

AN EPISODE
In the Documentary History of
The University of Oregon

THE
UNIVERSITY
OF OREGON
CHARTER

GEORGE N. BELKNAP

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EUGENE, OREGON
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PREFACE

Some years ago, I undertook the assembly and chronological arrangement of copies of contemporary documents basic to the early history of the University of Oregon, as an archival contribution to the approaching observance of the University's centennial year, 1976. As a by-product, I found myself arranging and annotating several groups of related documents as an experiment with a documentary approach to episodes in narrative history. This pamphlet presents one episode. The reader may judge whether, in this case, the experiment is successful.

Manuscript documents are transcribed as literally as type will allow. The conventional [*sic*] is avoided; should the reader wonder whether some oddities may be my typographical errors, I offer assurance that proofs of all such documents have been checked with special care. In the case of printed documents, typographical errors in the original printing have been silently corrected. The writing habits of the author of a manuscript may be significant, but hardly the errors of a careless compositor.

Side notes for manuscript documents indicate the location of the manuscripts with standard library symbols (OrHi, Oregon Historical Society Library; OrU, University of Oregon Library) --with one exception. The abbreviation, M. C., refers to *The Diary of Judge Matthew P. Deady, 1871-1892. Pharisee among Philistines*, edited by Malcolm Clark, Jr. (Oregon Historical Society, 1975).

GEORGE N. BELKNAP

No. 1.
Director's Minutes, ug. 8-10,1876
(OrU)

On motion of Joshua J Walton the President of the Board of Directors [Matthew P. Deady] was requested to draft a new law as an amendment to the present law, creating, organizing and locating the State University to be presented to the next session of the Legislature for adoption.

The "present law" was the 1872 act locating the University in Eugene, on condition that citizens of Lane County provide a site for the institution and erect a building worth \$50,000 without cost to the state. That act also contained provisional regulations for the government of the University, since it was anticipated that it might open before the next meeting of the Legislature; though the deadline was later extended, the act required that the building be completed by January 1, 1874. The 1872 act has sometimes been called the University charter, though the institution operated under its provisional regulations for less than four months.

No. 2.
Deady Diary,Sept. 2, 1876
(M.C., I, 217)

Since my return this week [from a trip to the beach], have been engaged on my correspondence and completing the University act. Paul copied it for me and it was sent by Kelly to Eugene this morning . . . Genl Hamilton and Laurence called today. The latter is a member of the legislature which meets next Monday. He talked a couple of hours about the work of the session . . . [1](#)

Deady has been called the "Oregon Justinian." The usual reference is to his role as president of the 1857 Constitutional Convention and to the Deady Code of Oregon Laws (1866), revised with the assistance of Lafayette Lane in 1874. The legislative charter of the University of Oregon, though of much narrower scope, ought to be recognized as a third major accomplishment of Deady as a lawmaker, both for its immediate practical anticipation and handling of the problems of the new institution and for its continuing guidance of the University and

In drafting the bill that became, with amendments, the University charter, Deady brought into common focus the skills and insights of an eminent legal scholar, a shrewd politician, and an enlightened and cultured citizen. He was perfectly aware that he possessed these assets, and this awareness generated a rather lofty self-assurance that tempers the admiration of one who reviews his career in the 1970s. In the 1870s, however, these qualities were powerful, and the University of Oregon was then and is today greatly indebted to his skills, insights, shrewdness, and self-assurance.

The draft that Paul copied has not been found. But, by a fortunate accident, one copy of Senate Bill No. 44, through which the proposed University charter reached the Legislature, has survived in the Oregon State Archives.² The bill is substantially Deady's draft, though with two changes by Eugene directors.

No. 3.
Walton to Deady,
Sept. 18, 1876
(OrHi)

Dear Sir: Your favor came duly to hand. I received the copy of the bill prepared by you some time ago. I read it to some of the Directors here, and those who read it or heard it read seemed to be well pleased with the bill. There was one item however the Directors here have thought ought to be amended or changed. That was prohibiting the appointment of a majority of the Regents in Lane or Linn counties. The change suggested is "in any one county in the State." Through the advice and suggestion of Ex. Gov. Whiteaker and judge Thompson the last section was changed so as to appropriate one quarter of a mill of the "Soldiers Bounty Fund." They thought it would be very difficult to pass a bill increasing the tax any, and that fund can be diverted with out making any increase.

I placed the bill in the hands of Gov. Whiteaker who promised to watch over it, and use his influence to get it through . . . ³

I trust you will pardon me for not acknowledging the receipt of the bill sooner.

Your Truly Joshua J Walton

There were several preliminary steps before the Legislature would act on Senate Bill No. 44. The University building had been accepted by the Board of Commissioners for the Sale and Management of School and University Lands in July. Governor Grover (one of the commissioners

assured the Legislature in his message that the building and grounds were worth \$52,000.

No. 4.
Governor's Message,
Sept. 1876, p. 25

I am gratified to be able to report to you the completion of the new State University building at Eugene City, which, together with the grounds on which it is situated, of the value of \$52,000, has been made a free gift to the State by the people of Lane county, in consideration of the permanent location of the University in their midst. This institution is now fully organized by the selection of an excellent and experienced corps of professors and teachers. The special fund invested for its support will now, for the first time, be brought into active and current use, adding great impetus and strength to the educational agencies of the State.

The Legislature, however, voted to send a joint committee to Eugene to inspect the University and ascertain whether the conditions for its location had been satisfied.

No. 5.
Oregon Laws 1876
pp. 178-179

The joint committee, composed of two from the House and two from the Senate, be appointed to examine the State University, at Eugene City, and everything connected therewith; inquire into the management of the same; and said committee is hereby instructed to report to each house whether or not the law creating and locating said University has been fully complied with, and such other facts as the committee may deem proper.⁴

No. 6.
Senate journal,
1876, pp. 217-219

The joint committee appointed to visit the State University, at Eugene City, having discharged that duty, now ask leave to make the following report:

They found a substantial brick structure of good material, of the following dimensions: One hundred and fourteen (114) long by fifty six (56) feet in width, a good, strong stone foundation, two stories high, with a basement story twelve feet in the clear, and the two stories above sixteen feet in the clear, with a mansard roof, forming a third story, eighteen feet in the clear; all the work done in a good workmanlike manner. The lower story is now completed and ready to receive the furniture, which your committee is credibly informed is in course of preparation and will be in its place by or before the 18th day of October next; and your committee would further state that the University has been fully organized, by the election of Hon. M. Deady, President of the Board of Regents [i.e., Directors), and such other officers as required by law; that such board have selected a corps of teachers, composed as follows: Prof. J. W. Johnson, President; Prof. Bailey and Condon, subordinate members of the Faculty; Mrs. Spiller, Principal of the Preparatory Department, and Miss Mary E. Stone, Assistant; and designated the 18th day of October next, for the commencement of the first school year of the University. Your committee would further state that the expenses incurred in the construction of said building and the purchase of the

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site, have been paid by voluntary contributions of the citizens of Lane county, and in the judgment of your committee, founded on the appearance of the building, and the best information that could be obtained, the same is at least of the value required by the law, locating the State University, to-wit: \$50,000. Your committee would further say, that from reliable information, the title to the grounds upon which the building is located is perfect; the grounds, consisting of a fraction less than eighteen acres, beautifully situated, just outside the limits of Eugene City, Lane county, Oregon; and your committee would recommend that a small appropriation be made by the present Legislative Assembly to complete the unfinished parts of the building and improve the grounds belonging to the same.⁵

Dated this September 28, 1876.

Walton was optimistic in a September 30 letter to Deady: "I am informed that our University bill will not meet any opposition, excepting, perhaps, from Watt of Forest Grove." As it turned out, he underestimated the impact of Watt's opposition. Deady spent several days in Salem in October lobbying for the bill.

