NEW YORK LAW SCHOOL

digitalcommons.nyls.edu

Faculty Scholarship | Articles & Chapters

1985

A Comment on Style: The Elevator as Metaphor

James Brook
New York Law School, james.brook@nyls.edu

Follow this and additional works at: http://digitalcommons.nyls.edu/fac_articles_chapters


Part of the Legal Education Commons, and the Legal History Commons

Recommended Citation
30 N. Y. L. Sch. L. Rev. 547 (1985)

This Article is brought to you for free and open access by the Faculty Scholarship at DigitalCommons@NYLS. It has been accepted for inclusion in Articles & Chapters by an authorized administrator of DigitalCommons@NYLS.

A COMMENT ON STYLE: THE ELEVATOR AS METAPHOR*

*JAMES BROOK***

Professor Chase begins his presentation by observing that law schools and legal education generally change, if at all, at a snail's pace. He notes, in contrast, the increasing tendency of the modern sports franchise simply to pull up stakes and start over in a new town. I would like to begin by recalling at least one instance where something analogous to this did in fact occur in the law school world. It is a story familiar to a large number present at the symposium today. I am referring, of course, to certain events in New York City in 1891—what the official history of the Columbia Law School refers to as "the Revolution of 1891,"[1] but which we at New York Law School know better as "our founding."

In broad outline, the story is simple to relate. Professor Theodore Dwight, who had started the Columbia Law School in 1858 and had run it almost singlehandedly (and many would say singlemindedly) for the next thirty-three years, was not very ceremoniously maneuvered by President Low into offering his resignation. Along with his resignation, however, went those of all but one member of the faculty. It was these professors, along with a good number of their Columbia students, who moved downtown and set up New York Law School.[2] Their stated purpose was to "promote the cause of sound legal learning, by maintaining what is believed to be the best method of legal instruction,"[3] by which they meant the so-called "Dwight method," as had been developed by

---

* A comment on the remarks of Professor Chase, delivered at the New York Law School Symposium on Legal Education, held on April 12, 1985.

** Professor of Law, New York Law School. B.A., 1968, Harvard College; J.D., 1972, Harvard Law School; LL.M., 1983, Columbia Law School.

1. COLUMBIA UNIV. FOUND. FOR RESEARCH IN LEGAL HISTORY, A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY (1955) [hereinafter cited as COLUMBIA HISTORY]. That this history is so illuminating regarding the difficulties at Columbia during this period may be primarily attributable to the fact that the faculty member chosen to do the project simply fobbed it off on one of the school's assistants in law. *See* Konefsky & Schlegal, *Comment—Mirror, Mirror on the Wall: Histories of American Law Schools*, 95 HARV. L. REV. 833, 847 (1982).

2. The disciples of Dwight—Professors Chase, Petty and Reeve—were in fact unlike the itinerant football franchise of today in one important respect. They were able to take their fans along with them. The leading graduates of Columbia Law School, angered at the treatment of their revered Professor Dwight, formed the "Dwight Alumni Association." The Association's principal activity was to organize a new law school where work could continue in the Dwight tradition. COLUMBIA HISTORY, *supra* note 1, at 152 n.82.

3. NEW YORK LAW SCHOOL CATALOGUE, 1891-1892, at 5 (1891).

their mentor and used by them at the Columbia School. Professor William Keener, lately down from the Harvard Law School and a devotee of Langdell's "case method," was left midtown (Columbia was then at 49th Street and Madison Avenue) with not much more than the support of President Low and what little was left of the home field advantage. Keener remained at Columbia to become its Dean, eventually introducing his own version of the case method at the school.

In the ensuing years, the rivalry between the proponents of the "case method" and the "Dwight method" was—in the language of diplomacy—intense and spirited. The controversy played itself out in every forum from the *Harvard Law Review*[4] to the editorial pages of the *Brooklyn Eagle*.[5] Rest assured that it is not my intention to bring up old grievances or start old battles anew; much time has passed, and with it, relations between the two schools have become very positive.

