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# LAW SCHOOL RIGHTS: THE ESTABLISHMENT OF NEW YORK LAW SCHOOL, 1891-1897

JAMES A. WOOTEN\*

## I. BEGINNINGS

Early in March of 1891, Professor George Chase of Columbia College School of Law addressed a brief letter to his friend, Melvil Dewey, in which he announced his intention to found a law school.<sup>1</sup> This idea, he told Dewey, had taken shape in the wake of recent events at Columbia. Seth Low, the newly elected President of Columbia, perceived the law school as an impediment to his goal of turning the college into a university. Low's decision to impose a series of curricular reforms at the law school over the objections of its faculty had given rise to "a row of large dimensions."<sup>2</sup> Indeed, only two days before Chase wrote Dewey, Chase and his colleague, Robert Petty, had resigned in protest of Low's actions.<sup>3</sup> In the interim between his resignation and his letter to Dewey, Chase had been offered the deanship of the Law School of the University of the City of New York (NYU).<sup>4</sup> The actions of Low and the Columbia Trustees, however, had made him wary of another position with a university affiliation. "[A]fter late experiences," he told Dewey, "I havn't [sic] much fondness for boards of Trustees, who may control and interfere at their own sweet will, and if I could get a good law school established

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1. See Letter from George S. Chase, Professor, Columbia College School of Law, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Mar. 4, 1891) (Melvil Dewey Papers, Rare Book and Manuscript Library, Columbia University [hereinafter Dewey Papers]).

2. *Must the Law School Go*, N.Y. TIMES, Mar. 4, 1891, at 8.

3. See Minutes of the Trustees of Columbia University (Mar. 2, 1891) (Office of the Secretary, Low Memorial Library).

4. For part of the period covered in this article, the legal name of New York University was the University of the City of New York. The name was formally changed to New York University in July, 1896. THEODORE F. JONES, NEW YORK UNIVERSITY, 1832:1932, at 169 (Theodore F. Jones ed., 1933). The school will be referred to throughout this article as New York University or NYU.

where the faculty would have ample freedom and independence, I would like it."<sup>5</sup>

Through the spring and summer of 1891, Chase drummed up support for the venture. In June, he obtained a charter from the Regents of the University of the State of New York. Four months later, the law school he had envisioned, New York Law School, held its first classes. Its beginnings were auspicious. As *The Counsellor*, the school's student journal, observed in its inaugural issue, "like Minerva, [the school] spr[ang] into existence fully equipped."<sup>6</sup> Its enrollment of 345 students made it the third largest law school in the country.<sup>7</sup> Before the end of the first year of its existence, it surpassed Harvard to become the second largest.<sup>8</sup> "Napoleonicallly speaking," *The Counsellor* boasted, "the history of the New York Law School can be summed up in a single sentence: A year ago, a seemingly daring venture; to-day the largest law school, with one exception, in these United States."<sup>9</sup>

The school's growth more than kept pace with the rapid increase in law school enrollments of the 1890s. In its second year of operation, more than 500 students enrolled.<sup>10</sup> In another ten years, enrollment doubled making it the largest law school in the nation.<sup>11</sup> It would be a mistake to infer from its extraordinary growth, however, that the school's survival was guaranteed.

New York Law School came into being in an environment populated with individuals and organizations that considered its creation a threat to their own ideals and interests. George Chase and his allies spent a good deal of time during the school's early years defending it against the political maneuverings of these adversaries. The story of their struggle to establish the school is of particular historical interest because it illuminates a period of fundamental change in political, economic, and cultural institutions, both local and national. The 1890s, as many historians have recognized, constituted "a turning point" in United States history, when old institutional relationships were supplanted, even suppressed, by new ones.<sup>12</sup> In their own way, the efforts of Chase and the protagonists of

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5. Letter from George S. Chase to Melvil Dewey, *supra* note 1.

6. 1 COUNSELLOR 19, 19 (1891).

7. *Id.*

8. *The New York Law School and Its Faculty*, 1 COUNSELLOR 240, 241 (1892).

9. *Id.*

10. 2 UNIVERSITY OF THE STATE OF N.Y., 107TH ANNUAL REPORT OF THE REGENTS 742-43 (N.Y., 1894) [hereinafter REGENTS' 107TH REPORT].

11. ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 196 (1921).

12. See, e.g., MARTIN J. SKLAR, THE CORPORATE RECONSTRUCTION OF AMERICAN

New York Law School to secure the school's future were implicated in these changes. Perhaps for this reason, the school's story extends far beyond the bounds of most law school histories and resonates with a number of important cultural and social themes.<sup>13</sup>

## II. THE COLUMBIA COLLEGE SCHOOL OF LAW UNDER THEODORE DWIGHT

The immediate impetus for George Chase's efforts to establish a new school was Seth Low's imposition of reforms at Columbia Law School against the wishes of its faculty. The characteristics Chase desired to build into New York Law School had their origins not only in the recent turmoil at Columbia, but in the school's tradition of legal education as well. As Chase wrote when New York Law School opened, it was "established to perpetuate the system of legal instruction which was maintained at the law school of Columbia College for the thirty-three years, during which it was under the charge of Professor Theodore W. Dwight."<sup>14</sup> Any account of the establishment of New York Law School must begin with the school whose traditions informed Chase's aims.

Theodore Dwight had come to Columbia College in 1858, when its Trustees decided to establish a law school.<sup>15</sup> The undertaking must have seemed to the Trustees something of a venture into the unknown, for there had been only halting steps in the development of legal education in antebellum New York City. Chancellor Kent had lectured at Columbia in the 1790s, and again in the 1820s, but in each case abandoned lecturing after only a few years.<sup>16</sup> Although Kent remained nominally affiliated

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CAPITALISM, 1890-1916, at 21 n.16 (1988) (discussing the 1890s as a decade of decisive change). Discussions of the importance of the cultural and institutional changes of these years may be found in, among others, LAWRENCE GOODWYN, *THE POPULIST MOMENT* (1978); THOMAS L. HASKELL, *THE EMERGENCE OF PROFESSIONAL SOCIAL SCIENCE* (1977); JOHN HIGHAM, *The Reorientation of American Culture in the 1890s*, in *WRITING AMERICAN HISTORY* 73 (1970); RICHARD L. MCCORMICK, *Prelude to Progressivism: The Transformation of New York State Politics, 1890-1910*, in *THE PARTY PERIOD AND PUBLIC POLICY* 289 (1986); ROBERT H. WIEBE, *THE SEARCH FOR ORDER, 1877-1920* (1967); Thomas Bender, *The Erosion of Public Culture: Cities, Discourses, and Professional Disciplines*, in *THE AUTHORITY OF EXPERTS* 84 (Thomas L. Haskell ed., 1984).

13. See generally Alfred S. Konefsky & John H. Schlegel, *Mirror, Mirror on the Wall: Histories of American Law Schools*, 95 HARV. L. REV. 833 (1982) (discussing the importance of the history of the three-year, full-time graduate program of law in American law schools).

14. George S. Chase, *The New York Law School*, 1 COUNSELLOR 10, 10 (1891).

15. JULIUS GOEBEL, JR., ET AL., *A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY* 29 (1955).

16. *Id.* at 13-21.

with Columbia until his death in 1847, after 1826 "he did no teaching and received no emoluments from Columbia."<sup>17</sup> By the time Dwight arrived, "[t]he memory of Chancellor Kent, as a lecturer, had practically died away."<sup>18</sup> William Betts, a prominent New York lawyer, was appointed to Kent's chair after his death, but Betts's practice kept him too busy to do more than give intermittent lectures.<sup>19</sup> The only previous attempt to create a full-fledged law school in New York City, Benjamin Butler's in 1838 at New York University, attracted few students and was suspended after about one year of operation.<sup>20</sup> As Dwight observed, "in 1858, the City of New York was, so far as legal instruction is concerned, unbroken and virgin ground."<sup>21</sup>

However venturesome the creation of a law school may have seemed, the Columbia College School of Law was an immediate and resounding success. From an initial enrollment of thirty-five in 1858, it grew to 204 at the end of its first decade of existence.<sup>22</sup> By 1870, it was the leading law school in the country, "the very *West Point* of the Profession," according to one commentator.<sup>23</sup> The school retained its prominence through the 1870s<sup>24</sup> and when Dwight resigned in 1891, Columbia was the largest law school in the country.<sup>25</sup> It enrolled more than 600 of the roughly 1000 law students in the state, and was more than three times larger than the only other law school in the city, NYU.<sup>26</sup>

The principal reason for the success of the Columbia College School of Law was evident to everyone affiliated with it. "The school ha[d] thriven beyond the utmost [the Trustees] hoped," Columbia Trustee

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17. *Id.* at 20-21.

18. Theodore W. Dwight, *Columbia College Law School, New York*, 1 GREEN BAG 141, 144 (1889).

19. GOEBEL ET AL., *supra* note 15, at 25.

20. See Ronald L. Brown, *The Unfulfilled Aspirations of an Urban Law School in Jacksonian America*, in THE LAW SCHOOL PAPERS OF BENJAMIN F. BUTLER 3, 8-10 (Ronald L. Brown ed., 1987).

21. Dwight, *supra* note 18, at 144.

22. See *id.* at 151 (presenting enrollment figures for the school's first three decades).

23. ROBERT B. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 23 (1983) (quoting Benjamin Silliman).

24. *Id.*

25. Columbia was the largest law school in the United States in 1889-1890, when it had a two-year law course. See AMERICAN BAR ASS'N, REPORT OF THE 14TH ANNUAL MEETING at app. B, tbl. 1 (Philadelphia, Dando 1891). Its enrollment climbed from 456 for 1889-1890 to 623 in 1890-1891, when a third year was added to the course of study. See GOEBEL ET AL., *supra* note 15, at 447 n.84.

26. UNIVERSITY OF THE STATE OF N.Y., 105TH ANNUAL REPORT OF THE REGENTS 628, 632-33 (N.Y., 1893) [hereinafter REGENTS' 105TH REPORT].

George Templeton Strong wrote, "thanks to Dwight's admirable talent for teaching."<sup>27</sup> Theodore Dwight was by all accounts a phenomenal teacher who devoted himself wholly to the school. The remarks of Brander Matthews, a turn-of-the-century man of letters and Professor of Drama at Columbia who attended the law school in the early 1870s, are representative. Although Matthews was critical of a number of Dwight's educational policies, he wrote in his autobiography that "Professor Dwight was commonly called a great man. His greatness could be denied by nobody who had once sat at his feet."<sup>28</sup> "For his gift of clarity," Matthews continued,

no words of praise can be too high. Certainly I have never listened to any one whose skill in exposition even approached his. He was so clear, he made every successive step so acutely, that it was impossible not to follow him step by step, and to absorb day after day the fundamentals of the law.<sup>29</sup>

To his superior abilities as a teacher, Dwight added personal kindness and devotion to his students that many recalled warmly years later. Matthews "marvell[ed] . . . at his unfailing courtesy, at his constant kindness, and at the ever-present serenity of his demeanor."<sup>30</sup> Strong, who participated in the end-of-year oral examinations of Dwight's students during the school's early years, remarked on Dwight's "kind and patient" manner of dealing with his students and their devotion to him.<sup>31</sup> Without him, an alumnus observed, "the School would resemble Hamlet with the part of the Prince of Denmark omitted."<sup>32</sup>

In the thirty years of Dwight's management of Columbia College School of Law, a tradition comprised of a set of ideas about the proper method and function of legal education and the place of legal education in relation to the operation of the college was created. The most celebrated element of the school's heritage was the system of legal instruction that Dwight employed. Although Dwight's contemporaries and historians of legal education have called this system the "Dwight Method," Dwight's manner of teaching was, as Dwight himself observed, "substantially the

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27. 3 THE DIARY OF GEORGE TEMPLETON STRONG 269 (Allan Nevins & Milton H. Thomas eds., 1952) (entry dated Nov. 3, 1862) [hereinafter STRONG DIARY].

28. BRANDER MATTHEWS, THESE MANY YEARS 135 (1917).

29. *Id.* at 136.

30. *Id.* at 137.

31. STRONG DIARY, *supra* note 27, at 29 (entry dated May 26, 1860); 4 *id.* at 206 (entry dated May 9, 1868).

32. 4 *id.* at 207 (entry dated May 13, 1868) (quoting L. Bradford Prince).

same" as the recitation method of teaching that was employed in most college classrooms in nineteenth-century America.<sup>33</sup> Dwight, in fact, counted the familiarity of his method to the college graduates among his students as one of its advantages.<sup>34</sup>

The "central idea" of the Dwight method was that

[t]he student [was] assigned daily a certain portion of an approved text-book for his reading prior to listening to expositions of the subject involved. To make the assignment effective, he [was] asked questions upon the topic mainly to make it certain that he ha[d] studied the subject and ha[d] in a measure comprehended it, and [was] thus in a position to listen with advantage to expositions.<sup>35</sup>

Illustrations of the application of particular rules or principles "in familiar language" were provided.<sup>36</sup> New York Law School founder George Chase described the Dwight method in essentially the same terms several years later:

The practice in using the text-book is this: the instructor assigns each day to his class a certain number of pages of the text-book for careful study in preparation for the recitation of the next day. When the class meets again the next day for recitation, he questions them, one after another, in rapid succession, in regard to the rules of law which they have studied, receives their answers, finds out thus whether they have understood what they have read, and by a running comment of his own, which is intended to simplify and illustrate the subject under consideration, endeavors to make the legal rules and principles so clear and so well adapted to their comprehension, that they will bear away with them full, clear and definite knowledge.<sup>37</sup>

The second element of the Columbia legal tradition was Dwight's understanding of the purpose of legal education. Dwight conceived of legal education as a means to admission to the bar, a substitute for

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33. Dwight, *supra* note 18, at 146; see also DONALD H. MEYER, *THE INSTRUCTED CONSCIENCE* 133-35 (1972) (describing the recitation method of teaching used in the 1800s).

34. See Dwight, *supra* note 18, at 146-47.

35. *Id.* at 145.

36. *Id.*

37. George S. Chase, *The Three Systems of Legal Instruction: The "Dwight Method,"* 3 *LAW STUDENT'S HELPER* 63, 65 (1895).

apprenticeship. This conception reflected the fact that the Columbia College School of Law grew up in a period when most law students trained in the offices of practicing lawyers.<sup>38</sup> Dwight firmly believed that formal training in a law school was much superior to office training.<sup>39</sup> He also understood that law schools could not improve the quality of lawyers entering practice unless law students could be induced to attend them. For this reason, he introduced policies at Columbia that allowed as many students as possible to attend his law school.<sup>40</sup>

First, Columbia College School of Law maintained a non-exclusive admissions policy. The educational prerequisites for studying law in late nineteenth-century New York were relatively lax. Before 1882, one did not have to give any evidence of previous schooling in order to begin studying law.<sup>41</sup> From 1882 until 1890, only "a half year's work in a good high school, in addition to a common school education" was required to begin fulfilling the training requirement for bar admission.<sup>42</sup> Dwight kept the entrance requirements at his law school low—substantially lower than the entrance requirements at Columbia College, for example—because, if the law school's entrance requirements were substantially higher than the minimum educational requirements set by state law, students who otherwise would have attended Columbia would be forced into offices for training. Second, periods of instruction at Columbia were arranged to conform to the needs of students who worked.<sup>43</sup> This mitigated to some degree the fact that law school was a

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38. See STEVENS, *supra* note 23, at 26; Dwight, *supra* note 18, at 141.