No. 7.
Deady Diary,
Oct. 21, 1876
(M.C., I, 219)

Was about the legislature a good deal [October 9-13]. Got acquainted with the members and helped along with the University Bill and the Pilot Bill, which I drew. The Governor took me out to the

Penitentiary one morning. Stopped at Judge Boise's a couple of nights. Lodging was scarce in the city.

Walton also went to Salem, during crucial days later in October, where he lobbied and served as a volunteer enrolling clerk to speed the University bill. He wrote to Deady the day after it cleared the Senate.

No. 8.
Walton to Deady, Oct. 21, 1876
(OrHi)

Dear Sir: Your favor was duly received on yesterday, but I did not have time to answer. At the time the letter was handed to me I was busy at work enrolling our University bill, and did not get through until late in the evening. I was writing against time to secure the passage of our bill through, and I am pleased to say it was accomplished. I sent you a telegram in the evening, and I trust you will pardon the delay in sending it. I could not leave to do anything. I trust you received the telegram in time. The Regents meet the first Monday in November, the 6th.

When our bill was called up out of its regular order in the House it passed through without any opposition. Only one member voted against the bill, Gilbert from Marion County. The vote stood 56 to 1. It was a terrible struggle for us in the Senate, but by good work we got it through. The bill was amended in two or three places, by striking out a word or two and inserting others, but the provision of the bill remains

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the same. The bill appropriates ten thousand dollars for two years out of the General Fund, to complete and furnish the building.

The Governor informed me last night that he would sign our bill today.

Yours Truly, Joshua J. Walton

The text of the act is here transcribed, with footnotes providing commentary on Deady's intent and strategy, changes in the act from Senate Bill No. 44 and his original draft, selected quotations from the 1872 act showing borrowings and modifications, and information concerning the later history of the several sections of the charter.

No. 9.
Oregon Laws 1876,

An Act to Provide for the Support and Government of the University of Oregon.⁶

WHEREAS, By an Act of the Legislative Assembly, approved October 19, 1872, it was provided that, in order to devote to the purposes of education the 72 sections of land donated to the State for the use and support of a State University, by the Act of Congress of February 14, 1959, a State University having for its design, to provide instruction and complete education in all the departments of science, literature, professional pursuits and general education, be created and permanently located at Eugene; *Provided*, That the Union University Association of Eugene should, on or before January 1, 1874, secure a site for the same, at or in the vicinity of Eugene, and erect thereon, and furnish a building of not a less value than \$50,000, for the use of said University, on a plan to be approved, and after the erection of the same, to be adopted by the board of commissioners for the sale and management of the school and university lands, and for the investment of the funds arising therefrom; and

WHEREAS, By an Act of the Legislative Assembly, approved October 16, 1874, it was provided in effect, that said University Association might have until January 1, 1877, to secure said site, and erect and furnish said building as provided in said Act of October 19, 1872; and

WHEREAS, Said University Association of Eugene have duly provided a site for said University, and erected thereon, on a plan first approved by said board of commissioners, a building for the use thereof, as provided in said Act of October 19, 1872, which site and building was, by said board of commissioners, on July, 1876, duly accepted, and has since been duly conveyed by said University Association to the board of directors of said University;⁷ and

WHEREAS, The Directors of the University aforesaid, did, in pursuance of an Act of October 19, 1872, on August 9, 1876, elect and appoint

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a president and two professors of said University, and also a principal and assistant teacher of the preparatory department therein, and did also "fix the salaries of said president, professors and teachers, and prescribe the tenure of their offices, the beginning and end of the school year of said University, the studies to be pursued thereat, the admission fees and rates of tuition, together with the qualifications for admission therein;" therefore

Be it enacted by the Legislative Assembly of the State of Oregon:

SECTION 1. That the interest which⁸ may hereafter accrue on the fund arising from the sale of the University lands aforesaid, is hereby set apart and perpetually appropriated to the maintenance, use and support of "the University of Oregon;" but until otherwise provided by law, no part of said interest shall be appropriated or expended otherwise than in the payment of the salaries of its president, professors and teachers, and other current expenses; and if at the close of any fiscal year a

sum equal to \$500 of said interest shall remain unexpended or unappropriated, after the full payment of such salaries and expenses for said year, the same shall be added to and become a part of the principal of said fund forever, *Provided*, That the regents, the faculty or other officer or officers of the State University shall, in no case, pledge the faith or credit of the University of the State in excess of the interest annually accruing on the university fund, together with the receipts from tuitions and other sources during the current year.⁹

SEC. 2. The general government, superintendence and direction of

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said University is hereby vested in a board of regents, to be called "The Regents of the University," which shall consist of nine persons, who shall be citizens and residents of the State of Oregon.¹⁰

SEC. 3. The regents of the University shall be appointed by the Governor, by and with the advice and consent of the Senate, for the term of twelve years, and until their successors are nominated and confirmed; and all vacancies occurring in said board shall be fill [filled] in the like manner for the remainder of the term, except that a vacancy occurring during a recess of the Senate shall be filled by appointment by the Governor until the adjournment of the next session of the Legislative Assembly.

SEC. 4. The regents shall elect from their number a president of the board, who shall be called the "President of the Board of Regents," whose duty it is to preside at all meetings of the board, to call special meetings of the same upon the written request of any four members thereof, and to perform such other duties as may be provided by law or prescribed by the board; ¹¹ but if said president, for any cause, shall not be present at any meeting of said board, the members present, if a quorum, may elect a president to preside at such meeting, who shall thereupon have the power and perform the duties of "the President of the Board of Regents" during said meeting.

SEC. 5. The regents of the University shall meet annually, at Eugene, on the last Thursday of the school year, which meeting may be adjourned from time to time, to suit the convenience of the regents, and promote the discharge of the duties imposed upon them; but no special meeting of the regents shall be called by the president, except upon a previous written notice to each member of the board, of the time and place of such meeting; and said notices shall be issued by the secretary of the board, upon the direction of the president thereof, to be inserted in the call for said meeting, and filed with the same secretary, and may be served by said secretary by delivering the same personally to each member, or mailing it to his address, at the post office nearest his usual place of residence, not less than ten days before the time appointed for said meeting.¹²

SEC. 6. The board shall appoint a secretary and treasurer, who shall keep their offices at Eugene, and hold their places during the pleasure

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of the board. They shall receive such compensation as the board may prescribe.

SEC. 7. The powers and duties of the secretary shall be as follows: (1), To have the custody of the books, papers and documents belonging to the University; (2), To keep a record of the transactions of the board of regents, the acts and doings of the president of the board and the president of the University; (3), To keep full and accurate accounts of the money and other property of the University; (4), To do such other things as the board of regents may direct; but in the exercise of powers and discharge of his duties, he shall be subject to the direction of said board. [13](#)

SEC. 8. The powers and duties of the treasurer shall be as follows:

(1), To receive, keep and pay out, according to the order of the board, all the money and other property of the University; (2), To keep full and accurate accounts of all such money and property; (3), To give a bond to the University of Oregon for the faithful performance of his duties, in such an amount, and with such a number of sureties, as the board may prescribe, to be approved by the president of the board.

SEC. 9. [14](#) The general powers and duties of the board of regents shall be as follows: (1), To control and provide for, subject to the conditions herein made, the custody and occupation of the University grounds and buildings, and the books, papers and documents belonging to the University; (2), To manage, control and apply all property, of whatever nature, which may hereafter be given to, or appropriated for the use, support or benefit of the University, according to the terms and conditions of such gift or appropriation; (3), To appoint and employ a president of the University, and the requisite number of professors, teachers

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and employees, and to prescribe their compensation and tenure of office or employment; [15](#) (4), To demand and receive the interest mentioned in section I of this Act, and all sums due and accruing to the University for admission and tuition therein, and apply the same, or so much thereof as may be necessary, to the payment of the compensations aforesaid, and the other current expenses of the University; (5), To prescribe a fee for admission [16](#) into said University, to be applied to the payment of incidental expenses, and the rate of tuition for instruction therein; (6), To supervise the general course of instruction in the University, and to enact rules and by-laws for the government thereof, [17](#) including the faculty, teachers, students and employees therein; (7), To confer, on the recommendation of the faculty, such degrees as are usually conferred by universities, or as they shall deem appropriate; [18](#) and, (8), To prescribe the qualifications for admission into the University.

