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DARTMOUTH COLLEGE V. WOODWARD – FREEDOM OF CONTRACTS AND PRIVATE EDUCATION

The Constitution is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.
Thomas Jefferson

Initially the United States Supreme Court did not have clearly defined tasks and competences. On its introduction, the separation of powers demanded that judiciary authority is treated as equal to legislative and executive. However, in practice the position of the recently established court was not overly high. The prestige of the Supreme Court consolidated only under Chief Justice John Marshall.[1]

John Marshall,[2] the Chief Justice of the United States Supreme Court in the years 1801–1835 contributed decisively to such an interpretation of the Constitution that defined the framework of US legal and economic development for the years to come. Of all the numerous decisions made by Marshall, three seem especially crucial today.

In the first of them, in the *Marbury v. Madison* case of 1803, Marshall affirmed the right of the Supreme Court to Judicial Review. The holding of the court was a landmark precedence for American constitutionalism.

[1] John Marshall assumed the post of Chief Justice of the Supreme Court, while the institution was still taking shape, which gave him the opportunity to be one of the framers of constitutionalism being born at that time.

[2] Marshall participated in the American Revolutionary War and was named Secretary of State. He never completed any studies in law and letters, only in a few months' long course in law. Was a man of extreme intelligence, hence the decisions issued by Marshall Court are based on logic hard as nails.

Marshall's opinion in the *McCulloch v. Maryland*[3] case of 1819 defined the manner of understanding American federalism. The successive decision was the 1819 verdict in the case *Dartmouth College v. Woodward.* This decision was of great importance for setting the principle of protecting contracts on the grounds of Federal Constitution, as the same time laying down the new definition of corporate entity. In the general opinion held by the researchers of American law "*Dartmouth College* marked an epochal moment in the history of American Corporation".[4]

In the colonial and state period, corporations were established mostly to implement public tasks designated by the authorities, and never of private business character. Devoid to a great extent of independence, they had to bear with the interventions of state authorities that controlled every aspect of their operation. State authorities participated in the revenue of the corporation, held numerous shares, and also appointed members of the body that provided the external representation of the corporation.

The 19th century was to bring a profound change in this *status quo*. Corporations begun to be noticed as efficient not only in attaining public goals. They could be private institutions undertaking certain tasks for the benefit of the society. This was the vision and understanding of the corporate institution, as defined by the Supreme Court in the verdict of John Marshall concerning the *Dartmouth College v. Woodward* case, where the majority case opinion was drafted by Marshall himself.

Dartmouth College was one of the nine colonial colleges founded before the American Revolution, as an initiative of Eleazar Whellock. Although officially incorporated in the name of the Crown, it received its charter of incorporation not from King George III but from the Royal Governor of the Province. The basic task of the college was to provide tuition for Protestant elites of New Hampshire, whose official and state denomination was Congregationalism.[5]

The beginning of the 19th century heralded major social and economic changes in the United States. In the year 1800, the Federalists,[6] being the party supporting powerful federal authority, were defeated in presidential election. The victorious Republicans were, however, suspicious about the mixing of state and church structures, and aimed at the severance of official churches from the State at the level of individual states, following Jefferson's opinion and interpretation of the First Amendment. Hence a protestant college, which was to forge the elites for the

[3] *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819).

[4] W. M. Wiecek, *Liberty under law. Supreme Court in American Life*, Baltimore 1988, pp. 44–45.

[5] Congregationalism, popular, especially in the US and the UK, is one of the trends in Protestantism. Congregationalists emphasise especially the freedom of man in questions of faith and morality. Moreover, Congregationalism is democratic form of church governance. Some claim that Congregationalism exerted indirect influence on American constitutionalism. (The first American universities, as e.g. Yale and Harvard, were established by Congregationalists.)

[6] Federalists supported strong power of the Federal Government and had a tendency to a broader and interpretation of US constitution which they considered the supreme law; they wanted to weaken state authorities to the benefit of the Federal Government. Alexander Hamilton was the leader of the federalists.

entire state, did not go well with the Republicans, and its interception by the state was treated as contrary to the Republican philosophy. The source of the reluctance was the fact that the majority of the Board of Trustees of the Dartmouth College, were Federalists.

In 1815, the newly elected legislature of New Hampshire attempted to change the character of the college from private to state. They argued to have the right to it, as these were the state authorities that provided for its operation and chose to alter a clause in the original Dartmouth's charter, which made the board a self-perpetuating one. By the decision of state legislature, the new board was to be appointed, and the right to nominate its members was to be a task of the new governor. Additionally, by changing the statutory provisions, they supervision of the state over the operation of Dartmouth College was expanded.

This resulted in outrage and objections of the current Board of Trustees of the college. The decision was understood to overcome the contractually guaranteed status of the college. Considering this act an obvious violation of guaranteed clauses of the contract, members of the dismissed board decided to take the case against William Woodward to court. William Woodward was the treasurer, who kept the seal and documents in the name of state authorities. They Trustees appointed Daniel Webster[7] their defense attorney. A young man, Webster already enjoyed much respect and fame as a lawyer. Moreover, he knew the case of Dartmouth College from its very beginning.