39. GOEBEL ET AL., *supra* note 15, at 43.

40. See Dwight, *supra* note 18, at 157. For his first 20 years at Columbia, Dwight received a percentage of the tuition fees of the students at the school. Thus, another, and obviously not unhappy, consequence of policies encouraging large enrollments was that they benefited Dwight financially. By the 1862-1863 school year, Dwight was making more than \$6000 a year from student fees. See STRONG DIARY, *supra* note 27, at 269 (entry dated Nov. 3, 1862). This figure is reported to eventually have increased to somewhere in the neighborhood of \$25,000 a year, before Dwight agreed to a salary of \$15,000 a year in lieu of a percentage of fees. See Letter from Melvil Dewey, Secretary, Regents of the University of the State of N.Y., to St. Clair McKelway, Regent of the University of the State of N.Y. (Mar. 25, 1895) (St. Clair McKelway Papers, Rare Books and Manuscripts Division, New York Public Library [hereinafter McKelway Papers]).

41. Franklin M. Danaher, *Examinations in Law for Admission to the Bar in the State of New York*, 20 PROC. N.Y. ST. B. ASS'N 105, 119 (1897).

42. 1 REGENTS' 107TH REPORT, *supra* note 10, at r202; see also UNIVERSITY OF THE STATE OF N.Y., 102D ANNUAL REPORT OF THE REGENTS at xvi (N.Y., 1889) (discussing the court of appeals's adoption of the 1892 rules regarding law school admission requirements). The minimum requirement was raised in 1891 to the equivalent of "one and one fourth years of high school work." 1 REGENTS' 107TH REPORT, *supra* note 10, at r202.

43. See the general statement of law school policies published in UNIVERSITY OF THE



more expensive means of legal education than apprenticeship.<sup>44</sup> Third, the curriculum of Dwight's school was practice-oriented. The course of instruction concentrated on areas relevant to private practice, "the bread and butter studies,"<sup>45</sup> as Dwight once put it, at the expense of areas of law like international and constitutional law, and the developing field of political science.<sup>46</sup>

The final element of the Columbia tradition is expressed in George Chase's statement to Melvil Dewey that he wanted a school that would give its faculty "ample freedom and independence."<sup>47</sup> The great success of Columbia Law School, and the recognition by Dwight and the Trustees that the school's success was the result of Dwight's efforts, led to an arrangement in which the Trustees ceded virtually complete control over the school to Dwight. In return, Columbia College received a substantial portion of the revenues generated by the school. This "partnership," Brander Matthews noted, "was profitable to the college since there were many students and only one instructor."<sup>48</sup> It also made the law school almost completely independent of the college. As Columbia Dean Frederick Keppel later observed, "Professor Dwight's commanding prestige, and . . . certain formal resolutions of the Trustees, made him practically independent of the [college] President."<sup>49</sup> For many years, the connection between the college and the law school "was attested merely by the college seal, which it was the President's pleasing function to affix. At all other times it was Professor Dwight's school under his sole and entire control."<sup>50</sup> Although Dwight returned a number of administrative functions to the Trustees in 1878, and although the Trustees raised admissions requirements and hired additional faculty,<sup>51</sup> in 1891 the law school remained relatively independent of the college. "Prof. Dwight," the *New York Times* observed, "was still master of the school" when Low began his program of reforms.<sup>52</sup> The law school faculty continued to consider academic affairs to be their bailiwick.<sup>53</sup> Chase's

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STATE OF N.Y., 93D ANNUAL REPORT OF THE REGENTS 21-22 (N.Y., 1880).

44. The relative expenses of law school and apprenticeship are discussed in Dwight, *supra* note 18, at 157.

45. *Id.* at 158.

46. See GOEBEL ET AL., *supra* note 15, at 87-88, 126.

47. Letter from George S. Chase to Melvil Dewey, *supra* note 1.

48. MATTHEWS, *supra* note 28, at 134.

49. FREDERICK P. KEPPEL, COLUMBIA 20 (1914).

50. *Must the Law School Go*, *supra* note 2, at 8.

51. See GOEBEL ET AL., *supra* note 15, at 76-77, 82-83.

52. *Must the Law School Go*, *supra* note 2, at 8.

53. See GOEBEL ET AL., *supra* note 15, at 126.

comment about independence was thus as much a reference to this understanding of the proper place of legal education in the structure of higher education as it was a response to the particular events that led to the resignations of Dwight and his disciples in 1891.

These three characteristics of Columbia Law School under Dwight's tutelage—the use of the recitation method, inclusive educational policies adapted to the circumstances of students for whom apprenticeship was an educational option, and a commitment to the law school's independence in university affairs—constituted the core of the Columbia tradition of legal education. To Dwight and his disciples on the faculty, and to many of the alumni of the Columbia College School of Law, the school's success and the success of its graduates confirmed the validity and vitality of this tradition. Their commitment to these ideas provided the lens through which they perceived and evaluated the events that led to Dwight's resignation and the new Columbia Law School that came into being thereafter. Likewise, when Dwight's followers abandoned Columbia to organize a new law school, the Columbia tradition provided the blueprint for the institution they created.

### III. SETH LOW AND THE TRANSFORMATION OF COLUMBIA LAW SCHOOL

For most of Theodore Dwight's thirty-three year tenure at Columbia, he maintained peaceful, if not always amicable, relations with the President and Trustees. During the last years of the 1880s, however, events occurred that undermined Dwight's relationship with the Trustees. These were very unsettled years at Columbia.<sup>54</sup> Though it had been "a lazy little college" with little public presence in New York City for much of the nineteenth century, Frederick A.P. Barnard, the President of the college from 1862 to 1888, was a proponent of educational reform.<sup>55</sup> Through most of his tenure as President, the conservatism of Columbia's Trustees foreclosed the possibility of any important educational change at the college.<sup>56</sup> Barnard's commitment to reform, however, led him to draw around him a group of young scholars who were committed to turning Columbia into a modern university. Reform-oriented faculty members like John W. Burgess, who was instrumental in founding the School of Political Science, and Nicholas M. Butler cultivated important allies among the Trustees.<sup>57</sup> When Barnard's declining health forced his

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54. See KEPPEL, *supra* note 49, at 28-29.

55. MATTHEWS, *supra* note 28, at 395.

56. LAURENCE R. VEYSEY, *THE EMERGENCE OF THE AMERICAN UNIVERSITY* 99 (1965).

57. See JOHN W. BURGESS, *REMINISCENCES OF AN AMERICAN SCHOLAR* 224-25

resignation in 1888, the Columbia faculty split into two hostile camps: conservatives, who wished to maintain the traditional college organization, and reformers, who "favored some sort of university development."<sup>58</sup> The election in 1889 of Seth Low—a businessman, former Mayor of Brooklyn, and progressively inclined Trustee—as Barnard's successor was a clear statement by the Trustees that the reform faction had triumphed.<sup>59</sup>

Dwight sided with the reformers during the period of infighting that preceded Low's election.<sup>60</sup> Less than two years after the new President took office, however, Dwight and most of the law faculty resigned in protest of Low's actions at the law school. The source of the conflict between Low and Dwight was Low's program for reforming legal education at Columbia. The reforms produced conflict because, as Low put it, there were "wide differences of opinion which prevailed as to the future policy of the law school."<sup>61</sup> Low and Dwight had conflicting ideas about the proper methods and purpose of legal education. Indeed, Low and his supporters among the Trustees and faculty held views that were incompatible with each of the three elements of the Columbia tradition discussed above.<sup>62</sup> Because the conflict surrounding their ideas informed public debate about legal education for the remainder of the 1890s, it is worth discussing in some detail.

First, in contrast to Dwight's conception of his law school as an independent unit, the reform faction led by Low conceived of the "university" as an organic entity made up of interconnected departments that influenced and complemented one another. In professional schools, wrote Nicholas M. Butler, there was "a constant clamor for strictly utilitarian work" that resulted in the production of professionals who were too narrow in their training and outlook.<sup>63</sup> To combat this, Butler argued, it was necessary for professional schools to be "broad in scope and liberal in spirit."<sup>64</sup> According to Low and Butler, a more thorough integration

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(1934); 1 NICHOLAS M. BUTLER, *ACROSS THE BUSY YEARS* 96-98 (1939).

58. BUTLER, *supra* note 57, at 137; *see also* BURGESS, *supra* note 57, at 231-34 (recounting the growing faction favoring a university that Burgess and his colleagues supported).

59. *See* KEPPEL, *supra* note 49, at 28-31. *See generally* GERALD KURLAND, *SETH LOW: THE REFORMER IN AN URBAN AND INDUSTRIAL AGE* 50-62 (1971) (discussing Low's tenure as President of Columbia).

60. *See* BURGESS, *supra* note 57, at 232; KEPPEL, *supra* note 49, at 29-30.

61. COLUMBIA COLLEGE, *ANNUAL REPORT OF PRESIDENT LOW TO THE TRUSTEES* 17 (N.Y., 1891).

62. *See supra* notes 33-53 and accompanying text.

63. Nicholas M. Butler, *On Permitting Students to Take Studies in Professional School While Pursuing a Regular Undergraduate Course*, 3 EDUC. REV. 54, 56 (1892).

64. *Id.*

of the law school into the university would broaden legal education. "The student who lives in an atmosphere of literature, art, science, and philosophy," Butler asserted, "can hardly pursue his professional course in an unthinking and routine way."<sup>65</sup> For this reason, Low argued that professional schools ought to be "integral parts of the university" rather than "schools independent of the college and of each other."<sup>66</sup> Integration required, however, that the professional schools give up their curricular and administrative autonomy. From this university-oriented perspective, Dwight had too much control. "[T]he initiative as to many points which properly belonged with the [college] President," Low wrote, "ha[d] been with the warden [Dwight] from the formation of the school."<sup>67</sup>

Low and the other reformers also rejected Dwight's notion that the proper way to improve the legal profession was to make law school training as accessible as possible. While Dwight thought of legal education as a means of training practitioners, Low defined it in scholarly and academic terms. He perceived a sharp distinction between the law degree as "a symbol of scholarship" and "what may be called the popular claim as to the right to practice law."<sup>68</sup> Columbia's "duty" was not to make legal education available to all who wished to practice law, but to provide "the best possible education in law," even if doing so made law school training less accessible.<sup>69</sup> Fulfilling this duty required raising admissions standards to ensure that students were prepared for the more stringent educational regimen of the university law school. Professional schools should "teach law and medicine scientifically to students equipped by previous training for such work," argued Nicholas M. Butler's *Educational Review*.<sup>70</sup> This conception of legal education also involved intensified instruction. Students spent more hours in class each week, with the result that the hours of instruction no longer accommodated students who had jobs.<sup>71</sup> This increase in the indirect or opportunity costs of a Columbia legal education produced a "very great falling off in the

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65. *Id.*

66. Seth Low, *Higher Education in the United States*, 5 EDUC. REV. 1, 13-14 (1893).

67. COLUMBIA COLLEGE, *supra* note 61, at 17.

68. Letter from Seth Low, President, Columbia College, to Hon. George W. Curtis, Chancellor, Regents of the University of the State of N.Y. (Apr. 11, 1892) (on file with the Columbia University Archives, Low Memorial Library).

69. COLUMBIA COLLEGE, *supra* note 61, at 19.

70. *Editorial*, 2 EDUC. REV. 77, 77 (1891). In 1891, the *Educational Review* was edited by Nicholas M. Butler, who founded the journal in 1890. See BUTLER, *supra* note 57, at 202-03.

71. See COLUMBIA COLLEGE, THIRD ANNUAL REPORT OF PRESIDENT LOW TO THE TRUSTEES 29 (N.Y., 1892).

attendance upon the Law School," Low wrote, but was necessary because it was implemented "with the twofold purpose of making the Law School an integral part of the university, unembarrassed by the thralldom of subservience to officework, and of making the law students look upon their work in the school as the chief business of their lives for the time being."<sup>72</sup>

Finally, although Low denied that he intended to bring about "any radical change in the system of instruction" that Dwight had employed,<sup>73</sup> even before he assumed his duties as President, he implemented a plan to bring William A. Keener to Columbia. Keener was the Story Professor of Law at Harvard and a "leading apostle" of the case method of instruction.<sup>74</sup> The "case method," of course, had been introduced at Harvard by Christopher Columbus Langdell two decades earlier.<sup>75</sup> In spite of withering criticism from contemporary legal writers and practitioners,<sup>76</sup> it survived there. For reasons that still are not clear, in the 1880s other schools of law began to import the case method and to hire Harvard-trained law Professors.<sup>77</sup>

Although the recitation and case methods resembled each other in certain respects, they differed in their notions about the materials that ought to form the cornerstone of legal education.<sup>78</sup> According to Langdell and his disciples like Keener, law students ought to be educated through the study of reported decisions. Students educated according to the case

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72. *Id.* On the importance of indirect costs in the development of medical education, see PAUL STARR, *THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE* 118 (1982).

73. COLUMBIA COLLEGE, *supra* note 61, at 18.

74. See GOEBEL ET AL., *supra* note 15, at 118-19; Clarence D. Ashley, *The Training of the Lawyer and Its Relation to General Education*, 37 J. SOC. SCI. 229, 236 (1900).

75. See STEVENS, *supra* note 23, at 52-55; ARTHUR E. SUTHERLAND, *THE LAW AT HARVARD* 174-75 (1967).

76. Criticisms of the case method are discussed in STEVENS, *supra* note 23, at 57-60. A particularly interesting criticism appears in James Schouler, *Cases Without Treatises*, 23 AM. L. REV. 1 (1889).

77. See John H. Schlegel, *Between the Harvard Founders and the American Legal Realists: The Professionalization of the American Law Professor*, 35 J. LEGAL EDUC. 311, 314-19 (1985); John H. Schlegel, *Langdell's Legacy or, the Case of the Empty Envelope*, 36 STAN. L. REV. 1517, 1520-22 (1984).

78. In contrast to the lecture method of teaching, in which students transcribed information dictated by their instructors, proponents of the Dwight and case methods emphasized oral colloquy between instructor and student as a central part of the education process. The similarities and differences of the case and Dwight methods are discussed by Christopher Tiedeman, Professor of Law at New York University and proponent of the lecture method, in Edward J. Phelps et al., *Methods of Legal Education*, 1 YALE L. J. 139, 150, 152 (1892) (a multi-part article with separately authored sections by Edward J. Phelps, William A. Keener, Christopher G. Tiedeman, and J.C. Gray).

method were questioned by their instructors on assigned readings from "casebooks" in which reported decisions relating to specific substantive areas of law were collected. Keener argued that the case method was superior to other methods because it was "inductive" and, therefore, scientific.<sup>79</sup> Scientists, Keener observed, acquired knowledge by examining primary data rather than by reading what other people said about the things they wished to learn about.<sup>80</sup> Students of science, he continued, studied specimens—original data—and research reports written by scientists about such specimens.<sup>81</sup> With regard to the science of law, the case method most closely corresponded to the scientific manner of teaching.<sup>82</sup> "The facts of the case," asserted Keener, "correspond to the specimen, and the opinion of the court, announcing the principles of law to be applied to the facts, correspond to the memoir of the discoverer of great scientific truths."<sup>83</sup>

Rather than casebooks, Dwight used textbooks and treatises that contained systematic expositions of the legal principles relating to different substantive areas of law. These, Keener insisted, were secondary derivations. "[T]he cases are the original sources," he stressed, "and he who consults the textbooks, as a substitute for the cases, gets his information at second hand."<sup>84</sup> Keener argued that the "textbook" method, as he called Dwight's system of instruction, gave students abstract rules that it did not teach them to apply. "[T]he student who takes up a text-book immediately finds the results of another's labor, and receives that other's conclusions without participating with him in the process which has enabled him to produce the result."<sup>85</sup> For this reason, the textbook method did not "train the intellect" of the student to apply legal rules.<sup>86</sup> Dwight's students, Keener concluded, did not learn to think like lawyers.<sup>87</sup>

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79. See William A. Keener, *The Inductive Method in Legal Education*, 28 AM. L. REV. 709, 713 (1894).

80. See *id.* at 712.

81. See *id.* at 713.

82. *Id.* at 710.

83. *Id.* at 713.