SEC. 10. At all meetings of the board of regents, five members shall constitute a quorum, but a less number may meet and adjourn from time to time, and the powers and duties of the board may be exercised and performed, during a recess of the same, by a committee thereof, to be called the executive committee, so far as the board may prescribe and direct.

SEC. 11. [19](#) No political or sectarian test shall ever be allowed or applied

in the appointment of regents, professors, teachers or employees of the University,²⁰ nor shall the majority of the regents be, at any one time, members of any one religious denomination, or be appointed from, or reside within, any one county of the State.²¹

SEC. 12. The regents shall not receive any compensation for their services, but they shall be allowed their actual and necessary expenses in attending the meetings of the Board, to be paid as current expenses of the University.²²

SEC. 13. At the close of each school year, the president of the board of regents shall make a report to the Governor of the State, showing the transactions of the board, the progress, condition and wants of the University, the number of professors, teachers and students therein, the amount of receipts, disbursements, and such other matters as may be deemed important.²³

SEC. 14. The president and professors constitute the faculty of the University, and, as such, shall have the immediate government and discipline of it and the students therein; but, in all matters connected with the government and discipline of the preparatory department, the

teachers therein shall be heard and consulted. The faculty shall also have power, subject to the supervision of the board of regents, to prescribe the course of study to be pursued in the University, and the text books to be used.²⁴

SEC. 15. The president of the University is also president of the faculty, but, whenever required by the board of regents, he shall perform the duties of a professorship; he is also the executive and governing officer of the school, except as herein otherwise provided; and, subject to the supervision of said board, he has authority to control and give general directions to the practical affairs of the school.²⁵

SEC. 16. Each county in this State is entitled to one scholarship in the collegiate department of the University, and an additional scholarship therein for each member and joint member of the Legislative Assembly to which such county may at the time be entitled.

SEC. 17. Applicants for county scholarships must apply in writing for the same, to the county superintendent of common schools, at least one month before the commencement of the school year in which they seek to enter, and such superintendent must receive such applications, and present the same to the County Court of the county when sitting for the transaction of county business, which Court shall, with the aid of said superintendent and such other person or persons as it may see proper to designate for that purpose, examine said applicants at a time appointed by it therefor, and the scholarships to which such county may then be entitled shall be awarded by such court among the

applicants found to possess the requisite qualifications, by lot. Whenever a vacancy occurs in a county scholarship during the course of any school year, application may be made for it, and the same awarded in the manner provided in this section; reasonable notice being first given of the time when the proceedings will take place.

SEC. 18. A person entering the University upon a county scholarship shall, at the commencement of the term next following such entry, be subject to an examination by the faculty, and if found disqualified by

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reason of want of educational attainment, physical capacity, or moral character, such person shall be dropped from the roll of students, and the scholarship upon which he or she entered shall thereupon become vacant. [26](#)

SEC. 19. [27](#) No person shall be eligible or entitled to the use of a county scholarship in the University unless he or she has been an inhabitant of the county to which it belongs for one year immediately preceding the application therefor, nor unless such person possesses the qualification, educational and otherwise, which the board of regents may prescribe for admission into the collegiate department thereof; nor shall any person who has been convicted of a crime involving moral turpitude, or who is notoriously of bad reputation or evil habits, ever be eligible or entitled to admission into said University upon any such scholarship or otherwise.

SEC. 20. All funds derived from the sale of university lands aforesaid shall be loaned by the board of commissioners aforesaid for periods of not less than three nor more than five years, at a yearly interest of ten per centum, payable semi-annually, in January and July, in the same kind of currency as the loan was made; but no loan of such funds shall be made except upon the promissory note of the borrower, secured by a mortgage upon unencumbered real property, which property, exclusive of improvements, shall be of three times²⁸ the cash value of the sum so loaned, and every such note shall contain a stipulation of the effect that in case default is made in the payment of the same, or any installment of interest due thereon, the maker thereof will pay a reasonable attorney fee for foreclosing said mortgage, the amount of which fee shall be fixed by the court wherein said foreclosure takes place, and be taxed and recovered as a part of the costs and expenses of the suit.

SEC. 21. Each justice of the Supreme Court shall appoint, in each county within his district, a person to receive applications within such county for the loan of university funds and the valuation of the lands offered as security therefor, who shall be styled "The University Fund Commissioner" for said county; and such justice shall have power to remove any such commissioner for good cause, and to fill any vacancy which may occur in such office in any county in his district.

SEC. 22. An application for a loan of the University funds must be made in writing, stating therein the amount and time of the proposed loan, and the property offered as security therefor, to the commissioner of the county wherein such property is situated; whereupon, it is the duty of such commissioner to ascertain the cash value of the premises and the interest of the applicant therein, and make a certificate of the same, verified by his own oath, and forward such certificate by mail to

the board of commissioners aforesaid, who, if it appears from said certificate that the interest of the applicant in the property is worth, exclusive of improvements, three times²⁹ the sum applied for, may make the loan, but not otherwise.

SEC. 23. An application for a loan of University funds must be accompanied with a fee of \$10 for the first thousand or fraction of a thousand dollars applied for, and \$5 for the second thousand, or fraction thereof, and \$2 50 for each thousand or fraction thereof over and above that amount, as a compensation for the services of the University Fund Commissioner, who is entitled to receive and retain the same, whether the application be allowed or not.

SEC. 24.³⁰ Each University Fund Commissioner shall keep a memorandum of all applications for loans, and of his action thereon, in a suitable book, which memorandum shall be preserved by him and delivered to his successor. The words "cash value," as used in this Act, must be construed to mean the value or amount which the property offered as a security for a loan would bring at sale upon an execution.

SEC. 25. The Act of October 19, 1872, aforesaid and the Act of October 16, 1874, amendatory of said Act, and section 10 of the Act of October 28, 1868, entitled "An Act to regulate the sale of school lands, university lands, and to provide for the management of the funds arising therefrom," be and the same are hereby repealed; but the repeal of said Acts shall in no wise affect the location and organization of said University under the same, as set forth, recited and referred to in the preamble hereto, and the same are hereby confirmed and continued, subject to the provisions of this Act, nor shall such repeal, or the passage of this Act, in anywise affect the appointments heretofore made of members of the board of directors of said University in pursuant of said Acts, but the persons so appointed shall continue in office, according to the terms and classification of their several appointments, as a board of regents, under this Act, and subject to all the provisions thereof; *Provided*, That the three places in said board now filled by the appointees of the "Union University Association" aforesaid shall, at the expiration of the terms of the present incumbents, or upon the happening of any vacancy therein, be filled in the manner and for the term provided in this Act for the office of regent of the University.³¹

SEC. 26. For the purpose of completing and furnishing said University building, and enlarging the site so as not to exceed fifty acres, and enclosing and improving the grounds thereof, there is hereby appropriated³² the sum of ten thousand dollars per annum for the term of two years, ending September 1st, 1878, or so much thereof as may be necessary, which shall be set apart by the Treasurer of State out of the general fund, to be designated the University building fund, which shall constitute a separate fund to be expended by and under the supervision of the said board of regents, for the purpose aforesaid; and all liabilities contracted by virtue of this section shall be paid to the person entitled thereto only on the warrant of the Secretary of State, to be drawn upon presentation of the certified statement, under the hands of the president and secretary of said board of regents, that the

amount claimed is justly due.

