers whether you persist in your Resignation, and [the Court] EXPECT from us a Provision for the College in Case of your Persistence, and a Return to the Court of what we have done in this Business.”

And again; “ Whereas in Observance of an ORDER of Court made, June 10. 1654, The Overseers have had sundry Meetings with Mr. *Dunster* to know whether he persist in his Resignation lately exhibited to the General Court. And as they would not be wanting to Mr. *Dunster* whose LAPSE [viz into the Tenets of the Anabaptists] is the Matter of their Grief, so that they may not be wanting to the Truth, the College, the Country, nor the Trust committed to them by the General Court [viz in this Affair wherein they acted as a Committee of the Court;] they therefore declare that if the Lord do not incline his Heart before the middle of September next to give Satisfaction according to the Rules of Christ; they must be constrained in Case there be no other Remedy [viz from the Court which is all the Remedy

“ that

“ that can be *here* supposed] to take Care for *furnishing* the College with *another* President.”--- Then after two or three more *Pro's* and *Con's* (no Way relating to the Occasion of these Extracts ) he on Oct. 24. 1654, makes his *final* Resignation to the Overseers of said College who were *now* sent and *empowered* by the Court as their *Committee* to receive it. And the Overseers in *November* following provided another President, and in the mean Time *commit* the Care and Government of the said College to the Fellows thereof.--- And thus the Overseers of said College acted through the whole of this Affair ; not by any Power of their own, but by a delegated Power from the Court ; for this Power *expired* as soon as, according to Order, they had made *Return* to the COURT who had *employed* them in this Affair.

Let it be noted that this Resignation of Mr. *Dunster*, implied in it a *proper* Dismission of him ; for a *voluntary* Resignation is of a quite different Nature. Thus a Member of said Corporation residing at Harvard College when he designs to settle abroad in the World may *resign* to the President of said College, *i. e.* may *inform* the President that he is determined to leave the College and quit his Post in it, (which none can hinder him from doing. ) But this is far from implying that the said President can *force* such a Member to resign. But *that* Power that can rightfully *force* him to resign, is most certainly A POWER which can rightfully *dismiss* him. Now this was President *Dunster's* Case. For the Overseers of said College, when they acted as *Delegates* from the COURT, tell him expressly that “ unless he would give *Satisfaction* according to the Rules “ of Christ they must be *Constrained* to furnish the College with *another* President.” So this Power included in it a Power from the COURT to *dismiss* him.

N. B. The *next* and the *only other* Instance of a Dismission of a Member of said Corporation was on Feb. *last* 1741, 2 ; without *any* Power from the COURT or *any Act* of said Corporation for the same, but by the Sole and SOVEREIGN Authority of the Overseers of said College ; who having no plain Law for it nor from Times immemorial any Instance of such a Thing on their Side, *seemed* now resolved to *make* one, that so they might *plead* it in future Times. Precedents *against* Law are DANGEROUS Things ; especially if they rise so high as to turn out Members of CORPORATIONS.” Such a Thing done in England *would cause* an INSURRECTION ; And if this Power does not belong to the Corporation and Overseers of said College *by* LAW, The Overseers of said College by such an Act have assumed to themselves the Powers of the GENERAL COURT, *viz.* Those Powers which in President *Dunster's* Case were *not* the Powers of the Overseers, but were delegated to them from the COURT, and so were *the Powers of that* COURT. --- Nothing therefore can demand a more critical *Examination* than *such* Precedents, and that at their *first Beginning* before they *acquire* the *force* of Laws and in future Times will be *pleaded* as Law *against* the Rights of the GENERAL COURT itself.



V. The

## The State of *Harvard-College* since the new Province Charter was granted.

AFTER the vacating the old Colony Charter of the Massachusetts in 1684, there were some new Laws or College-Chartes made by the general Court of this Province. But these Laws (as all others made under our present Province-Charter) were of Course to be sent Home for the Royal Approbation ; And they all were sent Home accordingly, and have been disapproved. So that no Laws whatever remain, but the four preceeding Laws of 42, 50, 57 and 72, as the Foundation on which the Government of the said College now stands. And *all* or *some* of these Laws are valid to this Day on the following Grounds 1. These Laws were made in old Charter Times, when it was not *requisite* to send them Home for Approbation ; and so they never were disapproved at Home. 2. As they never were disapproved at Home, so they never were repealed by the General Court who made them ; Only so far as the succeeding do interfere with, supersede or repeal the Preceeding, or any Clauses in the Preceeding, and in such a Case the succeeding take Place ; and particularly the Charter of 50, and the last of these Laws made in the Year 1672 which is properly an APPENDIX to the said Charter of 50. And 3. What of those Laws remained valid, in old Charter Times, was virtually and implicitly confirm'd by a Clause in our present Province-Charter and by a declarative Order of the General Court in 1707 respecting the College Charter of 50 ; BOTH of which here follow as the *last* Regulation made of the Constitution and Government of said College.

### I. From the Province Charter granted by King WILLIAM and Queen MARY.

In this Charter after their Majesties Subjects of the Colony, have this Province granted to them, thus and thus bounded, with all Lands-- Places--- Hereditaments, &c. There follows this *Proviso*.

“ PROVIDED nevertheless, and we do for us, our Heirs and Successors grant and ordain that all and every  
 “ such Land, Tenements and Hereditaments and all other Estates which any Person or Persons, or *Bodies*  
 “ *Politick or Corporate, Towns, Villages, COLLEGES or Schools, do hold and enjoy or ought to hold and enjoy,*  
 “ within the Bounds aforesaid, by or under any GRANT or Estate duly made or granted by any GENERAL  
 “ COURT *formerly held* or by Virtue of the Letters Patents herein before recited, or by *any other lawful*  
 “ Right or Title whatsoever, SHALL BE by such Person and Persons, *Bodies Politick and Corporate,*  
 “ *Towns, Villages, COLLEGES, or Schools,* their respective Heirs, \* SUCCESSORS and assigns forever, here-  
 “ after HELD and ENJOYED, according to the Purport and Intent of such respective Grant, under and sub-  
 “ ject nevertheless to the Rents and Services thereby reserved or made payable, any Matter or Thing  
 “ whatsoever to the contrary notwithstanding.”