84. *Id.* at 712.

85. William A. Keener, *The Inductive Method in Legal Education*, 3 LAW STUDENT'S HELPER 201, 202 (1895).

86. *Id.* at 201.

87. See *id.* Robert Stevens notes the importance of this point in STEVENS, *supra* note 23, at 55-56; see also GOEBEL ET AL., *supra* note 15, at 154-55 (discussing Keener's determination to give as much intellectual stimulation as possible to the men of superior ability).

Keener's disdain for Dwight's method of teaching, and Low and Dwight's conflicting ideas about legal education in general ensured that Low's program for reforming the law school would not meet with Dwight's approval. In 1890, Low began restructuring the law school's curriculum and teaching schedule to add instruction from faculty in the Graduate School of Political Science. Keener was appointed to the law school faculty in March of that year, and began teaching the following fall.<sup>88</sup> After Keener arrived, Low regularly consulted with him and with Political Science Professor John W. Burgess, rather than Dwight.<sup>89</sup> Tensions developed as it became clear that Low preferred "[Keener's] style of teaching to the style associated with Columbia's traditions."<sup>90</sup> Low's "supposed project . . . came to be known as 'Harvardizing' the Law School."<sup>91</sup> Although the initial reforms were instituted relatively cautiously, early in 1891 Low communicated to Dwight his determination to institute more thoroughgoing reforms. Dwight protested and, late in January, announced his retirement.<sup>92</sup> Professors George Chase and Robert Petty announced their resignations in early March, when they realized that Low's reforms amounted to a rejection of the Dwight legacy.<sup>93</sup>

#### IV. CREATING NEW YORK LAW SCHOOL

Plans for a law school to perpetuate Dwight's legacy were in the works within a few days of Chase and Petty's resignations. George Chase took the most active role in bringing together the resources and support that would be necessary to accomplish this end.<sup>94</sup> Securing faculty was straightforward. The new school's faculty included Chase, Petty, and Alfred Reeves, another former member of the Columbia faculty.<sup>95</sup> Dwight's former students organized and provided support.<sup>96</sup> Many Columbia alumni felt that their teacher had been ill-treated by the Trustees. In the spring of 1891, they founded the "Dwight Alumni

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88. See GOEBEL ET AL., *supra* note 15, at 118-19, 142, 435 n.205, 440 n.238.

89. *Id.* at 125, 130.

90. *Must the Law School Go*, *supra* note 2, at 8.

91. *Id.*

92. See GOEBEL ET AL., *supra* note 15, at 114, 121.

93. See *Must the Law School Go*, *supra* note 2, at 8.

94. See *To Start a New Law School*, N.Y. TIMES, June 2, 1891, at 4.

95. See NEW YORK LAW SCHOOL, CATALOGUE FOR THE YEAR 1891-1892, at 4, 25-26 (N.Y., 1891) [hereinafter NYLS 1891-1892 CATALOGUE].

96. See GOEBEL ET AL., *supra* note 15, at 446 n.82; *The Dwight Alumni Association*, 1 COUNSELLOR 243, 243 (1892).

Association." Among its objects were "secur[ing] the perpetuation and promot[ing] the extension of the method of legal instruction pursued by Professor Theodore W. Dwight under which method the members . . . ha[d] been trained."<sup>97</sup> By early June, Chase "had secured the requisite financial backing."<sup>98</sup> In addition to enthusiasm, a faculty, and money, however, a charter was necessary to start a law school. Institutions of higher education could not operate without formal recognition from the Board of Regents of the University of the State of New York or the state legislature. Chase's questions about obtaining a charter prompted him to write Melvil Dewey.

Dewey was an important figure in educational circles in 1890s New York. A well-known library reformer and the inventor of the Dewey Decimal System, he had been Chase's colleague at Columbia. In 1888, Dewey resigned as Columbia's librarian to take a position in Albany as State Librarian of New York and Secretary to the Regents of the University of the State of New York.<sup>99</sup> Dewey was a zealous administrator and reformer, and had done much to revitalize the University in his brief tenure as Secretary to the Regents.<sup>100</sup> He promised to be an important ally in Chase's efforts.

Notwithstanding its name, the University of the State of New York did not give instruction. It was essentially an administrative agency that chartered and oversaw some of New York's high schools and its institutions of post-secondary and professional education. As a contemporary observer stated, the University resembled "a State bureau of higher education, with powers of supervision over private and local institutions, and also with some powers of direct administration."<sup>101</sup> It was overseen by a Board of Regents, made up of nineteen members appointed for life by the state legislature.<sup>102</sup> The Regents were empowered to grant charters to colleges and high schools.<sup>103</sup> These

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97. *The Dwight Alumni Association*, *supra* note 96, at 244.

98. *To Start a New Law School*, *supra* note 94, at 4.

99. RAY TRAUTMAN, *A HISTORY OF THE SCHOOL OF LIBRARY SERVICE, COLUMBIA UNIVERSITY* 20 (1954).

100. Dewey's tenure as Regents' Secretary is discussed in FRANK C. ABBOTT, *GOVERNMENT POLICY AND HIGHER EDUCATION* 59-83 (1958).

101. John A. Fairlie, *The Centralization of Administration in New York State*, in 9 *STUDIES IN HISTORY ECONOMICS AND PUBLIC LAW* 411, 471 (N.Y., Columbia University 1898).

102. *See id.* at 470; Sidney Sherwood, *University of the State of New York: Origin, History, and Present Organization*, in *THE UNIVERSITY OF THE STATE OF NEW YORK: HISTORY OF HIGHER EDUCATION IN THE STATE OF NEW YORK* 31, 42-43 (Herbert B. Adams ed., 1900).

103. The powers of the Regents are briefly set out in Sherwood, *supra* note 102, at



charters, as well as charters granted by the state legislature, generally reserved a right of visitation and oversight by the Regents. In practice, these regulatory powers were quite limited. Although the Regents retained some control over academies and high schools, colleges traditionally had enjoyed "almost complete" independence.<sup>104</sup> "The immediate management of each institution [was] left to its own board of Trustees or other local officers . . . ."<sup>105</sup>

The statute that authorized the Regents to grant charters placed certain restrictions on their exercise of this power. "[B]esides provision for suitable buildings, furniture and apparatus," institutions granted a so-called "absolute charter" had to have "an endowment of not less than one hundred thousand dollars for a college of arts and not less than fifty thousand dollars for a medical college, and for any other institution for higher education means for its proper maintenance."<sup>106</sup> George Chase's problem was that he could not raise a sufficient endowment to secure an absolute charter. In such circumstances, however, the Regents could grant a "provisional charter."<sup>107</sup> With the aid of St. Clair McKelway, a lawyer, journalist, editor of the Brooklyn *Daily Eagle*, and member of the Board of Regents, Chase secured a provisional charter.<sup>108</sup>

The provisional charter granted to New York Law School did not allow it to grant degrees on its own authority. Instead, it created an arrangement in which the Regents examined students from the law school.<sup>109</sup> If the students passed the Regents' examinations, they would receive their LL.B. degrees from the University of the State of New York. Because the Regents granted the degrees, they retained control over much of the structure and content of New York Law School's course of study. Thus, in addition to conducting final examinations, the Regents also determined New York Law School's entrance requirements and the content of its curriculum.<sup>110</sup>

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104. Fairlie, *supra* note 101, at 470.

105. *Id.*

106. Regents of the University of the State of N.Y. Act of 1889, ch. 529, § 21, 3 Rev. Stat. N.Y. 2567, 2570 (Birdseye 1890).

107. *See id.* § 22, 3 Rev. Stat. at 2570.

108. *See* St. Clair McKelway, Address to Graduates of the New York Law School (June 5, 1894) (transcript in the McKelway Papers, *supra* note 40); Minutes of the Regents of the University of the State of N.Y. 65 (June 11, 1891).

109. *See* NEW YORK LAW SCHOOL, SPECIAL ANNOUNCEMENT 1 (N.Y., 1898) (on file with the Yale Law Library).

110. *See* REGENTS' 105TH REPORT, *supra* note 26, at r70.

Although the Regents' direct control over the school's affairs would become a sore spot in the future, the acquisition of a charter meant that New York Law School was prepared to open. When it did, its organization reflected the intent of its founders to "mak[e] it what the old Columbia Law School was."<sup>111</sup> First and foremost, the Dwight method of teaching was adopted. Second, as at Dwight's Columbia, efforts were made to accommodate the needs of students whose financial situation required them to work while they attended law school. Lectures were given in the afternoons.<sup>112</sup> The school was located downtown, "in the midst of the lawyers' offices, . . . a short distance from the State courts and the Federal courts and from the public offices of the City and County."<sup>113</sup> Tuition was set at \$100,<sup>114</sup> substantially below the \$150 that the Columbia Trustees forced Dwight to charge after 1884.<sup>115</sup> A two-year law school course, similar to the one at Columbia for most of Dwight's tenure, was adopted instead of the three-year course that Columbia instituted in 1890.<sup>116</sup> Finally, in accordance with George Chase's desire to safeguard faculty autonomy, the school was independent. It had no university affiliation.

The Dwight legacy turned out to be an important asset for the school. It guaranteed New York Law School what a historian of Columbia called the "goodwill" of the old Columbia Law School.<sup>117</sup> "The prospect for the new institution," the *New York Times* reported after the October 1st reception marking the school's opening, "was brighter than the most sanguine had hoped for."<sup>118</sup> The initial enrollment exceeded 340 students—larger, *The Counsellor* noted, than Columbia's enrollment.<sup>119</sup> In fact, almost half of these students had formerly attended Columbia Law School.<sup>120</sup> New York Law School "start[ed] out from the very day of its

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111. *New-York Law School Opened*, N.Y. TIMES, Oct. 2, 1891, at 9.

112. See NYLS 1891-1892 CATALOGUE, *supra* note 95, at 11. A contingency was made, however, for an 11:00 a.m. session if the size of the class made it desirable. See *id.*

113. *Id.* at 12; see also *To Start a New Law School*, *supra* note 94, at 4 (discussing the convenient location of the school in relation to City Hall and the majority of the law offices in the city).

114. See NYLS 1891-1892 CATALOGUE, *supra* note 95, at 13.

115. See GOEBEL ET AL., *supra* note 15, at 95-96.

116. See NYLS 1891-1892 CATALOGUE, *supra* note 95, at 10; see also *supra* note 25.

117. See Munroe Smith, *The University and the Non-Professional Graduate Schools*, in *A HISTORY OF COLUMBIA UNIVERSITY, 1754-1904*, at 199, 244-45 (1904).

118. *New-York Law School Opened*, *supra* note 111, at 9.

119. 1 COUNSELLOR 19, 20 (1891).

120. In October 1891, the *New York Times* reported that New York Law School had

beginning with such large numbers and with such earnestness and zeal on the part of its students," wrote George Chase, "that its success [was] no longer problematical but permanently assured."<sup>121</sup>

The opening of New York Law School, along with the opening of Metropolis Law School, another independent school that held a provisional charter from the University, did not please officials at the university affiliated law schools in New York City. For purely economic reasons, Columbia and NYU were bound to be threatened by the two new schools, because the new schools would adversely affect their enrollments. Although the number of young men and, for the first time, women in the city who wished to study law was growing, two new schools meant two new competitors.<sup>122</sup> NYU law school's enrollment fell off slightly when New York Law School and Metropolis Law School commenced operation, then began a steady rise. One can only assume that in their absence, NYU would have grown much more rapidly.<sup>123</sup> At Columbia, the impact of increased competition added to the effects of Low's reorganization and the defection of many of its students to New York Law School. Columbia's enrollments fell off drastically in 1891.<sup>124</sup>

A second concern, directed as much at the Regents and Dewey as at the schools, resulted from the fact that the new schools would be competing for more than students. Oversight of New York Law School and Metropolis Law School required the Regents to establish standards for

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343 students, 160 of whom had formerly attended Columbia Law School. *New-York Law School*, N.Y. TIMES, Oct. 25, 1891, at 11.

121. Chase, *supra* note 14, at 12-13.

122. The number of students attending law schools in New York City grew from about 600 in 1889 to more than 1800 in 1899. See UNIVERSITY OF THE STATE OF N.Y., 3D ANNUAL REPORT OF THE COLLEGE DEPARTMENT 402, 405 (1901); 2 UNIVERSITY OF THE STATE OF N.Y., 104TH ANNUAL REPORT OF THE REGENTS 1616, 1626 (N.Y., 1892) [hereinafter REGENTS' 104TH REPORT]. In 1890, NYU became the first law school in New York City to admit women. See JONES, *supra* note 4, at 272.

123. In 1888, NYU enrolled 66 first-year law students. See UNIVERSITY OF THE STATE OF N.Y., 103D ANNUAL REPORT OF THE REGENTS 454, 458 (N.Y., 1890). That number climbed to 108 by 1890. See REGENTS' 105TH REPORT, *supra* note 26, at 628, 631. When New York Law School and Metropolis Law School opened in 1891, enrollment at NYU fell to 107, see UNIVERSITY OF THE STATE OF N.Y., 106TH ANNUAL REPORT OF THE REGENTS 676, 679 (N.Y., 1893) [hereinafter REGENTS' 106TH REPORT], then to 98 in 1892, see 2 REGENTS' 107TH REPORT, *supra* note 10, at 742, 745. In 1893, NYU's enrollments began to climb again. See 2 UNIVERSITY OF THE STATE OF N.Y., 108TH ANNUAL REPORT OF THE REGENTS 1164, 1167 (N.Y., 1895) [hereinafter REGENTS' 108TH REPORT].

124. Columbia's enrollment fell from 625 in 1890-1891 to 318 in 1891-1892. See REGENTS' 106TH REPORT, *supra* note 123, at 676, 681; REGENTS' 105TH REPORT, *supra* note 26, at 628, 632.

the LL.B. degree given by the schools. Educators at other institutions believed that these requirements would establish standards by which their own criteria would be judged. This was not really a threat to Columbia, because Seth Low's plans included raising entrance requirements.<sup>125</sup> NYU's case, however, was different. Its admissions requirements were much less stringent than Columbia's.<sup>126</sup> This led the school's Chancellor, Henry M. MacCracken, to worry, probably disingenuously with regard to Columbia, that if the Regents were "more strict than others with the degrees, then people will perhaps have a great deal of unpleasant criticism to make of Columbia and of the University of the City of New York."<sup>127</sup> MacCracken argued that the Regents should stay out of the degree-granting business altogether. "I have very serious doubts," he contended, "as to whether there will not be a great deal of friction created in this state of New York if our rulers, the University Regents, proceed with the conferment of degrees on examination in any line of study or instruction whatever."<sup>128</sup> MacCracken's opposition to the University's role in legal education provoked a sharp reply from George Chase. "[T]he opposition of Dr. McCracken [sic] and others to the granting of degrees by the Regents," Chase told Dewey, "ought not to have a feather's weight, coming from the source it does."<sup>129</sup> The animosity that manifested itself in 1891 was only the first instance of what became an enduring hostility between NYU and New York Law School.

Finally, the "wide differences of opinion" that precipitated the faculty resignations at Columbia<sup>130</sup> did not suddenly disappear with the exit of one set of disputants. In the wake of the "unseemly amount of personal feeling and bitter discussion" produced by the conflict,<sup>131</sup> some made an effort to put the ideological disagreement that had generated the dispute behind them. In 1892, the *Columbia Law Times*, the school's student law journal, wrote that although the case system had been adopted at Columbia, "[m]uch [could] be said in favor of both the former text-book plan and the one now employed, and we do not propose to enter into any

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125. See GOEBEL ET AL., *supra* note 15, at 124, 156-57.

126. In 1891, for instance, NYU Law School had no minimum educational requirement for admission. See THE UNIVERSITY OF THE CITY OF NEW YORK, CATALOGUE AND ANNOUNCEMENTS: 1891-1892, at 171 (N.Y., n.d.).

