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Professor Ross Sandler has contributed a full review of *Fighting for the City* to this symposium issue.[1] This short comment is meant to supplement that review by emphasizing topics that are of particular interest to an historian of the American legal profession, and of American legal education in particular and New York City in general. It is also meant to draw some connections between *Fighting for the City* and two of Professor William Nelson's other works: *In Pursuit of Right and Justice*, his biography of Edward Weinfeld, a lawyer and judge of the District Court for the Southern District of New York, and *The Legalist Reformation*, a legal history of New York State in the twentieth century.

A. The Historical Background

1. The City

The story of New York City's role in the economic life of the nation and what that role meant for the task of governing the city is important to understanding Professor Nelson's telling of the history of the Corporation Counsel. Put simply, for a very long time, the city (or rather, politicians who wished to obtain and keep power) could spend its way to success. Political loyalty could literally be bought by providing the means for upward mobility through jobs and other economic advantages. Free spending was made possible by the city's near monopoly over commerce, especially trans-Atlantic commerce. Once the near monopoly began to collapse in the twentieth century, and the effects of that collapse were less and less meliorated by federal subsidies, an entire methodology of governance fell apart.[2]

Professor Nelson describes this methodology of government as "democratic," with an emphatically small "d."[3] Its first distinguishing characteristic was a closeness between government and the people. As practiced most effectively by Tammany Hall, it provided a way for young men to become part of government and to serve as bridges between government and the neighborhoods and ethnic groups from which they came. In the particular terms of the story told in *Fighting for the City*, the road to leadership ran through the Office of the Corporation Counsel, which provided government jobs for some of the young men who managed to obtain a legal education.

The second democratic feature of this method of government was the effect it had on upward social mobility. By providing jobs for men and occasionally women whose educational credentials were not gained at elite institutions, this version of democracy helped to increase the number of middle-class residents of the city and "brought entire new families into the mainstream—families that might have remained at the margins of American society if not for the opportunity that government service on the part of one of their members brought them."[4]

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1. Ross Sandler, *The History of the New York City Law Department: Fighting for the City by William E. Nelson*, 53 N.Y.L. SCH. L. REV. 541 (2009).

2. WILLIAM E. NELSON, FIGHTING FOR THE CITY: A HISTORY OF THE NEW YORK CITY CORPORATION COUNSEL x, xiii–xvii (2008).

3. *Id.* at xiv.

4. *Id.* at xv.

Finally, democracy slipped over the line into demagoguery. As Professor Nelson describes it, when the city's monopoly position began to erode after the First World War, the ability to govern by improving the economic position of the governed (whose votes were the necessary prerequisite to remaining in office) lessened dramatically and practitioners of Tammany democracy turned to providing less personalized benefits to their constituents. The city, through the Law Department, sued corporate interests, such as public utilities and the transportation companies, in an attempt to lower the prices at which these private enterprises sold their products and services to the people of the city.[5] Under the leadership of practitioners of this small-d democracy, the city also attempted to vindicate the cultural, religious, and ideological interests of the voters politicians needed to please. The Law Department found itself at the center of this effort.[6]

While the economic basis of this democratic style of government began to erode as early as the third decade of the twentieth century, the situation became a crisis with the near default of 1975.[7] The city has since recovered to a great degree (although as this comment is written the ongoing credit crisis may be ushering in a new period of economic difficulty). One of the most important arguments in *Fighting for the City* is that the revival was, at least in part, due to the abandonment under Mayor Ed Koch of the democratic model of government in favor of a business type model of governance. Under the business model of governance, the purpose of city government is to develop the city economically and to increase business activity, thus increasing wealth, and benefiting all of the city's residents, directly or indirectly. This transformation both influenced and was promoted by the Law Department. The great accomplishment of Allen Schwartz[8] and Mayor Koch was the creation of a Law Department devoted to representing the economic interests and development of the city. This meant that the direct benefits of democratic rule, which I think must have been limited in extent, were replaced by more indirect but perhaps more widespread benefits—to use a hackneyed phrase: a rising tide lifting all boats.

2. *The Legal Profession*

Fighting for the City is as much about the legal profession as it is about the city of New York. The time period covered by the book spans, more or less, the entire history of the legal profession in the United States, including the period before independence. The relationship between the legal profession and legal education is an important part of the story. During the period of democratic government, the essentials of legal education as we know them today came to maturity. Beginning with the transformation of Harvard Law School during the deanship of Christopher Columbus Langdell, American legal education became an increasingly academic

5. *Id.*

6. *See id.* at xvi.

