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THE DARTMOUTH COLLEGE CASE: THE NEGLECTED EDUCATIONAL MEANING

Eldon L. Johnson

The Dartmouth College case, its climactic decision coming amidst intellectual and institutional churning in the formative years of American higher education, has been examined and re-examined far more for its constitutional than its educational meaning. The U.S. Supreme Court decision of 1819 is famous in constitutional law for its statements on private rights and corporation privileges. It is, perhaps, the most quoted decision of all, but for reasons that have nothing to do with education. Two great questions remain. What were the educational ideology and goals in the attempted reform of the Dartmouth charter? And what was the effect on the development of the supposed alternative of public higher education? Almost no attention has been given the first question, fundamental though it would seem; and the little attention given the second, with one notable exception,¹ has been based on questionable inference. A return to these educational questions seems overdue since a college was the centerpiece, the state was trying to change it, the court said what could not be done and intimated what could, and both the educational ideas espoused and the educational prohibitions imposed must have reverberated down through history for alert ears to hear. One's curiosity is also piqued by that little explained sentence in which one historian suggested that public higher education was thus held back fifty

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¹ John S. Whitehead, *The Separation of College and State: Columbia, Dartmouth, Harvard, and Yale, 1776-1876* (New Haven 1973).

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years — an idea since echoed by others without much examination.² The effect on private higher education, bolstered by the court's vigorous defense of private philanthropy, is much less in doubt and will be treated here only indirectly.

All know about Daniel Webster and his pleading for the small college that some still loved (although actually, in number of graduates produced, it was second only to Harvard). All know too about John Marshall, who, as chief justice, wrote what could not be done to the college. But who knows about William Plumer, governor of New Hampshire, and what this Yankee Jeffersonian was trying to do? And who knows of the overall significance of the Dartmouth College case in the evolution of public higher education? History is a plaster which is hard to change once applied.

It all began in a church quarrel. The relation of Dartmouth's professor of divinity to the local church triggered a larger controversy about who would run the college. Trustees were soon galvanized into factions in their long festering relations with President John Wheelock. Losing his grip after more than thirty years, he invoked the royal charter which the colonial governor had issued in 1769 to Wheelock's father, Eleazar, and went to the New Hampshire legislature for relief. Thus began, in the words of a Dartmouth historian, "a quarrel which was to end in the Supreme Court of the United States, with all the nation looking on."³ The president, abetted by the minority trustees, memorialized the legislature for public remedy; the opposing trustees took sufficient umbrage to dismiss Wheelock before the resulting legislative investigating committee could report; and the charter (private or public?) became a burning public issue. Newspapers took sides. Pamphlets appeared for and against. Indignation ran against both Wheelock's dismissal and the "dynasty" he tried to perpetuate through the charter.

In time, the issue was politicized. Federalists tended to support the status quo and Republicans favored change; so the New Hampshire election of 1816 was waged on the issue. Afterwards, the new governor, William Plumer, made charter reform one of the two critical issues on which he called for legislative remedy. Fol-

² Donald G. Tewksbury, *The Founding of American Colleges and Universities Before the Civil War* (New York 1932), 151.

³ Leon Burr Richardson, *History of Dartmouth College* (2 vols., Hanover 1932), I, 291.

lowing a bitter, protracted struggle of parliamentary maneuver, attempted delay, investigations, and embarrassing divisions (all along political lines), the legislature narrowly voted to “improve” the royal charter carried over into republican times — to make the governance of the college more public and less self-perpetuating, and to conceive the new embodiment as “Dartmouth University.” The state injected itself dramatically into college affairs by increasing the number of trustees; giving veto power to a large new board of overseers to be named by the governor and council, who were obligated to inspect the doings of all officers; requiring president and professors to take an oath to support the United States and New Hampshire constitutions; calling for an annual presidential report to the governor on enrollment and the “state of funds”; and guaranteeing “perfect freedom of religious opinion.”⁴

But it was not to be so simple. The opposing trustees who were carried over and their college allies dug in their heels, frustrated a quorum, drove governor and legislature to try again with amendments, took the great majority of students off campus for continued instruction, hired the most distinguished lawyers, and carried the matter to the courts. Eventually, the highest state court upheld the act and an appeal was taken to the Supreme Court solely on the grounds that the college charter was a contract inviolate under the Constitution. With Daniel Webster pleading and with other distinguished lawyers participating, Chief Justice Marshall and fellow justices (with one dissent), held for the college in *Trustees of Dartmouth College v. Woodward* in 1819.⁵ The state legislative act was void because the college was a charitable institution, not a public corporation; hence the charter was a contract and could not be impaired under the Constitution.

What did this mean, at the time and for the future? In looking back, it is now clear that the case originated in differing conceptions of the college mission and of institutional responsibility. It is also clear that it helped shape American higher education in its formative years. Yet the educational significance of the Dartmouth case has been neglected, particularly in understanding what Governor Plumer and his allies were attempting, in ideas as well as in action.

⁴ Timothy Farrar, *Report of the Case of the Trustees of Dartmouth College Against William H. Woodward* (Portsmouth, N.H. 1819), 375.

⁵ 4 Wheaton 518 (1819).

It may be noted at the outset that William Plumer was a public man in the best tradition of the Enlightenment in early America. He was an independently minded, self-educated lawyer who made significant political and intellectual contributions, both locally and nationally. At twenty-six years of age, he entered the state legislature, where he served eight terms and rose to speaker of the house and president of the senate. The revised state constitution of 1792 was so much of his shaping that opponents called it "Plumer's Constitution." Despite his professed indifference when out of public office, politics kept calling him back from law, farm, and books — once to the United States Senate, 1802-1807, and repeatedly to the governorship of New Hampshire, in 1812, and for three yearly terms from 1816 to 1819. Plumer began as a Federalist but deplored blind party loyalty and, despite his initial dislike and suspicion of Jefferson, eventually shifted to the Republican party.