In fact, it was while reading Professor Chase's paper[6] and thinking about how Columbia Law School and New York Law School now seem so comfortably compatible in the world of legal education, that I began to wonder how such a reconciliation came about. Initially, the answer seemed obvious. The case method, as Professor Chase reminds us, was "victorious."[7] Inevitably, New York Law School, no less than any other school of its time, succumbed to the juggernaut that President Stevens has so well documented in his recent history.[8]

---

4. *See Note—The Columbia and New York Law Schools*, 5 HARV. L. REV. 146, 146 (1891), in which the system of instruction at New York Law School was characterized as "little more than the discarded Harvard method." Dean Chase attempted to respond to "several important errors of statement" by writing a letter to the editors of the *Harvard Law Review*. Chase, *Correspondence—Instruction at the New York Law School*, 34 CENT. L.J. 12, 13 (1892). This letter was refused publication in the *Harvard Law Review*. *Id.* at 1 (editors of the *Central Law Journal* relate to their readers that their decision to publish the Chase letter was based upon Harvard's refusal to do so). This public airing of the Chase letter in the *Central Law Journal* was preceded by publication in New York Law School's own law review. 1 COUNSELLOR 82 (1892). Thereafter, Chase and Keener continued the debate in various law school reviews. *See* COLUMBIA HISTORY, *supra* note 1, at 152 n.86 (claiming the victory for Keener).

5. When it was initially formed, New York Law School had no independent power to grant degrees; its students were required to pass examinations written and graded by the New York Board of Regents. The school, or at least Dean Chase, became incensed at what appeared to be a move by some members of the Regents, acting in concert with the university law schools, to use this power to eliminate the fledgling school. Chase was able to get special legislation passed in New York in 1897 which granted the school full power to award degrees in its own name and on its own examinations. The battle in the legislature and the various heated exchanges back and forth seem to have been widely reported and commented upon in the popular press. For a totally partisan account, see New York Law School, Special Announcement (1897).

6. Chase, *American Legal Education Since 1885: The Case of the Missing Modern*, 30 N.Y.L. SCH. L. REV. 519 (1985). Professor Chase's article appears in this issue.

7. *Id.* at 537-38.

8. *See* R. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO

And surely this must be true. The fact of this defeat is evidenced by the teaching methods of the current professors at New York Law School, who are as much caught up in the casebook syndrome as are all others in our profession.[9] To the extent that the argument of the last century was between Keener's use of casebooks and Dwight's use of textbooks, the battle hardly seems to make much sense today. New York Law School has been as graceful in defeat as the times and the tempers would allow.[10]

The introduction of the case method was not, however, simply about which books students would be required to lug back and forth from the classrooms.[11] It is unfortunate, in a way, that the system has become known as the "case method" since that label may divert one's

---

THE 1980's 60-64 (1983) (discussing the origin, objections to, and success of Langdell's case method).

9. If nothing else, it is nice to know that if ever at a loss for conversation at a reception of law school professors, you can always ask another professor what casebook he or she uses.

10. It is tempting in this context to identify Professor Dwight and the "Dwight method" with the first "traditional" period of law school development, as that term is used by Professor Chase in his historical schema. *See* Chase, *supra* note 6, at 527-28. This, however, would be wrong. Dwight's motivation for setting up a law school at Columbia in the 1850's was certainly not to foster the apprenticeship system, but as a reaction to it. Later Dwight would write about his founding the school at Columbia:

> It was considered at that time mainly as an experiment. No institution resembling a law school had ever existed in New York. Most of the leading lawyers had obtained their training in offices or by private reading, and were highly skeptical as to the possibility of securing competent legal knowledge by means of professional schools. Legal education was, however, at a very low ebb. The clerks in law offices were left almost wholly to themselves. Frequently they were not even acquainted with the lawyers with whom, by a convenient fiction, they were supposed to be studying .... Few studied law as a science; many followed it as a trade or as a convenient ladder whereby to rise in a political career.

Dwight, *Columbia College Law School,* 1 GREEN BAG 141, 141 (1889). In many ways, Dwight's goals seem similar to Langdell's goals as characterized by Professor Chase's earlier works. *See* Chase, *The Birth of the Modern Law School,* 23 AMER. J. LEG. HIST. 329, 332 (1979); Chase, *Origins of Modern Professional Education: The Harvard Case Method Conceived as Clinical Instruction in Law,* 5 NOVA L. J. 323, 333-34 (1981). Viewed in these terms, Dwight actually seems to be Langdell's precursor in the "classical" style, yet their two "styles" are quite different.