127. REGENTS' 105TH REPORT, *supra* note 26, at 468.

128. *Id.* at 467.

129. Letter from George S. Chase, Dean, New York Law School, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Nov. 9, 1891) (Dewey Papers, *supra* note 1).

130. COLUMBIA COLLEGE, *supra* note 61, at 17.

131. *The Law School Controversy*, N.Y. TIMES, June 7, 1891, at 4.

controversy or constitute ourselves arbiters of this much mooted question."<sup>132</sup> "[T]he difference between the systems," according to the student editor, was "more a difference in name than in practice."<sup>133</sup> In the same vein, New York Law School's student law journal recommended that everyone

give up this wrangling and questioning of this and that "method" and realize that our position is in no way antagonistic to the other law schools of the country, but that our ways are parallel although not the same, perhaps rather we should say convergent and tending to the same goal, the maintenance of the legal profession.<sup>134</sup>

It quickly became clear, however, that the philosophies of the two schools were not convergent.<sup>135</sup> The founding of New York Law School merely shifted the arena and stakes of the dispute. The controversy ceased to be a private matter because the conflicting visions of what constituted a proper legal education became the basis of a public competition with potentially important consequences for the viability of both schools. Only a few days after it was reported that Chase intended to found a school along the lines of the old Columbia, the *New York Times* published an editorial lauding the case method as "a university method" and deriding the Dwight method as "an elementary school method."<sup>136</sup> The normally reticent Theodore Dwight was moved to respond, to correct "one or two of the most glaring and conspicuous" errors.<sup>137</sup>

Even before the *New York Times* editorial appeared, the *Harvard Law Review* had published its own editorial on *The Increasing Influence of the Langdell Case System of Instruction*.<sup>138</sup> "In yet another instance," the editors declared, "the aim to prepare students on narrow lines of work merely for actual law practice is condemned as inadequate and the departure taken by Professor Langdell is acknowledged to be in the interest of legal scholarship in its highest sense."<sup>139</sup> A few months later, when the *Harvard Law Review* published an editorial note that unfavorably

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132. Editorial, 6 COLUM. L. TIMES 22, 22 (1892).

133. *Id.*

134. 2 COUNSELLOR 29, 30 (1892).

135. See GOEBEL ET AL., *supra* note 15, at 152-55.

136. *The Law School Controversy*, *supra* note 131, at 4.

137. *The Columbia Law School*, N.Y. TIMES, June 9, 1891, at 4.

138. *The Increasing Influence of the Langdell Case System of Instruction*, 5 HARV. L. REV. 89 (1891).

139. *Id.* at 90.

compared New York Law School to Columbia,<sup>140</sup> George Chase responded immediately, drafting an article that addressed a paragraph to each sentence critical of his law school and its methods. He sent copies to *The Counsellor*, the *Central Law Journal*, and the *American Law Review*.<sup>141</sup> In this manner, a pattern began that continued for several years as the proponents of the "case" and "Dwight" methods of legal education engaged in a battle of pamphlets and articles.<sup>142</sup>

Although the participants in the dispute focused on the comparative benefits of the Dwight and case methods, there was more at issue than systems of instruction. As the debate developed, Columbia adopted Harvard's *hauteur* with regard to New York Law School and the other law schools in New York City. According to the *Columbia Law Times*, Seth Low's reforms "bar[red] out that large class of men who desire a legal education by the royal road of a short cut. Columbia offer[ed] no attractions to students who look[ed] to prepare for the bar in two years, crowding two years of office work into the two years of instruction in a law school."<sup>143</sup> Columbia's stringent requirements limited the school to "but a comparatively small number of students."<sup>144</sup> These reduced enrollments were not a sign of failure, however, but of indifference to the downward leveling impulse of pecuniary considerations. "University" law schools aspired to higher things. "For a university to content itself with being a mere adjunct to the state examination," wrote an editorialist in Nicholas M. Butler's *Educational Review*, "is to forfeit all claim to public respect and confidence. . . . It is their function to teach law and medicine scientifically to students equipped by previous training for such work."<sup>145</sup> The case system of instruction, asserted the *Columbia Law Times*, "was a most forcible and important recognition of the fact that law [was] something more than a business, that it [was] a science of the

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140. See *The Columbia and New York Law Schools*, 5 HARV. L. REV. 146 (1891).

141. See 1 COUNSELLOR 82 (1891); *Jetsam and Flotsam*, 34 CENT. L. J. 238 (1892); *The New York Law School and the Harvard Law Review*, 26 AM. L. REV. 155 (1892). The *Central Law Journal* and the *American Law Review* were two of the most widely read non-university law reviews at this time.

142. See, for instance, the pamphlet, GEORGE S. CHASE, NEW YORK LAW SCHOOL: "DWIGHT METHOD" OF INSTRUCTION, COMPARED WITH THE "CASE METHOD" (n.p., 1893). For articles, see Chase, *supra* note 37; George S. Chase, *The "Dwight Method" of Legal Instruction*, 1 CORNELL L.J. 74 (1894); Keener, *supra* note 85; Keener, *supra* note 81; Thomas F. Taylor, *The "Dwight Method,"* 7 HARV. L. REV. 203 (1893); see also GOEBEL ET AL., *supra* note 15, at 447 n.86 (citing and discussing Keener and Chase's arguments regarding the case method versus the "Dwight Method").

143. Editorial, 6 COLUM. L. TIMES 15, 16 (1892).

144. Editorial, 6 COLUM. L. TIMES 195, 195 (1893).

145. Editorial, 2 EDUC. REV. 77, 77 (1891).

highest order, and one which in its treatment requires the application of the most intelligent scientific methods."<sup>146</sup>

The resonances of this rhetoric of "science," "research," and "scholarship" were more than methodological.<sup>147</sup> Columbia, like Harvard, had ascended to a higher plane socially as well as scientifically. It now catered to a better class of students. To protests that the new regime "discriminated against poor but worthy students," Low responded that Columbia would not "level[] down her work to the demands of those who can give to [law school] but a portion of their time."<sup>148</sup> As a result, observed the *Albany Law Journal*, "[t]he old school [Columbia] probably keeps the wealthy leisure class, while the new [New York Law School and Metropolis Law School] attract the poor busy young men who can only attend at night and down-town."<sup>149</sup>

The *Journal* took a sanguine view of this state of affairs. "There [was] room for both kinds of schools" because "these city schools of law, furnishing regular instruction to busy law clerks, out of office hours, supply a want which the regular scientific law schools like those of Harvard, Yale and the new Columbia school, cannot and do not pretend to reach."<sup>150</sup> At least some Columbians, however, interpreted the development of exclusive and non-exclusive law schools differently. They branded the "city schools of law" threats to academic values and to the

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146. *Editorial*, 6 COLUM. L. TIMES 171, 171 (1893).

147. The resonances of Columbia's rhetoric will be familiar to readers of Thomas Bender's *New York Intellect*, Lawrence Levine's *Highbrow/Lowbrow*, and Paul DiMaggio's articles on the institution of the high culture pattern in the arts. See THOMAS BENDER, *NEW YORK INTELLECT* (1987); LAWRENCE W. LEVINE, *HIGHBROW/LOWBROW* (1988); Paul J. DiMaggio, *Cultural Entrepreneurship in Nineteenth-Century Boston*, in *NONPROFIT ENTERPRISE IN THE ARTS* 41 (Paul J. DiMaggio ed., 1986). As Paul DiMaggio has shown, the nonprofit organizational form was the vehicle used to create exclusive cultural institutions. See *id.* at 43. In the case of Columbia Law School, the "Harvardization" of the school, and the emphasis on exclusivity that came with it, coincided with an insistence on the importance of the school's nonprofit status and its dependence on endowment income as well as student fees. See JAMES A. WOOTEN, *THE EMERGENCE OF NONPROFIT LEGAL EDUCATION IN NEW YORK: A CASE STUDY OF THE ECONOMIC THEORY OF NONPROFIT ORGANIZATIONS* 31-34 (Program on Non-Profit Organizations, Yale University, Working Paper No. 154, 1990).

148. COLUMBIA COLLEGE, *supra* note 61, at 19.

149. *Current Topics*, 44 ALB. L.J. 389, 389 (1891).

150. *Current Topics*, 43 ALB. L.J. 489, 490 (1891). It is worth noting that although Harvard and the new Columbia Law School were both case method schools, Yale was not. Yale followed a method that was similar in most respects to the old Columbia method. This suggests that "scientific," at least as understood by the editors of the *Albany Law Journal*, had less to do with epistemology than with a school's pretensions to do more than teach practitioners.

legal profession.<sup>151</sup> "The university teaching of law and medicine," wrote an editorialist in the *Educational Review*, "is not for the purpose of manufacturing as many practitioners as possible, but to furnish to the country scholarly and well-trained physicians and lawyers."<sup>152</sup> "Proprietary schools, run for revenue only, and the lack of a strong, intelligent public sentiment as to what amount of general education should be demanded of lawyers, physicians and ministers," Nicholas M. Butler argued, "have combined to make it possible for illiteracy and a professional degree or license to go hand in hand."<sup>153</sup> In the case of New York Law School, the attacks sometimes amounted to little more than personal vilification of its principals. In a eulogy of Theodore Dwight published in the *Educational Review* in 1892, an anonymous writer praised Dwight's teaching but denied that there was a "Dwight method" of teaching.<sup>154</sup> "He himself was a method of teaching. His power was personal, and cannot be bequeathed or imparted to others."<sup>155</sup> "The attempt to make the public believe that there is a 'Dwight method' of teaching law, or anything else," the writer continued, "is a hollow mockery. It is an unworthy attempt to derive pecuniary profit from a great name and reputation."<sup>156</sup>

The hostile rhetoric of its competitors and critics did not prevent New York Law School from attracting students. Although the school could not offer its students "classic seclusion or academic shades,"<sup>157</sup> *The Counsellor* and the editor of the *Albany Law Journal* agreed that it met an important need.<sup>158</sup> It gave law students what *The Counsellor* called "an unpleasantly close view of the real business and work of life without the softening influences of a university atmosphere."<sup>159</sup> Yet, as the post-graduate course that was instituted in 1892 showed, New York Law School was "not merely a 'practical' school," but "an institution of legal learning where the great problems of the law [we]re elucidated, and whose courses g[a]ve [it] a place among the foremost schools in the country."<sup>160</sup> According to *The Counsellor*, the mix of academic training and practical experience, like the student body composed in roughly equal

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151. *Id.*

152. *Editorial*, *supra* note 145, at 77.

153. Butler, *supra* note 63, at 56.

154. *Editorial*, 4 EDUC. REV. 205, 206 (1892).

155. *Id.*

156. *Id.*

157. 2 COUNSELLOR 243, 243 (1893).

158. *See id.*; *Current Topics*, *supra* note 149.

159. 2 COUNSELLOR 29, 29 (1892).

160. *Id.* at 31.



numbers of college graduates and "young men who ha[d] spent several years in law offices or in business," happily blended "the theoretical and the practical."<sup>161</sup> The school proved that "it [was] perfectly practicable for men to combine work in practising law offices with their legal studies and nevertheless to acquire far more than a mere superficial knowledge of the elements of law."<sup>162</sup> When the 1892 school year began, New York Law School's enrollment increased by fifty percent, to slightly more than 500.<sup>163</sup> As *The Counsellor* observed, the school stood "second—or possibly first—in point of numbers in the list of the law schools."<sup>164</sup> It could "no longer be called an experiment."<sup>165</sup>

#### V. CONFLICT BETWEEN THE REGENTS AND NEW YORK LAW SCHOOL

As George Chase soon learned, *The Counsellor's* belief that New York Law School was firmly established was premature. Although the hostile propaganda of its adversaries did not diminish the school's attractiveness to students, the arguments of critics like Seth Low and Nicholas M. Butler found sympathetic ears among the Regents' staff. There was irony in the fact that Chase had left Columbia only to place himself under the control of administrators who threatened to become as overbearing as he believed the Columbia Trustees had been. The irony must have seemed particularly bitter when it began to appear that the Columbia officials Chase had resigned to escape might be the source of his problems with the Regents.

Although Columbia and NYU remained hostile to their two new competitors, they quickly adapted themselves to the Regents' expanded role in legal education and became supporters of Melvil Dewey's efforts to reform legal education. There were several reasons for this change of heart. One factor in the case of Columbia was Dewey's friendships with Seth Low and Nicholas M. Butler. From 1883 to 1888, Dewey had served as librarian at Columbia.<sup>166</sup> He was, in fact, one of the progressive young educators that Frederick Barnard recruited to Columbia during his tenure as President. Dewey allied himself while on the faculty with the reform forces led by John W. Burgess and Nicholas M. Butler.<sup>167</sup> He

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161. *Id.* at 32-33.

162. *Id.* at 30.

163. See 2 REGENTS' 107TH REPORT, *supra* note 10, at 742-43.

164. 2 COUNSELLOR 29, 32 (1892).

165. *Id.* at 30.

166. See TRAUTMAN, *supra* note 99, at 3, 20.

167. See BURGESS, *supra* note 57, at 218-19; BUTLER, *supra* note 57, at 94-95. *But*

left Columbia a firm believer in the ideals of the younger faculty members who were Seth Low's allies. More important, however, he had become a close associate of Butler and Low. According to his biographer, Dewey made it a personal project to convince Low "to giv [sic] his enthusiasm to education insted [sic] of to politics."<sup>168</sup> "At the time Seth Low was Mayor of Brooklyn," he writes, "Melvil Dewey and he frequently took long walks together" during which Dewey would encourage Low to seek the presidency of the school.<sup>169</sup> Dewey was even closer to Butler, who remained a close friend until Dewey's death in 1931.<sup>170</sup> Dewey actively corresponded with each of them after he left Columbia and took "almost a proprietary interest in the marvelous development of Columbia in the eleven years of Seth Low (1890-1901) and the thirty-one years of Butler."<sup>171</sup> Dewey's relationships with Low and Butler ensured that the educational program Dewey charted for the Regents would not deviate from what his Columbia friends conceived to be the Regents' proper role.

A second factor that contributed to NYU and Columbia's accomodation to the Regents' new role in legal education was the complicated relationship among the Regents' powers over New York Law School and Metropolis Law School, the educational standards adopted by the other law schools in the state, and the requirements for admission to the bar. The New York Court of Appeals had been empowered to establish the requirements for bar admission since 1871.<sup>172</sup> In 1890, the rules promulgated by the court established three basic conditions for bar admission: (1) a preliminary educational requirement, (2) a three-year period of training, and (3) a passing grade on a bar examination.<sup>173</sup> These rules had considerable effect on the educational standards adopted by law schools in New York. For instance, the court required three years of training for lawyers but gave college graduates one year of credit for their four years in college.<sup>174</sup> Thus, college graduates could take the bar

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cf. FREMONT RIDER, MELVIL DEWEY 55 (1944) (discussing "Dewey's insistence that women be admitted into library work" against the Columbia Trustees' beliefs).

168. GEORGE G. DAWE, MELVIL DEWEY: SEER:INSPIRER:DOER, 1851-1931, at 186 (1932). Among Dewey's many enthusiasms was spelling reform. As the quoted passage shows, Dewey's biographer, George G. Dawe, also was a convert to the cause.

169. *Id.*

170. *See id.* at 11, 99.

171. *Id.* at 99; *see also id.* at 186 (discussing the development of Dewey and Low's relationship).

172. *See REED, supra* note 11, at 72.

173. *See* Attorneys and Counsellors at Law Act of 1886, ch. 425, § 2, 1 Rev. Stat. N.Y. 148, 149 (Birdseye 1889); *see also* 1 REGENTS' 104TH REPORT, *supra* note 122, at 183 (discussing the court of appeals's rules).

