courts did regard them at the outset.[2010] It is also the way in which Blackstone regarded them in relation to the royal prerogative, although not in relation to the sovereignty of Parliament, and the same point of view found expression in Story's concurring opinion in *Dartmouth College v. Woodward*, as it did also in Webster's argument in that case.[2011]

The third view is the one formulated by Chief Justice Marshall in his controlling opinion in *Dartmouth College v. Woodward*.[2012] This is that the charter of Dartmouth College, a purely private institution, was the outcome and partial record of a contract between the donors of the college, on the one hand, and the British Crown, on the other, and the contract still continued in force between the State of New Hampshire, as the successor to the Crown and Government of Great Britain, and the trustees, as successors to the donors. The charter, in other words, was not simply a grant—rather it was the documentary record of a still existent agreement between still existent parties.[2013] Taking this view, which he developed with great ingenuity and persuasiveness, Marshall was able to appeal to the Contract Clause directly, and without further use of his fiction in *Fletcher v. Peck* of an executory contract accompanying the grant.

A difficulty still remained, however, in the requirement that a contract, before it can have obligation, must import consideration, that is to say, must be shown not to have been entirely gratuitous on either side. Moreover, the consideration, which induced the Crown to grant a charter to Dartmouth College, was not merely a speculative one. It consisted of the donations of the donors to the important public interest of education. Fortunately or unfortunately, in dealing with this phase of the case, Marshall used more sweeping terms than were needed. "The objects for which a corporation is created," he wrote, "are universally such as the government wishes to promote. They are deemed beneficial to the country; and this benefit constitutes the consideration, and in most cases, the sole consideration of the grant." In other words, the simple fact of the char-

---

[2010] In 1806, Chief Justice Parsons of the Supreme Judicial Court of Massachusetts, without mentioning the Contract Clause, declared that rights legally vested in a corporation cannot be "controlled of destroyed by a subsequent statute, unless a power [for that purpose] be reserved to the legislature in the act of incorporation," Wales v. Stetson, 2 Mass. 142 (1806). *See also* Stoughton v. Baker, 4 Mass. 521 (1808) to like effect; *cf.* Locke v. Dane, 9 Mass. 360 (1812), in which it is said that the purpose of the Contract Clause was to provide against paper money and insolvent laws. Together these holdings add up to the conclusion that the reliance of the Massachusetts court was on "fundamental principles," rather than the Contract Clause.

[2011] 17 U.S. (4 Wheat.) at 577–95 (Webster's argument); id. at 666 (Story's opinion). *See also* Story's opinion for the Court in Terrett v. Taylor, 13 U.S. (9 Cr.) 43 (1815).

[2012] 17 U.S. (4 Wheat.) 518 (1819).

[2013] 17 U.S. at 627.