11. Even within the classroom, the greatest difference may not have been *what type* of books the students were using, but rather *how many.* The most radical change may have been the institution of a system in which students were required to take several different courses concurrently throughout the semester. COLUMBIA HISTORY, *supra* note 1, at 146. This system was announced only eight days after the resignations of Chase and Petty were accepted. *Id.* Previously at Columbia, and for many years to come at New York Law School, "[any] particular topic, as *e.g.,* the Law of Contracts, the Law of Real Property, *etc.,* having been begun, [was] pursued continuously, day by day, until it [was] completed." NEW YORK LAW SCHOOL CATALOGUE, 1891-1892, at 8 (1891). This language was not dropped from New York Law School's catalogue until after the first World War. NEW YORK LAW SCHOOL BULLETIN, 1919-1920, at 8-9 (1919).

attention from the other things involved. It may, in fact, make it a little too easy to accede to Professor Chase's contention that we are all still caught up (he would hope not irretrievably) in the thrall of Langdell's philosophy. This point seems worthy of further exploration. To do so, I have investigated the common family history of Columbia and New York Law Schools, and what has happened to those schools since the turmoil of 1891. Taking my cue from Professor Chase, I found myself focusing not exclusively on what went on in the classrooms but on the classroom buildings themselves, looking at developments as a matter of "period style," as that term is applied to architecture. In doing so, some interesting contrasts began to emerge. To explain, it is necessary to give some consideration to elevators.

From its very beginning New York Law School seems to have had a fascination with elevators. In its first catalogue, in 1891, designed to inform the public about the new law school, Dean Chase and his compatriots described the location of the law school. The lecture room, located on the eighth floor of the Equitable Life Assurance Company Building, then at 120 Broadway, was "large, admirably lighted and free from noise. Eight large elevators are constantly running in the building."[12] Soon the school had outgrown these quarters and moved to 35 Nassau Street at the corner of Liberty, where, we are assured, "[s]everal large and rapid elevators are constantly running, so that rooms are readily accessible."[13]

By 1909 the school had moved once more, to a building that it had built at 174 Fulton Street. The relocation was announced to the national law school community in the pages of the *American Law School Review*:

> With the large classes which the school has, the problem of ventilation has in the past been found a very difficult one to solve. In the new building a special ventilation plant has been installed, and by this means a constant current of fresh air is poured into each lecture room whenever a class is in session. Safety elevators are also used, which cannot start until the doors are closed. There is now, therefore, no fear that the elevator will start while a number of students are pressing into it and several are at the door.[14]

Indeed, through each subsequent move, New York Law School's students, faculty, and staff have remained dependent on the elevator as a means of transportation.

These early references to elevators begin to make sense when we

12. NEW YORK LAW SCHOOL CATALOGUE, 1891-1892, at 12 (1891).
13. NEW YORK LAW SCHOOL CATALOGUE, 1898-1899, at 17 (1898).
14. Notes and Comments, 2 AMER. L. SCH. REV. 291, 293 (1909).

recall the period we are considering. The elevator and downtown "office buildings" of more than a few stories were relatively new to the city. The first home of New York Law School, the building at 120 Broadway, was in fact, when it was built twenty-one years earlier, the first such building in the downtown area with passenger elevators.[15] The founders of New York Law School were not merely attempting to assure students that they would be able to get to the eighth-floor lecture room. They were delineating, quite deliberately I believe, the kind of place students would find once they got there. Note further that the catalogue description of the school always included a detailed description of the school's convenient location—within easy distance of the rail, elevated, and ferry lines of the day. Again, this was in part to assure students that they could reach the school with ease, but more importantly, it was to foster the intended image. New York Law School was to be right in the thick of things—physically in, and actively a part of the heart of the downtown area.

Consider finally a paragraph that appeared in all of the early catalogues' descriptions of the school's locale:

> This situation will enable students to conveniently attend the daily sessions of the courts, and they are recommended to do so, as far as may not interfere with their studies, as a means of gaining a practical acquaintance with the conduct of trials, the arguments on appeals, etc.[16]

Professor Dwight had apparently objected "most strenuously" when Columbia University moved his law school in 1883 from its downtown home to join the rest of the University at 49th Street. He believed that Columbia's new location was too far from the law offices and the courts.[17] Perhaps as the ultimate tribute, the Dwight Alumni Association brought the "Dwight method" back to its natural setting.

