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1810s: Butterfly Effect

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1810: Butterfly

LAURA BARRET: The 1818 Supreme Court Case *The Trustees of Dartmouth College v. Woodward* is famous among legal scholars and Dartmouth community members alike. If you are familiar with the Dartmouth College Case, you know that nearly 50 years after the College's founding, the New Hampshire state legislature attempted to alter the College's charter and transform the private Dartmouth College into the public, state-run Dartmouth University. It was a landmark case in corporate law. Although, among the Dartmouth community, the case is known for two main reasons: first, without the case, Dartmouth College would not be The College, but instead Dartmouth University, an institution that would likely look nothing like what we have today. Second, it established a dearly held identity that infuses the student experience and ties alumni's hearts and wallets to the institution. It was during this case that the much-loved and often-quoted line was first spoken, "It is, Sir, as I have said, a small college, and yet *there are* those that love it...."

But, to be honest, neither of those factors is what interests me. You see, lawyers, trustees, and legislators were only some of the players in this high-profile case. Other key players included insult-hurling churchgoers, axe-wielding faculty members, students armed with clubs, and, by some reports, a handful of numbskulls. Local color and messy, interpersonal relationships? Now *that's* what I'm interested in.

In researching for this episode, I was surprised and delighted to learn that the Dartmouth College Case can be traced back to an unlikely conflict. [pause] You've probably heard of the "butterfly effect," the idea that seemingly insignificant events can have far-reaching effects. The Dartmouth College case's "butterfly" was named Rachel Murch. Sometime in the late 1700s, Samuel Hayes (Haze), a member of the Congregationalist church in Hanover, sparked a local religious rift when he told his fellow parishioner Rachel Murch she had a character that was "black as Hell."¹ Ms. Murch reported the incident, and the church admonished Hayes. The conflict created a divide in the congregation which fed into a convoluted interplay of local religious feuds and statewide political battles between traditionalist/Republican Congregationalists and Federalist Presbyterians. While political ideals of the various groups evolved during this time, what's important for our story is that there were Dartmouth Board of Trustee members on both sides of the numerous conflicts that arose. At the time, John Wheelock, a Presbyterian and the eldest son of Eleazer Wheelock, was the president of the College and the chair of the Board of Trustees. During the feud, Nathaniel Niles, a Republican and Congregationalist, was elected to the board of Trustees and the two men became embattled. Niles set out to turn the board against Wheelock by strategically filling vacancies until an anti-Wheelock contingent had the majority.

The spirit of animosity that ignited all the trouble continued in a more formal manner. Two pro-Wheelock pamphlets were published in 1815 that detailed and condemned recent actions of the Board. The first pamphlet was titled, in characteristic 19th century verbosity, "Sketches of the History of Dartmouth College and Moors' Charity School with a particular account of some late remarkable proceedings of the Board of Trustees, from the year 1779 to the year 1815;" its anonymous author denounced the Board for creating an antagonistic relationship with Wheelock,

¹https://books.google.com/books?id=cXctNp7ZbmMC&pg=PA155&lpg=PA155&dq=rachel+murch+hanover+nh&source=bl&ots=nUfDL79kTS&sig=qRREkUicONOcL_dkKqOtEpLFDhw&hl=en&sa=X&ved=0ahUKEwjZnvoZzbAhWCzVkkHSGNA54Q6AEIPTAE#v=onepage&q=rachel%20murch%20hanover%20nh&f=false p155

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devaluing the President's contributions to the success of the College, diminishing the role of religion in students' educations, unnecessarily raising tuition for medical students, and diverting funds intended for Moor's Charity School—the school that “was the germ whence the College sprang.” The suspected author, or at least instigator, of the pamphlets was John Wheelock himself. This suspicion is far from unfounded: the pamphlet describes the president as, “peaceful and quiet, the delight of his friends, and highly esteemed by the public” and emphasizes the “new” board members’ “different religious principles.”

The Board replied by publishing two pamphlets of their own. These pamphlets were titled, ““A Vindication of the Official Conduct of the Trustees,” and “A True and Concise Narrative of the Origin and Progress of the Church Difficulties.” In these pamphlets, the board defends, point by point, the criticisms of the first set of pamphlets. They also unflatteringly characterize Wheelock as small-minded, corrupt, and narcissistic. They write that men like him believe, “Friends must be caressed and flattered; enemies must be persecuted and driven out of every place of importance.”

This pamphlet battle can best be understood as the 19th century version of a Twitter war. The pamphlets were widely read and brought the Board's internal problems into the public. Outnumbered on the board and out of favor with students and faculty, Wheelock was in trouble. In fact, on August 26, 1815, the board ousted him from the Presidency.