The legislative history of the 1876 act, though touched on in the notes, needs a summary. Senate Bill No. 44 was introduced on September 21 by Senator Cochran of Lane County, "read a first time and passed to its

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second reading without question" (Senate journal, pp. 117-118). On September 25 "the rules were suspended, and the bill was read a second time by title" and referred to the Committee on Education (*ibid.*, p. 147). On October 14 it was reported back with proposed amendments (*ibid.*, pp. 480-481); see notes 16, 28, 29, 32. Later the same day, it was made a special order of business for October 16 at 2:00 p.m. (*ibid.*, p. 491). On October 16 the amendments from the Committee on Education were adopted, together with amendments by Watt (see notes 8, 9) and Cochran (see note 32), and a motion by Watt to delete Sec. 26 was defeated (see note 32); the bill was then ordered engrossed for a third reading (*ibid.*, pp. 508-510). On October 17, on the third reading, it failed to pass: 14 for, 13 against, 3 absent (*ibid.*, p. 540). On October 18 Senator W. H. Clark of Grant County County, who had voted no on October 17 for parliamentary reasons, moved to reconsider, which motion prevailed; the bill then passed: 19 for, 9 against, 2 absent (*ibid.*, pp. 574-575).

The bill reached the House on the morning of October 20, the last day of the session. Under suspension of the rules, it was read three times by title and passed, 56 for, 1 against, 3 absent (House journal, pp. 834-837, 841-&42); Walton's statement in no. 8 that the negative vote was cast by A. N. Gilbert of Marion County is contradicted by the House journal, which records that R. D. Ruckman of Union County cast this vote.

The difficulties that Bill No. 44 encountered in the Senate were not basically partisan, though the principal troublemaker, Watt of Washington County, was a Republican and the weak Republican minority uniformly voted 4 to 2 against the University on three recorded votes. The key to the opposition is probably to be found in the vote on final passage, in which 8 of the 9 no votes were cast by senators from Yamhill, Polk, Washington, Marion, and Linn counties, where sectarian colleges still feebly hoped for the University land grant. The ninth negative vote was by James Applegate of Douglas County. The Applegates were notoriously and quixotically individualistic, and the University forces had already had troubles with Elisha, who had, through innocent enthusiasm, repeatedly upset well-laid plans in the drive to finance the building. But James' vote in this case may reflect payment of a political debt to senators who, earlier in the session, had unsuccessfully supported his Uncle Jesse, as a candidate for United States Senator. The lineup of state senators in the senatorial balloting is suspiciously similar to that on the University bill.

The crucial shifts of votes in the Senate on bill between October

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17 and 18 were all on the Democratic, side, doubtless reflecting efforts of the Lane County Democratic senators, aided by Walton, also a Democrat: Clark of Grant County (correcting his parliamentary vote on the 17th), D. L. Green of Josephine, T. R. Munkers of Linn, and Charles L.

Jewett of Umatilla; J. S. M. Van Cleave of Multnomah, a firm University supporter, was absent on the 17th, present and voting yes on the 18th.

As pointed out in note 14, the detailed provisions of the 1876 act for the organization and operation of the Board of Regents were repealed (or had their legal effectiveness obscured) with the creation of the Oregon State Board of Higher Education in 1929. But in 1945, when the uncertainty of the new Board's powers became apparent, the problem was solved by the re-enactment of Deady's Sec. 9 language as a statement of the general powers and duties of the Board of Higher Education.

Deady's formulation of the powers and responsibilities of the President and the organized faculty of the University also remains Oregon law -- and, perhaps more important, the firm traditional base for the development of the government of the University. And Deady's classical affirmation of the freedom of the faculty from religious and political tests is still Oregon law. At a strictly legal level, the sections stating the powers of the President and the faculty and prohibiting religious and political tests apply, in the Oregon State System of Higher Education today, only to the University of Oregon.³³ At the level of living tradition, however, the influence of the University and its ways has become pervasive in the State System; and these sections have, in fact, become the general rule in all institutions in the System.

Though Deady did not draft his bill formally as an amendment of the 1872 act, as the directors had requested (no. 1), he had a legal scholar's distaste for needless innovation -- and borrowed phrases, clauses, and sentences freely from this act. It is interesting to observe what he borrowed, but more interesting to observe his revisions, both editorial and substantive.

In sections of the charter that have survived in Oregon law, Deady's original drafting and his revisions of passages in the 1872 act show a skilled and deliberate concern for simplicity and brevity and an avoidance of detail -- which would either have burdened the infant University with organizational complexities beyond its needs or have tied the

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institution, as it grew, to an obsolete primitive structure. Instead, Deady provided a charter that is as vital today as it was in 1876.

The fast tempo of events, in the last days of the 1876 Legislature, that brought the University bill into final form caught the newspapers of the state napping, especially in regard to the building appropriation.

No. 10.
Portland Oregonian,
Oct. 20, 1876

The State University bill has passed the Senate, and should pass the House. The diversion of a quarter of a mill of the bounty and relief tax to enlarge the University grounds and finish the building, will give the University a good send-off, without incurring the burden of taxation, the bounty and relief fund being in excess of the demands upon it. But the most important provision of the bill is that by which it secures the University fund against improvident handling and consequent loss. Under the present plan of loaning the fund there is really no security. We have heretofore called attention to some loans which will prove a loss of all the interest and the larger part of the principal. Such loans will be impossible under the bill which has passed the Senate. We hope the House may take favorable action on this bill before adjournment.

On October 21 the Eugene *Oregon State Journal* and *Guard* both reprinted the *Oregonian* item verbatim as their only accounts of the Senate action; in separate items in both papers, House approval was reported. Ordinary citizens, who would not have consulted the Senate Journal or the session laws, may never have known that the \$20,000 provided to complete the University building was a "burden of taxation," not a diversion from the Bounty Fund. And Deady may have been content that the University's first recourse to support from taxation should remain unnoticed. In 1876 he may have thought, as the *Oregonian* did, that the sections of his bill concerning the management of the Land Grant Fund would remedy the "improvident handling" that disturbed the *Oregonian*. If so, he quickly changed his mind (see note 30). But it seems more probable that the dispersion of responsibility for loans among the county University Fund commissioners and the related dispersion of capital available for loans among the counties of the state had a primarily political intent -- to attract needed votes in the Legislature for the University charter. The provision for county scholarships probably had the same primary intent. Both were short-lived and, one may suspect, died with Deady's approval or connivance.

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APPENDIX: REGENTS BY-LAWS:

The Board of Directors of the University of Oregon, at its August 8-10, 1876 meeting, not only requested Deady to draft a new legislative charter for the University but also appointed its secretary, Walton, a committee of one to put the rules of the Board in the form of by-laws. The two actions were related measures to bring order into the government of the University; and the provisions of the charter and the bylaws remained closely interrelated as instruments of its government. It has therefore seemed convenient and useful to publish the early bylaws as an appendix to the story of the charter.

The by-laws here published fall into two groups -- seventeen by-laws formally adopted at the November 6, 1876 meeting of the Board of Directors (no. 14) and additional by-laws adopted by the Board of Regents between 1877 and 1901 (no. 15). In 1903 the president of the Board of Regents and the president of the University undertook a thoroughgoing revision and codification of the by-laws, which was approved by the Board a year later. Notes on the 1876-1901 by-laws are here restricted principally to the recording of amendments.

No. 11.
Walton to Deady,
Sept. 18, 1876
(OrHi)

I have the By-Laws all prepared, and handed them to Judge Thompson to look over and suggest any amendments he thought proper. He has not returned them yet, but I will see him this morning and get them, have them set up and send you a Slip.

You see our University fund is much larger than expected, being \$75,480.

The indications are now that the school will be quite liberally patronized this year. A good number are coming from a distance. [34](#)

No. 12.
Walton to Deady,
Sept. 30, 1876
(OrHi)

Dear Sir: Inclosed please find a slip containing the by laws of the State University. I have made them as short and clear as I could. It is suggested by some of the Directors here that I had better have one hundred copies printed in pamphlet form, after the by laws are completed. You will, no doubt, find many amendments to make . . .

