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The Dartmouth College Case at 200

by Justin Zaremby

*On the landmark Supreme Court decision about the college’s charter.*

The year 2019 marks the two-hundredth anniversary of the Supreme Court’s landmark decision in the case of Trustees of Dartmouth College v. Woodward, the validity of Dartmouth’s royal charter has long been recognized as a turning point in American constitutional history. Chancellor James Kent, the early American law scholar and judge, wrote that the Court’s decision in the case did more than any other single act, proceeding from the authority of the United States, to throw an impregnable barrier around all rights and franchises derived from the grant of government; and to give solidity and inviolability to the literary, charitable, religious and commercial institutions of our country.

Following an attempt by the New Hampshire legislature to restructure Dartmouth’s board of trustees, the College successfully defended its autonomy. The Court’s decision affirmed the role that private actors could (and continue to) play in shaping American charitable and educational activities.

In the 1760s, Eleazar Wheelock, a Congregational minister and aspiring educator, sought to found a college in New Hampshire. After years spent raising funds, in 1769 Wheelock was granted a charter from King George III for the establishment of a college “for the education and instruction of youth of the Indian tribes in this land in reading, writing, and all parts of learning which shall appear necessary and expedient for civilizing and christianizing children of pagans, as well as in all liberal arts and sciences, and also of English youth and any others.” The charter further granted that governance of Dartmouth College, which was founded in the western New Hampshire town of Hanover, was to be vested in a board of twelve trustees and their chosen successors.

John Wheelock was a polarizing and pompous figure. Under the charter, the College president had the authority to name his successor, subject to the approval of the trustees.
Upon Eleazar’s death in 1779, he named his son John—a graduate of the inaugural class of the College—as president. (The line of Dartmouth presidents is still known as the “Wheelock Succession.”) At the time of his accession, Wheelock fils enjoyed the support of a board whose members had been selected by Wheelock père. Yet as members of his father’s board died, new trustees did not defer to the Wheelock name or legacy. Wheelock was a polarizing and pompous figure. The trustees feared that his desire for control over the College would continue past his own death such that he would “be willing to make the College his heir; but upon the condition that the institution, its authorities and funds, should pass, like a West-India plantation with the slaves and cattle upon it, to his actual heirs and descendants according to his own destination.”

Simmering tensions reached a boil when a disagreement over the election of Roswell Shurtleff as the Phillips Professor of Divinity in 1804 led to outright conflict between the board and President Wheelock. Shurtleff, a member of the evangelical movement that was then gaining momentum across the country, was supported by the trustees but disfavored by Wheelock, who barred Shurtleff from doing so at the College chapel and unsuccessfully attempted to further prevent him from preaching in other locations in town. Hostilities continued to grow, and by 1814 the board had denied Wheelock the right to teach the senior class. Wheelock anonymously criticized the trustees in an 1815 pamphlet and enlisted the New Hampshire state legislature and governor to investigate and implement change on the board. The trustees then issued their own published defense, accusing Wheelock of “gross and unprovoked libel on the institution,” and dismissed him from his professorship, the board, and the presidency.

Wheelock’s ousting became a political and religious issue in the 1816 New Hampshire elections. At a time when state support of the Congregational church was being debated at the polls, supporters of the Presbyterian Wheelock viewed his dismissal as an act of religious extremism by hardline Congregationalists on the board. Buoyed by his recent victory over the Federalists, the newly elected Jeffersonian Republican governor William Plumer encouraged the legislature to take action to change the governance of the college. He decried certain “principles congenial to monarchy” in the charter that empowered the trustees to choose their own successors, noting that such principles were “hostile to the spirit and genius of free government.” In 1816, the legislature passed “An Act to Amend the Charter and Enlarge and Improve the Corporation of Dartmouth College.” The act changed the name of the school to Dartmouth University, increased the size of the board from twelve to twenty-one members (with new vacancies to be filled by the governor), and created a board of overseers under gubernatorial control. In other words, the state legislature had upended the self-governance of the original charter.