7. *See id.* at iii–xvi.

8. Allen Schwartz was the Corporation Counsel under Mayor Koch from 1978–1981. *See id.* at 252–75 for a discussion of Schwartz's role as Corporation Counsel.

undertaking, dominated by schools within universities, with full-time faculty whose job description included research and publication as much as teaching.[9] Teaching was not necessarily tied to the rules of the system in which graduates would practice, but rather was designed to inculcate techniques of legal analysis and research so that these academically trained lawyers would then be able to learn the practicalities of practice under the guidance of experienced lawyers. The method of teaching was also new. The case method featured the reading of appellate opinions rather than treatises, and class discussion focused on understanding the reasoning of these opinions and the law applied, rather than on learning the principles gleaned from the cases and organized by the treatise writer. In an odd way, this new model of legal education was an extension of the oldest model of learning—apprenticeship. The period of learning by doing, however, was to be preceded by a period (eventually three years) of full-time academic work designed to give the neophyte an understanding of the law in a large sense before plunging into actual legal work.[10]

This model eventually prevailed, in part, because it helped reinforce lawyers' status as professionals—masters of a body of knowledge as worthy of intense and rigorous study as medicine or the natural sciences.[11] Such a demanding course of study necessarily demanded both adequate academic preparation (eventually defined to be an undergraduate degree) and a certain degree of social sophistication. These requirements, of course, could easily eliminate aspiring lawyers who did not have the opportunity to pursue a college education or whose social and economic background were judged unsuitable, at least by those who saw themselves as the guardians of professionalism (usually the faculty of these new university law schools and the leaders of the bar).

Most American lawyers were not trained in these new law schools until after the Second World War. If those lawyers were graduates of a law school at all, they were graduates of schools that did not demand a college degree as a prerequisite to admission, whose faculties often practiced law as much or more than they taught it, and whose classes were held in the evening so that students could earn a living during the day and study at night. Often these schools were not associated with a university and some were even proprietary institutions whose instructors shared in the profits of the enterprise. Whatever their legal status, however, these schools trained large numbers of men and some women who then passed the bar exam and became practicing lawyers. These were the sort of lawyers who played an important role in the democratic government that was practiced in New York City for so long.[12] The

9. WILLIAM P. LAPIANA, LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION 15–16 (1994).

10. *See id.* at 134–35.

11. *Id.* at 89–92.

12. The classic studies of American legal education in the period before the triumph of the case method are discussed in the works of Alfred Z. Reed. *See* Alfred Zantzinger Reed, *Training for the Public Profession of the Law* (Carnegie Found. for the Advancement of Teaching, Bulletin No. 15, 1921); Alfred Zantzinger Reed, *Present-Day Law Schools in the United States and Canada* (Carnegie Found. for the Advancement of Teaching, Bulletin No. 21, 1928).

private legal practice of law firms representing large business entities and wealthy individuals, however, tended to draw its new lawyers from the graduates of the new model schools.

By the time of the remaking of the Law Department under Mayor Koch and Allen Schwartz, American legal education had become much more homogenous. The Harvard-inspired new model had triumphed everywhere and legal academia was more like the rest of academia than it was like the practicing bar.[13] Yet the hierarchy of schools was more rigid than ever. What sets these selective schools apart is the level of qualifications of their entering classes—good grade point averages from equally selective colleges and universities and, even more prominently, high LSAT scores. It cannot be too much emphasized that the legal education offered in those schools, however, might not, and, frankly, probably does not differ much from the legal education offered by schools whose students have less impressive numerical qualifications.[14]

B. The Law Department in Government and the Legal Profession

1. Towards Modern Professionalism

The history of the Law Department as an entity through which lawyers provide legal services is intimately connected, of course, to the history of governing New York City. This is at the heart of Professor Nelson's book. While some of the details of this history of the Law Department's work are striking, they are not directly connected to the larger story.[15] The more important point is how the role of lawyers for the city changed over time. Through the Civil War, the Law Department was part and parcel of the politics of New York City. This produced a tension between the need for competent legal representation for the city and the demands of an often corrupt political system that could function only if legal supervision was weak. Everyone in the 1870s realized that a strong Corporation Counsel was needed to act "on behalf of the city as an entity" and "[t]he history of the past quarter century also had shown that a special relationship between the office and politics was essential for the office to possess the needed strength."[16] The Corporation Counsel needed "a

13. Elizabeth Chambliss, *Professional Responsibility: Lawyers, a Case Study*, 69 FORDHAM L. REV. 817, 832–36 (2000).

14. *See id. See generally* Randolph N. Jonakait, *The Two Hemispheres of Legal Education and the Rise and Fall of Local Law Schools*, 51 N.Y.L. SCH. L. REV. 863 (2007) (noting that, while students from local law schools primarily represent individuals and graduates from high-prestige law schools primarily represent corporations, both receive the same form of training).