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\* Thus far the Province Charter. --- And thus this Charter *confirms* the College in the *Town of Cambridge*, the same Way that it confirmed the old Town of *Cambridge* itself to be or continue still a Town; and as it *confirmed* all other ancient Towns in this Province *still to continue* Towns as they were *before*, in old Charter Times.--- Now comes the *Last* Regulation made of the said College, by an Order of the General Court in 1707, on the Choice of Mr. LEVERETT for a President, at which Time the Court ordered the Corporation to act on their FIRST *Foundation* on the Charter of 1650, after the said College had been on *temporary* Charters ever since the Times of the *Revolution*.

II. At a Great and General Court held at *Boston* Wednesday *May* 28. 1707. and continued by several Prorogations to Wednesday *Oct.* 29 following, being the third Sessions.

In Council ; Thursday *Dec.* 4. 1707.

“ THE GOVERNOUR and COUNCIL having *Accepted* and *Approved* the Choice made by the  
 “ Fellows of *Harvard College* in *Cambridge* of Mr. *John Leverett* to be present President of the said College  
 “ to fill up that Vacancy ; *Propose* that the HOUSE of Representatives consider of and grant a suitable Sa-  
 “ lary to be paid to the said President annually out of the publick Treasury for his Encouragement and  
 “ Support during his Continuance in said Office, residing at *Cambridge* and discharging the proper Duties to  
 “ a President belonging and entirely devote himself to that Service.

“ *And inasmuch* as the FIRST Foundation and Establishment of that HOUSE and the GOVERNMENT there-  
 “ of had its ORIGINAL from an Act of the General Court made and passed in the Year 1650, which has not  
 “ been REPEALED or NULLED ; The President and Fellows of the said College are DIRECTED from  
 “ Time to Time to regulate themselves according to the *Rules of the CONSTITUTION* by the Act pre-  
 “ scribed ; And to exercise the Powers and Authorities thereby granted for the Government of that House  
 “ and Support thereof.

“ Saturday, Dec. 6. 1707. The Representatives returned the Vote passed in Council the 4th current  
 “ referring to the College, with their Concurrence thereto ; and this further Addition thereon, viz. That  
 “ the Sum for Salary be *One Hundred and Fifty Pounds*.

To which the Council voted an Agreement, and the Governour  
 consented

This was the LAST ACT of the COURT relating to the Government of said College, and this Act refer-  
 red that College back again to its original Foundation on the College-Charter of 50. *Which had not been*  
 REPEALED or NULLED ; as the old Colony Law of 42 had *been*, by the Incorporating Act of 1650. So  
 that the Overseers of said College have *now* no Power over that College by the Act of 42, but by the  
 College Charter of 50 *alone*. Which gives the Overseers of said College only a Power to act *with* the  
 Corporation and not *without* them, as appears on Inspection from that Charter itself. And on this Foun-  
 dation the said College has continued, or OUGHT to have continued, to this present Year of our  
 Lord, 1742.

And if any Persons in the Government of said College, should at any Time go off from this Foundation,  
 and set up a Power INDEPENDENT on said Charter, and SOVEREIGN over the said Corporation ; the Ge-  
 neral Court alone can remand them a *Second* Time back to that Charter again, as the FIRST Foundation of  
 that House *and of the Government thereof* ; and DIRECT them to regulate themselves from Time to Time ac-  
 cording to the CONSTITUTION by that Act prescribed.

REASONS

REASONS to prove that the Honourable and Reverend *Overseers of Harvard-College* have no Independent Power over the Corporation of said College, nor can Dismiss a Member of said Corporation, solely by Themselves ; But that the GENERAL COURT alone have such a *Sovereign Power* ; And are the VISITORS of said College.

IN Order to the Proof of This, Let it be Premised. 1. That from all the Preceding Laws it appears that the said *Harvard-College* was originally the College of the General Court of the *Massachusetts Colony* ; That the General Court of said Colony *built* it and *named* it and ordered *where* it should be built and *what Kind* of Building it should be ; And that all the Powers which any Persons ever had from the beginning, or now have over the said College, were originally derived to them from the General Court of the Colony abovesaid ; so that no Persons whatever can have any Power over the said College, but only so far as the General Court have been *pleased* to grant it to them. 2. It appears in particular that the Overseers and Corporation of said College owe their Being and all the standing Powers They now have, or ever had over the said College, To Four Laws of the General Court which were made in the Year 1642, 1650, 1657 and 1672. The *First* of which Laws originally constituted Overseers of said College ; The *Second* incorporated the said College, and is called the Charter of 50 ; The *Third* is called an Appendix to said Charter ; And the *Fourth* confirmed, added to or altered, some or *all* of these preceding Laws. So that no Powers can now belong to the Overseers and Corporation of said College but those Powers which the Court granted to them in some or all of these four Laws. 3. That in the two latter Laws of 57 and 72, the Court gave to the Overseers of said College no *New Powers* of any Importance over the said Corporation ; <sup>^ Independent or</sup> And so there is no Occasion to consider any of these four Laws, but the two *First*, in order to determine whether the Overseers of said College have an *Independent* and Sovereign Power over the said Corporation.