At about the same time that the disciples of Dwight were moving into their second elevator-equipped building, the Columbia University School of Law was also moving to new facilities. The comparison is striking. When the University moved to its present Morningside Heights campus in 1897, the law school followed happily.[18] Especially considering the date, this was moving uptown with a vengeance. The law school settled in as one of the first residents of what is now known as the Low Memorial Library. Overlooking the rest of the campus, with its low dome, magnificent rotunda, and ionic colonnade for an entrance, it has justly been called "one of New York's great pieces of

15. C. VON PRESSENTIN WRIGHT, BLUE GUIDE: NEW YORK 64 (1983).
16. *E.g.*, NEW YORK LAW SCHOOL CATALOGUE, 1891-1892, at 12 (1891).
17. COLUMBIA HISTORY, *supra* note 1, at 92-93.
18. *Id.* at 181-82.

monumental architecture."[19]

The point was not lost on the Columbia faculty, nor did they permit it to go unnoticed by others in the community. Writing in the *Green Bag,* a general legal magazine of mostly light entertainment, in 1898, Professor George Kirchwey, seeking to enlighten his readers on "The Columbia Law School of Today," was naturally moved to describe the school's magnificent new building "before invoking the spirit that dwells therein."[20] Forgetting for the moment that the building he was describing was of the Roman Revival school, Professor Kirchwey began:

> The installation of Columbia University in its new permanent home on the Manhattan Acropolis—an event full of interest and hopeful augury to all men of light and leading—is justly regarded as marking an era in the history of the law school. It was, perhaps, fitting that the first stage in the evolution of the new ideas, the period of *Sturm und Drang,* should be felt and spent in the old environment, with the roar of the railroad on one side and the reverberations of the city's traffic on the other. It is surely no less fitting that the successful working of the new forces should be celebrated and the peaceful conquests assured to them be won on the historic heights which the wisdom of the fathers has consecrated to learning. Here, lifted high above the teeming millions of the great city, with the roar of their mighty industrial life transmuted into distant music, with the eternal hills and the mighty waters environing it, will the Columbia Law School fulfill her destiny for ages to come.[21]

Kirchwey does not mention whether this temple of knowledge, which I know has an elevator modestly tucked away in a corner today, had one at the time of its construction. At any rate, since the building was only four floors in height, it could not have mattered in the same way that it did downtown.

The law school did not occupy the library building alone. It shared quarters with the school of political science and the school of philosophy. While the student at New York Law School could be expected to

---

19. P. GOLDBERGER, THE CITY OBSERVED: NEW YORK 281 (1979) (Paul Goldberger has written for the *New York Times* as an architecture critic).

20. Kirchwey, *The Columbia Law School of Today,* 10 GREEN BAG 199, 199 (1898). This piece is wonderful reading in its entirety if for no other reason than to see how Kirchwey, who went on to become dean of the school, must have earned his reputation for having "an unlimited flow of mellifluous speech." COLUMBIA HISTORY, *supra* note 1, at 165. The *Green Bag* article was obviously undertaken by Kirchwey in order to inform the magazine's readers how much Columbia had changed from only nine years earlier when a piece on the school, written by Dwight, *see* Dwight, *supra* note 10, had appeared.

21. Kirchwey, *supra* note 20, at 199.

run to class straight from the principal ferries or the elevated railroads of the day, his Columbian counterpart

> in going to and from his lecture-room, passes open doors within which courses in philosophy, history and political science are taught, rooms where the collections of books appropriate to those studies are temptingly displayed, and if his mouth is made to water by the sight of this banquet of learning, he has only to enter and fall to.[22]

The contrast between the images that the two schools were creating for themselves—not merely their own self-images, but also the way in which they were marketing themselves to the legal community and to the nation—could not have been any more distinct. The way in which they related to the city where both had a home was to be quite different. We know that during the first few years after the split, the battle for students between the schools was intense,[23] and I would not be surprised if the typical student chose which school to attend based as much or more upon the location and physical plant of the two schools as on the "method of instruction" he would encounter once he got there or the type of books he would be expected to buy.

The present day situations of the two schools need only brief consideration. New York Law School, during the ups and downs of the intervening years, has moved its shop several times (and even, during the wars, temporarily shut down the shop). Still, throughout the school's wanderings it has stayed close to its initial image, always located in the downtown area and in the kind of building that makes it seem, at times, as if the law school were as dependent upon its elevator operators as it is upon its faculty.[24] Even today New York Law School's catalogue stresses "The Law School's Unique Location" amidst the courts, government buildings and Wall Street offices of our

---

22. *Id.* at 201.