174. *See* 1 REGENTS' 104TH REPORT, *supra* note 122, at 183.

exam and go into practice after only two years of law school. Many exercised this option. "A man who is a B.A.," NYU Professor Isaac Russell observed in 1893, "will apply for admission to the bar at the first opportunity that the law allows, which is a trifle within two years after his graduation [from college]."<sup>175</sup> The tendency of college graduates to enter practice after two years discouraged law schools from lengthening their courses to three years.

Similarly, the preliminary educational requirements set by the court—that is, the minimum educational attainment required of any person before he or she could commence the study of law in a school or an office—established the parameters of the competition between office training and law school training as means of access to the bar. If, for example, every law school in the state adopted entrance requirements that were higher than the minimum educational standard set by the court, then students who could not meet these entrance requirements but could meet the legal minimum would train in offices rather than in law schools. Or, if one law school raised its entrance requirements above the court of appeals's standard but other schools did not, the school that raised its standards would lose students, either to other law schools with lower admissions requirements or to office training.

In the context of the regulatory framework governing admission to the bar, the Regents' relationship with New York Law School and Metropolis Law School took on great importance. The relationship between these two law schools and the Regents was different from the Regents' relationship with every other law school in New York. The other law schools granted their degrees under the auspices of endowed colleges or universities, the charters of which authorized them to grant law degrees.<sup>176</sup> The Regents exercised no direct authority over the operations of such schools.<sup>177</sup> For this reason, when the Regents issued a general declaration in 1892 that no student could obtain a law degree unless he or she had completed high school, the only schools that actually were affected by this pronouncement were New York Law School and Metropolis Law School. The only power the Regents had over the other schools was persuasion.

Melvil Dewey, in fact, believed that the threat of embarrassment would force the other law schools in New York to conform their standards

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175. 1 REGENTS' 107TH REPORT, *supra* note 10, at 457, 459.

176. In 1891, these schools and their affiliations were (1) NYU Law School with New York University, (2) Columbia Law School with Columbia College, (3) Albany Law School with Union University, (4) Cornell Law School with Cornell University, and (5) Buffalo Law School with the University of Buffalo. *See* REGENTS' 106TH REPORT, *supra* note 123, at 676-77.

177. *See A Right of Charter*, N.Y. COM. ADVERTISER, Feb. 20, 1897, at 3; Fairlie, *supra* note 101, at 470-71.

to the standards that the Regents set for New York Law School and Metropolis Law School. What reputable institution, he asked in 1893, "[could] afford or [would] be willing to stand as a sort of educational Botany Bay where students may be received who can not be admitted elsewhere?"<sup>178</sup> Dewey hoped that the Regents' supervision of New York Law School and Metropolis Law School could serve as a lever for raising the standards of legal education at every law school in the state. He failed to appreciate the possibility, however, that it could be economically advantageous for a school not to raise its standards, since not raising its standards would bring it some of the students that could no longer gain admission to schools that did raise their standards. Thus, notwithstanding Dewey's confidence that no school would be willing to become a "Botany Bay," the effect of the Regents' imposition of higher standards was to give recalcitrant schools a competitive advantage over New York Law School and Metropolis Law School. For when a law school raised its standards, its enrollment invariably fell and some of its students were lost to schools with lower standards. Of course, the fact that the higher entrance standards promulgated by the Regents adversely affected the enrollments of New York Law School and Metropolis Law School gave the university-affiliated schools all the reason they needed to push the Regents to raise those standards. The university schools could be allies of the Regents, seeming improvers of professional education, and antagonists of New York Law School and Metropolis Law School at the same time.

This state of affairs became disturbingly obvious to George Chase and Abner Thomas, the Dean of Metropolis Law School, in February of 1892, when the Regents suddenly announced an increase in the minimum educational requirement from the equivalent of a little more than a year of high school (which was the level required by the court of appeals for the commencement of law study) to roughly the equivalent of a high school diploma.<sup>179</sup> In March, Thomas asked Chase if he approved of the proposed change.<sup>180</sup> Thomas then discussed the problem with George William Curtis, the Chancellor of the University, and St. Clair McKelway, and prepared a statement of his concerns.<sup>181</sup> In June, Chase

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178. 1 REGENTS' 107TH REPORT, *supra* note 10, at r225. The concerns voiced by NYU Chancellor MacCracken about the Regents' role in the operation of New York Law School and Metropolis Law School show that there was something to Dewey's ideas. See *supra* text accompanying notes 127-28.

179. Although this increase is not mentioned in the minutes of the Regents' meeting on Feb. 11, 1892, other sources state that this was when it was passed. See REGENTS' 106TH REPORT, *supra* note 123, at r102-04.

180. See Letter from Abner C. Thomas, Dean, Metropolis Law School, to George S. Chase, Dean, New York Law School (Mar. 21, 1892) (Metropolis Law School Papers, New York University Archives [hereinafter Metropolis Papers]).

181. See Letter from Hon. George W. Curtis, Chancellor, Regents of the University

and Thomas lobbied the Regents for an exemption for students who had "prepared in good faith to enter in the fall of '92," because "the resolution raising the preliminary requirements . . . would be practically retroactive if enforced on this class."<sup>182</sup> The Regents granted an exemption that postponed the implementation of the new requirements until 1893.<sup>183</sup>

Subsequent events must have reminded Chase of his experience at Columbia. By the spring of 1893, a plan to increase the preliminary educational requirement to a B.A. was being considered in Dewey's office. Chase clearly was bothered about it and explained the adverse consequences of implementing such a standard to Dewey.

I think you make a mistake in pushing the standard to so high a pitch for the following reasons: (1) *It drives students into the offices to get their legal education, or into law-schools which maintain a low standard.* (2) Of students who do come to the schools with a high standard, most come as "special students," not as candidates for a degree. I have never found it possible to get the same satisfactory work out of special students as out of candidates for a degree.<sup>184</sup>

The competition of NYU Law School was probably a major concern that motivated Chase's letter. When the Regents raised the entrance requirement at New York Law School and Metropolis Law School to a high school diploma in 1893, Columbia followed suit and raised its standards as well.<sup>185</sup> NYU did not. Notwithstanding the entrance requirements stated in its catalogue, NYU "practically admitted students without preliminary requirements" as late as 1897.<sup>186</sup> In so doing, it

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of the State of N.Y., to Seth Low, President, Columbia College (Apr. 9, 1892) (Correspondence Files, Columbia University Archives, Low Library); Letter from Abner C. Thomas, Dean, Metropolis Law School, to St. Clair McKelway, Regent of the University of the State of N.Y. (Mar. 29, 1892) (Metropolis Papers, *supra* note 180).

182. REGENTS' 106TH REPORT, *supra* note 123, at r104.

183. *See id.*

184. Letter from George S. Chase, Dean, New York Law School, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Apr. 12, 1893) (Dewey Papers, *supra* note 1). "Special students" were "not candidates for a degree" and were admitted without having to meet the entrance standards applicable to degree candidates. *See* NEW YORK LAW SCHOOL, CATALOGUE FOR THE YEAR 1893-1894, at 9 (N.Y., 1894).

185. *See* GOEBEL ET AL., *supra* note 15, at 156.

186. Letter from Clarence D. Ashley, Dean, New York University School of Law, to Henry M. MacCracken, Chancellor, New York University (Mar. 17, 1898) (Records of the Chancellor: Henry M. MacCracken, New York University Archives). In 1894-1895, NYU gave students who were not college or high school graduates the option of either

undoubtedly enrolled students who could not gain entrance to the other schools in the city. When the rule requiring a high school education took effect in 1893, for example, the number of students registered in the first-year class of New York Law School's LL.B. course declined dramatically while the number of its students classified as "special" students jumped from 104 to 158.<sup>187</sup> NYU's first-year enrollment, on the other hand, rose slightly after having fallen the previous year.<sup>188</sup> Chase's recognition of this situation made him apprehensive about the Regents' control over his school. "We simply pray to be 'let alone' for a few years," he told Dewey in 1893, because "the change of requirements already made is a serious enough one."<sup>189</sup>

In sum, a close look at the institutional context of 1890s legal education in New York reveals that the founding of New York Law School could not settle the conflict between adherents to the old and new Columbia theories of legal education. The Regents' control over New York Law School merely shifted the dispute to the regulatory body that framed educational policy. If the Regents accepted the Dwight theory that a law degree was primarily aimed at training people to practice law, then it made no sense for the University to raise the entrance standards of the schools it controlled. Doing so would only "drive[] students into the offices to get their legal education, or into law-schools which maintain[ed] a low standard."<sup>190</sup> On the other hand, if the Regents adopted Seth Low's ideas and conceived of legal education in scholarly and academic terms, then they would conclude, as Melvil Dewey did in 1893, that "the degree of LL.B. convey[ed] an impression that a man not only [was] allowed by law to practise but that he ha[d] some special training in law

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proving that they had fulfilled the court of appeals's requirement, which was roughly equivalent to three years of high school, or taking NYU's own admissions examination. See NEW YORK UNIVERSITY, UNIVERSITY LAW SCHOOL: CATALOGUE FOR 1893-1894, at 194-95 (N.Y., n.d.) Ashley's letter to MacCracken suggests that NYU's entrance examination was administered leniently. See Letter from Clarence D. Ashley to Henry M. MacCracken, *supra*.

187. See 2 REGENTS' 108TH REPORT, *supra* note 123, at 1164, 1167-68; 2 REGENTS' 107TH REPORT, *supra* note 10, at 742, 746. Thus, the enforcement of the new entrance requirements shifted students from New York Law School's degree program, to which the requirements applied, to its non-degree "special student" program, to which they did not. Note that in Chase's letter to Dewey, Chase states his opinion that special students were not as diligent as students working toward a degree. See *supra* text accompanying note 184.

188. See 2 REGENTS' 108TH REPORT, *supra* note 123, at 1167; 2 REGENTS' 107TH REPORT, *supra* note 10, at 742, 745.

189. Letter from George S. Chase to Melvil Dewey, *supra* note 184.

190. *Id.*

and general education that entitle[d] him to a university degree."<sup>191</sup> The implication of this view, illustrated by Columbia's course of action, was that more exclusive entrance standards that "increase[d] respect for the degree" ought to be adopted.<sup>192</sup> The relocation of this contest to the Board of Regents, and Melvil Dewey's endorsement of the views of Low and Butler, boded ill for the future of relations between New York Law School and the Regents.

## VI. A BRIEF PERIOD OF PEACE

As things turned out, George Chase was granted his wish to be "let alone" for a few years.<sup>193</sup> After advancing several proposals for raising law school entrance standards in 1892 and 1893, the Regents'—that is, Melvil Dewey's—interest shifted to topics that were less threatening to New York Law School. The spring of 1894 found Dewey organizing an effort to induce the court of appeals to raise the minimum educational requirement for admission to the bar.<sup>194</sup> Unlike the entrance requirements set by the Regents, the court's rules governing the prerequisites for bar admission applied to all law students, whether they studied in law offices or schools. For this reason, raising this requirement was a reform that the Columbia and New York Law School faculties could agree on, in spite of their conflicting theories of legal education. With the backing of the Regents and every law school in the state, the Court of Appeals revised the rules in October, 1894, in accordance with Dewey's recommendations.<sup>195</sup> After January 1, 1895, applicants for admission to the bar would be required to complete "[t]hree years of satisfactory high school work or its equivalent."<sup>196</sup>

191. 1 REGENTS' 107TH REPORT, *supra* note 10, at 455-56.

192. Letter from Seth Low to Hon. George W. Curtis, *supra* note 68.

193. Letter from George S. Chase to Melvil Dewey, *supra* note 184.

194. See Letter from Clarence D. Ashley, Secretary, Metropolis Law School, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Mar. 12, 1894) (Dewey Papers, *supra* note 1) (approving Dewey's proposed revision to the court's rules); Letter from George S. Chase, Dean, New York Law School, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Mar. 7, 1894) (Dewey Papers, *supra* note 1) (responding to Dewey's letter regarding the proposed revision); Letter from E. Corning Townsend, Attorney, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Mar. 7, 1894) (Dewey Papers, *supra* note 1) (approving Dewey's proposed revision).

195. See UNIVERSITY OF THE STATE OF N.Y., 110TH ANNUAL REPORT OF THE REGENTS 438-40 (N.Y., 1897) [hereinafter REGENTS' 110TH REPORT].

196. UNIVERSITY OF THE STATE OF N.Y., 1ST ANNUAL REPORT OF THE COLLEGE DEPARTMENT 22 (N.Y., 1899) [hereinafter COLLEGE DEPARTMENT'S 1ST REPORT]; see also

A second and more important cause that Dewey and the law schools supported in 1893 and 1894 was reform of the state's bar examination system.<sup>197</sup> Although the system provided for a written bar exam, its implementation was left to the supreme courts of New York's five judicial departments.<sup>198</sup> This led to haphazard administration in some departments, because the courts usually appointed committees of local attorneys to assist them in administering the examinations.<sup>199</sup> These committees served without compensation or payment of expenses.<sup>200</sup> The combination of administrative decentralization and the lack of permanency of administrative authority meant that the examination "[might] in one department be exceedingly lax, and in an adjoining department very severe, or it [might] during one year, under one set of examiners, be lax and the next year be severe, or the contrary."<sup>201</sup> Some departments apparently did not even require written exams.<sup>202</sup>

As with reform of bar admission standards, reform of the bar examination "improved" the profession without setting the schools at odds with one another. The bill introduced in the New York State Assembly in 1894 created a State Board of Bar Examiners charged with the responsibility of administering a uniform statewide bar admissions regime.<sup>203</sup> Of necessity, the bill provided for a written examination. The schools were bound to benefit from this, because an admissions regime based on a uniform written examination would place a premium on the skills that law schools inculcated in their students.<sup>204</sup> Passage of the bill

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REGENT'S 110TH REPORT, *supra* note 195, at 438-40 (discussing the 1894 changes to the court of appeals rules regarding admission to the bar).

197. Dewey had been interested in legislation aimed at reforming the bar examination for several years. *See, e.g.*, Letter from Dan'l H. McMillan, Partner, McMillan, Cluck & Dooley, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Mar. 20, 1891) (Dewey Papers, *supra* note 1) (requesting a copy of the uniform bar examination bill).

198. *See* Austen G. Fox, *Two Years' Experience of the New York State Board of Law Examiners*, in AMERICAN BAR ASS'N, REPORT OF THE 19TH ANNUAL MEETING 543, 546 (Philadelphia, Dando 1896).

199. *See id.*

200. *See Proceedings of the Section of Legal Education*, reprinted in AMERICAN BAR ASS'N, REPORT OF THE 21ST ANNUAL MEETING 493, 527 (Philadelphia, Dando 1898) (remarks of W.P. Goodell).

201. *Remarks of J. Newton Fiero, President of the New York Bar Association, Before the Senate Committee on the Judiciary, on the Bill to Provide a Uniform System of Examinations for Admission to the Bar*, 47 ALB. L.J. 496, 497 (1893).

202. *See* Fox, *supra* note 198, at 546.

203. *See Current Topics*, 49 ALB. L. J. 345, 348-49 (1894).

204. By "skills" I do not mean knowledge of substantive areas of law. There often



was bound to prompt more students to attend law school. The Regents, the state bar, the state's law publications, and the law schools all supported the bill.<sup>205</sup> At the 1894 convention of the New York Bar Association, representatives from every law school in the state spoke or sent papers endorsing the bill. George Chase "[took] pleasure in expressing [his] hearty concurrence in the plan for establishing a uniform system of bar examinations."<sup>206</sup> He and the other law school representatives were joined by William C. Doane, the Vice-Chancellor of the Regents.<sup>207</sup> The Association's Committee on Legislation registered "the hearty co-operation of the faculty of all the law schools of the State, as well as of the Regents of the University."<sup>208</sup>

When the bill passed in May of 1894,<sup>209</sup> the schools benefited immediately. Writing several years later, one of the members of the new State Board of Bar Examiners commented that the examination "dr[o]ve[] men to law schools."<sup>210</sup> In the fall of 1894, NYU had a forty-percent increase in the number of first-year students, and New York Law School a fifty-percent increase in the number of "special students."<sup>211</sup>

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is a substantial divergence between the substantive areas of law tested by bar examiners and the curricular requirements of law schools. Rather, I refer to the communicative skills that are promoted and required by a mode of training that focuses on the methodically organized inculcation of formalized principles, including the practice of monitoring this process through formal examinations. The more formalized examination process of the new admissions regime placed a greater premium on such skills. See generally PIERRE BOURDIEU & JEAN-CLAUDE PASSERON, *REPRODUCTION IN EDUCATION, SOCIETY AND CULTURE* 46-52 (Richard Nice trans., 1977) (discussing the process of internalization of formalized principles).