The next part of the story is famously fascinating to lawyers. But, it's been told so many times and so well, that I'm going to gloss over it. If you want to learn all about it, I suggest you come to the Library and check out “The Dartmouth College Case,” by Julius J. Marke. Very briefly, Republicans (Wheelock sympathizers) were victorious in New Hampshire's 1816 election, and the College issue became entirely political. That June, the New Hampshire legislature passed a bill that transformed Dartmouth College into Dartmouth University, almost doubled the number of trustees, established a board of overseers, and gave the Governor authority over the institution. The Trustees claimed the move violated the U.S. Constitution, but even Thomas Jefferson weighed in with his support of the change, stating that, “Laws should serve the living and not be imposed by the dead.”

Although Thomas Jefferson liked the idea, many on campus were less enthusiastic. The College Trustees completely disregarded the new law. And that brings us to our focal document for this episode: an October 1817 broadside that served as the catalog of the College. It lists 99 students, five professors, one lecturer, two tutors, and two resident graduates for a total of 109 people comprising the student and faculty bodies of the College. This may sound like a small number until you compare it with the catalog of Dartmouth University, published the same month. This population totaled 16, less than fifteen percent the size of the College, with only twelve students.

A month after the catalogs were published a state superior court case ruled in favor of the University and against the College trustees; a unique campus protest ensued. The *Dartmouth Gazette* describes how two of Dartmouth University's three professors broke into the College's Social Friends library intending to “remove the books.” The professors made no effort to be discrete in their work, and they broke down the library door with an axe. The College students

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learned of the break-in and arrived at the library wielding clubs. It's unclear where everyone acquired their weapons so quickly, leading me to wonder if Dartmouth students all had their own clubs and, if so, how often they needed to use them. According to a letter from Nathan Smith to Mills Olcott, which makes the event sound like something from the board game Clue, the students were met by a University professor holding an axe at the library door threatening that, "if any man entered he would split them down." Smith adds the mundane fact that the faculty hadn't bothered to ask for a key in order to steal the books less dramatically.

The club-wielding students overpowered the faculty who had taken "recourse to the hours of darkness to take forcible possession of property."² They confined the intruders, and they moved the books to a more secure location—the home of alumnus Samuel Alden.

While advocates of the new University were victorious in the courts, the students of the College were victorious in the library stacks. Could this be a bit of foreshadowing? Let's see...

The College Trustees appealed the case to the U.S. Supreme Court, and hired as their lawyer Dartmouth's favorite son, Daniel Webster. Maybe you've heard of him. Webster focused his argument on the claim that the College Charter was a contract protected by the U.S. Constitution. Webster was not at all confident in his argument, saying, "It is our misfortune that our case goes to Washington on a single point."

Fortunately for the College, Webster compensated for his doubts with zealous preparations. The University Overseers, on the other hand, felt assured their state victory would be repeated in the Supreme Court. They were even described as "confident, cocky, and careless." Their lawyer not only was inexperienced, but he was ill-prepared for the case. On March 10, 1818, the two men faced off in court. Although his case rested on only one point, Daniel Webster spoke passionately for five full hours on the sanctity of the College's charter and of higher education. He closed with the words, "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, 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 the land! It is, Sir, as I have said, a small college, and yet *there are* those that love it..."

The University's lawyer John Holmes's response was inadequate, relying on "cheap tricks and weak mouthing." Another lawyer William Wirt stood up to try to save the University's case but he, too, was underprepared, this being his sixth Supreme Court case argued in under six weeks. The Court ruled in favor of the College, in a victory described as "complete and sweeping."

In a letter to his brother Ezekiel, Daniel Webster wrote, "all is safe. Judgement was rendered this morning, [and]...leaves not an inch of ground for the University to stand on." A letter to the University President William Allen from Dr. Perkins, on the other hand, bemoans the "numbskulls we had for counsel."

² Gazette

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The Dartmouth College case not only set important legal precedent, it was foundational in establishing Dartmouth's self-perception as a small, remote college with humble origins and lofty ideals that resisted and overcame government intrusion. "The voice crying in the wilderness," Dartmouth's motto, was heard clearly and powerfully all the way to Washington D.C. This narrative still shapes the College's identity today.

Remember Rachel Murch? Like the proverbial butterfly that caused a distant tornado simply by flapping its wings, perhaps Rachel Murch secured the future of the College simply by reporting Samuel Hayes's harsh words to church officials. Whether or not Ms. Murch's soul was, in fact, "Black as Hell," in some way, Dartmouth owes its legacy to her. I choose to interpret her refusal to bow to a bully as the germ of resistance that grew, ultimately, into Daniel Webster's fiery speech and the College's victory.

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