15. The most interesting of these is the diversity of geographical origins among the personnel of the Law Department during the heyday of New York's economic dominance. Mississippi natives Archibald Watson and Lamar Hardy served as Corporation Counsels in the early twentieth century and Walter Sheppard, brother of a United States Senator from Texas worked in the department from 1906–1918. The willingness of members of out of town elites to give up their positions and come to New York to pursue success in their chosen profession is impressive evidence of the importance of the city in the economic life of the nation. *See* NELSON, *supra* note 2, at 105, 107, 111.

16. *Id.* at 62.

political base, either his own or the Mayor's . . . to impose law on recalcitrant officials, and to force them to act on behalf of the city rather than the political forces that had elected them."[17] It was a time of widespread corruption, however, with many hands grabbing for the wealth New York's dominant economic position produced. Those who grabbed the most, like Mayor Fernando Wood and Boss Tweed of Tammany Hall, "knew how to use democratic processes" to keep the office of the Corporation Counsel weak.

Change finally came with the ousting of the Tweed Ring in 1875. The reformers included William Whitney who was elected Corporation Counsel. He took office in August 1875 and served until 1882. The new Corporation Counsel had a plan to strengthen the office. Whitney cut the amount spent on hiring outside lawyers to handle the city's business in half and spent some of what was saved on increasing the pay of the members of his predecessor's staff that he asked to stay on. Whitney's new hires were indeed something new as well. Whitney hired young law school graduates and assigned them to work with more experienced attorneys. As Professor Nelson notes, "this staffing pattern seems simply natural to us," but it was not the norm in the 1870s.[18] It was a response to the growth of the modern law school, which certified its graduates' abilities rather than their knowledge of legal practice. It became the task of the employers of the new graduates to train them to provide the specific legal services that made up their employers' businesses.

Professor Nelson notes that we cannot know why Whitney managed hiring in this new way, but it is at least possible that he was deliberately trying to bureaucratize the Law Department.[19] Such a move would limit political influence over the Department and move it farther away from the democratic model, which looked on governmental hiring as method of rewarding political supporters. This explanation is further supported, I believe, by the actions Whitney took to centralize the bulk of the city's legal business in the Law Department—he required officials to seek legal advice and representation from the Department rather than from outside counsel.[20] Perhaps he believed that if he was to make a credible claim of being able to deal with most of the city's legal business, he needed not only a larger, but a well trained staff for whose skills he could vouch.

These, however, may not have been Whitney's reasons for hiring young law school graduates. Professor Nelson candidly acknowledges that Whitney may have undertaken a bold innovation simply because he could not afford to hire experienced attorneys.[21] However, if Whitney did have reasons beyond fiscal expediency (like the reasons explained above), he was truly prescient. The new model law school may have been very new in 1875—Langdell had become Dean of Harvard Law School only five years earlier—but it was tailor-made to help Whitney solve his difficulty.

17. *Id.*

18. *Id.* at 69.

19. *See id.* at 70.

20. *Id.* at 71.

21. *Id.* at 70.

First, it provided trained young lawyers who presumably knew enough to immediately begin learning how to do specific legal tasks. Second, it provided a way to select new hires on the basis of merit, or at least on a basis other than political connections. Presumably, these new employees would have their primary loyalty to the office itself and the office in turn would be staffed by professionals who owed their positions to their abilities and their skills rather than their connections.[22]

Whitney's model was followed when Fusionist reformers were in control during the first decades of new city of Greater New York.[23] When Tammany ran the show it "used the Law Department to provide upward socio-economic mobility to its brightest workers."[24] The difference did not necessarily result in poor legal work when Tammany was in control and a professional paradise when Fusion won elections. While the elite schools during Tammany's time admitted students "on lineage and wealth" rather than merit, "many of the young men whom Tammany brought into the Law Department possessed real talent and were fully capable of performing the city's legal work despite their lack of elite educational credentials."[25] The difference, of course, was in the role the Law Department played in the governance of the city.