205. See Tracy C. Becker, *The President's Address*, 51 ALB. L.J. 69, 70 (1895); *Current Topics*, *supra* note 203, at 348. Tracy Becker was President of the New York State Bar Association at this time. See Becker, *supra*, at 69.

206. *Address of George Chase*, 17 PROC. N.Y. ST. B. ASS'N 65, 65 (1894).

207. See *Address of Rt. Rev. William C. Doane*, 17 PROC. N.Y. ST. B. ASS'N 83, 84 (1894).

208. *Report of Committee on Legislation, Etc.*, 17 PROC. N.Y. ST. B. ASS'N 87, 89 (1894).

209. See An Act to Amend the Code of Civil Procedure Relating to Examination and Admission of Attorneys or Counselors, ch. 760, 1894 N.Y. Laws 1910. The bill's passage is reported in *Current Topics*, *supra* note 203, at 348.

210. Danaher, *supra* note 41, at 113-14.

211. During the 1893-1894 school year, NYU enrolled 107 first-year students. See 2 REGENTS' 108TH REPORT, *supra* note 123, at 1164, 1167. The next year, there were 150 new students. See UNIVERSITY OF THE STATE OF N.Y., 109TH ANNUAL REPORT OF THE REGENTS 756, 759 (N.Y., 1896) [hereinafter REGENTS' 109TH REPORT]. New York Law School enrolled 158 special students in 1893-1894 and 234 in 1894-1895. See *id.* at 756, 760; 2 REGENTS' 108TH REPORT, *supra* note 123, at 1164, 1168.

Enrollment figures for the 1895-1896 school year increased at every school in the state by an average of seventeen percent (compared to four percent in 1893-1894 and six percent in 1894-1895).<sup>212</sup>

The achievement of these reforms was a victory for Dewey and the schools. For New York Law School, however, the consequences of this success were mixed. After accomplishing these reforms, Dewey was free to focus his energies on more divisive issues again. Furthermore, events occurred in 1894 and 1895 that diminished Dewey's willingness to avoid conflict.

#### VII. A "SPIRIT OF HOSTILITY" AGAINST NEW YORK LAW SCHOOL

For the first three years of New York Law School's existence, New York Law School and Metropolis Law School were companions of sorts. Both were supervised by the Regents. Both were frowned upon by NYU and Columbia. When the Regents raised law school admission standards in 1892, Metropolis Law School Dean Abner Thomas cooperated with George Chase to obtain a postponement from the Regents.<sup>213</sup> Clarence Ashley, the Secretary of Metropolis Law School, complained to Dewey about the potential threat posed to his school by more stringent educational policies, just as Chase had.<sup>214</sup> On the other hand, the schools were competitors for the same students. Competition had been muted initially because Metropolis Law School offered its classes in the evening while New York Law School offered day classes. The financial and institutional success of New York Law School and its expansion into the evening market in 1894 destroyed whatever fellow-feeling once had existed between the two schools.

New York Law School prospered in the mid-1890s. As noted above, its enrollment was boosted considerably by the passage of the bar examination reform bill. By 1895, the school had accumulated more than \$35,000 in investments, notes, and cash.<sup>215</sup> In contrast, Metropolis Law School never paid its two principals a dime. "You are probably aware,"

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212. See COLLEGE DEPARTMENT'S 1ST REPORT, *supra* note 196, at 29. The increases in enrollments declined after 1895-1896 but still amounted to ten percent in 1896-1897 and nine percent in 1897-1898. See *id.* at 29.

213. See Minutes of the Regents of the University of the State of N.Y. 134-35 (June 8, 1892).

214. See Letter from Clarence D. Ashley, Secretary, Metropolis Law School, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (June 28, 1894) (Dewey Papers, *supra* note 1); Letter from George S. Chase to Melvil Dewey, *supra* note 184.

215. See REGENTS' 109TH REPORT, *supra* note 211, at 756, 769.

Clarence Ashley wrote Dewey in 1894, "that this school has simply paid its expenses."<sup>216</sup> This situation led the principals of Metropolis Law School to regard New York Law School somewhat jealously. In 1893, for instance, Ashley wrote to James R. Parsons, Jr., the Regents' Examinations Director, expressing his concern about the effect of rumors among his students "that the N.Y. School had great influence with the examiners and that their Faculty would see to it, that their students passed."<sup>217</sup> Several months later, Ashley assured Dewey of his support of educational reform "which will not place us at a disadvantage with other Regents' Law Schools."<sup>218</sup> Finally, when New York Law School opened its own evening division in October, 1894, there were protests from the principals of Metropolis. "I told [Abner] Thomas," Dewey wrote to St. Clair McKelway the next spring, "that we neither had given nor would give him any monopoly of teaching law in the evening. He is off on another extreme."<sup>219</sup>

Apparently more grating to Clarence Ashley than the economic competition was the fact that even though his school adopted more exclusive enrollment policies, New York Law School continued to enjoy greater prestige and to draw a greater proportion of college graduates. In 1892, only 7 of the 103 students enrolled at Metropolis had college degrees.<sup>220</sup> New York Law School, in contrast, had 126 college graduates among its 381 students.<sup>221</sup> In 1895, despite efforts to "gentrify" the law school, only 15 of Metropolis's 174 students had a B.A. or B.S., while 237 of New York Law School's 541 students had

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216. Letter from Clarence D. Ashley to Melvil Dewey, *supra* note 214. Ashley's statement is born out by his annual reports to the Regents on the school's finances. Copies of these reports are in the Metropolis Papers, *supra* note 180.

217. Letter from Clarence D. Ashley, Secretary, Metropolis Law School, to James R. Parsons, Director, Regents' Board of Law Examiners (Nov. 22, 1893) (Metropolis Papers, *supra* note 180).

218. Letter from Clarence D. Ashley to Melvil Dewey, *supra* note 214.

219. Letter from Melvil Dewey, Secretary, Regents of the University of the State of N.Y., to St. Clair McKelway, Regent of the University of the State of N.Y. (Mar. 29, 1895) (McKelway Papers, *supra* note 40). In the fall of 1894, Metropolis Law School extended its LL.B. course to three years. This in itself would have cut its enrollments. Its first year class fell from 88 in 1893-1894 to 53 in 1894-1895. The number of its non-degree students fell as well. Over the same period, New York Law School grew from 148 to 158 first-year students, and the number of its non-degree students increased from 158 to 234. See REGENTS' 109TH REPORT, *supra* note 211, at 756, 759-60; REGENTS' 108TH REPORT, *supra* note 123, at 1164, 1167-68. The latter increase probably owes more to the new bar exam than to the creation of an evening course.

220. See REGENTS' 106TH REPORT, *supra* note 123, at 676, 681-82.

221. See *id.* The New York Law School figures are for the spring semester of the 1891-1892 school year.

college degrees.<sup>222</sup> The resentment this gave rise to can be read between the lines in Ashley's letters. In 1893, for instance, he wrote William Kneeland Townsend, a federal judge and Yale Law School Professor, that "Wilbur McBride, Yale '83 is a special student in this school and said he would give you his ideas as to our school and particularly in comparison with the N.Y. Law School in which he has also studied."<sup>223</sup> In 1894, Ashley wrote to the editor of the Princeton alumni publication: "Will you oblige us by inserting, under your Alumni Notes, the enclosed three items as to Princeton graduates. We notice occasionally you put in such notices for the New York School and as it is legitimate college news we presume you will do us a like favor."<sup>224</sup>

The increasing hostility of Metropolis Law School and, especially, Clarence Ashley to New York Law School probably would have been of little importance except that in April, 1895 Metropolis Law School merged with NYU to become the latter's evening department.<sup>225</sup> One important consequence of this merger was that, henceforth, New York Law School would be the only law school directly supervised by the Regents. In addition, the merger moved Clarence Ashley into the position of Vice-Dean at NYU Law School.<sup>226</sup> When Austin Abbott, NYU's Dean, died in 1896, Ashley became his successor.<sup>227</sup> Relations between NYU and New York Law School had never been anything but hostile.<sup>228</sup> Ashley's accession to the deanship ensured that the two schools would remain "bitter enemies."<sup>229</sup>

At the same time that Clarence Ashley steadily became more hostile to George Chase and New York Law School, Melvil Dewey's personal relationship with Chase also became strained. Although it is not clear when the negative feelings began to develop, when New York Law School opened its evening division in October, 1894, Dewey was not pleased.

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222. See REGENTS' 109TH REPORT, *supra* note 211, at 756, 760.

223. Letter from Clarence D. Ashley, Secretary, Metropolis Law School, to William Kneeland Townsend, Professor, Yale Law School (May 15, 1893) (Metropolis Papers, *supra* note 180).

224. Letter from Clarence D. Ashley, Secretary, Metropolis Law School, to D.R. James, Jr., Editor, *Princeton Alumni Publication* (May 1, 1894) (Metropolis Papers, *supra* note 180).

225. See JONES, *supra* note 4, at 266-67; REGENTS' 109TH REPORT, *supra* note 211, at 358.

226. See REGENTS' 109TH REPORT, *supra* note 211, at 680.

227. See REGENTS' 110TH REPORT, *supra* note 195, at 564, 636-37.

228. See *supra* text accompanying notes 122-29.

229. Letter from Clarence D. Ashley to Henry M. MacCracken, *supra* note 186. In this letter, Ashley refers to George Chase and New York Law School as "bitter enemies" of NYU Law School.

"While technically this may possibly not be a violation of the law," he wrote in his Secretary's Report for that year, "it is an obvious evasion of the principle involved in the law and makes necessary a new ordinance which shall explicitly prohibit the establishment of branch schools without permission of the Regents."<sup>230</sup> A second dispute occurred in 1895, when Chase complained that the Regents' strict enforcement of their entrance requirements placed his school at a disadvantage relative to the state's other law schools. In a letter to Seth Low in April, 1895, Dewey wrote that he "ha[d] just seen a letter emanating from Prof. Chase, though not signed by him," that asserted that Columbia admitted students on lower standards than New York Law School.<sup>231</sup> In a letter to McKelway a few days earlier, Dewey accused Chase of attempting to misrepresent the facts of this situation to McKelway and concluded that Chase "never will be trusted again by us here as we have trusted him in the past, for he has shown himself unworthy of it by misrepresentation."<sup>232</sup>

The enmity was mutual. Chase was becoming increasingly antagonistic toward the Regents' supervision, or more accurately toward the supervision of Dewey and Regents' Examination Director, James Parsons. Unquestionably, Chase's defensiveness about the potential for interference with his school and his wish, as he had put it earlier, to be "let alone"<sup>233</sup> were intensified when Metropolis Law School's merger with NYU made New York Law School the only law school under the Regents' control. In 1895, the first year that only New York Law School students were required to take the Regents' LL.B. examination to receive their degrees, the examination became a particular sticking point between the Regents and the school.<sup>234</sup> Parsons decided to make the Regents' examination more difficult so that the Regents' law degree would command greater respect.<sup>235</sup> The consequence of the more difficult exam, however, was a lower pass rate for Chase's students. When Chase protested, Dewey was not sympathetic. "[T]here are those," Dewey wrote describing Chase's response, "who complain bitterly of persecution and injustice on the part

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230. 1 REGENTS' 108TH REPORT, *supra* note 123, at r91.

231. Letter from Melvil Dewey, Secretary, Regents of the University of the State of N.Y., to Seth Low, President, Columbia College (Apr. 2, 1895) (Keener Correspondence, Rare Book and Manuscript Library, Columbia University).

232. Letter from Melvil Dewey to St. Clair McKelway, *supra* note 219.

233. See *supra* note 189 and accompanying text.

234. Although the merger of Metropolis Law School and NYU took place only a couple of months before the end of the 1894-1895 school year, 1895 graduates of Metropolis Law School were awarded their degrees by NYU. See REGENTS' 109TH REPORT, *supra* note 211, at 756, 764-65. Thus, only New York Law School students were required to take the Regents' examination.

235. See REGENTS' 109TH REPORT, *supra* note 211, at r87.

of the board or its officers if they are required to meet anything beyond the minimum condition on which the weakest institution confers a similar degree."<sup>236</sup> Dewey now perceived Chase as a foe of educational progress. "The result of heeding such protests," he said, "[would] be to make the Regents standard the minimum instead of something which individual schools would aim to equal."<sup>237</sup>

From Chase's vantage point, however, and particularly through the lens of subsequent events, the Regents' conduct looked very different. "In 1895 and 1896," he wrote in 1897, "signs began to be manifest that the spirit of hostility which Columbia College Law School and New York University Law School had exhibited against New York Law School from the very time it was established was making its influence felt in the Regents' office."<sup>238</sup> The failure rate on the 1895 Regent's LL.B. exam had been unprecedentedly high. In that year, 109 of the 133 students in the second year of New York Law School's LL.B. course received a degree.<sup>239</sup> In 1896, the proportion of students who did not receive LL.B.s increased again. Of 171 students in the second-year course, only 121 graduated.<sup>240</sup> Chase made a "temperate remonstrance" to Dewey and Parsons, complaining, first, that the questions were ambiguous, and, second, that the exams were marked too severely.<sup>241</sup> His protestations, he said, met with "personal abuse and insolence."<sup>242</sup> Parsons stirred matters up further by submitting some of the disputed examination papers to Clarence Ashley and to William Keener, who had become Dean at Columbia Law School after Dwight and his compatriots left in 1891.<sup>243</sup> Not surprisingly, Ashley and Keener, who had practiced together as the law firm of Ashley & Keener in the early 1880s,<sup>244</sup> "seem[ed] to favor the view of Mr. Parsons as to the fairness of the questions and those who

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236. *Id.*

237. *Id.*

238. NEW YORK LAW SCHOOL, *supra* note 109, at 2.

239. See REGENTS' 109TH REPORT, *supra* note 211, at 759, 765. Although 24 second-year students in the LL.B. course did not receive degrees, some of these may not have been recommended by the faculty to stand for the exam. They did not necessarily all fail it. The same is true of the 1896 figures.

240. See REGENTS' 110TH REPORT, *supra* note 195, at 636, 640, 647.

241. NEW YORK LAW SCHOOL, *supra* note 109, at 2; see also *Questions Cause Trouble*, N.Y. DAILY TRIB., Oct. 10, 1896, at 12 (discussing the controversy between Chase and Parsons as to the ambiguity of the exam questions and the fairness of the markings).

242. NEW YORK LAW SCHOOL, *supra* note 109, at 2.

243. See GOEBEL ET AL., *supra* note 15, at 147-48.

244. For a discussion of Ashley and Keener's law partnership, see *id.* at 137.

have examined the marks think them sufficiently liberal."<sup>245</sup> Irritated by the manner in which "[t]hese gentlemen appear[ed] at every turn where their letters or actions [might] be of any detriment to New York Law School,"<sup>246</sup> Chase demanded a hearing before the Regents on the examinations issue. It was scheduled for their October 15, 1896, meeting.