When the old trustees refused to acknowledge the Act, two Dartmouths effectively existed—the College, led by its old trustees, and the University, led by the new trustees (who elected John Wheelock to the presidency). The government-run Dartmouth University seized control of and occupied school buildings, and in response the displaced Dartmouth College (which still enrolled significantly more students than the University) took up residency in a nearby building. Despite
government pressure, the College refused to concede its name and brought suit against William H. Woodward, the new secretary of the University, to recover the seal of the College and the original charter. When the College trustees lost their suit at the state court level, they appealed to the United States Supreme Court. The question before the high court was whether the Act was unconstitutional under Article 1, Section 10 of the U.S. Constitution, which provides that no state can pass any law “impairing the obligation of contracts.”

New Hampshire argued that because education is one of the vital goals of government, the state had an obligation and right to modify the charter. The College’s charter was fundamentally different from a contract between individuals. It constituted a grant of authority by a state actor (the King) to engage in a public mission (the education of young men); accordingly, the state had the right to modify or even revoke the charter. The trustees were serving a public rather than a private purpose, and therefore the state had the ability to intervene. Doing so allowed the state to ensure that Dartmouth would be responsive to its key stakeholders—the people. “These civil institutions,” the United States Attorney General argued for the University, “must be modified and adapted to the mutations of society and manners. They belong to the people, are established for their benefit, and ought to be subject to their authority.”

The College argued that it had been established under a private charter to fulfill the charitable purposes envisioned by its founding donors. Even though the College served public purposes, it was established as a fundamentally private institution. The charter constituted a contract between the King and the donors that empowered the trustees to fulfill the donors’ vision in perpetuity. Just as the contractual rights of individuals could not be impaired by state action under the Constitution, neither could the contractual rights of a private charitable corporation or, by extension, the trustees acting on behalf of the corporation.

Daniel Webster, a Dartmouth alumnus, was a member of the legal team that represented Dartmouth College before the state court and the Supreme Court. The case, he explained to the Supreme Court,
is not of ordinary importance, nor of every day occurrence. It affects not this college only, but every college, and all the literary institutions of the country. They have flourished, hitherto, and have become a high degree respectable and useful to the community. They have all a common principle of existence, the inviolability of their charters. It will be a dangerous, a most dangerous experiment, to hold these institutions subject to the rise and fall of popular parties and the fluctuations of political opinions.

Although not included in the official report of the case before the Supreme Court, Webster’s defense of Dartmouth College before the Supreme Court has become an oft-quoted rallying cry for generations of Dartmouth graduates. Addressing Chief Justice Marshall, he exclaimed,

Sir, you may destroy this little Institution; it is weak, it is in your hands! I know it is one of the lesser lights in the literary horizon of our country. You may put it out! But, if you do so, you must carry through your work! You must extinguish, one after another, all those greater lights of science which, for more than a century, have thrown their radiance over our land! It is, Sir, as I have said, a small College. And yet there are those who love it.

Webster’s eyes are said to have filled with tears as his voice choked. He continued his defense in classical terms: “Sir, I know not how others may feel, but for myself, when I see my Alma Mater surrounded, like Caesar in the senate house, by those who are reiterating stab upon stab, I would not, for this right hand, have her turn to me, and say, ‘Et tu quoque, mi fili. And thou too, my son!’ ”

On February 2, 1819, Chief Justice Marshall announced a 5-1 decision in favor of the College. Marshall recognized that education was an “object of national concern and a proper subject of legislation.” But while a state government could establish a public university under its control, Dartmouth College was not such an institution. The existence of Dartmouth College’s public purposes did not transform it into a public institution. “Does every teacher of youth become a public officer, and do donations for the purpose of education necessarily become public property, so far that the will of the legislature, not the will of the donor, becomes the law of the donation?” The answer, according to Marshall, was no.

