Supplementary Material

Chapter 4: The Early National Era—Individual Rights/Property/Contracts

Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819)

Dartmouth College was chartered by the king of England in 1769 as an independent education institution. The Dartmouth Board of Trustees allied with the Federalist Party in New Hampshire. When Jeffersonians took over the state government after the 1816 elections, they determined to gain control of this Federalist outpost. New Hampshire Republicans passed legislation establishing a new board of overseers appointed by the governor. The old trustees claimed that this action unconstitutionally abridged the original corporate charter establishing Dartmouth College. They soon retained the services of Dartmouth's most illustrious alumnus, Daniel Webster, and sued New Hampshire for violating property rights protected by the contracts clause of the U.S. Constitution. The Superior Court in New Hampshire upheld the state's actions. The case was then brought to the U.S. Supreme Court. Webster's argument before the Supreme Court, often cited as one of the most vigorous defense of property rights in early antebellum America, concluded with the famous passage (at least among Dartmouth students), "It is, sir, a small college, but there are those who love it."

The status of Dartmouth College was a hot issue in New Hampshire politics, but of less immediate interest in national politics. The legal issues were nevertheless of great importance. Corporations had long been used as instruments of public policy. Private business corporations were beginning to emerge. Soon they would be extremely important participants in the national economy. Jeffersonians emphasized the importance of maintaining strict public control over such potentially powerful corporate entities. They believed states must have the power to adjust corporate rights and responsibilities in light of changing public needs and political circumstances. Federalists and their successors emphasized the importance of corporate independence from state control. They saw both private and public corporate charters as contracts giving corporate participants vested rights that could not be impaired by subsequent state actions. John Marshall was familiar with these issues. When a lawyer in Virginia, he defended the board of visitors of the private College of William and Mary after they modernize the curriculum and fired a professor. In Dartmouth College*, Marshall articulated those arguments for the independence of corporations from government control in a constitutional context.*

The Supreme Court in Dartmouth College *ruled that the college charter was a contract that could not be impaired by New Hampshire. Dartmouth College remained and still is private. As you read the opinion, notice the increased role played by the contracts clause and the lesser role played by general principles of law. What do you think explains this shift? Marshall insisted that the contracts clause limits state power over contracts concerning property, but not contracts concerning marriage. Why did he make that distinction? Is that distinction correct? Does* Dartmouth College *sharply reduce legislative power to regulate corporations once established? Can government, consistent with Marshall Court contracts clause jurisprudence, promote the public good while maintaining vested rights?*

CHIEF JUSTICE JOHN MARSHALL delivered the opinion of the Court

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. . . 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.

The points for consideration are,

1. Is this contract protected by the constitution of the United States?

2. Is it impaired by the acts under which the defendant holds?

1. On the first point it has been argued, that the word "contract," in its broadest sense, would comprehend the political relations between the government and its citizens, would extend to offices held within a State for State purposes, and to many of those laws concerning civil institutions, which must change with circumstances, and be modified by ordinary legislation; which deeply concern the public, and which, to preserve good government, the public judgment must control. That even marriage is a contract, and its obligations are effected by the laws respecting divorces. That the clause in the constitution, if construed in its greatest latitude, would prohibit these laws. Taken in its broad unlimited sense, the clause would be an unprofitable and vexatious interference with the internal concerns of a State . . . . That as the framers of the constitution could never have intended to insert in that instrument a provision so unnecessary, so mischievous, and so repugnant to its general spirit, the term "contract" must be understood as intended to guard against a power of at least doubtful utility, the abuse of which had been extensively felt; and to restrain the legislature in future from violating the right to property. That anterior to the formation of the constitution, a course of legislation had prevailed in many, if not in all, of the States, which weakened the confidence of man in man, and embarrassed all transactions between individuals, by dispensing with a faithful performance of engagements. To correct this mischief, by restraining the power which produced it, 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 general correctness of these observations cannot be controverted. That the framers of the constitution did not intend to retrain 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. . . .

. . .

It is more than possible, that the preservation of rights of this description was not particularly in the view of the framers of the constitution, when the clause under consideration was introduced into that instrument. It is probable, that interferences of more frequent recurrence, to which the temptation was stronger, and of which the mischief was more extensive, constituted the great motive for imposing this restriction on the State legislatures. But although a particular and a rare case may not, in itself, be of sufficient magnitude to induce a rule, yet it must be governed by the rule, when established, unless some plain and strong reason for excluding it can be given. It is not enough to say, that this particular case was not in the mind of the Convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception. The case being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the constitution in making it an exception.

On what safe and intelligible ground can this exception stand. There is no expression in the constitution, no sentiment delivered by its contemporaneous expounders, which would justify us in making it. In the absence of all authority of this kind, is there, in the nature and reason of the case itself, that which would sustain a construction of the constitution, not warranted by its words? Are contracts of this description of a character to excite so little interest, that we must exclude them from the provisions of the constitution, as being unworthy of the attention of those who framed the instrument? Or does public policy so imperiously demand their remaining exposed to legislative alteration, as to compel us, or rather permit us to say, that these words, which were introduced to give stability to contracts, and which in their plain import comprehend this contract, must yet be so construed, as to exclude it?. . . .

The opinion of the Court, after mature deliberation, is, that this is a contract, the obligation of which cannot be impaired, without violating the constitution of the United States. This opinion appears to us to be equally supported by reason, and by the former decisions of this Court.

2. We next proceed to the inquiry, whether its obligation has been impaired by those acts of the legislature of New-Hampshire, to which the special verdict refers. . . .

. . .

. . . The whole power of governing the college is transferred from trustees appointed according to the will of the founder, expressed in the charter, to the executive of New-Hampshire. The management and application of the funds of this eleemosynary institution, which are placed by the donors in the hands of trustees named in the charter, and empowered to perpetuate themselves, are placed by this act under the control of the government of the State. The will of the State is substituted for the will of the donors, in every essential operation of the college. This is not an immaterial change. The founders of the college contracted, not merely for the perpetual application of the funds which they gave, to the objects for which those funds were given; they contracted also, to secure that application by the constitution of the corporation. . . .

It results from this opinion, that the acts of the legislature of New-Hampshire, which are stated in the special verdict found in this cause, are repugnant to the constitution of the United States; and that the judgment on this special verdict ought to have been for the plaintiffs. The judgment of the State Court must, therefore, be reversed.

JUSTICE WASHINGTON [concurring] . . .

[omitted]

JUSTICE JOHNSON concurred, for the reasons stated by the CHIEF JUSTICE.

JUSTICE LIVINGSTON concurred, for the reasons stated by the CHIEF JUSTICE, and JUSTICES WASHINGTON and STORY.

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