Now from these two Laws, which constituted the Overseers and Corporation of said College, it manifestly appears that the Court did not vest the Overseers of said College with such a sovereign Power over the said Corporation ; But that the Court, who originally had this Power, reserved it to themselves ; And are VISITORS of said College. For.

I. The *prior* Law of 1642, which constituted the Overseers of said College, gave them no Power over that College considered as a *Body Politick or Corporate*.

This Law was made before the Corporation of said College had a BEING ; and therefore it gave the Overseers only a Power over an *unincorporated* College. It was the latter Law of 1650 which first incorporated said College ; for in this Law 'tis expressly " Ordered and Enacted by the Court, that " *From Henceforth* the said COLLEGE in Cambridge shall be a *Corporation*." So that by the Law of 1642 the Court gave the Overseers of said College no Power over that College consider'd as a Corporation ; And therefore when afterwards the Court made Harvard-College a Corporation in 1650, so far as this latter Law, which incorporated said College, *Subjected* the Members of this Corporation to the Overseers, so far and no farther have the Overseers a Power over the said College or Corporation. And thus the latter Law supercedes or repeals the former Law of 1642. And this Sense the Great and General Court seem to have put upon the latter Law of 1650 ; For when in Decemb. 1707 the said Corporation were ordered to regulate themselves according to the original Constitution of the said College, the Court then declared that " The first Foundation and Establishment of That " House and the Government thereof had its Original from an Act of the General Court made " and passed in the Year 1650 which had not been *repealed* or nulled." So that the FIRST Foundation both of *that House* and the *Government* thereof had *not* its ORIGINAL from the *prior* Law of 1642 but from the latter Law of 1650. And hereon it follows that the Law of 1642 ( which was *before* the FIRST Foundation of that House and the *Government* thereof ) was *sat aside* and *removed* out of the Way in order to *Lay* the FIRST Foundation of that House and its *Government* upon the incorporating Act of 1650. And therefore the said Law of 42 is *no* Part of the *Foundation* of the present House of the College nor of the *Government* thereof. So that by this Law of 42 the Overseers of said College ( instead of having a sovereign Power over it ) seem to have no Power at all over it, nor over the Corporation thereof,

A plain Instance may illustrate this Law of 1642. Suppose the General Court in 1642 had appointed Overseers to order and govern the Inhabitants of a Place, in the Colony, who had not as yet been incorporated into a *Town* ; and afterwards in 1650 the Court should have made the Place a *Township* ;--- How far would these Inhabitants, now incorporated into a *Town*, be *subject* to their former Overseers by Virtue of the Law which constituted such Overseers before the Place was made a *Town* ? Could these Overseers turn out the SELECT MEN of that *Town* in all *future Times* after the Place was made a *Township* ? By *No* Means ! Unless the *latter* Law, which incorporated the Place into a *Township*, gave such a Power to the former Overseers of the Place. Nor would these Overseers have any Powers at all over such a Place, *after* it was made a *Town*, unless  
those

those Powers which were *granted* or *confirmed* to them in the *latter* Law which incorporated the Place into a Township.--- And thus as to the Overseers and Corporation of the College abovesaid ; The Law of 42 which appointed Overseers to said College *before* it was incorporated, gives them no Power over that College *after* it was made a Corporation ; but all the Powers of the Overseers over said College *after* it was incorporated, are only those Powers which are *granted* or *confirmed* to them in the latter Law of 1650 which made the said College a Corporation.

Some truly worthy and valuable teaching Elders of the six neighbouring Towns are of Opinion, “ That  
 “ the Law of 42 abovesaid is the great *STANDING* Law that contains all the more important and superior  
 “ Powers over the said College ; And that the Charter of 50 was made as a Thing by the *BY*, and only to  
 “ empower the President and Fellows to do some *small* Matters ; and for the Sake of the College-Stock, it  
 “ being necessary that they should be a Corporation in Law in order to acquire and hold a Stock.” But  
 in Answer hereto. 1. This Supposition is *apparently* contrary to the above mentioned Declaration of the  
 General Court, which determines that the Act or Charter of 50 is the *ORIGINAL* of said College. So  
 that the said Law of 42 is *beyond* the *ORIGINAL* of that College, and therefore *seems* to be out of Date.  
 So far is it from being *certain* that this Law of 42 is “The *great Standing* LAW--“the LAW that contains  
 all the more *important* and *superiour* Powers over the said College. But 2. This Supposition abovesaid  
 is contrary to the whole *Strain* and *Tenour* of the said Charter of 50 which no longer treats the  
 President and Fellows *as* in a State of *Minority* under Overseers or Guardians ( though the most  
*Honorable* in the Land ) but *as* now grown up to the *full Stature* of MEN. Thus particularly the  
 said Charter enacts, “ That in all *great* and *difficult* Cases a general Meeting of ALL the Overseers and  
 “ Society, or Corporation, shall be procured ; and the *Conclusion* be made by the major Part ( of  
 “ the Corporation ) the Overseers consenting thereto” --- Is this only a Power in said Corporation  
 to do some *small* Matters ? Or is this treating the President and Fellows as still in a State of *Minority*  
 and *Pupillage* under Overseers, when a *general* Meeting of ALL the Overseers can make *no*  
 Conclusion at all, and that in the most *great* and *difficult* Cases, but by *consenting* to a Conclusion  
 made on such Cases by the Corporation ? --- Thus again 'tis enacted in said Charter, “ That the  
 “ President and Fellows shall forever hereafter in Name and Fact be one Body-Politick or Cor-  
 porate in Law to ALL Intents and Purposes” and therefore *not* to ONE Intent and Purpose *only*.  
*viz.* The acquiring and holding a Stock, and the suing or being sued on the Account thereof.  
 And thus evidently did the Court by this Charter, *manumitt* the said College from a State of *minor*  
 Pupillage to Overseers, and looked on it as now grown up to Maturity and *fitting* to be incorporat<sup>e</sup>d  
 with

with a President and Fellows and to have all the Rights and Privileges of a Corporation in Law ; -- as *truly* as in the Instance, above supposed, of a Place in the Colony put under Overseers, in its *infant* State ; but afterwards incorporated when grown up and increased in full Numbers of Inhabitants. And as a Law that incorporates a Town can by a very just Figure of Speech be called the ORIGINAL of such a Town, so the incorporating Act of 1650 above-mentioned is, in its own Nature, the ORIGINAL of Harvard-College, as well as it has been declared by the Legislature to Be the ORIGINAL of said College. And therefore

II. The latter Law of 1650, which incorporated Harvard College, and not the Prior Law of 1642, contains those Powers which the present Overseers have over the Corporation of the said College.