23. Within months of its founding, New York Law School had become the second largest law school in the country, and Columbia's enrollment was substantially down. COLUMBIA HISTORY, *supra* note 1, at 152; R. STEVENS, *supra* note 8, at 86 n.21. The competition was not only for the greatest number of students, but for students from the better schools, particularly from the Ivy League. New York Law School was successful by this measure as well. *See Ten Largest Law Schools, 1901-1902,* 1 AMER. L. SCH. REV. 21 (1902).

24. For the record, New York Law School is now housed in three contiguous buildings on Worth Street located in lower Manhattan. Two of these buildings are five stories high, each of which has a modern (if slow) automatic elevator. The largest building, of ten stories, has one small elevator that only goes to the fifth floor and bears the sign "FOR USE OF FACULTY, STAFF AND GUESTS ONLY." In addition, there are two large elevators on which students *are* allowed to ride, and which are under the control of Messrs. Vincent Cammilleri, Sr., Vincent Cammilleri Jr., and Carmello David.

time.[25] "New York Law School," it proudly proclaims, "is the only law school in the area today."[26] Something that has been added to the catalogue is a modern, artfully drawn map, showing the present law school buildings in the midst of the towering buildings of downtown Manhattan.[27]

During the years since the "Revolution of 1891," the history of the Columbia Law School has been less rocky. For one thing, it has stayed close to its original home on the Morningside Heights campus. Its succession of moves, even if only by a few hundred yards each time, are still worth noting. By 1910 the Law School had moved from its Roman Revival temple of learning to Kent Hall, a nearby building of the Italian Renaissance style, moving somewhat forward in time. In the 1960's the school relocated to its present quarters in a modern highrise building with elevator problems all its own (and which if student wits are to be believed is best described as looking like a minor household appliance).[28]

Recent editions of the Columbia catalogue, while rightly stressing the considerable academic prowess of its faculty, also devote a special section to "the study of law in New York City." It begins by assuring the students that "[t]he City offers a variety of legal challenges and opportunities that are no further away than a ride downtown or a good walk." But it goes beyond this to actually highlight a very different view of the City:

> New York, of course, is not the only urban center to experience such urban problems as unemployment, mass labor disputes, environmental hazards, consumer fraud, and the like. It simply gets the most attention because of its long prominence in American cultural and economic life. Being in the spotlight is not always pleasant. But it helps to keep New York a leader in the search for creative and equitable solutions to urban distress.[29]

One wonders what Professor Kirchwey would have made of all of this!

I realize that I may be getting perilously close to claiming an eventual victory of style, if not necessarily of substance, for Professor Dwight and his followers over the temporary fashion followed by Keener and his crew. Could I be discovering, in fact, a long overlooked connection between the "Dwight method" and this Legal Realism we

---

25. NEW YORK LAW SCHOOL BULLETIN, 1984-1985, at 7 (1984).

26. *Id.*

27. *Id.* at 88-89.

28. The current Columbia building is known informally as "the toaster" for reasons that make sense once you have seen it.

29. COLUMBIA UNIVERSITY SCHOOL OF LAW BULLETIN, 1984-1985, at 33 (1984).

hear so much about? While I would certainly not go that far, I cannot resist quoting from a letter written by Judge Jerome Frank, whom Professor Chase has invoked as a spokesman for the Realist school.[30] In a letter, read to a convocation of New York Law School alumni and other dignitaries brought together in 1947 to celebrate the reopening of the school after a six-year period of inactivity during the war, Frank had this to say:

> I gladly salute the revived New York Law School. By adhering to an old orthodoxy it is to-day the leading exponent of what to many who went astray seems a new heresy. For it remained sane when years ago the madness of the extreme casebook method swept most of the law school world. The sensible element of that method it adopted, without relinquishing the intelligent use of text-books. But it never turned its back on those invaluable lawyer-laboratories, the courtrooms and the law offices, to play with the legal paper dolls made by Langdell & Co.[31]

Judge Frank recognized that there was no clear winner in the New York area battle of law school styles. New York Law School adopted the use of casebooks in the classroom and today, as much as any law school, has the modern "case method" look.[32] But the "case method"

---

30. For Professor Chase's discussion of the Realist's alternative to the classical mode of lawyer training, see Chase, *supra* note 6, at 535-37.