Other items on the agenda for the October 15 meeting suggested to Chase the possibility that the university law schools were engaging in a conspiracy to sabotage New York Law School. Also slated to be addressed was a set of recommendations that had been proposed in June, 1896 by an organization called the College Council. The College Council was a committee of five college and university officials appointed from among the delegates to the University's annual Convocation.<sup>247</sup> The Council was created in 1890 "for the purpose of conferring with the board of regents regarding the possibility of bringing the higher institutions into closer relations with the University of the state, and for the promotion of unity in the work of collegiate education, and in the requirements for degrees."<sup>248</sup> In 1896, the Council was chaired by Nicholas M. Butler. Butler appears to have been using the Council's recommendations as a means of advancing his agenda for reforming professional education. The council's fifth recommendation specified "[t]hat after January 1, 1898, the degree LL.B. shall not be conferred because of graduation from any school which does not give at least 1000 hours of actual instruction during its graduating course."<sup>249</sup> As George Chase observed several months later, although this rule "purport[ed] to apply to all law schools [in] the State," if adopted "it would have been enforced against New York Law School" alone because the other law schools had charters that allowed them to "establish their own requirements for admission, their course of

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245. *Questions Cause Trouble*, *supra* note 241, at 12; *see also* NEW YORK LAW SCHOOL, *supra* note 109, at 2 (discussing Ashley and Keener's support of Dewey and Parsons in this matter). Apparently, the faculty of New York Law School did not know who prepared or marked the examinations taken by their students. In a pamphlet written several months after the controversy developed, Chase claimed that the Regents' Board of Law Examiners included two recent Columbia Law School graduates who may also have been instructors at Columbia. *See* NEW YORK LAW SCHOOL, *supra* note 109, at 6.

246. *A Right of Charter*, *supra* note 177, at 3.

247. The Convocation of the University was a yearly meeting in Albany at which educational issues were discussed by government officials, educational administrators, teachers, and other interested parties.

248. 1 REGENTS' 104TH REPORT, *supra* note 122, at 291.

249. Minutes of the Regents of the University of the State of N.Y. 352 (June 24, 1896). The recommendations were published in the *Educational Review* in October, 1896. *See Editorial*, 12 EDUC. REV. 303, 306-07 (1896).

study and their standard for graduation.”<sup>250</sup> Thus, the provision would require New York Law School, and only New York Law School, to extend its course of study for the LL.B. to three years. Because several other law schools in the state were conducting a two-year course, and because this recommendation would not force the other schools to extend their courses, Chase perceived the proposed regulation as a threat to his school.<sup>251</sup>

Chase lost the exam dispute at the October 15 meeting. “[A]fter consideration of the criticisms of Prof. Chase in regard to the University, and of the comments of the director of examinations,” the Regents voted that “the position taken by the director in the administration of these exams be sustained.”<sup>252</sup> Chase gained at least a temporary reprieve, however, on the issue of a three-year law course. The Regents adopted all of the College Council’s recommendations except the one relating to legal education. Judgment on that recommendation was deferred until their December 17 meeting.<sup>253</sup>

On December 17, three representatives from NYU—Ashley, MacCracken, and David Banks, a lawyer and NYU Trustee—and one representative from Columbia Law School—Professor Francis Burdick—appeared and urged the Regents to pass the three-year requirement.<sup>254</sup> Although Chase had argued his own case in his previous appearances before the Regents, he was joined at the December meeting by his counsel, Frank H. Platt of the law firm of Tracy, Boardman & Platt. He and Platt requested a second extension so that Platt’s partner, General Benjamin F. Tracy, could be present. After hearing the arguments of the NYU and Columbia representatives, the Regents granted Platt and Chase’s request, and a decision on the Council’s recommendation was deferred again, this time until January 21, 1897.<sup>255</sup>

Platt’s appearance and the promise that Tracy would appear were an ominous escalation of the conflict between Chase and his antagonists. Frank Platt and Benjamin Tracy were not ordinary lawyers. Nor was Tracy, Boardman & Platt just another law firm. Frank Platt was the son of Thomas Collier Platt who, in January, 1897, was re-elected Senator from New York after investing years in establishing control over the New

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250. *A Right of Charter*, *supra* note 177, at 3.

251. *See id.*

252. Minutes of the Regents of the University of the State of N.Y. 372 (Oct. 15, 1896).

253. *See id.* at 366.

254. *See* Minutes of the Regents of the University of the State of N.Y. 385 (Dec. 17, 1896).

255. *See id.* at 379-80, 385.



York Republican party organization.<sup>256</sup> Benjamin Tracy was Platt's boyhood friend. Platt had been instrumental in Tracy's appointment as Secretary of the Navy in President Benjamin Harrison's administration.<sup>257</sup> According to the *New York Times*, Tracy, Boardman & Platt was the intermediary through which Platt managed New York politics. "The first and most important question asked by many legislators as they begin consideration of a pending measure," the *Times* told its readers, "[was] 'Does it have the backing of Tracy, Boardman & Platt?'"<sup>258</sup> Frank Platt also happened to have graduated from Columbia Law School during Dwight's tenure. In addition to being a Columbia Law School graduate, Platt's partner, Albert Boardman, was a Trustee of New York Law School.<sup>259</sup> The importance of Platt and Tracy's appearances was not lost on New York Law School's adversaries. When Chester S. Lord, a newspaper editor sympathetic with Platt, was appointed to the Regents shortly before their January meeting, Nicholas Butler intimated to Melvil Dewey, "[y]ou people are now getting a little taste of politics. I hear now that Mr. Lord was put on the Regents especially to help out Tracy and Frank Platt in their fight for Chase and his law school abuses."<sup>260</sup>

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256. Only a few months after Platt, known as the "easy boss" of the Republican party, was elected U.S. Senator in 1881, he and New York's other senator, Roscoe Conkling, resigned in "a patronage dispute with President James Garfield." RICHARD L. MCCORMICK, *FROM REALIGNMENT TO REFORM* 71 (1981). They sought to embarrass Garfield by seeking and gaining re-election, but failed. "Platt soon renewed his political activity, and by the late 1880s he had become the recognized leader of the Republican party in the state." *Id.*

257. See BENJAMIN F. COOLING, *BENJAMIN FRANKLIN TRACY: FATHER OF THE MODERN AMERICAN FIGHTING NAVY* 7, 9, 42-43 (1973).

258. *Bribery Out of Date*, N.Y. TIMES, Apr. 20, 1896, at 1. For 1897, see *The Organization Rules*, N.Y. TIMES, Feb. 14, 1897, at 4; see also HAROLD F. GOSNELL, *BOSS PLATT AND HIS NEW YORK MACHINE* 246 (1924) (stating that "[l]egislative business of a decorous nature was handled by the law firm of Tracy, Boardman and Platt").

259. See COLUMBIA COLLEGE SCHOOL OF LAW, *DIRECTORY OF GRADUATES* 36, 64 (N.Y., 1893); *New York Law School*, N.Y. TIMES, Feb. 23, 1897, at 12.

260. Letter from Nicholas M. Butler, Dean, Columbia University, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Jan. 15, 1897) (Dewey Papers, *supra* note 1). Lord's appointment prompted the *Nation* to observe that "[i]nquiries [were] being made of us whether we think the *New York Sun* is to get nothing for its support of Platt except a Regentship of the university for its managing editor. We know nothing about the matter, except that nobody with our knowledge supports or has ever supported or admired Platt gratuitously." NATION, Jan. 21, 1897, at 41. The *Albany Law Journal* was much friendlier of Lord's appointment, calling him "one of the ablest and most gracious men who ever occupied the chair of managing editor." *Current Topics*, 55 ALB. L.J. 65, 66 (1897).

Whatever the purpose of Lord's appointment, he did not attend the Regents' January 21 meeting.<sup>261</sup> Tracy and Chase argued against the Council's recommendation, and Clarence Ashley and Francis Burdick appeared again and argued for it. The measure did not pass. In its place, however, the Regents voted that "[a]fter January 1, 1898, the degree LL.B. shall not be conferred because of graduation from any law school unless the graduate shall have first passed the examination for admission to the bar of the state."<sup>262</sup> Although it is not clear who proposed or advocated this rule, from the perspective of the Regents and the university law schools it turned out to be a blunder of the grandest proportions. The 1000-hour regulation proposed by the College Council, which would have required New York Law School to extend its LL.B. course to three years, at least had the appearance of even-handedness. Columbia already had a three-year course.<sup>263</sup> NYU's evening students attended for three years (although its day students followed a two-year course).<sup>264</sup> NYU, in fact, was in the process of lengthening its day course to three years, as was Cornell.<sup>265</sup> The rule that passed, on the other hand, obviously was aimed at injuring one school. "This [was] simply an illustration of how the Board ha[d] acted toward New York Law School," State Assemblyman George Austin told Nicholas M. Butler, "because [it was] the only school affected by the legislation. This, if kept in force, would simply drive to the other schools students from other States."<sup>266</sup> Regent and University Vice-Chancellor William C. Doane later observed that "if it had been inspired by the advocate of the [New York] Law School, [the resolution] could not have been more ingeniously devised as a grievance."<sup>267</sup> From Chase's standpoint, the new regulation made it "clearly apparent that [the] law schools, on the one hand, and the Regents' Secretary and Director of Examinations, on the other, had combined in a common purpose to harass and injure, and that . . . they would continue to make trouble in the future

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261. *See Regents Offer No Opinion*, BROOK. DAILY EAGLE, Mar. 2, 1897, at 14.

262. Minutes of the Regents of the University of the State of N.Y. 392 (Jan. 21, 1897).

263. *See* GOEBEL ET AL., *supra* note 15, at 119.

264. *See* NEW YORK UNIVERSITY, UNIVERSITY LAW SCHOOL: ANNOUNCEMENTS FOR 1896-1897, at 183 (N.Y., n.d.)

265. *See id.* at 25. Cornell adopted the three-year course in 1897. *See* MORRIS BISHOP, EARLY CORNELL 1865-1900: THE FIRST PART OF A HISTORY OF CORNELL 329 (1967) (a reprint of the first part of the book *A History of Cornell*, published in 1962).

266. Letter from George C. Austin, N.Y. State Assemblyman, to Nicholas M. Butler, Dean, Columbia University (Feb. 19, 1897) (Nicholas M. Butler Papers, Rare Book and Manuscript Library, Columbia University [hereinafter Butler Papers]).

267. *The New-York Law School*, N.Y. DAILY TRIB., Feb. 25, 1897, at 3.

and devise other means to accomplish their ends."<sup>268</sup> He saw no option but "to seek adequate relief from another source, namely, from the Legislature."<sup>269</sup>

### VIII. AN ACT TO INCORPORATE NEW YORK LAW SCHOOL

On February 1, State Senator Clarence Lexow, a Columbia Law School graduate and former student of Dwight's, introduced "[a]n act to incorporate New York Law School of New York city, New York."<sup>270</sup> The following day, Assemblyman George C. Austin introduced the same bill in the assembly.<sup>271</sup> Austin, who was also a Columbia Law School alumnus, was more closely associated with the bill than Lexow. His ties to Dwight, Chase, and New York Law School were strong. He was an organizer of the Dwight Alumni Association in 1891 and served as its Secretary for the entire thirty-seven years of its existence.<sup>272</sup> In 1893, he published a defense of the Dwight method in the British *Law Quarterly Review*.<sup>273</sup> He also spent two years teaching in New York Law School's evening division.<sup>274</sup> This made him the logical person for Chase to approach, and he became the law school's de facto representative in the political maneuvering that the bill gave rise to.

The introduction of special charter legislation was not unusual. Melvil Dewey inevitably opposed special charter bills, however, on the principle that they undermined the Regents' statutory authority to confer charters. Governors appear to have accepted his general argument against the "tinkering of general laws in the interests of individuals."<sup>275</sup> Protests from Dewey and the Regents killed several special charter bills in the 1890s.<sup>276</sup> "Of late years," Dewey wrote in 1895, bills in the interest of

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268. NEW YORK LAW SCHOOL, *supra* note 109, at 3.

269. *Id.*

270. STATE OF N.Y., JOURNAL OF THE SENATE, 120th Sess. 118 (1897).

271. *See* STATE OF N.Y., JOURNAL OF THE ASSEMBLY, 120th Sess. 225 (1897).

272. *See* GOEBEL ET AL., *supra* note 15, at 446 n.82.

273. *See* George C. Austin, *The Dwight Method of Legal Instruction*, 9 LAW Q. REV. 171 (1893).

274. *See* REGENTS' 110TH REPORT, *supra* note 195, at 556; 2 REGENTS' 108TH REPORT, *supra* note 123, at 1093.

275. 1 REGENTS' 108TH REPORT, *supra* note 123, at r39.

276. In 1890, Buffalo Law School introduced a bill to obtain a legislative charter. GILBERT J. PEDERSEN, *THE BUFFALO LAW SCHOOL: A HISTORY, 1887-1962*, at 39 (1962). The bill passed, but was vetoed by Democratic Governor David Hill even though it had the support of William F. Sheehan, Buffalo's Democratic Party boss. *See* Letter from Nicholas M. Butler, Dean, Columbia University, to Frank Pavey, N.Y. State Senator (Mar. 19,

individual institutions "have been so uniformly vetoed that it is commonly understood to be useless to work for such a bill, as it would be vetoed by the governor even if worried through the legislature."<sup>277</sup> Consistent with this outlook, Dewey began to organize a broad, public campaign against New York Law School's charter bill soon after it was introduced.

Nicholas M. Butler also began to exert his influence to quash the bill. Besides assisting Dewey, Butler contacted important legislators. The threat that Butler posed was not one to be scoffed at. For several years he had orchestrated the campaign that resulted in the enactment in 1896 of controversial legislation centralizing the administration of public schools in New York City.<sup>278</sup> This legislation was opposed by "[a] wide range of groups," including the Democratic Tammany organization in New York City and the regular Republican party machine.<sup>279</sup> Through his role in support of centralization, Butler had established ties with a number of reform-oriented legislators.<sup>280</sup> Less than a week after Chase's bill was introduced, Butler wrote Senator Frank Pavey, complaining that the bill defied "the authority of the Regents . . . and the educational sentiment of the State."<sup>281</sup> Pavey was a member of the Senate Judiciary Committee and had worked closely with Butler and reform organizations on the school legislation.<sup>282</sup> Butler also contacted Assemblyman (and Columbia graduate) Francis Laimbeer, who warned him that "[a]ny opposition that can be aroused against this bill must be emphasized without delay. There is a determination to have the Legislature do what the Board of Regents will not do and the force now behind the bill represents the dominant political power."<sup>283</sup> Another ally of Butler's school reform effort was George Austin.<sup>284</sup> Butler, in fact, had assisted Austin in his re-election

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1897) (Butler Papers, *supra* note 266). In 1895, Assemblyman A.R. Conkling's bill to create the "New York polyclinic medical school . . . [p]assed but [was] recalled from [the] governor before signing because [it] properly belong[ed] to the Regents rather than the legislature." REGENTS' 109TH REPORT, *supra* note 211, at 30.

277. 1 REGENTS' 108TH REPORT, *supra* note 123, at r39.

278. See DAVID C. HAMMACK, POWER AND SOCIETY 259-99 (1982).

279. *Id.* at 260.

280. See *id.* at 279; Letter from Melvil Dewey, Secretary, Regents of the University of the State of N.Y., to Clarence D. Ashley, Dean, New York University (Apr. 1, 1897) (Dewey Papers, *supra* note 1).

281. Letter from Nicholas M. Butler, Dean, Columbia University, to Frank Pavey, N.Y. State Senator (Feb. 6, 1897) (Butler Papers, *supra* note 266).

282. HAMMACK, *supra* note 278, at 284, 289, 292.

283. Letter from Francis Laimbeer, N.Y. State Assemblyman, to Nicholas M. Butler, Dean, Columbia University (Feb. 15, 1897) (Butler Papers, *supra* note 266).