The new role of the Law Department started by Whitney was finally and firmly established by Mayor Koch and his first Corporation Counsel, Allen Schwartz. One feature of this era was an increase in numbers hired from the most selective law schools.[26] It is extremely difficult to draw any sort of conclusions about the quality of work done in the Law Department by examining the educational qualifications of those hired, and Professor Nelson does not do so for this is not the importance of his discussion. What is important is what this change means for the modern Law

22. The "cheap hire" hypothesis may be the most likely explanation of Whitney's innovation for two reasons. First, as noted, the new model law school was new indeed. If these hires were graduates of Harvard Law School, then the suggestion that Whitney understood that his goals were well served by the new idea of legal education is more likely to be accurate. On the other hand, if Whitney hired locally, the matter is more complicated. The most prominent law school in New York City at the time, the law school of Columbia College (later University), was anything but an exemplar of the new legal education. In spite of its affiliation with the college, it was a proprietary institution (the compensation of Theodore Dwight, its head, was based on the fees collected), an undergraduate degree was not required for admission, nor was the case method used until the school was completely transformed on the Harvard model in 1891. In general, at least some of the legal elite of New York saw the school as a real liability because it provided an easy route to the bar for the socially undesirable, a group which almost certainly included the young men whose careers Tammany promoted. *See* LAPIANA, *supra* note 9, at 86–87, 92–99.

23. "Fusion" was the name given to a political alliance of dissident Democrats and Republicans brought together by their opposition to Tammany Hall. The city of Greater New York was born on January 1, 1898 through the unification of Manhattan with the four outer boroughs of Brooklyn, the Bronx, Queens, and Staten Island. NELSON, *supra* note 2, at 95.

24. *Id.* at 109.

25. *Id.* at 109–10.

26. Of those hired in the first three years of the Koch administration, 55% "were either graduates of top-ranked law schools or had served on the law reviews of other law schools . . . ." *Id.* at 262. In particular, 28% were "graduates of highly ranked law schools." *Id.* at 318. That number has somewhat fallen, but it has remained at about 20% since the beginning of the Giuliani administration. *Id.*

Department: hiring is not a matter of connections and political patronage but rather is based on merit as expressed in educational accomplishment—what it possibly meant for Whitney's Law Department.

There is an additional aspect of the change that is important as well. The world whose birth Whitney witnessed is now in full adulthood. The largest and richest law firms now hire graduates from the most selective schools. Emulating the hiring practices of these firms shows the degree to which the Law Department has been transformed from a government bureaucracy to a law firm serving clients (or rather, one diverse and extraordinarily busy client, the city of New York) and staffed by professionals rather than by political place holders.

There is yet another aspect of the transformation of the Law Department into the city's law firm that is probably even more important than hiring practices, but equally related to professionalism. In 1985, the entire staff was removed from the civil service system.[27] This change meant that hiring and firing were under the control of the managers of the Department, and their judgments about merit and performance would be the last word. And while there is always the chance that managers might make decisions on bases other than a relatively objective assessment of performance, most readers of *Fighting for the City* would probably agree that esprit de corps cannot be built and maintained in an organization where those who do not pull their weight are relatively immune from discipline.[28] And the informal discipline of expectations, praise, and shame is even more effective when the employee in question really depends on the job for his or her livelihood. It is therefore not surprising that one of Allen Schwartz's reforms was the prohibition on outside practice.[29]

In short, the modern Law Department resembles the large modern private law firm more than a government bureaucracy. In some ways then, the city's law work has been virtually privatized (although Professor Nelson does not use that term) and not only when one considers personnel. Another important aspect of the Schwartz/Koch transformation was the removal of the Law Department's offices from the Municipal Building to 100 Church Street where the Department's staff occupy facilities appropriate to a private law firm.[30]

2. *Government*

These changes in the Law Department truly fulfilled the promise of the change made by Whitney but rolled back by Tammany. As Professor Nelson notes several

27. *Id.* at 261–62. The Law Department had come under the civil service system during the tenure of E. Henry Lancombe, Corporation Counsel from 1882–1885. *Id.* at 74–78. This meant that hiring was from a list of persons ranked by their scores on a written examination and that, once hired, the employee could be dismissed only for cause and had a right of appeal to the Civil Service Commission. *Id.* at 262.