While not so consistently liberal as Jefferson, Plumer pressed religious liberty with such fervor that he provoked violent re-cremations. He embraced reform and thought well ahead of his time: in treatment of prisoners and debtors, in legal codification, in educational philosophy, and in advocacy of an income tax. Beyond that, he had ideas about virtually everything, as shown in the 186 essays he wrote and published between 1820 and 1829. He was widely read, often quoting Bacon, Montaigne, Locke, Rousseau, Pope, Gibbon, and Adam Smith. His private library was almost half the size that of Dartmouth College. From his exposure to the nation's capital in the formative years, he resolved to write the definitive history of North America and was encouraged to do so by Jefferson, John Quincy Adams, and others. What he left, instead, were many useful biographical remnants and significant aid to new regional historical societies. All in all, he was a fiercely independent man of intellectual substance, "a man of conviction, of stubborn courage, and of devotion to principles wider than his own horizons and nobler than his own character." Paying tribute to the local bar which so helped shape the young Daniel Webster in Portsmouth, New Hampshire, biographer Henry Cabot Lodge named Plumer as "the most eminent" and "a man of cool and excellent judgment," who "was one of Mr. Webster's early antagonists, and defeated him in their first encounter."⁶

⁶ Lynn W. Turner, *William Plumer of New Hampshire, 1759-1850* (Chapel Hill 1962), 343; Henry Cabot Lodge, *Daniel Webster* (Boston 1883), 36.

This was the man whose position as governor of New Hampshire brought him into the midst of the Dartmouth College controversy. Given his qualities and values, however, it is quite likely that he would have spoken out on the issues of the case in any event. Partisan politics was indeed present. With plenty of initiative from both sides, it sprang both from current interest and past history. It reflected the intense public controversy engendered and testified that a “public interest” was perceived by many common citizens and their leaders. Moreover, as John S. Whitehead pointed out in *The Separation of College and State*, Dartmouth had long followed the collegiate pattern of the time, sought uneasy alliances with the state, asked state favors, and thus incurred political risks from the fierce battle between Federalists and Republicans for state supremacy.⁷ Indeed, one line of legal defense held that “our Legislature has often interfered and had thus gained a kind of prescriptive right of interference.”⁸ Isaac Hill, partisan Republican editor of the *New Hampshire Patriot and State Gazette*, thought that “the future governance of D. College,” if “judiciously managed, will be a means of perpetuating the republican majority in the State.”⁹ When the Federalists attempted to thwart the two great legislative changes of 1816 — both judicial reform and charter reform — the college reformers gladly joined the issues for the fall election, and prepared to deal with the unconvinced Dartmouth trustees in the “common interest of our party.”¹⁰ The governor was dragged in further than expected because another “long and unpleasant session” was required for patch-up amendments to produce a workable quorum of trustees, with fines for holdouts.¹¹ In this political climate, the aggrieved and irascible President Wheelock easily precipitated a nasty battle over his reinstatement, which became hopelessly confused with broader governance considerations. However, as a later president of the college said, “It would be unjust . . . to recall this ancient controversy from the side of the College without making the frank

⁷ Whitehead, *Separation of College and State*, 56-57.

⁸ Salma Hale to William Allen, Dec. 16, 1818, William Plumer Collection (Dartmouth College Library, Hanover, N.H.).

⁹ Hill to William Plumer, Jr., Apr. 22, 1816, Plumer Papers (New Hampshire State Library, Concord).

¹⁰ Levi Woodbury to William Plumer, Jr., Aug. 7, 1816, *ibid.*

¹¹ William Woodward to William Plumer, Dec. 28, 1816, *ibid.*

acknowledgement that the College invited the interference of the State."¹²

On the charter and governance issues, Plumer clearly acted with competent legal knowledge and legitimate interest in sound public policy. He knew what other states had tried to do, recognized the unsettled legal implications, and had already taken the position that legislatures were incautiously passing acts of incorporation, often "in the nature of grants," without reserving legislative power of repeal or modification "when they cease to answer the end for which they were made, or prove injurious to the public interest." This plea for charters of public responsibility was expressed in Plumer's first gubernatorial message to the legislature four years before the Dartmouth crisis. On vindicating President Wheelock, Plumer's own letters are singularly free of political motivation, although he received commendation for "defense of our venerable friend" and never flinched from battle with the old Federalists. While he once equated Republican victory with "justice to the injured [President] Wheelock," he later wrote that "it has long been a subject of great regret to me that the name of Dartmouth University has been considered as a political party question." Looking beyond presidential restoration, Plumer asked his partisan allies to join in devising "a system . . . to prevent the college being again exposed to similar evils." His subsequent naming of the board members from both parties gave some credibility to his florid hope "that when the sod shall be green on my grave those who survive me will say I have preferred men of merit to political partisans." His concern was for a certain type of institution, more broadly representative, that would reflect his strong views about education with public relevance and responsibility; hence, he fervently urged a trustee to public duty lest "the University remain unorganized . . . and perhaps the current of public opinion [be] turned against the Institution."¹³

¹² *The Proceedings of the Webster Centennial: The Commemoration by Dartmouth College of the Services of Daniel Webster to the College and the State . . .* (Hanover 1901), 220.

¹³ State of New Hampshire, *Journal of the Honorable Senate, June Session, 1812* (Concord 1812), 25-26; William Woodward to William Plumer, Dec. 28, 1816, Plumer Papers; William Plumer to A. A. Brewster, Mar. 22, 1816, and William Plumer to Elijah Parish, Nov. 29, 1817, Plumer Collection; Turner, *William Plumer*, 236; William Plumer to Silas Benton, Oct. 13, 1818, Plumer Collection; William Plumer to D. M. Durell, Feb. 6, 1817, Plumer Papers.