Now by this latter Law which incorporated Harvard College, the † ONLY Power given to the Overseers of said College is a Power to *Counsel* the Corporation of that College to act, or to *consent* to and *allow* of the Acts of the said Corporation. So that the Overseers of said College have no independent and SOVEREIGN Power over the Corporation of said College, even by that Law which is the only Law that now gives them any Power over that Corporation. To apply this in particular to the POWER of *dismissing* a Member of said Corporation. [Which let it be noted, is a Case on which this Law is absolutely *silent* and no where says, “ WHO have such a Power ! ] Now here since it is *Fact* that all the Power given to the Overseers over the said Corporation, by that Law which appointed and ~~made~~ the said Corporation, is a Power to *counsel* that Corporation to act or to *consent* to their Acts ; it follows that all the Power which the Overseers can have in *dismissing* a Member of that Corporation, is a Power to *counsel* the said Corporation to *dismiss* such a Member, or to *consent* to an Act of that Corporation for his *Dismission* ; And therefore the Overseers of this College have no Power to dismiss a Member of that Corporation without an Act of the said Corporation for it ; What *can* be more plain ?---So that it may *freely* be said ( and *no* Offence is *justly* offered in saying ) that the Honourable and Reverend Overseers of said College, cannot, without a Breach upon the College-Charter, assume the Power to dismiss a Member of that Corporati-

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† For the Truth of this FACT let the said Charter of 50, be consulted from Beginning to End ! all the Powers of the Overseers which are either *granted* or *mentioned*, or even *referred* to, in that Charter are contained in the 3d, 6th and 8th small Paragraphs of said Charter, as it is printed in the preceding Collection of Colony Laws relating to Harvard College. And so the *Decision* of the Fact here referred to, and whether the Writer of this Pamphlet speaks *Truth* or *Falsifies* in such an Assertion, may be  
SHORT.

on, singly by themselves ! So far is this Charter from giving to the Overseers of said College a SOVEREIGN Power to call a Member out of that Corporation before themselves alone ; and try, and judge, and sentence, and turn him out of that Corporation ; and all this Time the PASSIVE Corporation are to know nothing, unless by private Notice given them, “*What has been doing to One of their Members---* or “*What has finally become of him*” ’till the Overseers of said College are pleased to give them Information. This is as foreign to the Design and Spirit of the Law, which incorporated Harvard-College, as it is to the plain and express Letter of it ; and is such a Power as evidently seems to NULL the Charter or must it self be NULLED by it ; And which of the Two are to Stand, the General Court alone, who founded that College and who appointed NO Visitors to it, can finally determine and Declare “*Whether their OWN Act of 1650 which incorporated that College, or “ Whether One unwarranted Precedent, which is subversive of that Act, is ultimately to remain VALID.*

It may be added here *Ex Abundanti* that *supposing* some Powers granted to the Overseers of said College in the Law of 42, to act *solely* by themselves, were NOT superseded or vacated by the Charter of 50 which first incorporated said College ; Yet all this *notwithstanding*, ’tis still TRUE that the Power of removing a Member of said Corporation is NOT One of those Powers that CAN be supposed to remain *solely* with the Overseers *After* the said Charter of 50 was granted. For since this Power of removing a Member of the Corporation is no where mentioned in the prior Law of 42 ( and no Wonder, for the said Corporation and its Members had then NO Being ) it therefore follows that if such a Power is contained *at all* in that Law, It must *be* so, because it is *implied* under some of the GREAT and more important Powers granted to the Overseers in that Law. Now, This, *This* brings the Matter to a Point ! For the Charter of 50 is EXPRESS that the Overseers are to act *with* the Corporation in all GREAT and DIFFICULT Cases. So that *supposing* the Law of 42 was in some Respects still in Force, yet the College Charter of 50 comes afterwards and leaves NO Powers in that Law for the Overseers to act *solely* by themselves in *any* Cases of GREAT Importance ! The Words in the Charter of 50 are these ( *Not* as they stand in the Copy of the Overseers CLERK, and in some other *faulty* Copies of that Charter, which ought to be *corrected* ; but *as* the Words stand in the ORIGINAL Charter itself, and in the RECORDS of the General Court ! ) That “*For Direction in all emergent Occasions, Execution of all Orders and By-Laws,* “ and for the procuring of a GENERAL Meeting of ALL the OVERSEERS and SOCIETY in GREAT “ and DIFFICULT Cases, and in Cases of Non-agreement ; In ALL which Cases *aforsaid*, the Con- “ clusion shall be made by the *major Part*, the said President having a casting Voice, the OVER-