28. *See id.* at 257.

29. *Id.* at 268.

30. *Id.* at 257.

times, these changes altered the role of the Law Department in the governance of the city. It was no longer a mainstay of democratic government. Part of the change was the end of using the Law Department as an employment bureau for political supporters of the political machine. The other aspect of the change put an end to a more pervasive and, I think in Professor Nelson's view, a far more dangerous political use of the Law Department:

> [T]he new Tammany went far beyond [providing jobs]. Murphy and his supporters understood that there were not enough offices, contracts, and jobs to pay off ordinary voters; they had to give those voters something else. What they offered was city government's support for policies in the interest of those voters. Tammany and the attorneys it appointed to the Law Department fought for what its voters wanted—inexpensive urban services, the defense of Roman Catholic moral values, and the availability of innocent pleasures that met with the Church's approval.[31]

Some of these fights are easy to sympathize with. Many contemporary New Yorkers are no more sympathetic to Prohibition than their ancestors (literal or figurative). Today, however, the opposition is probably based on what Professor Nelson calls "cosmopolitanism"—a sophisticated rejection of antiquated, rural, and perhaps fundamentalist religious values.[32] Tammany "cared instead about the pedestrian pleasures of underclass voters, many of them loyal adherents of the Roman Catholic Church. The Church did not regard alcoholic beverages as sinful, and therefore, neither did Tammany."[33] The Law Department's role in this era, however, is much less easy to sympathize with when it led to the persecution of gay men or censorship of the theatre.[34]

This use of the Law Department continued in the administration of Fiorello LaGuardia, who "caved in to moral conservatives."[35] One example was the Mayor's refusal to allow Corporation Counsel William Chanler to appeal the decision of a New York supreme court justice ordering the Board of Education to rescind the appointment of Bertrand Russell as a visiting professor of philosophy at City College.[36] The opposition to Russell was directed at his views about sexuality, which were excoriated by religious leaders of the day.[37] Professor Nelson attributes LaGuardia's less-than-liberal approach to these often cultural questions as the Mayor's response to the loss of the city's monopoly position in the economy. LaGuardia was unable to satisfy demands for jobs and services, and caving in to moral conservatives was his only option to repay voters. He was, therefore, led by

31. *Id.* at 150.

32. *See id.* at 142–43.

33. *Id.* at 143.

34. *Id.* at 143–44.

35. *Id.* at 172.

36. *Id.* at 172–74.

37. *Id.* at 172.

circumstances he could not control and was required to maintain the "demagogic practices that his Tammany Hall predecessors had invented."[38]

Demagoguery persisted in the post-World War II period. In what has proved to be the most controversial portion of his work, Professor Nelson uses the anti-Communist campaign of the late 1940s and 1950s as the prime example. Professor Nelson's argument is essentially that the prosecution of teachers and others suspected of being Communists was driven by democratic politics. Just as Tammany pandered to the sensibilities of its electorate (sensibilities that, in some ways, were linked to their Catholicism), the post-war Law Department cooperated with a campaign that pleased the strongly anti-Communist position of the Roman Catholic Church.[39]

Professor Nelson's main point is not the influence of the Roman Catholic Church in New York City; rather, it is about the role of the Law Department, and more precisely, the answer to the question of who is the Law Department's client. According to Professor Nelson, the Law Department created by Allen Schwartz and Ed Koch took as its client the city rather than the mayor, and therefore went about its business advocating those positions that would advance the city's economic well being. When the mayor is the client, however, the Law Department may find itself advocating for results that promote the mayor's political agenda by pleasing various constituent groups—just as the Tammany, LaGuardia, and post-war Law Departments did.

Professor Nelson's concern about the mayor as client is that the democratic majority gives the mayor political power. The mayor as a client can therefore lead to the use of the Law Department to persecute minorities and minority view points. The last paragraphs of *Fighting for the City* sum it up quite well. Until the legal profession "develops a consensus" about "what it means to represent an entity rather than the individual who speaks for the entity and what duties a lawyer has to minority members of the entity," Corporation Counsels will have to depend on the support of "democratically accountable Mayors" to fulfill the promise of Allen Schwartz's reforms and "keep their office professionally pure, above politics, and free from the maelstrom of competing social visions of justice."[40]

C. Fighting for the City *and Nelson's View of the Legal History of New York*

It is clear throughout *Fighting for the City* that Professor Nelson is deeply sympathetic to the goals of Allen Schwartz's reforms, admires Schwartz greatly, and equally admires Ed Koch's support of Schwartz's vision. That sympathy and admiration is a theme throughout much of Professor Nelson's work, especially in his two books concerned with the legal history of New York: *In Pursuit of Right and*

38. *Id.* at 182.