Fortunately, we also have a clear picture of Plumer's educational philosophy in a remarkable series of newspaper essays written under the name of "Cincinnatus" two years after the Supreme Court rebuff. He was critical of existing collegiate education and thought it called for radical reform. Such reform would have three major thrusts. It would come from institutions under public control and support, state oriented rather than church oriented. It would emphasize educational application to daily life — the useful, the scientific, the ordinary vocations. It would be open to the poor as well as the rich.

American institutions had become slightly more liberal than the English, but the same "mistaken policy" prevailed, wherein "*the great object of colleges was to educate young men for priesthood, rather than to qualify them for the duties of civil life.*" Harvard and Dartmouth were both church-ridden, too subject to "principles unfavorable to the progress of education in the higher branches of literature and science." Hence the usual inquiry was "not whether the public need other colleges, but whether *particular sects* want them." Instead, colleges should be "formed and governed" without regard to religion or party. "The commonwealth of letters is free — men of erudition of all countries, sects, and parties are its members — and no scholar can be alien from it." Existing colleges were good for the education of the clergy (they needed it, he said) but they should be more — "of a different character . . . suited to the pursuits and business of *this life*." This conviction that contemporary collegiate education was too "monkish" appeared again and again in Plumer's writings; in fact, he thought the ecclesiastical rather than civil emphasis might be "hostile to our republican system."¹⁴

What was wrong with the colleges was typified by the retention of, and emphasis on, ancient languages and the mode of their teaching. He objected when his children and grandchildren were subjected to Greek, Latin, or Hebrew and rejoiced when French or German was taken. He did not want the prime of life wasted on useless learning and, worse yet, on the form rather than the substance: on the language of the ancients instead of the opinions, ideas, and knowledge possessed by the ancients.¹⁵

¹⁴ "Cincinnatus," No. 32, *New Hampshire Patriot and Gazette* (Concord), Apr. 2, 1821; "Cincinnatus," No. 31, *ibid.*, Mar. 26, 1821.

¹⁵ William Plumer to Mary Elizabeth Plumer, May 27, 1825, Plumer Papers;

For remedy, Plumer would first put an end to the private-public ambiguity being played upon, as he learned to his sorrow in the Dartmouth case. "When the government of our colleges apply to the people or to the legislature for aid," he wrote, "they represent the college as a *public institution*."

But when the legislature of the State enact [*sic*] laws for their better regulation and improvement, then the college is to be considered as a *private corporation* exempt from all legislative acts. . . . Let the legislature establish a *public Academy* in each county in the State, subject to the control . . . of civil government After such academies are established, and the people experience their salutary effects, the legislature will have an easy task to establish a public college or university upon similar principles. Society owes too much to education to justify legislators who neglect the means for its support.¹⁶

He did not believe that institutions like Dartmouth, many of which received partial public support, were private in the public-hands-off sense held by the Supreme Court; but, if so, then alternative public institutions should be established. Such institutions, moreover, should and would be responsive to the need for a new kind of education — useful education.¹⁷

The academies Plumer conceived would start with "nothing but what is useful and subservient to the business of human life," and the new college or university would correct the mistake of not adopting "effectual measures for instructing youth in the useful arts [and] in science." As "now constituted and governed," however, no college can give "useful and complete education." Plumer underscored the point: "In what school, academy or college are the principles and sciences of agriculture, of commerce, of manufactures, or of mechanics taught? These are important subjects in which we have a direct and deep interest: for it is from them we derive all the means of substance." Similar sentiments came from Jonathan Baldwin Turner and Justin Morrill forty years later, at the inception of the national system of land grant colleges. It is fit-

"Cincinnatus," No. 28, *New Hampshire Patriot*, Feb. 26, 1821.

¹⁶ "Cincinnatus," No. 34, *New Hampshire Patriot*, Apr. 16, 1821; No. 35, Apr. 23, 1821.

¹⁷ *Ibid.*, Apr. 23, 1821; Francis N. Stites, *Private Interest & Public Gain: The Dartmouth College Case, 1819* (Amherst 1972), 26-29.

ting that in closing his twenty-fifth article on education in the *Cincinnati* series, Plumer wrote, “*utility* has been my sole object.”¹⁸

Nor were these educational constructions mere post-Supreme Court rationalizations. While the then new “Dartmouth University” should have given him encouragement, he wrote his friend Salma Hale: “I have long wished to see a fundamental change in these institutions; to have more of the time of students devoted to the acquisition of *useful* rather than ornamental knowledge — the knowledge of *things* rather than that of *words* — and to make proficiency in the *living* rather than the *dead* languages.” Then he added plaintively, “I hope for these changes in our university, but I have no reason to expect them.” The things/words, living/dead, useful/ornamental dichotomies were a constant refrain.¹⁹

Utility led to another reform objective. Since life is short, time should be best used; but the great time needed for college preparation and for learning the dead languages “necessarily excludes a vast proportion of our youth from those institutions.” So long as this condition continued, public tax support was not justified. Let the “rich and idle” enjoy such, “but free the common people from the support of establishments in the enjoyment of which they cannot participate.” This man who later thought Andrew Jackson’s election and “the mad spirit of Jacksonism” the greatest misfortune to befall the nation, nevertheless wrote about education in the context of the “common people,” the “common affairs of life,” the dangers of “the privileged orders,” and the need for more responsive institutions befitting the new republicanism.²⁰

What Plumer wanted is best summarized in the positive portion of an essay that criticized the existing colleges with unusual severity. Yes, “even in their present state,” they could be of some good:

But to render them extensively useful to the public, they require a radical reform. They should no longer be schools of theology but civil institutions — instead of being private they should be public establishments, not governed by sectarian priests but by men of

¹⁸ “Cincinnati,” No. 35, *New Hampshire Patriot*, Apr. 23, 1821.