31. NEW YORK LAW SCHOOL CATALOGUE, 1949-1950, at 2 (1949).

32. In all of its early catalogues, the founders of New York Law School included a lengthy discussion of the school's "Method of Instruction—Course of Study." *See, e.g.*, NEW YORK LAW SCHOOL CATALOGUE, 1891-1892, at 8 (1891). Here was a careful description and defense of the so-called "Dwight method" of study, which focused students' attention on legal treatises rather than reported cases. *Id.* at 9. In fairness, it should be noted that followers of this method were not completely opposed to the reading of cases by students. They viewed such reading as an "appropriate supplement" to the classroom discussion of textbook materials. *Id.* at 9-10. Indeed, only one year after leaving Columbia to help found New York Law School, Dean Chase prepared a casebook entitled *Leading Cases Upon the Law of Torts* for none other than the West Publishing Company. *See* Book Reviews, 1 COUNSELLOR 90 (1892). Clearly, however, the casebook was not the center of legal studies at New York Law School.

The description of the school's method of instruction remained virtually unchanged for the next fifty years. Whatever one may think of the "Dwight method," it is somewhat sad to see subtle references to casebooks and assigned readings of cases first making their way into the catalogue. NEW YORK LAW SCHOOL CATALOGUE, 1938-1939, at 17 (1938). Only in 1950 was the "Method of Instruction" portion of the catalogue substantially rewritten. After noting the controversy which had for so long fixed for the school its particular place in legal education, the following passage appeared:

> Whatever the respective merits of these systems of instruction as they existed in 1891, the march of time has changed our perspective concerning each. As Woodrow Wilson, a great educator as well as a great President, once remarked, the principal difference between the methods of legal education as they existed in

actually employed today at New York Law School, and even at those schools first championing the idea, is far different from the model as it was understood during the peak of the classical period. That model has been diluted by that with which it came in contact. Originally intended for an elite few, and certainly not for the part-time student of law,[33] it is now in use far and wide, both in the day and evening, and anytime in-between.[34] Today, students in nominally full-time programs have found ways, at least after the first year, to put the case method in its proper perspective, getting their education as much in spite of their casebooks and assigned seats as because of them.[35] Langdell and company may have been the victors—certainly until recently their press was quite good—but the price was high. The whole onslaught of ideas and images travelling under the name of "case method" had accomplished the considerable feat of becoming the conquering hero at the same time it was becoming flabby, slow, and some would say downright groggy.

What we have seen in this brief historical architectural tour is, of course, that great homogenization and leveling out of the law schools under the rubric of case method education, chronicled so well by Presi-

---

his day was largely one of emphasis. The truth appears to be that in most modern law schools, as also in New York Law School, no single system of instruction affords a complete solution to the problem of getting over to the law student the full import of modern legal education. In the matter of methods the casebook system has come to be generally regarded as an efficient tool for teaching the beginner the technique of analyzing causes of action; but beyond that it has largely ceased to exist in its original form. No longer are casebooks referred to merely as casebooks, but as 'Cases and Materials' on a specific topic, the materials consisting of textual matter, hypothetical cases, or references to the bibliography of the subject.

NEW YORK LAW SCHOOL CATALOGUE, 1950-1951, at 8-9 (1950).

This interpretation of events, which allows for a compromise in which all parties are entitled to some credit for the eventual outcome, is far more generous than that offered earlier by Albert G. Mohr, an instructor at New York Law School, writing in a short-lived student journal in 1929. Tracing the evolution of the casebook phenomenon following its initial introduction, and noting the increasing use of "materials" to temper the cases, Mohr concludes: "The 'Dwight Method' is really the composite method to which others are forced to return in one form or another." Mohr, *New York Law School and the Dwight Method,* 1 N.Y.L. SCH. REV. 4, 8 (1929). Here he cannot resist adding a short footnote: "The recent announcement of the plans of Columbia Law School for important changes in their system of instruction is of special interest in this connection." *Id.* at 8 n.1.

33. *See* R. STEVENS, *supra* note 8, at 121.

34. *Id.* at 60-64.

35. Studies of how much time and energy students invest in their law school studies are not entirely consistent, but all reflect a "steady disengagement" from law school over the three years of full-time study. AMERICAN BAR ASSOCIATION, LAW SCHOOLS AND PROFESSIONAL EDUCATION: REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION 35-45 (1980).

dent Stevens in his history of our industry and of which he spoke at this school last year.[36] Under pressures, both subtle and not so subtle, followers of Langdell, disciples of Dwight, and others as well, were able to patch together the various pieces of the contemporary American law schools as now constituted. They have done it at New York Law School and at the Columbia University School of Law. They have done it at virtually every law school. If there is such a style as semimodern (half-hearted) eclecticism, our law schools have stumbled onto it.