Yours Truly Joshua J Walton

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No. 13.
Deady Diary,
Nov. 5-6, 1876
(M.C., I, 220)

Sunday, November 5: Attended S. S. and morning and evening prayer as usual. Also drafted by-laws

for the University. Monday, November 6: Went to Eugene to attend meeting of Board of Regents ... Had a meeting in the evening of 2 hours. Adopted the by laws.

No. 14.
Directors Minutes,
Nov. 6, 1876
(OrU)

The Secretary reported the following By-Laws as directed by the Board at the meeting held on the 8th day of August 1876, which were read. On motion of R S Strahan the By-Laws reported by the Secretary were read by section, amended and adopted as follows:

1st

The school year of the University shall commence on the third Monday of October of each year, and shall consist of two terms of twenty weeks each without an intermission. [35](#)

2d

The Faculty may give a vacation to the school [i.e., school] not to exceed eight days during the Holiday at Christmas, but such vacation shall not be counted as part of the term. [36](#)

3d

The term of employment of each teacher and member of the Faculty shall continue during good behavior. [37](#)

4th

The tuition in the Collegiate department is twenty dollars per term, payable in advance; and the tuition in the Preparatory department is fifteen dollars per term payable each half term in advance. [38](#)

5th

Every student in the Collegiate department must pay an admission fee of two dollars and fifty cents in advance for incidental expenses. [39](#)

6th

The Salary of the President of the University is two thousand five hundred dollars; and the Salary of

each professor other than the President is two thousand dollars a year. *Provided*, the annual income from

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the University fund and the receipts from tuition in the Collegiate department are sufficient for that purpose, after the Salary of the President is paid therefrom; *Provided*, if there is any deficiency the Board shall not be charged interest on the same.

7th

The Salary of the Principal of the Preparatory department is twelve hundred dollars a year; and the Salary of the Assistant in said department is eight hundred dollars a year.

8th

The Salaries herein provided are payable quarter yearly, as follows: on the first day of January, April, July and October; and all such Salaries together with the tuition and admission fee herein provided for are payable in United States gold coin and not otherwise. [40](#)

9th

At all elections by the Board of Regents votes shall be given by ballot. [41](#)

10th

As a condition of admission into the Collegiate department, all persons must pass a thorough examination by or under the direction of the Faculty in mental and practical arithmetic, reading, writing, spelling, English grammar, geography, history of the United States, elementary algebra to equations of the second degree, Latin grammar and reader, four books of Caesar, Greek grammar and reader, and produce satisfactory evidence of good moral character; but as to persons seeking admission upon county scholarships such examination shall take place and proof be produced at the end of the first term, as provided in the act organizing the University; *Provided*, that until school year commences in 1878, it shall be sufficient for the student to have the qualification required of teachers of common schools by the statutes of the State.

11th

The qualification for admission into the Preparatory department and the course of study therein shall be provided by the Faculty and Teachers.

12th

In the terms of admission and course of study, there shall be no distinction made between males and females.

The course in the University shall consist of four years, and the curriculum of study shall consist of- High[er] Arithmetic, Algebra, Geometry, Trigonometry, Mensuration and Surveying, Conic Sections, The Calculus, Physiology, Book Keeping, Chemistry, Natural Philosophy, Astronomy, Geology, Natural History, Rhetoric, Logic, Political

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Economy, Mental and Moral Science, History, Latin, Greek, French and German.

14th

The President of the University and Faculty shall be charged with the duties of one of the professorships, and shall have authority to divide the course of instruction in the University between himself and the other professors.

15th

The Executive Committee shall audit all accounts and demands against the Board for Salaries and other current expenses authorized by the Board, and issue warrants upon the Treasurer signed by themselves and countersigned by the Secretary in payment of the same; and such Committee is authorized from time to time to provide wood, water and the necessary furniture for the University building and to make necessary repairs and improvements therein, and the grounds pertaining thereto, and to employ a janitor for the same. [42](#)

16th

At each session of the Board [the] Executive Committee shall make a report thereto of their acts and doings since the last meeting including a detailed statement of all liabilities incurred by them, and all accounts and demands audited with the vouchers therefor, and all warrants issued by them.

17th

Any student who shall in any wise injure or destroy any property of the University shall be liable therefor, and upon neglect or refusal to make such compensation as the Executive Committee [43](#) shall determine to be reasonable may be suspended or expelled.

On motion of T. G. Hendricks the Secretary was instructed to have five hundred copies of the By-Laws and organization printed in pamphlet form.

As nos. 11-13 show, the by-laws adopted on November 6, 1876 had the advantage of Deady's revision and editing. Walton had sent him his first draft on a printed "slip" on September 30, with a resigned comment: "You will, no doubt, have many amendments to make." Since

no copy of the slip has been found, it would have been impossible to determine Deady's contribution, except for the fact that Walton's first draft was published in the September 30 *Guard*, probably from the type of the slip, which had been printed in the *Guard* Office (see record of payment of \$27.00 to George J. Buys, publisher of the *Guard*, for "sundries," Board Minutes, February 5, 1877). The *Guard* printing, more than a month before the by-laws were presented to the Board for approval, was not as presumptuous as it might seem; the draft was a very nearly verbatim assembly of rules adopted at the August 8-10 Board meeting. Walton and the Executive Committee probably felt that the rules ought to be made public before the University opened, for the guidance of the faculty and students.

At any rate, the *Guard* printing provides a base for determining Deady's contribution. He had, indeed, "many amendments to make." Scarcely a line in the *Guard* version was unchanged in the draft adopted on November 6, and Deady's characteristic assumption of authorship in his diary (no. 13) --- ignoring Walton -- -was not altogether unjustified. For the most part, his revisions were in the interest of clarity, precision, and logical arrangement. The substance remained pretty much what the directors had intended when they adopted the rules in August; but here and there Deady added substantive phrases, for example to pin down the point that the authority of the professors over the Preparatory Department was shared by the teachers in this department. (Mrs. Mary Spiller, principal of the department, was a sister of R. P. Boise, Deady's political associate in territorial days, and Mary Stone, her assistant, was a niece of Mrs. Deady's.) It is very improbable that Deady introduced his massive changes formally as amendments at the two-hour November 6 meeting, though there is a reference to amendments in the minutes (see no. 14, second paragraph). Walton probably accepted them and incorporated them in his report to the Board.

Other directors may, of course, have contributed changes. But it seems probable that Deady's out-of-town colleagues left the revision in his competent hands. And the Eugene directors were already committed to Walton's original assembly, which in substance survived Deady's handiwork; all the rules adopted at the August meeting had been moved by local members, in a rapid-fire routine that suggests prior agreement.

18th

No. 15.
Regents Minutes,
1877-1900
(OrU)

[February 5, 1877] The Secretary shall collect all money due or owing to the University from tuition and the interest on the University Fund from the State; pay the same to the Treasurer, and report all money so collected to the Board of Regents at each session thereof.

19th

[September 14, 1877:] When a student holding a county scholarship absents himself or herself during the term, the scholarship shall be deemed vacant; *Provided*, a scholar may be absent no longer than three months at one time, by obtaining the written consent of the Faculty.

20th

[September 14, 1877:] That the Teachers and members of the Faculty shall report at the end of each term to the President of the Faculty, the studies and conduct of the studies [students], and the President of the Faculty shall report to the Board of Regents at the end of each term the studies and conduct of the students and such suggestions about the school as he may deem instructive and of interest.

21st

[September 14, 1877:] That at the close of the school year a catalogue shall be prepared by the President of the Faculty, and there shall be published by the Secretary not less than five hundred copies, for distribution.

22nd

[February 21, 1878:] When a student in the Collegiate or Preparatory Department is necessarily absent from school on account of sickness ten weeks or more during any term such student may be allowed one half of the term on next term on account of such sickness.