¹⁹ William Plumer to Salma Hale, July 31, 1817, Papers of William Plumer, reel 5 (Library of Congress); see also “Cincinnati,” No. 23, *New Hampshire Patriot*, Dec. 12, 1820; No. 24, Jan. 29, 1821; and No. 28, Feb. 26, 1821.

²⁰ *Ibid.*, No. 34, Apr. 16, 1821; William Plumer to Samuel Bell, Dec. 9, 1828, Plumer Papers; William Plumer to Jesse Hawley, July 1, 1818.

literature and science without regard to their professions — instead of *dead* languages, the *living* languages should be taught — the modern discoveries in philosophy and the useful arts should be promptly adopted; and youth instructed in the arts and sciences that are applicable to the business of human life.²¹

These were the educational ideas of the man who led the attempt to amend the Dartmouth charter. They had the immediate potency of his political influence and, on a more enduring basis, they were representative of something larger than himself. During the three or four decades before the ardent advocacy of the 1850s, sentiment for a more responsive kind of higher education was not lacking. It was muted both inside and outside the colleges by dormant enrollments and the flood tide of denominationalism — yet Thomas Jefferson did not stand alone. There were political leaders and opinion-makers who made possible all the early state universities. There were others who promoted particular educational reforms that produced the ingredients later to be clustered together in institutions controlled and supported by state governments. When these unsung authors and actors are brought from obscurity, William Plumer will be prominent among them. If his word was not wholly original nor his deed wholly enduring, he the better reflected his time and the ferment that would later transform American higher education, with an alternative closely allied with the state. He reflected the transitional period in which, according to one historian, family, church, and community influence over education had waned and the “whole range of education had become an instrument of deliberate social purpose.”²²

The first question can now be answered — what educational change was attempted at Dartmouth? As in most political crises, strange bedfellows thought differently but acted together. Some wanted merely to restore President John Wheelock and some merely to defeat political opponents, but what mattered and endured was more substantive. The central attempt was to make Dartmouth more accountable to public authority and needs, in greater harmony with the ideals of a democratic secular state and a society of equals. Significantly, that reform effort was the deliberate expression of a sovereign state (the organized New Hamp-

²¹ “Cincinnatus,” No. 34, *New Hampshire Patriot*, Apr. 16, 1821.

²² Bernard Bailyn, *Education in the Forming of American Society* (Chapel Hill 1960), 22.

shire public) through all its branches: the executive recommendation, the legislative enactment, and the judicial approval. As the articulate spokesman for many Jeffersonian values of the time, Plumer spelled out the supporting philosophy and the educational results hoped for, once the form was adopted. He gave the rationale from which immediate action proceeded and the goals toward which growth was to be directed. These new desiderata were then put at the mercy of quite inadequate means: transforming an existing institution through state "control" that relied on the presence of state officers without the presence of state taxes. But however rebuffed and delayed, the central idea would persist and later flower in institutions that Plumer and his allies countrywide would have found congenial.

The second question about the effect on the development of public higher education can best be approached by examining what happened in New Hampshire first and then elsewhere. The effect upon Dartmouth itself is important because the strategy of the 1816 legislation was to reform an *existing* institution by launching something public and something called a "university." Deposed President John Wheelock's nephew strongly lobbied for a university divided into colleges, as the law contemplated; and when the new Dartmouth University trustees met without a quorum in 1816, they received a committee report that proposed both some curricular broadening and institutional reorganization, with Colleges of Theology, Medicine, and Law. The curious fact is that Dartmouth unofficially had called itself a "university" as early as 1782 and through the catalogs of the entire 1801-1814 period. That was rather the academic fashion of the time and was abandoned, ironically at Dartmouth, only when the legislature sought to impose precisely that name. Were Webster and colleagues influenced by the fact that in English law "university" meant a public corporation, whereas "college" meant a private charity? Before the Supreme Court, Webster derided "the swelling and empty authority" in the "mock elevation to . . . a university." Even Governor Plumer once conceded that "University" and "College" conveyed no real difference. The profound difference was the existence, nevertheless, of two institutions, competing both legally and often ludicrously for students, keys, books, possession of buildings, commencement dates, and public favor. The incongruity climaxed when both institutions held commencements and both conferred honorary degrees on President James Monroe

when he visited New England in 1817. The new state-originated institution was a disaster by any standard, with its unhappy status never better shown than in the accountability report that the new legislation required to be filed with the governor. “University” President William Allen labored valiantly but could report accurately only on the number of students — sixteen. The state of funds, official board actions, and everything else was unknown, ambiguous, or speculative. With remarkable understatement, the president confessed to the governor after the Supreme Court decision that “some officers were discouraged.” The short-run effect on the existing college was disastrous, too; but how it recovered and later rose to its present esteemed position is not central to our present purposes.²³

It was unclear whether Dartmouth was a single college temporarily ruptured by fuzziness about the public-private balance or two institutions already set on contrasting courses. The situation was confounded by the insufficient solution the state attempted, as best shown by the conclusion of two New Hampshire legislative committees that state “control” was necessary but that reform of the charter of the existing college would yield that desired result. Relying on the sufficiency of this remote and indirect public patronage for “the cause of literature and science” (not uncommonly proposed elsewhere in New England at the time), one committee took the view that “the surest and most effectual means . . . are to be found in extending to our highest seminary of learning a *controlling* as well as fostering protection — thereby uniting its interests and destinies more firmly with the government of the State.”²⁴ Events were soon to demonstrate that Dartmouth was not the proper subject and a “fostering protection” was not a sufficient method. Furthermore, there is no evidence that Plumer, either as governor or Dartmouth University board member, was determined to force his personal ideas on the new Dartmouth, or

²³ Turner, *William Plumer*, 248-249; John King Lord, *A History of Dartmouth College, 1815-1909* (Concord, N.H. 1913), 98; Whitehead, *Separation of College and State*, 70; Farrar, *Report of the Case*, 281; William Plumer to Francis Brown, Mar. 5, 1817, Plumer Collection; Lord, *History of Dartmouth*, 125; William Allen to William Plumer, July 7, 1818, Plumer Collection.