One consequence of this semi-modern approach, and certainly one of the reasons for its staying power, is that it can make things very nice for the typical law professor. As one with a "Law and . . ." course of his own to peddle,[37] perhaps I should not mention this, but I have found that when you are trying to follow a personal agenda it does not hurt if the institution of which you are a part is not committed to a real agenda of its own. Convincing the Curriculum Committee that your own special course should be given at the law school is, more often than not, simply a matter of convincing them that you are free to teach it. Once this is done, the only trouble is convincing the minimum number of students to enroll.

By the same token, however, we professors suffer from making our way in this peculiar compromise institution. From that process of modernization and accommodation arose that special kind of split personality many (and I think most) of us experience in trying to accommodate both the lofty goals of Christopher Columbus Langdell and the no-less noble "bread and butter" ambitions of Theodore Dwight in our lives.[38]

---

36. *See* Stevens, *Legal Education: The Challenge of the Past*, 30 N.Y.L. SCH. L. REV. 475 (1985). President Stevens' 1984 Jeffords Lecture appears in this issue.

37. My particular interest is in teaching "Law and Statistics" to as many law students as possible. Such a course, I believe, fits in well with (indeed, may be indispensible to) many of the "modernist" visions of legal education, particularly those centered on the use of social science data and techniques. If I am part of a "movement," however, I am unwittingly so.

38. The term "bread and butter" is from Dwight himself. Dwight, *supra* note 10, at 158. One of the things I have found most interesting and impressive about Dwight is the total lack of self-consciousness he displays when openly acknowledging some of the harsher realities of life. He does not appear to be anything like an anti-intellectual, and he certainly is not modest about the value of his educational efforts. Still, he can write about Columbia Law School under his own direction, without apology, that "it is not to be forgotten that there exists in the law a great and important class of men of average ability, who fill respectably and usefully the humbler avenues of professional life. These men must be trained as well as those of superior powers." *Id.* at 146. Note also his comment on the Columbia students of his time:

> Young men come to study the law from a great variety of motives, and these are often mixed. Some choose it as an avenue to wealth; others because business is stagnant, and it is better to have some occupation than to remain idle; others still, because their fathers recommend or direct it; others, finally, because the

I agree with Professor Chase that there is a great deal of nostalgia within the law school community, although I must protest that it seems to be no more a condition of the "antimodernists" among us than of the forces of what is being loosely classified as "the left." Whether we make our way to the classroom by the "eternal hills and mighty waters" or simply on the IRT, we all must feel some fondness when we enter our school for the idea that it may, in fact, be that glamorous and glorious ivory tower (albeit perhaps now with an elevator) evoked so beautifully in Professor Kirchwey's tour of the new Columbia building of 1898. The only difference may be that the new, decidedly "modernist" law professor is hoping that, once there, he or she will be sharing space in the ivory tower with the Departments of Structuralism and Semiotics rather than those of Philosophy and Political Science.

I also agree with Professor Chase that the saying "we are all Legal Realists today" doesn't really wash,[39] unless that label is robbed of all content. At the same time, however, the sounds of the city are too loud and too insistent for any of us to ignore. We are now compelled, more powerfully than ever before, by the considerably genuine Realism of our worthy students and by the very real attractions of the cityscape itself to take the elevator down to the ground floor.

Thinking about the two camps that experienced the midtown revolution of 1891 and the separate visions of legal education that took one downtown and the other uptown, it is easy to get caught up in each of these visions in turn. We may even be tempted to congratulate ourselves for having been able to carry on so long without having to choose between them. But the pressures of the outside world—those of economics, demographics, and the particularly troubling habit in the past few years of students choosing whether or not to go to law school on some undefined factor other than the number of seats we are expecting them to fill[40]—may be bringing this period to an end. As a

---

> ladies of their choice insist upon it as a condition precedent to the relief for which they sue.

Id. at 145. Compare this to Professor Kirchwey's thoughts on the same subject only nine years later:

> The lazy, indifferent youth, who is studying law because his father and grandfather before him were lawyers, feels the shock and with amused surprise realizes he must either go with the current or swim ashore. He is in much the frame of mind of the immortal Alice in the land of the Red Queen, when she learned that in that country it was necessary to run at the top of her speed in order to stay where she was. So if our student has the blood of heroes and of lawyers in his veins, he runs as not to be ashamed.

Kirchwey, *supra* note 20, at 203.