“ SEERS *Consenting* thereunto.”--- Now here if by the Term “ *Society* ” is meant † the College in general, *including* the President, Fellows, and all its Members ; Or if by that Term is meant the “ SOCIETAS ” that is, the Company of SOCII, which with a President are the Corporation of SEVEN appointed in this Charter ; 'Tis still, *either Way*, True that in *difficult* Cases and in *great* Cases a General Meeting of ALL the Overseers and of all the Corporation is to be PROCURED ‡, and in ALL such Cases ( as it *expressly* follows ! ) The *Conclusion* shall be made by the *major Part* ( of the Corporation ) the President having a casting Voice, the Overseers CONSENTING thereunto. And thus 'tis evident to the Degree of *Demonstration*, that in NO great Cases and in NO difficult Cases had the Overseers a Power left them to act *solely* by themselves, after the Charter of 50 had incorporated said College ! So *carefully* has this Charter guarded against an Independent and SOVEREIGN Power in the Overseers of said College to act without the Corporation in Matters of GREAT Moment. And *so far* is this Charter from granting or *allowing* to the Overseers a Power of acting, WITHOUT the Corporation in such Cases, that this Charter neither grants or *allows* it to the Overseers, *even acting WITH the Corporation*, unless a GENERAL Meeting of ALL the Overseers and of ALL the Corporation be procured for *Concluding* on such Affairs of Importance.

This is the Purport and Intent, this is the *Spirit, Soul and Body* of that Charter ( and which No Power can alter but THAT Power which can *destroy* this Charter itself ) viz. That Cases of *Importance* should be transacted in a *General Assembly* of the WHOLE Government of Harvard-College ; And not be determined on by a PART, or, when *unhappily* divided and disagreeing in their Judgments, by “ a Party. Hence then to apply this to so GREAT and important a Case as the *dismissing* a Member of that Corporation ; 'tis demonstrable 1. That a GENERAL Meeting of ALL the Overseers, without a Meeting of the Corporation that is general also ! can have NO Power by Charter to dismiss a Member of that Corporation. And 2. Much less have a general Meeting of all the Overseers a Power to dismiss a Member of that Corporation without any Meeting at all of the Corporation, procured for that End. And 3. Much less still have the Overseers of said College

† This Sense of the Term “ *Society* ” seems not to be here intended ; for if it *were*, Then all the Members of the College must *Vote* with the President and Fellows, and the *Conclusion* be made by the major Part.--- If so “ The UNDERGRADUATES would most certainly *carry* it !

‡ PROCURED ! and therefore not merely *notified* or *warned* to meet, as some have pretended to argue, against the *express* Words here referred to in the Charter. Such a *loose* LICENSE indulged, in interpreting Laws, would destroy any Law in the World !-- But when this Charter mentions “ The *Procuring* a general Meeting of all the Overseers and Society in great and difficult Cases ” is it not self-evident that it actually *means* that such a Meeting *should* BE *Procured* in those Cases ? Most certainly ;-- And therefore the Charter is *not* ACTED upon if in those Cases such a Meeting is *not* Procured !  
e. g. Feb. 18. 1741,2.

such a Power, without a general Meeting even of their own Members procured for that End. ---- As in a late Case without a General, or even *any* Meeting of the Corporation, and also in the *Winter* Season and *Recess* of the General Court when there was not and *could not* be a general Meeting of the Overseers themselves, some of those Magistrates and Teaching Elders, who are *mention'd* in the Law of 42, Met together and assumed to themselves the *SOLE* Power of turning out what Members of the Corporation they thought fit. This was such an apparent receding from the Foundation of Harvard-College that if a few more Precedents of the like Sort were *Submitted* to, it would settle such a Power over that College that nothing could prevent the Ruin of its Constitution unless the Great and General Court, whose College it is, *INTERPOSED* and determined, as they did the *LAST* Time they *Interposed* "That the *FIRST* Foundation of that College and the *GOVERNMENT* thereof had its *ORIGINAL* from an *ACT* of the Court made and passed in the Year 1650; And ordered ~~and determined~~ that *according* to that *ACT* the Overseers of said College should make *NO* Conclusion in *GREAT* and difficult Cases unless it were in a general Meeting of *ALL* the Overseers and Society, or Corporation, *UNITED*. --- Without such a Remedy, the Consequences of the Overseers dismissing Members of the Corporation by themselves *alone*, when they have no such Power *BY* Charter, may be these: "That possibly, in Times *to Come*, so many Members of the Corporation may be dismissed *solely* by the Overseers, and so without any competent Authority, that those who succeed<sup>ed</sup> into their Places wou'd be merely Members of the Corporation *De Facto*; while those who were *thus* dismissed would be *still* Members of the Corporation *De Jure*. And thus by Degrees there might be a Corporation *De Facto*, in Opposition to a Corporation *De Jure*. And *THEN* what would become of all the *COLLEGE-STOCK*! --- It would no longer be in the Hands of a Corporation *De Jure* but only in the Hands of a Corporation *De Facto*, that is, in *plain* English, It would be in the Hands of *NO* Corporation *at all*!

And yet if any Person belonging to Harvard-College offers to list this *real* and *most certain* Danger of all Things in that Society, He is *industriously* represented as One who is going to ruin the College! Who is striking at its Foundation--- Who is undermining its Government-- And betraying all Things into the Hands of the *CHURCH*! --- Just as if the Clergy of the Church of *England* would not *REJOYCE* to see the Day when That College should be a Corporation *De Facto* with a *VAST* Treasury, in Opposition to a Corporation *De Jure* with *NO* Treasury at all! *THEN* would be the Time for them to cry "Down with it---*Rase* it, *rase* it, *even to the Foundation*. -- Or rather this Cry would be prevented with a Laugh at a Society that like the foolish Woman in the Proverbs *Plucketh down her House with her own Hands*; And thus such a <sup>Cry</sup> ~~Suggestion~~ that "The *COLLEGE* is in Danger (and