²⁴ State of New Hampshire, *Journal of the House of Representatives, June Session, 1816* (Concord 1816), 216; see a similar report from another committee, *ibid.*, 129-132.

that he could have done so through trustees or overseers sometimes as unreliable as executive-appointed judges. He had already failed to wring from the legislature a governing body as publicly representative and responsive (that is, not self-perpetuating) as he wanted. He more than once lamented that his ideas had little hope of acceptance, either under state reform or after the judicial reprieve. He again wrote: "Those institutions are in the hands of men who appear little inclined to change their present course, and still less to acknowledge a right in the people or the legislature to effect a reformation."²⁵ Whether because of ennui, disillusionment, or decision not to run for gubernatorial reelection, he in 1818 began to excuse himself from university duties and from commencement, with pleas of ill health and hopes for a more useful successor.²⁶ He apparently did nothing later to foster a public university or to identify with such feeble university-starting efforts as the literary fund gambit of Governor Samuel Bell. Even in logical openings in correspondence with public figures, Plumer withheld comment on university reform, apparently looking back somewhat bitterly on the Dartmouth case as a lost, if not last, opportunity.

Contrary to common assumption, however, this aborted state plan for Dartmouth did not summarily end agitation for state-controlled higher education in New Hampshire. Two great ironies are worthy of mention. In the heat of battle, none other than Daniel Webster suggested the instigation of a plan to create a state-officered "University of New Hampshire" as a means of finding peace; and a loyal Dartmouth trustee group offered a face-saving compromise which would have assured the essential public oversight Plumer sought but could not then gracefully accept.²⁷ Neither he nor they then knew that trustee acceptance of the compromise would have, because of trustee consent, removed the hinge on which *Dartmouth v. Woodward* was to turn. These ambivalent gestures merely recognized, however grudgingly, the durability of the public dimension of the issue; and it remained for Plumer's political successor, Governor Samuel Bell, to make two

²⁵ "Cincinnatus," No. 34, *New Hampshire Patriot*, Apr. 16, 1821.

²⁶ William Plumer to Elijah Parish, Aug. 7, 1818; William Allen to William Plumer, Aug. 9, 1818; Plumer to Allen, Aug. 15, 1818, Plumer Collection.

²⁷ Quoted in Lord, *History of Dartmouth*, 84-85; Baxter P. Smith, *The History of Dartmouth College* (Cambridge 1878), 102-105; Turner, *William Plumer*, 251.

other valiant attempts to found a separate new university. First, he worked with the 1819 legislature in setting up a committee to devise complete plans for a “public literary institution in this State.” But the astutely chosen chairman, President William Allen of the short-lived university, declined the honor because he thought that one college in New Hampshire was enough and he continued to believe that Dartmouth reform of the attempted kind, but with trustee consent, could and should appropriately monopolize legislative patronage. Second, in 1821 the governor and the legislature set up a “literary fund” from a stamp tax on bank circulation. The annual receipts were to support education in the higher branches of literature and science, provided significantly that support should never go to any institution *not* under the direction and control of the state. The muddling of the public-private dichotomy was never better illustrated than when Dartmouth came forward aggressively to seek the money, with willingness to create a Board of Overseers as the “public” price.²⁸ As the money accumulated, debate ensued on whether to divert it for general state expenses, “for the establishment of a College in some central place,” or for schools in the towns. But the public university forces could never muster enough strength to prevail. Their proposed use of the literary fund for a “New Hampshire University” in 1827 passed in the senate, but lost in the house by a two-to-one majority.²⁹

That was the high point of public university advocacy in New Hampshire in the half century following the attempted Dartmouth changes. The following year, the new governor began claiming that enough colleges existed in New England, Dartmouth sufficed with its private support, and therefore the towns should receive the literary fund for common schools. As last, that recommendation prevailed. But the seeds of something distinctive, destined eventually to yield fruit, were planted at the same time; that is, the need for agricultural research and training began to be articulated. In the same message that turned off the public university thrust,

²⁸ Lord, *History of Dartmouth*, 185-186. It should be noted that Allen was moving to the presidency of Bowdoin College and that Governor Samuel Bell, brother of the later Governor John Bell, had been associate justice in the state court which upheld the Dartmouth acts of 1816. *Ibid.*, 187, 207.

²⁹ See, for example, *Senate Journal, November Session, 1828*, 10, and *June Session, 1829*, 45, 75; Lord, *History of Dartmouth*, 207-208.

Governor John Bell lucidly spelled out what he thought, in contrast, was needed — “an experimental farm and agricultural school.” It was a remarkable prevision of the later land grant college, with emphasis upon practical as well as scientific education, broader student access, student labor, and even an embryonic extension system. This was all too advanced for the lower house, which resolved neither to purchase an experimental farm nor to “adopt any measures in relation to the same.”³⁰

This history of muddlement and parsimony detracts from the surmise that if the Dartmouth College case had gone the other way, New Hampshire might have had a flourishing state university at once. Other evidence magnifies the doubt. First of all, the legislature was not the slightest disposed to provide financial support. To make the reformed Dartmouth “a well-endowed institution” with “a liberal patronage” might have been William Plumer’s intention, as his son later contended; but the legislature showed no concurrence. In fact, Plumer was himself a zealot of governmental economy. The state even treated shabbily the university trustees and officers who, after the Supreme Court foreclosure, had to appeal for help on the grounds that they had acted in good faith with the legislature’s desire “to improve what was thought to be a public institution.” Such help as had been given already to the new “public university” amounted to a four thousand dollar *loan*; and its eventual cancellation (because of no alternative for a defunct institution) was a measure of the legislature’s largess.³¹