Moreover, the Court suggested that allowing the New Hampshire Act to stand would harm the establishment of charities in a young America. “It is probable,” Marshall wrote,

that no man ever was, and that no man ever will be, the founder of a college, believing at the time, that an act of incorporation constitutes no security for the institution; believing, that it is immediately to be deemed a public institution, whose funds are to be governed and applied, not by the will of the donor, but by the will of the legislature.
Why would donors consider establishing private charitable institutions if the public purposes of those institutions would subject them to government control? Through New Hampshire’s Act, “[t]he will of the state [had been] substituted for the will of the donor,” but as under English common law, the will of the donor could not be so easily usurped. Dartmouth College’s original charter stood, along with the authority of its trustees.

The Dartmouth College case established an important safeguard for charitable institutions in the United States. The Court held that while privately run institutions may engage in activities that are within the purview of government, government could not by right assume control. It affirmed the role of charities (and their donors) in shaping America’s educational, literary, and cultural life, and over time the number and impact of such organizations grew. Roughly twenty years later, in Democracy in America (1835–40), Alexis de Tocqueville admired the “infinite art with which the inhabitants of the United States managed to fix a common goal to the efforts of many men and to get them to advance to it freely” through the establishment of private associations. These associations executed an “innumerable multitude of small undertakings” that no government could ever achieve. Two hundred years later, they continue to do so in the form of countless charities, including colleges, museums, and hospitals. These nonprofits receive hundreds of billions of dollars of donations annually and make significant contributions to the nation’s economy.

Of course, today, charities operate in a far more complex environment than nineteenth-century Hanover. The line drawn by the Court between private organizations and government actors is far less clear. Tension between the private and the public takes various forms as state and federal governments exercise their oversight powers. State attorneys general intervene when trustees find themselves unable to govern effectively. The federal government determines which charities are tax-exempt; that, in turn, determines which charities receive contributions from individuals and foundations. The list of laws and regulations that apply to charities continues to grow. Despite the remarkable private initiative that continues to shape America’s nonprofits, federal, state, and local governments have assumed a prominent (and occasionally dominant) role in shaping philanthropy. Charities spar with regulators over a range of issues, including mandated procedures for adjudicating sexual harassment claims at colleges under Title IX, the composition of boards of trustees, and other laws and regulations that impact how they govern themselves, fundraise, and operate.

Today, charities operate in a far more complex environment than nineteenth-century Hanover. Such oversight can be reasonable. Charities do a tremendous amount of good, but there are always bad actors. Lamentably, each year brings new examples of organizations that take advantage of their tax-exempt status to advance the self-interest of their trustees and employees. Governments have an
obligation to ensure that charitable organizations actually engage in charitable activities (after all, donors are more likely to support the charitable sector if they believe it accomplishes good). Yet as is the case in the corporate sector, we should consider which of the many tools available to governments are appropriate for upholding the law and advancing the charitable goals of the nonprofit sector, and which are merely used to advance the political agendas of particular politicians, special interest groups, or communities.

The bicentennial of Dartmouth’s independence provides an opportunity to reflect upon and honor the place of charitable institutions in American public life. The charitable landscape has become more complicated and heavily regulated since 1819, but the fundamental questions raised in the case remain salient: What is the role of private initiative in advancing charity? How does a personal desire to engage in philanthropy interact with the obligations of government? How is philanthropy most effectively achieved? Answers to these questions will continue to evolve, but the pluralistic vision of charity presented by the Dartmouth College case remains vital. Charities operate on a local, national, and international level, but they reflect an ambition to improve society that originates not only in state capitals or Washington, but also in small communities and households. They reflect a tendency toward philanthropy that permeates American society and, one hopes, will continue to do so.

When the New Hampshire legislature attempted to transform governance at Dartmouth College, the Court ruled that the fickle whim of elected officials should not replace the will of the donors and the trustees. The Court took sides in a battle among stakeholders vying for power over the school—the trustees, the college president, and the politicians. Charities continue to engender conflict among such stakeholders and with government. Such passionate engagement with philanthropy by a multitude of voices can only improve the effectiveness of charities and their good works. This continuing struggle for influence, power, and vision reveals an admirable passion for supporting the public weal. It also indicates (to borrow from Daniel Webster) that when it comes to charities in America, there are still those who love them.

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