39. *See id.* at 195–211.

40. *Id.* at 332.

Justice: Edward Weinfeld as Lawyer and Judge (2004) and *The Legalist Reformation: Law, Politics, and Ideology in New York, 1920–1980* (2001).[41]

All three works share the same methodology of writing history. They are firmly grounded in original sources: the archives of the Law Department, first-hand information from those who have worked and now work there, Judge Weinfeld's personal papers and judicial opinions as well as recollections of those who knew him, a truly prodigious number of opinions of the New York courts, and the published and unpublished decisions of the federal courts serving New York. These original sources are quoted extensively and many sentences bring together short quotes from different sources in an attempt to make the sources speak. All three works, of course, are far more than chronicles. As Professor Sandler rightly observes in his review of *Fighting for the City*, the book has theses and themes that create a coherent story out of a great deal of first-hand information.[42] The same is true of the other two works, and it is these theses and themes that help put Professor Nelson's latest work into the context of a career.

The biography is the story of a judge for whom Professor Nelson clerked and for whom it is clear that he has the highest regard. While the book is complex and nuanced, the most important aspect for present purposes is the detailed explanation and illustration of the Weinfeld's judicial style and judicial values. No summary can do justice to this detailed discussion, but the point of Professor Nelson's discussion is easy enough to describe. Judge Weinfeld's judicial style was an adaptation of his lawyering style—a painstaking appraisal of all the facts from which develops, not an argument for a client, but rather a just result. Weinfeld's opinions eschewed policy arguments. Instead, he always tied "fundamental legal principles" to "the context of the specific facts of the cases before him."[43] Those principles were those of a traditional liberal for whom "equal justice was not about the distribution of wealth and power, but about the behavior of government towards its citizens."[44] Because this vision required only that the judge adhere to the rule of law, "it never created a conflict with the imperative of fidelity to law that a judge with a vision of equality as distributional justice would face."[45] Judge Weinfeld, then, is in some ways the judicial analogue of a Law Department whose client is the city. For one, the polestar is equal justice. For the other, it is the prosperity of the client. And for neither is it the furthering of a cultural or even political vision.

Professor Nelson is completely candid about the limitations of Judge Weinfeld's style of judging. It "cannot produce transformative social change," it can only do

41. WILLIAM E. NELSON, IN PURSUIT OF RIGHT AND JUSTICE: EDWARD WEINFELD AS LAWYER AND JUDGE (2004) [hereinafter NELSON, PURSUIT]; WILLIAM E. NELSON, THE LEGALIST REFORMATION: LAW, POLITICS, AND IDEOLOGY IN NEW YORK 1920–1980 (2001) [hereinafter NELSON, REFORMATION].

42. Sandler, *supra* note 1.

43. NELSON, PURSUIT, *supra* note 41, at 139.

44. *Id.* at 171.

45. *Id.*

justice for the parties who appear before the judge.[46] "Judges who want to help the poor and weak as classes, rather than only the few poor and weak individuals who happen to appear before them," Professor Nelson explains, "need a jurisprudence other than Weinfeld's."[47] More importantly, the judge's method depended on faith in transcendent norms, a faith that a multicultural world makes impossible. In fact, "[m]ost scholars today doubt . . . whether any inherent moral order exists."[48] Such "jaded scholars" will call Weinfeld's approach to judging "quaint and out of vogue" because they believe that "adjudication in accordance with norms that transcend any one culture has become impossible."[49] In short, some see Judge Weinfeld's approach to his job to be totally outdated.

But Professor Nelson describes his subject as "the preeminent trial judge in twentieth-century America,"[50] and puts him forward as a model, not only for all trial judges, but also for judges in nations whose commitment to the rule of law is still new and who can accomplish great things by doing impartial justice to the parties who appear before them. Finally, for "sophisticated judges and scholars" who envision a less political model of American appellate judging, Weinfeld's judicial approach points the way to that end: "[w]hile Weinfeld's jurisprudence offers no model for the creation of utopia," Professor Nelson writes, "it constitutes an exemplary paradigm for fidelity to law, right, and justice."[51] It is the very opposite of law used for demagogic ends.