Things were no better across the river in Vermont, where the incubus of the Dartmouth case did not exist. The spirit of the times, in other words, was well reflected in the studied ambiguity of Governor Jonas Golusha, who said to the Vermont legislature in 1816: “If any further aid to education should be deemed necessary, I doubt not that it will receive all the encouragement that present circumstances of the state will admit.” That translated into no aid in 1816, 1817, and 1818. The evidence is that intellectual, political, and budgetary forces stripped Governor Samuel Bell and his enthusiastic senate committee of their confidence in 1820 that

³⁰ Lord, *History of Dartmouth*, 219-220; *Senate Journal, November Session, 1828*, 10-12; *House Journal, November Session, 1828*, 321.

³¹ William Plumer, Jr., *Life of William Plumer* (Boston 1857), 440; Lord, *History of Dartmouth*, 169-174.

a public institution “will sooner or later go into operation under the high auspices of the people of New Hampshire.”³² It was much later, rather than sooner. The New Hampshire College of Agriculture and Mechanical Arts was established in 1866, and the name changed to University of New Hampshire in 1923.

Therefore, the consequences within the involved state would seem superficially to be precisely what Tewksbury said: a fifty-year retardation of the state university movement. The fact is one thing, the causes another, as outlined above. In one sense, quite ironically, New Hampshire had been judicially prompted to do what it presumably wanted to do, only to do it in a more direct way. Certainly, it could have founded an institution beneficially dedicated to that specific place — New Hampshire — since the reasoning of both Chief Justice Marshall and Justice Story had gone to some lengths to show that Dartmouth had no ties to geography or service-to-place.³³ But when it came to the doing, the need for a public alternative was not clearly established. Education dominated by religion was more rather than less popular, despite Governor Plumer’s hostility, and the good thoughts about education were drowned out by the bad thoughts about taxes. How slowly the “public” concept had evolved, even in fifty years, is shown by New Hampshire’s attempt to piggyback its new land grant college on Dartmouth College once more in 1866. It was a tribute to Dartmouth, which made generous concessions, and it was a vote for governmental frugality; but, foredoomed as an unhappy marriage, it was also an indication that little heed was given either the lesson learned by Plumer or the government’s remedy stated by Marshall.

The Dartmouth case had repercussions outside New Hampshire also, both on and beyond the state versus college issue. The interest was greater and the information more widespread than some historians have implied. Even before the case was resolved, the New-York Historical Society was asking Plumer for all relevant documents. The issue of state intrusion was a half-century old and the *North American Review* promptly and approvingly presented the Supreme Court’s state-restraining decision in January 1820, because none other “excited deeper interest in the public mind”

³² *Journals of General Assembly of the State of Vermont* (Rutland 1816), Oct. 11, 1816, 16; *New Hampshire Senate Journal, June Session, 1820*, 134.

³³ Farrar, *Report of the Case*, 368, 441.

and all colleges “stood on no surer foundation than Dartmouth College.” Likewise thinking Dartmouth’s fate “perhaps of equal importance to every other literary and charitable corporation of our country,” Timothy Farrar, Webster’s former partner, immediately rushed the decision (with its history and pleadings) into print in 1819 to reach the public in addition to the professional audience of the official Wheaton report. The case itself had attracted the nation’s best legal talent on both sides, and Governor Plumer had sent his 1816 charter reform message to Thomas Jefferson, prompting approval and the famous reply that “our lawyers and priests generally inculcate this doctrine . . . that the earth belongs to the dead, and not to the living.” With still closer interest, the colleges of the Northeast were clearly aroused. When a College Congress was held in Boston in 1818 with representatives from Yale, Harvard, Bowdoin, the University of Vermont, Williams, and Andover Theological Seminary present, Dartmouth College President Brown was invited but Dartmouth University President Allen was not. The Dartmouth appellants had already asked other colleges to help defer court costs, but President Kirkland of Harvard declined because the highest court might uphold the state decision, increasing its authority a hundredfold and making its application nationwide. Such were then the dubious odds in the public-private battle, with weighty authority on each side. Out of interest among other colleges, a Yale professor did go to Washington to hear the evidence presented. State and college officials, donors, and their legal counsel could hardly have been uninformed, unimpressed, or unaffected after the exhaustive treatment and rounded reasoning, on both sides, in the state court in 1817 and the federal court in 1818-1819.³⁴

It is important to remember, however, that the public overlay on Dartmouth was only the first to be tested, not the first to be attempted. Long ago, Lester W. Bartlett summarized the history of post-Revolution attempts at state control in Massachusetts, Connecticut, Pennsylvania, and New York, showing that New Hampshire’s later attempt was by no means the most “oppressive” or

³⁴ L. Spalding to William Plumer, Feb. 15, 1818, Plumer Collection; *North American Review*, January, 1820, 83; Farrar, *Report of the Case*, introduction; Claude M. Fuess, *Daniel Webster* (2 vols., Boston 1930), I, 243n; Smith, *History of Dartmouth*, 101; Fuess, *Daniel Webster*, I, 218; Lord, *History of Dartmouth*, 142, 147, 153, 155.