( and not that " The CHURCH is in Danger" ) answers itself, and is as STUPID as it is VILLAINOUS. The *Stupid* Part, no Doubt, came from some Teaching Elder in the COUNTRY ; and the *Villainous* Part from some Long *Chin* who with his Brethren in Iniquity care not *One SIX PENCE* " What becomes of that College ; or the Education of Youth in it : or whether the Tutors belonging to it, can examine Freshmen ; or be able so much as to understand the BOOKS which they *hear* their Classes recite out of ! --- Or How many Thousands *per Annum* were squandered away by Parents for the Education of their Children in this sort ; if *ever* it should *so happen* in future Times that such a Course of Things should *prevail* in that Place---THESE are the Men that want nothing but to keep the State of that Society in *Darkness*, and then ( if they cou'd have the Influence of the Government in it ) they know that they should be " The RULERS of that DARKNESS. ---

But to *resume* the Argument drawn from the Clause in the Charter above cited which leaves NO Power in the Law of 42 for the Overseers of said College to act solely by themselves in any Cases of great Importance. " There is something still further remarkable with respect to these Words in the Charter of 50 ; and it is this ; that the *same* Words are repeated over again without any *real* Alteration in the *third* Law relating to the College ; though the manifest Design of that Law was to explain and alter some Parts of this Charter in *Favour* to the Overseers of said College. Now in this Law of 57 'tis expressly said, that " for the procuring of a GENERAL Meeting of the " Overseers and Society in GREAT and DIFFICULT Cases, and in Cases of Non-agreement--- In ALL " these Cases the Conclusion shall be valid [ viz. for the procuring such a Meeting ] being made " by the major Part of the Corporation, the President having a casting Vote." --- So that this Law confirms it *over again* and shows it to be the *continued* as well as *original* Sense of the Legislature, that in ALL Cases relating to said College which are *difficult* Cases or *great* Cases a GENERAL Meeting of the Overseers and of the Society ( or Corporation ) are to be procured. --- And *which Way* the Conclusion shall be made on these Cases, when such a united Meeting of the Overseers and Corporation is procured, this Law does not *say*---And therefore does not *alter* ! That is, this Law leaves it of Course *without Alteration* to the College-Charter of 50 which had already so clearly determined that Point, that it needed *No* Explanation when this *explanatory* Law was made !

So that supposing ten Thousand Times over ( and LET the *H---*'s and *Ch---*'s of the Age, turn this Argument round and round 'till their HOT Heads grow giddy with it ) " That the Overseers of said College had *Some* Powers left them to act solely by themselves *after* the Charter of 50 was granted ; yet 'tis still TRUE that the Charter of 50 and its Appendix in 57, show the *Original* and *Continued* Sense of the Legislature to be " That in all *Difficult* Cases and in all *Great* Cases

Cases such a Power was *Vacated* from the *Day* and *DATE* of said Charter of 50! And that in *Lieu* of this Power, both the Charter of 50 and the explanatory Law of 57 † give to the Overseers ( and that in a General Meeting of ALL their Number ) only a Power of *counselling* and *consenting* to Acts of the Corporation in *great* and *difficult* Cases. --- How then is it *possible* for the Overseers of said College ( against *Both* these Laws, and without *any* Law for it ) To have the *SOLE* Power in so *Great* and *Difficult* a Case as *That* of removing a President or any other Member of the said Corporation. It *Ought* to be spoke out freely, “ That, such a Power is an *IMPOSSIBLE* Power! And whenever it is assumed, all its Acts are *essentially* Nullities. And therefore all that was done in a late Case, *Novum - et ante hunc diem inauditum*, from Oct. 21. 1741, to April 1. 1742, *was* and *is* in itself Null *ab Initio*; and there *Now* exists a certain Member of a Corporation *De Facto*, in Opposition to one *De Jure*.

Some of the Consequences of which ( together with the assuming a Power to make Members of the Corporation *De Facto* in Opposition to those that are so *De Jure* ) 'Tis of the last Importance to consider more at large than as yet they have been. 1. In such a Case while *Some* only ( and not the *Major Part* ) of the Members are meerly *De Facto* Members of the Corporation; 'Twill be *utterly* uncertain whether any of their Acts are *VALID* or not: And that for this plain Reason; Because so many of their Votes may turn upon the Votes of a *De Facto* Member, whose Vote will be no Vote at all *De Jure*; And so the Votes of the said Corporation *themselves* ( when turning on such Votes ) will really be no Votes *at all*; And thus when a Person is chosen a Member of that Corporation, in *Fact*, he will not be a Member of that Corporation of *right*; Which ( by the By ) will be a *quick Way* of making the Majority of that Corporation to consist of meer *De Facto* Members *only*! And thus when any Money is let out, who can say whether 'tis rightfully let out or not; or when any Lands or Tenements belonging to said College are ‡ leased,

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† Supposing the Law of 57 to be *now* null ( as it can be *proved* to be ) Yet this no Way affects the Force of this Argument; for that Law was once valid, and when it was so, it showed the Sense of the Legislature to be the *same* on this Point, now under Consideration, as it *was* when the Legislature granted the said Charter of 50. And this is the whole that the present Argument is concerned with.