23rd

[May 23, 1879:] Whereas the Constitution of this State at Article 2 Section 4, provides that, "For purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while a student of any Seminary of learning, "Therefore be it Resolved:

That any student attending the University upon a free scholarship who shall vote at any local election in the City of Eugene shall be expelled therefrom for such unlawful act by the Faculty: --- and in case any other student attending the University shall vote at any such election unlawfully he shall be expelled by the Board of Regents, and it is hereby made the duty of the Faculty to admonish the students of this by-law and to see that it is duly enforced.

[No number]

[August 27, 1880:] The duration of free scholarships in the University shall be four years.

22nd⁴⁴

[June 15, 1882:] The Faculty are hereby authorized to require of every student to sign an obligation to keep and abide by all the rules and regulations made by the Faculty or the Board of Regents for the

government or conduct of said student, during their connection with the University.

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23rd

[June 15, 1882:] Each member of the Faculty shall use a text book as the basis of each study taught by him, in case there is a recognized text book in the subject, and the time occupied during the course in any given study shall be subject to the order of the Faculty.

24th

[June 15, 1882:] The Faculty of the University are hereby authorized and required to prescribe such rules and regulations for the government of the students as may be deemed proper, and to annex and enforce such penalties as will secure their proper observance.

25th

[November 10, 1882:] It shall be the duty of the Professor of English Literature to supervise, criticize and correct the English Orations and Essays of the graduating class.

26th

[June 15, 1883:] That if any professor or teacher of the University shall become a candidate for any public office, or for a nomination thereto, or be a delegate to any political convention, or openly seek a nomination thereto he shall be taken and considered as having resigned his position as such professor or teacher as the case may be. [45](#)

27th

[June 15, 1883:] No member of the faculty will be present at the meeting of the Regents or have any communication with the Board otherwise than in writing unless upon the invitation of the same.

28th

[June 15, 1883:] That each professor in the University be required to make his final report to the President of the Faculty by the close of the week preceding commencement week, and that the President of the Faculty be required to make his report and file the same together with the professors reports with the Secretary of the Board by the first day of each annual meeting of the Board. [46](#)

29th

[March 13, 1885:] That the Secretary of the Board of Regents is hereby instructed to furnish the President of the Faculty of the University with a properly authenticated copy of such by-law and resolution affecting the government of the Institution as may be at any time adopted by this Board.

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[30th]⁴⁷

[June 19, 1890:] An incidental fee of Ten Dollars on entering each year will be collected from each student resident of the state attending the University to be paid at the time of matriculation, and that all students attending the University who are non residents of the State be required to pay a tuition fee of Fifty dollars annually to be paid quarterly in advance, and all students not in the Collegiate department be required to pay a tuition fee of \$30. annually to be paid quarterly in advance.

[31st]

[June 18, 1891:] 1st ... That the Faculty of the Law School, or a majority of them, including the Professor in charge shall recommend students for graduation. 2d The Faculty of the School, or a majority of them, including the Prof in charge, shall select not more than three of said class according to merit to deliver addresses on commencement day, which addresses shall be approved by the Faculty, or a majority of them, including the Professor in charge, and shall be delivered without manuscript.

[32nd]

[September 4, 1891:] That hereafter the salary of each and every professor and tutor shall be paid quarterly and at the end of the quarter in which the service shall have been rendered; provided, that it is the intention of this resolution to declare that each professor and tutor shall receive twelve months pay for nine months scholastic work, and that the last quarter shall be paid for on the first day of October of each year.

[33rd]

[June 20, 1895:] That in addition to the annual meeting now provided by law this Board shall hold its regular sessions on the Second Tuesday after the school year commences, and on the First Tuesday in February of each year, and the meeting on the First Tuesday in February of each year shall be held in Portland, Oregon.

[34th]

[July 23, 1895:] That no student shall be dismissed or suspended except with the consent of the President.

That when any student violates any of the rules or regulations of the University the professor to whom

knowledge of the fact is brought shall prepare a complaint stating the substance of the offense and a copy thereof shall be served upon the student, and he be notified of the time when the Faculty will hear the same.

That such student shall be permitted to file an answer to such complaint and an investigation shall then be made by the Faculty and a memorandum of all testimony submitted shall be kept by the Secretary of that body. That suitable time for deliberation shall be taken in such case, and the conclusion when reached shall be reduced to writing. When

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the Faculty shall have voted upon the case a report of the same with all papers and documents shall be submitted to the President for his action, and when he has acted he shall report his action to the Faculty as well as to the Secretary of the Board of Regents transmitting therewith to said Secretary all papers and documents connected with the case. [48](#)

[35th]

[February 2, 1897:] 1. Resolved, That the Incidental fee of \$10. shall be paid by each student entering the University before he or she is enrolled. 2. Resolved, That no persons shall be enrolled on the University register as a student until he or she obtains the receipt of the Secretary of the Regents for the incidental fee. 3. Resolved, That no student shall be allowed to recite in any class in the University until he or she exhibits the receipt of the Secretary of the Regents for the incidental fee.

[36th]

[June 18, 1901:]v That a graduating fee of Ten Dollars shall be paid by each student; and that said fee shall be paid by each student before he or she is allowed to graduate; and that said fee shall be used to pay expenses of commencement.

NOTES

- ¹ Deady was Federal District Court judge for Oregon from 1859 until his death in 1893. Paul was his son and in 1876 his court crier. Edward Hamilton, Portland attorney, had been secretary of Oregon Territory, 1850-53; A. J. Lawrence was a member of the 1876 House from Baker County.
- ² This copy of the printed bill has Senate amendments inserted in pencil, except that an amendment of Sec. I (see note 9) is indicated only by an insert sign, without the text; and an amendment of Sec. 26 (see note 32) is inaccurately recorded.
- ³ Whiteaker, first governor of the state of Oregon (1859-62), had been elected a member of the Senate from Lane County in June, and was elected president of the Senate when the Legislature convened on Sept. 11. For paragraph in Walton's letter concerning by-laws, see no. 11.
- ⁴ HJR No.9. Adopted by the House Sept. 14; by the Senate Sept. 15. The committee, in fact, had one Senate member, three House members (see note 5).
- ⁵ Signed by Senator R. B. Cochran and Representatives James Chambers, I. D. Haines, D. W. Butler. Adopted by the Senate Sept. 29, by the House Oct. 4. The report was published in the Senate Journal and in the House journal, pp. 348-349. The two printings, from different settings of type, differ in paragraphing and other very minor respects.
- ⁶ Passed Oct. 20, 1876; signed by the Governor, Oct. 21.
- ⁷ It is interesting that this clause does not state that the building provided by the association was worth \$50,000, as required by the 1872 act. In his Aug. 12, 1876 diary, Deady was skeptical, and reported that he had been informed that it had cost no more than \$35,000. The building had, however, been accepted by the commissioners in July without objective evidence of its worth, as Deady noted

ironically; and the joint committee that inspected it after the Legislature convened accepted this judgment on the basis of "the appearance of the building" (no. 6). Deady's reticence was probably deliberate.

⁸ The words "has accrued to and" following "which" in the printed bill were deleted in the Senate on motion of A. S. Watt of Washington County. Senate Journal, p. 509. The watchful Senator Watt (see p. 10) ruined a Deady gambit that might have had a major impact on the University in its first few years. Because of the hazy accounting practices of the early management of the University land grant, it would be difficult today to estimate the interest that had accrued before 1876 (and would have been equally difficult in 1876). But the money that would have been made available for "current expenses" under the bill as Deady wrote it would certainly have been far more than the University could have spent in its first two years, even if it had maintained its intended salary scale and hired a professor of English literature, which Deady believed of first importance. But his legal mind perhaps saw in the phrases "perpetually appropriated" and "until otherwise provided by law" a way to keep the 1851-76 accrued interest available for future years and out of "the principal of said fund forever." If the gambit had succeeded, the continuing annual interest on the Land Grant Fund would, of course, have been substantially reduced. But Deady was aware that this fund, under any circumstances, would soon have to be supplemented by state tax support of the University, and was already planning to educate the Legislature in this same act (see note 32). Appropriations from accrued interest still unspent might have temporarily relieved legislative pain. The suggestion that Deady understood all this is speculative, but wholly consistent with his documented political shrewdness. At any rate Walton's assurance that "the provision of the bill remains the same" after the Senate amendments (see no. 8) reflects a characteristic naivete. (The Feb. 14, 1859 date for the University land grant in the first paragraph of the preamble of the 1876 charter refers to the confirmation of the grant in the act admitting Oregon into the Union as a state. The grant actually dates from the 1848 Organic Act establishing Oregon Territory and interest began accumulating in 1851 when the lands were first offered for sale.)