He believed that by converting the school to a state university, the state legislature acted against the Constitution of the State of New Hampshire, "which provided that no person should be deprived of his property except by the 'law of the land', meaning the common law and not a legislative act".[8] Webster believed that it was only through court procedure that the rights and duties acquired earlier could be changed.

In the court, state authorities quoted the argument that they were the only legal successors of the authorities of the Colony of New Hampshire, the founders of Dartmouth College, which entitled them to changing stipulations of the charter.

Daniel Webster lost the case in the Supreme Court of New Hampshire. The judge leading the case, William M. Richardson, believed that changing the character of the college into a public State University, the state authorities did not act against the law. In his opinion, the college founded from public funds and established by state authority came under the control of the same authority, which was therefore entitled to introduce changes into its charter of incorporation. Hence the contractual clause in the charter of incorporation could not limit the prerogatives of the government. His line of argumentation assumed that "corporations were of two

[7] Daniel Webster (1782–1852), American lawyer involved in the political life of the country; Secretary of State 1841–1843 and 1850–1852.

[8] Richard N. Current ,"It is … a small college … yet, there are those who love it" Dartmouth College v. Woodward.

classes. Private corporations were created by individuals for the private benefit. Their property stood on the same ground as that of individuals; their charters were created by the state for public purpose. The legislature had the power to regulate them without limitation by the contract clause. Because the education of future generations was a matter of the highest public concern, Dartmouth College was a public corporation and subject to legislative control." Daniel Webster successfully appealed to the United States Supreme Court. With John Marshall as the Chief Justice, Webster, who had known Marshall's opinion on contracts, invoked the Contract Clause of the Federal Constitution.

The adding of the contract clause in the constitution resulted from the fear that state authorities would continue a practice that had been widespread under the Articles of Confederation, namely grant "private relief" by passing bills relieving particular (especially influential) persons of their obligation to pay their debts. The same phenomenon prompted the authors of the Constitution to make bankruptcy law a province of the Federal Government.[9] The Contract Clause appearing in the United States Constitution, Article I, section 10, states that

> No State shall […] pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts.[10]

Yet it was not only the fact of quoting the contract clause that guaranteed Webster his success before the Supreme Court. Speaking before Marshall, he made a speech so convincing and rhetorically perfect that it is still considered among the most famous court oratory pieces in the history of US jurisprudence.

He argued that Dartmouth College should remain beyond the realm of intervention of state authorities, lest the tradition of the college is destroyed and the uncertainty of contracts results in legal chaos. Webster quoted the ruling of the Supreme Court in *Fletcher v. Peck* of 1810, which was also written by Marshall. In that ruling, Marshall proved that state legislature violating contract clause was against the Constitution.

The defender of Dartmouth College turned to the Chief Justice of US Supreme Court with the following address:

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[9] www.en.wikipedia.org/wiki/Contract_Clause.

[10] Article 1, Section 10 of the United States Constitution reads: "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

This, Sir, is my case! It is the case not merely of that humble institution, it is the case of every college in our Land! It is more! It is the case of every eleemosynary institution throughout our country – of all those great charities founded by the piety of our ancestors to alleviate human misery, and scatter blessings along the pathway of life! It is more! It is, in some sense, the case of every man among us who has property of which he may be stripped, for the question is simply this, 'Shall our State Legislatures be allowed to take that which is not their own, to turn it from its original use, and apply it to such ends and purposes as they in their discretion shall see fit! 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 great 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!

Sir, I know not how others may feel but for myself, when I see my Alma Mater surrounded, like Cesar in the senate house, by those who are reiterating stab upon stab, I would not for this right hand have her say to me, 'Et tu quoque, mi fili!'[11]

Marshall was thus convinced by the arguments that he himself considered to be the only proper and valid. Nevertheless, unwilling to undertake a rash judgment, he investigated the problem in depth. Knowing how important was the precedent in such a case, he wanted to learn the opinions of the other members of the court. It was the opinion of two justices, Joseph Story[12] and Bushord Washington, that Marshall found considered especially vital in awarding legal significance to the precedent. The two eminent legists were a powerful expert support for Marshall.

Especially, Story appeared to be of key importance. He was not only the most eminent, besides Marshall himself, Justice of the Supreme Court and expert in law, but also the future author of *Commentaries on the Constitution of the United States*,[13] and an authority on the interpretation of the Federal Constitution for generations to come. Story supported to Marshall's point of view.

In 1819, Marshall's eighteen-page-long decision finally closed the case. In the document, Marshall focused on a number of the most important questions. The first was performing such an interpretation of the actual state of affairs related to the case that it proved that the college's charter must be construed as a contract. Marshall believed the rights set in Constitution to be flexible, that is potentially adaptable to most cases, which he believed to leave ample room for interpretation and guarantee the longevity of the Constitution. It was so as Marshall claimed that a flexible interpretation should be used for all new challenges and necessities of life for current and future times. This is how Marshall defined contract:

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[11] D. Webster, *The papers of Daniel Webster*, ed. by Ch. M. Wiltse, Series Two, Legal Papers, Vol. 3, *The Federal Practice*, Part 1, ed. A. J. King, pp. 153–154.