39. Chase, *supra* note 6, at 537 n.66.

40. From 1982 to 1984 there was a 12% drop in the number of people applying to law schools. Preliminary investigations have not identified the reason or reasons for this de-

whole, legal education in this country, envisioned as a monolithic industry, might never have to make a single unified choice about which road to take, but individual law schools and individual law professors may. In fact I find the most encouraging thing about the prospects for change in the modern era is the possibility that all of the schools and professors will not be changing in the same way. What should be feared most is that kind of communality by which all of us together replace the same old thing with the same new thing.

What struck me most in comparing the two schools at the turn of the century was not simply how different were their plans and visions for the future, but how much they wanted to *appear* different. They were more than willing to proclaim what they were *not* going to be; what they were *not* going to offer students. Whatever else may be said of the original "case method" and the "Dwight method" proponents, these men had a sense of style. Style is not just doing what comes naturally, and certainly not just what comes easily. It involves some self-awareness of, and beyond that the willingness to be known by, those fashions you will *not* follow as much as by those you will.

Professor Chase points out the myriad calls for change that we are hearing today. He notes as well that these calls come from many directions, lacking what he calls an "ideological focus."[41] This lack of focus sounds much like what I am calling a sense of style. Professor Chase finds hope in what is happening now at Queens College, and in a way I must agree with him. Just as I found interest in the very first catalogues coming out of New York Law School, I find it as well in the materials now being put out by this century's rebels at Queens. At least it isn't the same old stuff. There is some chance that a genuinely new style is emerging; it may be nothing of the sort. Whether the experiment will perform in reality as it apparently has on paper to its creators is, of course, still anyone's guess. At least they deserve credit for publishing a catalogue radically different from what we are used to—a catalogue presumably intended to be as likely to turn some people away as to lure others in.[42]

If the Queens model, or any other modern "non-Euclidean" model of the type Professor Chase envisions, does become the style of the future, I suppose that I will have to learn more about it. I seriously

---

cline, but it is clear that it is *not* attributable solely to demographic or population shifts. Vernon & Zimmer, *The Demand for Legal Education: 1984 and the Future,* 35 J. LEGAL EDUC. 261 (1985).

41. Chase, *supra* note 6, at 538-40.

42. The iconography of the Queens College catalogue is itself interesting. It contains distinctly unromantic pictures of, among other things, the New York City office of the Immigration and Naturalization Service at 7:30 a.m. and the Sixth Avenue subway in Manhattan. C.U.N.Y. LAW SCHOOL AT QUEENS COLLEGE CATALOGUE, 1984-1985, at 18-19 (1984).

doubt whether such a style would suit me. This should not trouble Professor Chase to any degree. It is only natural that he and his friends will lose a few antimodernists along the way. It does not particularly trouble me either. Any genuine style, if it is of some distinct value and not simply more of the same old things repackaged in the latest fashion, will have its detractors as well as its adherents. The problem for the detractors is then to set up some consistent and coherent countervision of their own—be it ancient, modern, or post-modern—lest the revolutionary style of the 1980's become like Langdell's vision of a century before, so well established that it is everywhere used, everywhere respected, and everywhere the subject of much grumbling.

Perhaps I should be more concerned that the new modernist style will be so successful that I could find myself without a comfortable niche in the law school of the coming decades. Paradoxically, I think Professor Chase has more to worry about in an eventual "modernist" hegemony. If he is successful in getting what he seeks, he could someday see that his style has come so far and broadened its base so effectively as to welcome all, even someone like me, within the fold.[43]

I may be less ready than Professor Chase to welcome the "terror of the bizarre,"[44] but that reflects my personality, and not his. A concern that we must share, however, is that developments in legal education will not proceed along such clear lines of battle. Given the realities of present-day law school applications and economics, change will most likely come, if at all, in a piecemeal and undirected fashion. We may one day find ourselves together, teaching in a law school that looks familiar, but is now dressed in the latest fashions. There it will be, high on the hill but convenient to public transportation, graced with a post-modern version of the ionic colonnade at the entrance, an attractive atrium at its center as a nod to the city planners, wired throughout and ready to receive technologies not yet discovered and perhaps never needed, and capped with a Chippendale top. And *that* will be no style at all.

---

43. In reading about the "Revolution of 1891" the question has naturally come up for me—which side would I have been on, had I been there? The more I think about this question, the less sure I am about which way I would have come out. The choice is particularly difficult because it is not quite clear, at least in hindsight, exactly who the "revolutionaries" were.

44. Chase, *supra* note 6, at 542.