⁹ The "*Provided*" clause was added in the Senate on motion of Watt. Senate Journal, p. 509.

¹⁰ 1872 act, Sec. 2: "The general government and superintendence of the University shall vest in a Board of Directors, to be denominated the 'Directors of the University of Oregon,' to consist of nine members, all of whom shall be citizens and permanent residents of the State of Oregon . . ."

¹¹ 1872 act, Sec. 3: "The Board of Directors shall elect from among their number . . . a President of the Board, whose duty shall be to preside at all meetings of the same, call special meetings at the request of any four members thereof, and perform such other duties as may be prescribed by the

Board of Directors."

12 The elaborate procedure for the calling of special Board meetings, including the requirement (Sec. 4) that there be a "written request of any four members," was Deady's answer to the presumption of the Eugene members of the Board of Directors in holding a meeting on Apr. 3, 1876 at which faculty appointments were "tendered" in the absence of Deady and all but one of the other out-of-town members. The procedure that would now be legally required had been followed for an Aug. 8-10 meeting at which the faculty was officially "elected" (see note 15), probably at Deady's insistence. Walton, who found the Apr. 3 fiasco embarrassing, was cooperative.

13 1872 act, Sec. 3: "The Secretary shall keep his office at the seat of the University; and it shall be his duty to keep a record of the transactions of the Board of Directors, which shall be open at all times to the inspection of any citizen of this State. He shall have the custody of all books, papers, documents and other property, which may be deposited in his office, and shall keep a correct record of all the executive acts of the President of the University, also an accurate account of all moneys received into the Treasury, as well as those paid out. He shall perform such other duties as the Board may impose."

14 Sec. 9 was amended in 1923 by the addition of more detail to the provisions of clause 2 concerning the management of University property and by the addition of a new clause 9, also concerned with property management. Oregon Laws 1923, c. 157. With the 1923 amendments, the section became a partial base for the general powers to the Board of Higher Education, which, under the 1929 act creating the Oregon State Department of Higher Education, inherited "all powers and duties" of the several institutional boards. Other powers were specified in the 1929 act, but they related principally to the new responsibility for building a unified State System of Higher Education. Except for the 1923 amendments, Sec. 9 remained unchanged until 1945, when the Board felt a need for a clearer statement of its general powers. This was provided by the 1945 Legislature through the re-enactment of Sec. 9, with the substitution of "all institutions under the control of the State Board of Higher Education" for "University" wherever this word occurred, and with the addition of the following words to clause 5: "and such other fees deemed necessary or advantageous for the cultural and physical development of the students." Oregon Laws 1945, c. 450. The addition was intended to clarify the Board's power to assess a compulsory athletic fee. In 1953 Sec. 9, as modified in 1945, was again re-enacted with clause 6 amended to clarify the Board's authority over research, extension, and health services. Oregon Laws 1953, c. 545.

15 1872 act, Sec. 4: "They shall have power, and it shall be their duty . . . to elect a President of the University and the requisite number of professors, instructors, officers and employees . . ." The words

"appoint and employ" in the 1876 act are significant. At the Aug. 8-10, 1876 directors' meeting, Walton had moved the adoption of a rule that would remove any ambiguity concerning the word "elect" in the 1872 act: ". . . that the President, Professors and Teachers of the University shall be elected by ballot." Deady and J. M. Thompson had objected and voted no, but Walton prevailed. The Board then proceeded to elect the faculty through a series of ballots. The rule was retained in by-laws adopted in November (see no. 14, by-law 9th), and the regents continued to ballot on new faculty members as late as 1898. But Deady quietly removed the requirement from the charter. It is puzzling why Walton insisted on the awkward balloting procedure. Perhaps, living in a small town in close personal relations with a small faculty, Eugene regents might have wanted their votes on candidates to remain secret (all votes cast for the rule in August were by Eugene regents). By 1898 only two regents were from Eugene and faculty appointments were usually made on the recommendation of the President.

¹⁶ The words "for admission" were added in the Senate on the recommendation of its Committee on Education. Senate Journal, pp. 481, 508.

¹⁷ 1872 act, Sec. 4: ". . . it shall be their [Board of Directors) duty to enact by-laws, rules and regulations for the government of the University . . ." Sec. 6: "The Board of Directors shall have power to supervise the general course of instruction . . ."

¹⁸ 1872 act, Sec. 6: "The Board of Directors shall have power . . . on recommendation of the Faculty, [to] confer such degrees and grant such diplomas as are usual in Universities, or as they shall deem appropriate." See note 33.

¹⁹ Secs. 2-8, 10, and Sec. 11 as it applied to regents were in effect repealed by the act of the 1929 Legislature establishing the State Department of Higher Education, which provided that the department "shall succeed to and hereby is invested with all the powers and duties of the board of regents of the University of Oregon, the board of regents of the Oregon State Agricultural College, the board of regents of the normal schools, and the board of higher curricula, which boards hereby are abolished effective July 1, 1929," established the new Board of Higher Education, and provided new rules for its membership, appointment, organization, meetings, etc.

²⁰ 1872 act, Sec. 4: "But no sectarian, political or partisan test shall ever be allowed or exercised in the appointment of Directors, or in the election of professors, teachers or other officers of the University; nor at one time shall the majority of the Board of Directors be of any one religious sect;

and members, of every religious denomination, and of no religious denomination, shall be equally eligible to all offices and appointments." Although this provision of the 1872 act is praiseworthy, it had a practical dimension in 1872. It was well known to the Eugene citizens who drafted the 1872 act that several sectarian colleges would try to get the University land-grant endowment when the Legislature met, following the 1868 precedent when Corvallis College, a Southern Methodist institution, became the recipient of the agricultural college grant. These institutions already had campuses and buildings, but would have had difficulty meeting the nonsectarian principle that Eugene could offer.

²¹ Deady's draft had provided that a majority of the regents could not reside in Lane or Linn counties. The Eugene directors substituted this more general provision (see no. 3), The section, as it refers to regents, has in effect been repealed (see note 19). But the prohibition of a political or sectarian test for professors, etc. is still Oregon law. ORS, 352.030: "No political or sectarian test shall ever be allowed or applied to the appointment of professors, teachers or employees of the University."

²² The 1872 act, Sec. 9, denied the directors travel expenses. Deady, whose judicial salary was never sufficient to cover the costs of life among the Portland elite, which he loved, removed this discrimination against out-of-town regents. The provision of the 1872 act may have reflected a perhaps unconscious wish of Lane County citizens to keep the institution they were to create under local control.

²³ Repealed by Oregon Laws 1961, c. 278. 1872 act, Sec. 7: "At the close of each fiscal year the Board of Directors, through their President and Secretary, shall make a report in detail to the Governor, exhibiting the progress, condition and wants of the University, the course of study, the number of professors and students, the amount of receipts and disbursements and such other information as they shall deem important." Deady's revision of this section gave him exclusive control over the annual reports, a power which he exercised meticulously and effectively through the rest of his life, his reports were highly personal documents, expressing his own views, which were not necessarily those of the other regents, President Johnson, or the faculty.