[12] Joseph Story was nominated a Justice of the Supreme Court by President Madison in 1811, at the age of 32 which made him the youngest nominated Justice. The closest collaborator of Marshall, Story held his office until his death in 1845.

[13] The work entitled *Commentaries on the Constitution of the United States* was written in 1833.

A contract is a compact between two or more persons, and is either executory or executed. An executory contract is one in which a party binds himself to do or not to do a particular thing. A contract executed is one in which the object of the contract is performed, and this, says Blackstone, differs in nothing from a grant. […] A contract executed, as well as one that is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right.[14]

It can require no argument to prove that the circumstances of this case constitute a contract. An application is made to the Crown for a charter to incorporate a religious and literary institution. In the application, it is stated that large contributions have been made for the object, which will be conferred on the corporation as soon as it shall be created. The charter is granted, and on its faith the property is conveyed. Surely, in this transaction, every ingredient of a complete and legitimate contract is to be found.

From the fact, then, that a charter of incorporation has been granted, nothing can be inferred which changes the character of the institution or transfers to the government any new power over it. The character of civil institutions does not grow out of their incorporation, but out of the manner in which they are formed and the objects for which they are created. The right to change them is not founded on their being incorporated, but on their being the instruments of government, created for its purposes. The same institutions, created for the same objects, though not incorporated, would be public institutions, and, of course, be controllable by the legislature. The incorporating act neither gives nor prevents this control. Neither, in reason, can the incorporating act change the character of a private eleemosynary institution.[15]

In this manner, Marshall reinstated the character of Dartmouth College, which it was granted on the power of the original contract that could not be changed.

In the other cases examined, Marshall proved that by interfering with their charter of incorporation, that is stipulations of a binding contract, the authorities of New Hampshire acted unlawfully, breaking contract law.

The State legislatures were forbidden 'to pass any law impairing the obligation of contracts', that is, of contracts respecting property, under which some individual could claim a right to something beneficial to himself, and that, since the clause in the Constitution must in construction receive some limitation, it may be confined, and ought to be confined, to cases of this description, to cases within the mischief it was intended to remedy […].

The framers of the Constitution did not intend to restrain the States in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us is not to be so construed, may be admitted. The provision of the Constitution never has been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate on the subject of divorces. Those acts enable some tribunals not to impair a marriage contract, but to liberate one of the parties, because it has been broken by the other. When any State legislature shall pass an act annulling all marriage contracts, or allowing either party to annul it, without the consent of the other, it will be time enough to inquire, whether such an act be constitutional.[16]

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[14] The Court laid down its exposition of the word "contract" in *Fletcher v. Peck*, 6 Cranch 87, 136.

[15] C. J. Marshall, Opinion of the Court, Supreme Court of The United States, 17 U.S. 518, Trustees of Dartmouth College v. Woodward, Error to The Superior Court of the state of New Hampshire.

[16] C. J. Marshall, Opinion of the Court, Supreme Court of The United States, 17 U.S. 518.

In his capacity of the Chief Justice of the United States, Marshall imposed his interpretation pointing out that the legal character of state legislature intervention. He bade it be more careful and prudent in future while drafting charters. For charters of incorporation, perceived as contractual agreements, decide unambiguously about the rights and obligations that result from them.

The *Dartmouth College v. Woodward* precedent provided on the one hand a clear definition of the limits of State intervention into legally binding contracts, and support for private enterprise on the other. Private corporations became independent legal persons. The result of the decision was the increase of legal security and attraction of private capital into corporations followed by their operation expanding on an increasing social and economic scale.

In his decision, Marshall precisely laid down his own concept of a legal person. In his understanding, corporations were persons that could also be the subjects of all rights and duties, and could act in their own name. What follows, private corporations began to be treated in legal transactions at par with other – private – persons.

The case *Dartmouth College v. Woodward* set the constitutional principle of inviolability of contracts in the United States. This inviolability, or sanctity, of contracts has been since then considered the basic fact. Placed at a par with freedom of religion and the due process of law, the freedom of contracts has been treated as one of the most important individual rights. It was an interpretation cleanly in Lockian spirit, as in his treatises in political philosophy.[17] Locke wrote that the protection of contracts and protection of the property right is a prerequisite for freedom, while the right to private property is a natural and inalienable right.

One of the effects of the decision in the case *Dartmouth College v. Woodward* was the establishment of a network of private schools and colleges, being the most powerful and most efficient system of education in the world. A system that, being independent of state authorities, is at the same time free and pluralistic.

[17] *Two Treatises of Civil Government* of 1689. Locke, developed the theory of liberal democracy. He believed the most important rights of an individual to be freedom and property, which needed protection from the authorities.