‡ By *express* Charter the *major Part* of the Corporation can Lease, though the rest are absent. Suppose then but *Four* should be present to lease a Farm of 100 *l.* per Annum, and one of these should be a meer *De Facto* Member; the Consequence of this is that *This* would be no Lease at all. For there would be only three legal Members to concur to such an Act. And *Three* Members make no *Quorum* of the Corporation. And in this Case though the Corporation might with Difficulty recover such a Farm into their own Hands again; yet they would lose the *whole* Rent! For the Lease *on which* it was *DUE* wou'd be only a Piece of Waste Paper.

the Validity of such Leases when depending on the Vote of a *De Facto* Member are no Leases at all ; And if any Person to whom such Lands or Tenements are leased, should refuse to pay Rent or when his Lease is expired should refuse to quit his Possession ;<sup>2</sup> What intricate Confusion on this, as well as on the several other Accounts abovesaid, would be introduced into all the Affairs of that Corporation. And what perplexed Difficulties ( to the Sport of WICKED Lawyers and to the Grief and Concern of GOOD Ones ) would the introducing one single *De Facto* Member, Occasion to that Corporation in recovering, not their Rents which in such a Case they could not do, but even their own STOCK into their Hands again. Do the rash, mad, headlong Young teaching Elders think any Thing of such TERRIBLE Consequences when they appear so \* keenly Eager to vote to themselves the Sole Power to turn out any Member of that Corporation; when such a Power belongs not to them by Charter ; And thereby that Member being still a Member *De Jure*, his Successor can be only a meer *De Facto* Member, i. e. NO Member of that Corporation at all ; And thus they would assume a Power to fill up that Corporation with meer *De Facto* Members and so to *dissolve it* !---This calls ALOUD for the Interposition of the Legislature, to reduce these young Elders within their proper Bounds ; and to put a Stop to such Confusion *Before* it be too *Late*.----*ALL these are the Beginning of Sorrows --- But the END is not yet.* Tho' by a SIGN that has been given there is Reason to think that *it is NEAR even at the DOORS.* For 2. When once the Overseers of said College have assumed to themselves the *Sole Power* of dismissing any Members of the Corporation abovesaid, the Consequence will be This ( Since it has been *demonstrated* that they have NO such Power *By Charter* ! ) that all the Members of said Corporation, that succeed into the Place of Those who are *Thus* dismissed, will be meer *De Facto* Members of said Corporation ! And when a few such are actually made ( and ONE is *already* made ! ) Then the major Part of said Corporation will *soon* come to consist of *De Facto* Members. And what now will follow !---- Why these Things. “ That all their Acts will be *Null and VOID* ; That a meer *De Facto* Corporation will be the *only* Corporation existing ; and thereon that all the College Stock will be *Lost and SUNK* ! For Query ; Could a meer *De Facto* Corporation SUE by Charter --- when by Charter they are NO Corporation at all ! Could such a Corporation recover any Monies let out into the

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\* The Writer of this Paper is resolv'd to SPEAK as *Keenly* of THEM as they have *zealously* acted against HIM. He owes them NO Obedience *Independent* on the Corporation. Nor ever will PAY them any, while They act in their SOLITARY Capacity.

Hands of others ! Or could they get in the Rents of all the Lands or Tenements ONCE possessed by a *De Jure* Corporation of said College !---What if those who had such Monies in their Hands or were in Possession of such Lands and Tenements should refuse to pay the *Just* Interest and Rents due for them ! And not only so, but also *keep* those Monies or Lands and Tenements in their own Hands ! What if they should give *Part* of such Interest or Rent to a Lawyer, to stand a SUIT ! Could not a Lawyer successfully *force* and *PUSH* their Cause against this meer *De Facto* Corporation, before any Court in the Province ? Most certainly !----Yea, the Credit of such a Corporation would at Length run so *Low* that the very FERRYMEN would stand Suit against them. For these *listening* Ferrymen would soon find out, from the infinite Numbers of Passengers whom they were perpetually rowing over, that “ there was No *Corporation* to sue them for their Ferry Rent.” And thereon *feeling* Themselves at the End of the Year to be “ RICH MEN ; And none to demand a single Half-Pence of Ferrage Money at their Hands.---- They would at once take it into their Heads, to quit all their Boats, and putting their *Negroes* into them, would set up for JACK Gentlemen and *perk* it in the Face of their *old* MASTERS. This is comical enough † ; But yet any Lawyer in the Land if he was asked the Question in *earnest* “ Whether in this Case they could have such a Right ? “ He would DECLARE that it was a *Serious* Truth ! And thus the WHOLE College-Stock ( which 'tis the Interest of said College, to have constantly *Out* at Use ; ) would be in the Possession of those to whom it was Let ; And a meer *De Facto* Corporation could never recover either Principal or Interest, Rent, Land or Tenement, to themselves or to the said College.---What then would become of it ! It would either be held and *enjoyed* by the present *Lucky* Possessors, or revert to the Donors and their Heirs, or “ Escheat to the KING. And which of these would be the Consequence, the Writer of this Paper is oblig'd in Modesty not to determine but would leave to Those who are Masters of Law.

And thus the Dissolution of all Things is *at Hand* ! in said College when once a Member of that Corporation is dismissed without a *competent* Authority ; The *Same* Power can dismiss ALL the Members of that Corporation ; And then every Thing will return to its primitive *Chaos* ; And the said College will no longer be called “ Harvard College ; but *be a*” † Tohu Bohu ; *without Form and* VOID.--- And DARKNESS will be upon the Face of the DEEP.

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† 'Tis true ! The FERRIMEN ought not to *Know* of this ; lest they should give some WICKED Lawyer--- “ A *Part* of their Rent to stand *Suit* for them against their *ancient* Masters--- 'Tis here said “ A WICKED Lawyer” because no HONEST Lawyer would *Take* such a FEE !

‡ The Person that writes this Paper is not exactly *skilled* in the Hebrew Language ; and perhaps may have printed this “ TOHU BOHU” with wrong Letters. If the Hebrew *Points* are not justly rendered into English *Vowels*, he desires to stand corrected by a Gentleman who is as great a Master of HEBREW as he is of the LAW.