The theme of *The Legalist Reformation* is the progression of New York's decisional law—from a protection of property rights through a reform agenda of redistribution and protection for the poor and powerless, to an almost complete abandonment of the attempt to protect the weak and the poor or promote their upward social mobility to foster an ideal of equality.[52] The thesis is that the ideals of liberty and individual freedom that once were harnessed to promote equality "have been deployed at the end of the century to promote enterprise and wealth maximization, not to provide opportunity to those who otherwise lack it."[53]

The story of *Legalist Reformation*, therefore, is the story of the Law Department writ large, or at least statewide. The law has found its role in promoting not political ends, but rather economic development by setting people free to pursue their goals. The policies that drove this development have been of enormous worth.

> In short, most of the policy values that had underlain legalist reform in mid-twentieth-century New York—equality, human dignity, liberty, and enterprise

46. *Id.* at 225.

47. *Id.* at 225–26.

48. *Id.* at 226.

49. *Id.* at 227.

50. *Id.*

51. *Id.*

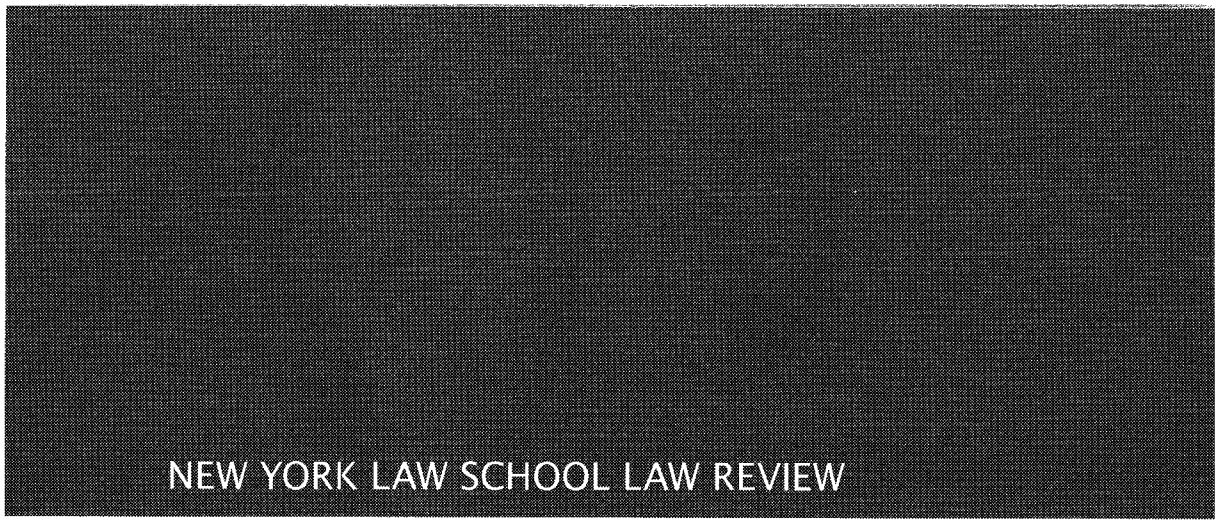
52. NELSON, REFORMATION, *supra* note 41, at 368.

53. *Id.*

> and efficiency—still remained in place at century's end, albeit in a different mix. The main difference was that such values are no longer deployed to promote progressive ends like opportunity for the downtrodden, assimilation into the mainstream, and redistribution of wealth. The legalist reformation still endured, however, to make life unimaginably better for the descendants of those who had created it than the creators themselves had ever dared to dream.[54]

The demagogic use of law is completely opposed to the policies that drove the legalist reformation and to the judicial philosophy of Judge Weinfeld. Trampling minorities to gain and keep political office, and of course the power that comes with it, is a betrayal of the work of two generations of the New York legal community, whose goal was to make New Yorkers free. It is also a betrayal of the work of one preeminent judge who made his courtroom a place of law and granted justice for the individuals who appeared before him. William E. Nelson has a vision of the end of law as vindication of the rights of individuals to live their lives in peace and prosperity. This vision was, in part, taught to him by Edward Weinfeld's example, and has been further strengthened by his truly magisterial study of the work of twentieth-century New York courts. Professor Nelson's ideals have been further confirmed by the vision and courage of Allen Schwartz and Ed Koch who fought so hard for their city and whose successors carry on that fight today.

54. *Id.*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