“threatening,” if judged by the percentage of state officials on the college boards. Dartmouth history differed, however, in the complete polarization of forces, the duality of institutions, the legal deadlock, and the firm resolve to derive a guiding precedent from a local example. As Harvard’s history before and after showed, legislative tampering (state officers on boards, vetoing powers, visitations) did not keep the institution from being private, yet did not make it public. Nor was the Dartmouth case to be the last. In 1831, for example, the Maine legislature intruded into Bowdoin College to squeeze out President William Allen. Having come there from the headship of the short-lived “public” version of Dartmouth, Allen paradoxically had to switch roles and resort to the federal courts for the same kind of victory that his opponents had enjoyed in 1819.³⁵

It was on the public-private distinction that *Dartmouth v. Woodward* had the greatest effect nationwide. While the decision meant that the states could no longer reform private colleges without the consent of the trustees involved, unless such power had been reserved, it also called attention quite specifically to how the public *could* do what William Plumer attempted. Chief Justice Marshall wrote: “That education is . . . a proper subject of legislation, all admit. That there may be an institution founded by government, and placed entirely under its immediate controul, the officers of which would be public officers, amenable exclusively to government, none will deny.”³⁶ Therefore, after 1819, every state legislature with collegiate reform ambitions had new limitations upon it and clarified opportunities before it, even if this dictum merely advertised the obvious. As a result, there was increased potential for affecting the establishment and growth of state universities — either hastening or retarding them.

It would be folly to attribute all that later happened to the Dartmouth case, without awareness of many other factors. Some state universities existed before 1819 and those which came after had other initiatives quite apart from Dartmouth, such as the First

³⁵ *State Control of Private Incorporated Institutions of Higher Education* (New York 1926), 70-80, 94; Samuel Eliot Morison, *Three Centuries of Harvard, 1636-1936* (Cambridge 1936), 16-61, 212-214; Richardson, *History of Dartmouth*, I, 345-346; Nehemiah Cleaveland, *History of Bowdoin College with Biographical Sketches of Its Graduates* (Boston 1882), 10-12, 103-106.

³⁶ 4 Wheaton 635 (1819).

Amendment impetus to a secular state university; the public land grants, first for new states and later for all states through the Morrill Act; and the changing conception of what was “public” enough to call for governmental response. But the Dartmouth decision thrust in the opposite direction also and became entwined with the great antebellum proliferation of “Christian” colleges, both denominational and non-denominational. In the church-state confrontation born of revolutionary fervor, religion rose to clear dominance in collegiate education. Francis Wayland wrote in 1842: “Almost every college in this country is either originally, or by sliding from its primitive foundation, under the control of some religious sect.” In fact, the dominance was so great that the sliding extended even to established state universities, often submerging the public parts and dominating the self-perpetuating boards, as exhibited in all six of the state universities then existing in the original states. That this was a drag on the evolution of “godless universities” cannot be doubted.³⁷

A reexamination of the Dartmouth case is a vivid reminder that institutions of higher education have evolved from myriad forces much too complex and attenuated to be explained by sudden events and decisive single cases. It is also a reminder that we, like Plumer and the Dartmouth trustees, are captives of our time and that we are prone to transfer from present to past that which was never there. When we apply “public” to collegiate institutions, we connote the concept of tax-supported, government-owned, and state-run schools, none of which would have been intelligible in 1816. “Private” higher education — untouchable and untouched by the state — had not yet arrived, if yet conceived. Dictionaries and encyclopedias of that time make clear that “public” meant merely what was “done by many,” or for the common good, or open to common use — which obviously could have meant a group of “private” individuals. That explains why Governor Plumer

³⁷ Francis Wayland, *Thoughts on the Present Collegiate System in the United States* (Boston 1842), 55; Tewksbury, *Founding of American Colleges*, 175-183; see also Natalie A. Naylor, “The Ante-Bellum College Movement: A Reappraisal of Tewksbury’s *Founding of American Colleges and Universities*,” *History of Education Quarterly*, 13 (Fall 1973), 261-271. Stites, *Private Interest & Public Gain*, 102-103, concludes, “It is impossible to determine the extent to which the decision contributed to the growth of state colleges,” but he repeats the Tewksbury thesis about delay.

thought Dartmouth was already a public institution, why the New Hampshire court unanimously agreed, and why both sides could accept the “guardian care” and “visitorial power” of the state.³⁸ Two decades later, in his critique of colleges (then virtually all church-controlled), Francis Wayland carefully described them as “public institutions.” This confusion between the object of existence and the finality of control also explains why everyone on the “public” side at that time had unwarranted confidence in the sufficiency of state control by the mere laying on of hands via governing boards. Later experience was to show that state support, not a vacuous state presence or concern, was the real key to public higher education. That meant taxation and annual appropriations — again concepts quite foreign to the public-private blurring of 1816, when all kinds of education still relied on unassured annual combinations in which the public and tax parts, if they existed at all, were merely folded into the endowment and current donations parts.³⁹

Making a distinction that was to have a profound effect on the relations between state and college, Chief Justice Marshall’s language drove a giant wedge into a small fissure. The twin nuclei of private and public could now be separated. They had been conceptually and, in time, would be operationally. But Marshall did not say the poles he identified were the only options. He did not rule out the continuation of some mix between college and state. Not surprisingly, practical men in both college and public life chose for a long time to strive for a balance or an accommodation, rather than an exclusionary extreme. This point is made with convincing documentation by John S. Whitehead, in *The Separation of College and State*. He challenges the conventional wisdom that the Dartmouth College case immediately severed the college-state alliance and clearly set apart public and private higher education. He shows that the Dartmouth trustees accepted their victory as leaving them in the ascendancy in running the college, but they saw no reason to break off the long-standing (if sometimes uneasy)

³⁸ Bailyn, *Education in the Forming*; 107; Smith, *History of Dartmouth*, 91, 94. Of the four Dartmouth alumni out of the eight counsel or judges dealing with the case at the state level, only Webster opposed the “public” reform effort. Turner, *William Plumer*, 298n.