²⁴ The clause concerning the Preparatory Department, though obsolete, is preserved in ORS, 352.010. 1872 act, Sec. 6: "The Faculty, consisting of the President and professors, shall be in trusted with the immediate government and discipline of the University, shall recommend the course of study and the text books to be used for the approval of the Board of Directors, and in connection with the President as its executive officer, have the government of its students." Under the 1872 act, the Board of Directors would have had final responsibility for approving textbooks. The 1876 act was at least ambiguous on this point, and allowed the regents to quietly relinquish whatever power they might

have had. Through the 1880s, however, the regents showed a sporadic interest in textbooks (see no. 15, second by-law 23rd, June 15, 1882), the assembled faculty sporadically exercised its authority over texts, President Johnson sporadically reported assigned texts to the regents, and lists of texts for some but not all courses were published in the catalogue. Deady showed a particularly strong concern about textbooks -- which perhaps reflected his deep interest in books more than an assertion of authority as a regent..

25 See no. 14, by-law 14th. 1872 act, Sec. 5: "The President of the University shall be President of the Faculty and the executive head of the Institution, except as herein otherwise provided, and shall have authority, subject to the Board of Directors, to give general direction to the practical affairs of the University, and so long as the interests of the Institution require it he shall be charged with the duties of one of the professorships."

26 The faculty repeatedly petitioned the regents to have this section changed to allow it to examine and screen recipients of county scholarships before admission; but the automatic admission of county scholars for at least one term persisted until county scholarships disappeared in 1890 with the abolishment of tuition for instate students (see note 27).

27 Secs. 16-19 were in effect repealed when the 1889 Legislature increased the University millage tax from one-tenth to one-seventh mill, with an accompanying provision abolishing tuition for all residents of the state. Oregon Laws 1889, pp. 54-55.

28 Changed from "double" in the Senate, on the recommendation of its Committee on Education. Senate Journal, pp. 481, 508.

29 See note 28.

30 Secs. 20-24 were repealed in 1882 and replaced by a new act providing uniform procedures for the investment of all endowment funds accruing from the sale of Federal lands granted to Oregon for the support of schools (Oregon Laws 1882, pp. 8-9). Deady was probably an active advocate of the 1882 act. In his reports to the Governor, he had complained persistently concerning the conduct of the county University Fund commissioners and concerning the prohibitively high interest rate on mortgage loans. The new act reduced the interest rate to 8 per cent and placed the State Board of School Land

Commissioners in full charge of loans.

31 Under the 1872 act the University Board of Directors consisted of nine members, six appointed by the Governor with the advice and consent of the Senate and three chosen by the stockholders of the Union University Association (Sec. 2). The terms of the Governor's appointees were for twelve years, the terms of the association representatives six years; but the terms of the first directors were fixed by lot, so that one member in each classification would retire every two years. These lots were drawn at the first meeting of the Board of Directors on Apr. 7, 1873. Sec. 25 of the 1876 act provided a skillfully contrived measure for an easy transition from the Board of Directors to the Board of Regents. Though the 1876 act was signed by the Governor on Oct. 21, a Nov. 6 meeting was still designated a meeting of the Board of Directors in its minutes, probably reflecting Deady's respect for the fact that the act did not carry an emergency clause (Walton had anticipated that the regents would meet on Nov. 6-see no, 8). The first official meeting of the Board of Regents was held on Feb. 5, 1877; there is no mention of the new act or the changed status of the Board in either the November or February minutes, except a passing reference to Sec. 18 in by-law 10th and one appearance of the full name of the new Board in by-law 9th (see no. 14).

32 The printed bill reads, after "appropriated," "an amount equal to one-quarter of one mill upon all taxable property of the State, which shall be set apart by the Treasurer of the State, out of the Soldiers' Bounty Fund . . ." The wording of the act was the result of two Senate amendments: (1) The change from a millage with no stated time limit to \$10,000 a year for two years, adopted on the recommendation of the Senate Committee on Education (Senate journal, pp. 481, 509); the section to be amended, is erroneously given as Sec. 24 on p. 481. (2) The change of the source from the Soldiers' Bounty Fund to the general fund, on motion of Senator R. B. Cochran of Lane County (Senate Journal, p. 509). Deady was not responsible for the Bounty Fund passage in the printed bill; his draft had called for a general fund appropriation, which would introduce the Legislature to the idea of tax support of the University. The Eugene members of the Board of Directors, on the advice of John Whiteaker and John M. Thompson, had substituted a diversion from the moribund Bounty Fund, for what they thought were decisive political reasons (see no. 3). Apparently Deady did not object but, biding his time, arranged for an amendment to restore his wording while he was lobbying in Salem on Oct. 9-13 (see no. 7). Cochran was an old political friend of Deady's from the days of the Salem Clique, which in the 1850s dominated the territorial Democratic Party. He was also a Senate member of the joint committee to visit the University, whose report had recommended "a small appropriation . . . by the present Legislative Assembly" to complete the building (see no. 6). The general-fund appropriation turned out to be a good gamble for a beginning. Cochran's amendment was adopted without opposition, and a motion by Watt to delete Sec. 26 as amended was defeated, 12 to 15 (Senate journal, pp. 509-510). The act providing for soldiers' bounties and creating a Soldiers' Bounty Fund was a late Civil War measure, approved Oct. 21, 1864 (see Oregon Laws 1866, unpublished 1864 laws appended, pp. 98-104).

³³ Except the requirement of faculty recommendation for the conferral of degrees. This power was extended to the faculties of all institutions of the Oregon State System of Higher Education when Sec. 9 was re-enacted by the Legislature in 1945.

³⁴ See no. 3 for paragraphs in this letter concerning the University bill.

³⁵ Amended June 16, 1880 to read: "The school [year] of the University shall consist of three terms; the first sixteen weeks; the second fourteen weeks, and the third, ten weeks, without an intermission."

³⁶ Amended Nov. 6, 1876 by striking "but such vacation shall not be counted as part of the term." The amendment was moved by Walton after the approval of the by-laws.

³⁷ Amended Sept. 29, 1887 by adding: "of which the Regents shall be the final judges."

³⁸ Amended June 19, 1879 by adding "quarterly" before "in advance" in the first clause and by changing "each half term" to "quarterly" in the second clause.

³⁹ Amended June 19, 1879 by changing the admission fee from \$2.50 to \$5.00, and on June 16, 1880 to read: "The Incidental fee is ten dollars per annum to be paid by free scholars in advance, and by all other students at the time of paying their tuition."

⁴⁰ See no. 15, by-law [32nd].

⁴¹ See note 15.

⁴² Amended Mar. 5, 1886 to read: "The executive committee shall audit all accounts and demands against the University for the current expenses, and the same with the approval of the committee endorsed thereon shall be filed in the office of the Secretary of the Board who shall thereupon draw his warrant upon the Treasurer in payment of the same or so much thereof as may be allowed by the committee countersigned by the chairman of the executive committee; and the Secretary of the Board shall draw his warrant upon the Treasurer countersigned by the chairman of the executive committee

for all salaries as fixed by the Board at such times as the Board may direct. The executive committee is also authorized from time to time to provide wood, water and the necessary furniture for the buildings and to make all necessary repairs and improvements thereon and upon the grounds belonging thereto, and to employ a janitor."

43 Amended June 15, 1882 by changing "Executive Committee" to "Faculty."

44 By-law numbers 22nd and 23rd are repeated.

45 For the background of this by-law, see George N. Belknap, *The Blue Ribbon University* (University of Oregon, 1976), pp. 25-26.

46 Amended Mar. 13, 1885 to read: "That each professor in the University is required to make his reports to the President of the Faculty for the first and second term of each year within ten days of the close of such term, and his report for the third term of each year by the close of the week next preceding commencement week: --- and the president of the faculty is required to make and file his annual report together with the reports of the professors with the secretary of the Regents by the first day of each annual meeting of the Regents."

47 Bracketed numbers are provided for by-laws 30th through 36th; there are no numbers in the minutes for these by-laws, but in some cases a blank was left but never filled in.

48 Amended June 16, 1897 by adding: "That the student shall be permitted by the Faculty to be present at the trial on charges preferred against him, and to present testimony in his defense."