My Dear Brother's Hardship <sup>G</sup>rowing upon him; He began to grow disorder'd in his Brain, & continues so for a week or two. The

The Writer of this Paper was going on to exhibit <sup>but</sup> to View the Management of the College-Stock from *Age to Age*---And how it was *scarce* looked into <sup>once</sup> or twice in an Age!--- (That is, BY the Corporation, *Whose* Stock it is ;---And as to any *Other* Persons in the Country *They* know NOTHING about it ! ) And then he proposed to pursue his general Argument still further, and *Prove* from the College Charter and from common Law, as Dr. *Ayliffe* a *Doctōr* of *Laws* has at large stated the Case, "That none *Can* BE Visitors of such a College but the Great and General Court who *founded*, who *erected*, and who *incorporated* the same, SINCE in the Act which incorporated that College the Court left NO Visitors to it!--- And that *Appeals* necessarily lay ( *and could not POSSIBLY be denied!* ) to the VISITORS of Colleges when any Members of Colleges were *Grieved*. And thereon the Writer of this Paper proposed to give Instances of some general and *perpetual* Grievances, and particularly the enormous Grievance of abusing Gentlemen's SONS in the *Arbitrary* fixing them below their *Just* Place in College-Classes,---- *There* to stand degraded ( *for ever!* ) in the publick Catalogues. Some Gentlemen's Sons! their *abused* *oppressed* SONS! are treated in this Sort, and after such a Manner, that Flesh and Blood was never made to BEAR such Indignities. And it was designed to show such Gentlemen that from the very Constitution of said College they had their *Remedy* as plain as A, B, C. --- But while the Writer of this Paper ( who is *absolutely* RESOLVED to set his Name to it, and at the End to stile himself *Nathan Prince* ) was *Demonstrating* how the College Constitution provided *Such* Remedy --- He received a *College-Vote*, as he *Thinks*, ( though by the very Words of the Vote it self it can be no College Vote *at all!* ) whereby " The President, TUTORs and Professors [ *Poor Professors!* settled " by Vote *below* Tutors! ] were empowered and directed to break open or cause to be broken open " the Doors of his Chamber and Studies, and to remove out of them the said *Prince's* Goods." And so to SEIZE all his *Books* and *Plate* and *Papers* to their OWN Use and Behoof ( for ought any Thing he knew by *This* Vote! ) ---- He *Flung* his Pen aside ---- and cared not what became of such a *INGRATEFUL* Society---*Till* it was RESTORED to a Better Government----Nor of all the &c. &c. \*\*\*  
Tr---! D---! H---! C---! A---! C---! F---! D---! G---! B--- C---! --- Se! ---  
AMEN. But KAI and again again.---- all in DUE Time.

† Dr. *W.* is *degraded* below 2 *Ms.* and an *H.* " What are Things coming to!

P. S. There is no Ending a Book without a Postscript. And the present P. S. shall contain some *various* Readings of Importance both in the MSS. and printed Copies of the last Page in this Book.

1. *Erratum.* P. 26. l. 27. for *Mankind* read *The &c. &c.*
2. *Errat:* P. 26. l. 27. for *Mankind* read *Womankind.*
3. *Errat!* P. 26. l. 27. for *Mankind* read *The &c. &c.*
4. *A. Rat!* P. 26. l. 27. for *Mankind* read *Womankind.*

N. B. In the *last* various reading " *A Rat*" has crept into the Press. But in *another* various reading 'tis " *Errat!* which in the Sound and Pronunciation is the same with " *A Rat*, when the *Emphasis* or *Accent* is ( by a Note of Admiration! ) placed on the last Syllable of the Word *Errat!* as it is here. But in other printed Copies 'tis " *Errat:* with a *Colon* : Now the *upper* Point of the Colon ( and thus the *Codex Cantabrigiensis* reads the Word ) was thro' the haste of the Scribe set down somewhat *oblong* ; and so the Printer

Printer at Times might take the Colon ( : ) for a Note of Admiration ( ! ) and alter his Prefs accordingly. And thereon some printed Copies have *Errat* : and others *Errat* !-- But in other MSS. Copies ( and particularly in the *Codex Bostonensis* which the Printer, at Times, had before him ) the Word is read at full length " *Erratum*. And hence all these Mistakes appear to run on in a natural easy Progression, thus ; *Erratum*. *Errat* : *Errat* ! *A Rat* ! The Writer of this Paper is of Opinion that there *really was* some *Rat* or other ( for he *smells* one ) who in his Absence from *Cambridge* got into his Chamber and fell foul of his MSS. And also that other *Rats* got into the Printing-House ( which always abounds with Rats, especially those of the *NORWAY* and *Two Legged-Kind* ) And by their *Nibbling* caused all this Confusion. He has no Leisure at present to compare all his different MSS. and settle the *true* reading; or to find out which Terms viz. Mankind, or Womankind, or The &c. &c, were in the original TEXT ; or whether *Either* of them were ever in it *at all*!--He can only say that the last *Reading* is most *certainly* false. And this he has found out by a close Attention to some *Hyper-critical* Rules that the great Dr. *B---*ly went by in castigating *Ancient MSS*. One of which Rules the Dr. often repeats, and it is here given in his own Latin Phrase viz, After a *Latin* or *Greek* Word has been turned and twisted this Way and that, and sometimes cast down and then raised up ; if after *all* it is found that *Recto* TALO *Sistere nequit* ; there is then no Occasion to consult any MSS. at *all*, to determine whether it be the *True* reading ; but immediately " *A Textu relegandum est*. And the Word is at once to be *Banished* out of its PLACE. Now Naturalists observe of the *Mus Major* which is *true* English for " a Rat " *Murem recto TALO sistere non posse*. And therefore no less a Critick than the great Dr. *B---*ly has already given Sentence against the 4th and last Reading abovementioned. And in Virtue of his *Hyper-critical* Authority " Be it ordered and enacted that the said RAT and every other Kind of RATS whatever, be *Banished* far away from *all* MSS. --- And *Notandum Bene*, from *all* *DESERTED* Chambers !--- &c. &c.