³⁹ Wayland, *Thoughts on the Present Collegiate System*, 57; Bailyn, *Education in the Forming*, 44.

state-college accommodation of mutual gain. As time went on, both at Dartmouth and at other institutions in other states, it was the state rather than the college that opted out of the alliance. With this foreclosure of public support, which went increasingly to public schools and to the public colleges and universities, and with the rise of private philanthropy in American life, the alliance was severed and the public-private distinction became clearly discernible — with President Charles Eliot of Harvard as the chief articulator. That, however, was after 1870. It had taken fifty years to sort out the public-private interest, to pull state and college fully apart, and to find the will as well as the way to separate and maintain “public” and “private” institutions. Interestingly enough, the case followed roughly the same time pattern in gaining its fame on constitutional grounds in “defense of vested rights” against the state, as Webster himself put it.⁴⁰

These were forces which prolonged the reliance on institutions of the familiar type (with a public-private blurring) and resisted the creation of an alternative (with complete separation). Such forces *included* the Dartmouth controversy and its intellectual options but were much larger and, in the aggregate, more conclusive. Gradualism, over a long continuum of interacting forces, was the key. Therefore, to say that the public-private split did not fully materialize until the 1870s is not to deny that forces generated as far back as 1816 and 1819 played a contributing or even determining role. Surely after the Marshall decision cutting off one approach for the state and pointing out another, and after all the intellectual and philosophical debate, “public” had to imply a more activist, initiating, supporting role — thus challenging and gradually replacing the mere authorizing, exhorting, and supervising posture of the state. Plumer’s solution did not work. Something more would be required.

At the other pole, the chartered colleges with self-perpetuating boards were given new impetus and governmental immunity that flowered in the “denominational era,” and remain as a rich heritage in that great segment of higher education now called “private.” Chancellor Kent wrote in his *Commentaries* that the Dartmouth case did more than any other single governmental act

⁴⁰ Whitehead, *Separation of College and State*, 76-88, 231-236; Fuess, *Daniel Webster*, I, 245.

“to give solidity and inviolability to the literary, charitable, religious, and commercial institutions of our country.” Noting this growth under the new legitimacy, the *Encyclopedia Americana* of 1830 feared that colleges would proliferate on a faulty analogy to the common schools, where “there can hardly be too many of them,” little realizing the full potency of that analogy as burgeoning new public institutions were added to the private profligacy.⁴¹

Rivalry between emerging types of institutions was inevitable. Indeed, it ran to debilitating extremes before the rediscovery that, with creative accommodation, public and private can be complementary. Fortunately, the “public” part was rarely carried to the extreme contemplated in some of the judicial pleadings and opinions — that is, to operation as a wholly undifferentiated and unbuffered part of civil government. Nevertheless, the Supreme Court’s separation of public and private went too far in higher education, as it did also in constitutional law.⁴² A federal judge recently said that Marshall made it too easy for himself, by “drawing so bright a line between ‘a civil institution to be employed in the administration of the government’ and ‘a private eleemosynary institution,’ ” and that the court itself no longer feels bound to follow the formulation of 160 years ago.⁴³ The line was originally blurred; separation was carried too far; blurring is with us again. Meanwhile, much educational history has rolled by, partly shaped by the Dartmouth case.

For those who want to reduce complex historical questions to simplicity, the Dartmouth experience will be frustrating. In fact, to attempt to keep the strains unsnarled and to unfurl a neat answer is to abuse the evidence. The Dartmouth episode in its entirety, not merely the court case, helps us identify the contributing ingredients of significant change but does not nicely measure their rela-

⁴¹ Cited in Tewksbury, *Founding of American Colleges*, 151; Francis Lieber, ed., *Encyclopedia Americana* (13 vols., 1829-1833), III, 319.

⁴² Stites, *Private Interest & Public Gain*, 113; Maurice G. Baxter, “Should the Dartmouth Case Have Been Reargued?” *New England Quarterly*, 33 (March 1960), 35-36. Oddly, some judicial exaggeration of the Dartmouth case gave temporary credence and strength to the practice, in some states, of regarding even a state university as a private rather than public corporation. Edward C. Elliott and M. M. Chambers, *The Colleges and the Courts* (New York 1936), 116-121.

⁴³ Henry J. Friendly, *The Dartmouth College Case and the Public-Private Penumbra* (Austin 1968), 10-11.

tive weight in the total balance. Beyond doubt, however, it was an event in the formative years of American higher education which helped shape the future. Intellectually, it elicited rough educational ideas and honed them in debate; it strengthened the philosophy of some kind of a higher education alternative, increasingly called “public”; and it hastened the Darwinian effect among educational modes increasingly at odds. Operationally, it defined the options for both state and college; it clarified the inadequacy of state control without state support; and it assured a richer variety of institutional embodiments for the nation. Negatively, the state would thereafter have to respect existing institutional charters or gain the consent of the trustees. There was a chilling effect on state intrusion into higher education governance anywhere anytime. Positively, the state could achieve its purposes via new charters by reserving the appropriate power for later reform, or it could found wholly public institutions committed to the service of a particular place. Conceptually, this great attention to a public alternative could have been a hastening factor in the rise of state colleges and universities — the reverse of the common Dartmouth attribution. But, pragmatically, other factors, chiefly political readiness, were determining. The state had to perceive a need and overcome both opposition from existing church-related institutions and from reluctant taxpayers. It was effective political will that was tardy, and far more the cause of delay among state universities than the Dartmouth impact.

No one can read the learned decisions by Chief Justice William M. Richardson of New Hampshire and by Justices Marshall, Washington, and Story of the Supreme Court without being reminded that the options all emerged in the context of education, not of commerce — of the small college, not, as later, the big corporation. In restoring that awareness, we are also reminded that with its clashing ideas (including the neglected ones of William Plumer), its national attention and significance, and its effect on the state in relation to both private and public higher education, the Dartmouth controversy was a significant peak, perhaps still inadequately explored, on an important watershed of American educational history.