284. See HAMMACK, *supra* note 278, at 379 n.120.

effort in 1896.<sup>285</sup> On February 16, Butler wrote Austin and attempted to persuade him to kill the bill that he had introduced.<sup>286</sup> Butler also contacted other legislators, including Assembly Speaker James O'Grady, and urged them to discuss the matter with Austin.<sup>287</sup>

In addition to lobbying his contacts in the legislature, Butler attempted to mobilize opposition among the organized bar. A number of elite lawyers had played major roles in the school reform campaign.<sup>288</sup> On February 5, Butler spoke with one of them, Charles B. Hubbell, about the danger posed by the charter bill. In a letter written later the same day, Butler urged Hubbell, who was the Chairman of the Committee on the Amendment of the Law of the Association of the Bar of the City of New York, to bring the bill to the attention "of the proper committee of the Bar Association."<sup>289</sup> "The educators of the State are opposing this bill vigorously and hope to defeat it. They should have the support and sympathy of [the] Bar and of Bar Associations."<sup>290</sup> Except for lawyers affiliated with one or another of the state's universities, however, the organized bar was for the most part silent on the charter bill.<sup>291</sup>

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285. See Letter from George C. Austin, N.Y. State Assemblyman, to Nicholas M. Butler, Dean, Columbia University (Sept. 8, 1896) (Butler Papers, *supra* note 266).

286. See Letter from Nicholas M. Butler, Dean, Columbia University, to George C. Austin, N.Y. State Assemblyman (Feb. 16, 1897) (Butler Papers, *supra* note 266).

287. See, e.g., Letter from Nicholas M. Butler, Dean, Columbia University, to James O'Grady, Speaker of the N.Y. Assembly (Mar. 19, 1897) (Butler Papers, *supra* note 266).

288. Besides Charles B. Hubbell, who is discussed in the text, other prominent lawyers who aided Butler in the school reform effort included Stephen Olin, Elihu Root, John B. Pine (a Columbia Trustee), William W. Niles, and Henry W. Taft. See HAMMACK, *supra* note 278, at 259-99. See generally Robert W. Gordon, "The Ideal and the Actual in the Law": *Fantasies and Practices of New York City Lawyers, 1870-1910*, in THE NEW HIGH PRIESTS 51 (Gerard W. Gawalt ed., 1984) (discussing lawyers and reform politics in New York City).

289. Letter from Nicholas M. Butler, Dean, Columbia University, to Charles B. Hubbell, Commissioner, Board of Education (Feb. 5, 1897) (Butler Papers, *supra* note 266). There is substantial correspondence between Hubbell and Butler in the School Reform box in the uncatalogued correspondence in Butler's Papers. Hubbell also figures in David Hammack's account of the school reform campaign. See HAMMACK, *supra* note 278, at 289, 290, 294.

290. Letter from Nicholas M. Butler to Charles B. Hubbell, *supra* note 289.

291. The only lawyers who appear to have heeded Butler's call for help were Elihu Root and Stephen P. Nash, a Columbia Trustee and ally of Low's. Their protests against the bill are contained in PROTESTS AGAINST SPECIAL LEGISLATION IN CONTRAVENTION OF THE STATUTES PROTECTING EDUCATIONAL STANDARDS 17-18 (n.p., 1897) (on file with the Columbia Law School Library) [hereinafter PROTEST PAMPHLET]. Nash had played a role in expediting George Chase and Robert Petty's departures from Columbia in 1891. See GOEBEL ET AL., *supra* note 15, at 145.

The major effort against the bill was Dewey's meticulously organized public mobilization of the Regents and what Butler called the state's "educational sentiment."<sup>292</sup> Austin's bill was scheduled for a hearing before the Judiciary Committee of the Assembly on February 17.<sup>293</sup> Dewey and several Regents threw themselves into organizing opposition among the state's educators with an abandon they would come to regret. In the week before the hearing, the Executive Committee of the Regents met and drafted a letter entitled *A Revolutionary Educational Bill*.<sup>294</sup> The letter, signed by Anson Upson, the Chancellor of the University, and Vice-Chancellor William Doane, was printed and sent out to educational institutions around the state.<sup>295</sup> "Earnest protests have been received at the Regents office from many college Presidents, Professors and professional men," its readers were informed.<sup>296</sup> "[T]his statement is published with a view of inducing those who realize the danger to make their convictions known to the committees of the legislature who are to report upon this bill."<sup>297</sup> Readers were urgently requested to attend the hearing or "send their protests by mail or telegraph to the Regents office . . . in time to be used at the hearing."<sup>298</sup> Excerpts from Doane and Upson's letter were published on February 15 in the *New York Daily Tribune*, and the *Evening Post* ran a short editorial condemning the

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292. Richard L. McCormick has observed that municipal reformers in 1890s New York "concentrated their efforts through interest organizations [rather than traditional party organizations] that put pressure on whomever filled the offices." MCCORMICK, *supra* note 256, at 107. Dewey's campaign to bring out the state's educational interest involved the same pattern of politics played out at the state level. The development of the "interest group" pattern in educational politics and, particularly, of the College Council, an official intermediary between the colleges and universities of New York and the Board of Regents, *see supra* notes 247-48 and accompanying text, constituted a significant shift in the prevailing institutional relations between government and institutions of higher education. *See* JOHN S. WHITEHEAD, *THE SEPARATION OF COLLEGE AND STATE* (1973). On shifting patterns of political activity in New York during this period, *see* MCCORMICK, *supra* note 12.

293. *See* Anson J. Upson & William C. Doane, *The Regents Protest*, N.Y. DAILY TRIB., Feb. 15, 1897, at 7.

294. *See* Open Letter from Anson J. Upson, Chancellor, Regents of the University of the State of N.Y., and William C. Doane, Vice-Chancellor, Regents of the University of the State of N.Y. (Feb. 13, 1897) (on file with the Columbia Law School Library). This letter was subsequently bound in a pamphlet with other protests against the charter bill. *See* PROTEST PAMPHLET, *supra* note 291, at 1.

295. Upson had become Chancellor of the University in 1892, when George William Curtis died. *See* REGENTS' 106TH REPORT, *supra* note 123, at r11.

296. Open Letter from Anson J. Upson and William C. Doane, *supra* note 294.

297. *Id.*

298. *Id.*

bill.<sup>299</sup> On the 16th, the *Evening Post* printed a lengthy letter from Butler condemning the surfeit of "curious educational measures" that had been introduced in the present session of the legislature.<sup>300</sup> Butler singled out Austin's bill as the "most dangerous" one of the term.<sup>301</sup> The *Evening Post* also ran Chase's lengthy response to its editorial of the previous day,<sup>302</sup> as well as a letter from James Day, the Chancellor of Syracuse University, attacking the bill.<sup>303</sup>

Although Dewey's effort had the desired effect of mobilizing the state's educators, legislators took a dim view of this stratagem. The February 17 hearing was attended by representatives of several universities as well as by Vice-Chancellor Doane, who presented Robert Scherer, the Chairman of the Assembly Judiciary Committee, with "more than 100 earnest protests, representing the leading educational interests of the entire state."<sup>304</sup> The members of Scherer's committee, however, were annoyed by Dewey's contentious conduct. "Mr. Dewey has established a regular press bureau for the distribution of circulars &c. throughout the state," Austin complained to Butler a few days after the hearing.<sup>305</sup> Others on the committee were chagrined as well. Assemblyman Frederick Robbins told Doane "that he had received a letter from a common school teacher up in his district (Allegany county) asking him to vote against the bill because it was a pernicious measure."<sup>306</sup> "[W]hat interest," he asked the Vice-Chancellor, "should a common school teacher, who knew nothing about law, have in the passage or defeat of a bill proposing to incorporate a law school in New York City."<sup>307</sup> "[Dewey's] methods," Austin told Butler, "were shown up quite clearly before the Committee last Tuesday."<sup>308</sup>

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299. See *Editorial Note*, N.Y. EVENING POST, Feb. 15, 1897, at 6; Upson & Doane, *supra* note 293.

300. See Nicholas M. Butler, *Curious Educational Measures*, N.Y. EVENING POST, Feb. 16, 1897, at 7.

301. *Id.*

302. See George S. Chase, *The New York Law School Bill*, N.Y. EVENING POST, Feb. 16, 1897, at 7.

303. See James R. Day, *A Protest from Chancellor Day*, N.Y. EVENING POST, Feb. 16, 1897, at 7.

304. *New York Law School*, N.Y. SUN, Feb. 18, 1897, at 8; see also *The New York Law School*, N.Y. EVENING POST, Feb. 18, 1897, at 7 (discussing the hearing and the educators' protests).

305. Letter from George C. Austin to Nicholas M. Butler, *supra* note 266.

306. *New York Law School*, *supra* note 304, at 8.

307. *Id.*

308. Letter from George C. Austin to Nicholas M. Butler, *supra* note 266. (The

Matters were not helped, at least from the Regents' point of view, by Frank Platt's argument on behalf of the school. Raising the issue of the disputed examination questions, Platt charged "that the questions . . . were prepared by a student just graduated from the Columbia School, and were questions which several well-known Judges of the Supreme Court . . . had characterized as unfair, not calculated to develop the students' knowledge, and intended to confuse them."<sup>309</sup> He recounted the history of New York Law School's founding and the continuing hostilities of the university-affiliated law schools in the city. "[T]he number of students in New York Law School was 617, Columbia 361, and [NYU] 462," he told the committee. "That . . . [was] the true animus of the whole opposition."<sup>310</sup>

Against Platt's vivid tale of persecution and clashing economic interests—a good story "based on a series of premises which did not accord at all with the facts,"<sup>311</sup> according to Dewey—the best the opponents could muster was the "mercenary" character of New York Law School and its lack of a \$500,000 endowment.<sup>312</sup> Austin's impression, though by no means that of a neutral observer, was that "[i]t may be that New York Law School is not being persecuted by Columbia but every indication is the other way."<sup>313</sup> "Many of those present," Dewey wrote two days later, "spoke of [Platt's argument] as the most adroit presentation that could possibly have been made."<sup>314</sup> "Had I been on the committee, with no special knowledge of the subject," he continued, "I should have voted in favor of the bill."<sup>315</sup> Although the committee was leaning heavily toward the law school's side, they scheduled a second hearing for February 24, upon MacCracken and Low's request.<sup>316</sup>

The suspicion with which many committee members greeted Dewey's strategy for defeating the bill did not lead Dewey to rethink his methods. With a week until the next hearing, he immediately set in motion another

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hearing was actually on a Wednesday.)

309. *New York Law School*, *supra* note 304, at 8.

310. *Id.*

311. Open Letter from Melvil Dewey (Feb. 19, 1897) (Dewey Papers, *supra* note 1).

312. *New York Law School*, *supra* note 304. In 1892, the University Law, which empowered the Regents, was extensively revised. The new statute governing charters provided that the Regents must require a \$500,000 endowment before granting an absolute charter to an institution. *See* University Law Act of 1892, ch. 378, § 32, 3 Rev. Stat. N.Y. 3889, 3897 (Birdseye 3d ed. 1901).

313. Letter from George C. Austin to Nicholas M. Butler, *supra* note 266.

314. Open Letter from Melvil Dewey, *supra* note 311.

315. *Id.*

316. *See* Letter from George C. Austin to Nicholas M. Butler, *supra* note 266.



intense effort to bring out the state's educators against the bill.<sup>317</sup> Newspaper coverage of the bill picked-up in the week between the February 17 and February 24 hearings as well. On February 18, the *New York Daily Tribune*, *New York Times*, *New York Sun*, *Evening Post*, and *Commercial Advertiser* all carried stories on the February 17 hearing.<sup>318</sup> On February 19, the *New York Times* published an editorial lauding the Regents's role in establishing "a standard of education for the bar . . . in this country."<sup>319</sup> It condemned New York Law School for "employ[ing] a firm of lawyers with a political 'pull' to get this favor from the Legislature."<sup>320</sup> The school's claim of persecution was dismissed as "puerile nonsense."<sup>321</sup> The *New York Times's* claim that the Regents could "certify that regular incorporated and endowed institutions conform to [their] standard[s]" shows, however, that the paper misunderstood the relationship between the Regents and the state's other law schools.<sup>322</sup> Chase quickly responded both to set the record straight concerning the Regents' powers over other institutions and to explain "the connection of the law firm of Tracy, Boardman & Platt" in the matter.<sup>323</sup> "If the Faculties of all other law schools in the state are qualified to hold their final examinations without the aid or concurrence of the Regents' examiners without injury being done to the cause of legal education," he asked, "why may not the Faculty of the New York law school enjoy the same privilege?"<sup>324</sup> The *Commercial Advertiser* published interviews with Chase and Boardman but eventually also published an editorial against the bill.<sup>325</sup>

The one-sidedness of the newspaper coverage may have owed something to the connections Nicholas Butler had forged with city

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317. See Open Letter from Melvil Dewey, *supra* note 311.

318. See *Law School Rights*, N.Y. COM. ADVERTISER, Feb. 18, 1897, at 3; *New York Law School*, *supra* note 304, at 8; *New York Law School Bill*, N.Y. TIMES, Feb. 18, 1897, at 3; *Regents' Standard Attacked*, N.Y. DAILY TRIB., Feb. 18, 1897, at 2; *The New York Law School*, *supra* note 304, at 7.

319. *The Standard of Legal Education*, N.Y. TIMES, Feb. 19, 1897, at 6.

320. *Id.*

321. *Id.*

322. *Id.* For a discussion of this relationship, see *supra* text accompanying notes 172-78.

323. *New York Law School*, *supra* note 259, at 12. The connection with Tracy, Boardman & Platt was, as noted above, Boardman's position as Trustee of New York Law School. See *id.*

324. *Id.*

325. See *A Right of Charter*, *supra* note 177, at 3; *Law School Rights*, *supra* note 318, at 3; *New York Law School Bill*, N.Y. COM. ADVERTISER, Feb. 26, 1897, at 4.

newspaper editors in 1896, during the struggle to reform the city's public schools.<sup>326</sup> It also casts light on a very important element of the strategy of those who opposed the bill and the role that this strategy may have played in escalating the political conflict. The educators who opposed the charter bill attacked it as a politically motivated transgression of institutional jurisdictions laid down by law. "By the terms of the university law, passed in 1892," wrote Butler,

the power to incorporate higher and professional schools and colleges is lodged with the Regents of the University of the State of New York, and the conditions of incorporation are carefully defined. That law was in effect a declaration that it is the policy of the state to have questions of this kind passed upon by a specially competent body, designated for the purpose, and not dealt with by the Legislature. No Legislature could possibly sift the merits of such applications or free itself from personal and political considerations in passing upon them.<sup>327</sup>

The cry of "special legislation," a staple in the rhetoric of mugwump and progressive political reform, was raised soon after the bill was introduced and kept up throughout the debate.<sup>328</sup>

What made this line of attack dangerous was that it involved smearing the charter bill as "machine" legislation. George Austin told Butler that he was "surprised at the efforts which [we]re being made through the press to place the matter in a false light before the People of the State."<sup>329</sup> In particular, Austin mentioned "a declaration . . . by a very prominent man in educational circles that if an effort of this kind should be made, it would be branded as a 'Platt measure.'"<sup>330</sup> The *New York Times's* allusion to "a firm of lawyers with a political 'pull'"<sup>331</sup> shows that much was being made of Tracy, Boardman & Platt's support for the bill. Similarly, in a February 15 editorial, the *Evening Post* called the

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326. See HAMMACK, *supra* note 278, at 288 (stating that Butler had managed to gain "an almost complete control of the [city] press" during the school reform struggle).

327. Butler, *supra* note 300, at 7.

328. James Bryce observed that "special bills [we]re condemned by thoughtful Americans." 1 JAMES BRYCE, *THE AMERICAN COMMONWEALTH* 541-42 (2d ed. 1911). In fairness to the reformers, it must be observed that more than two-thirds of the statutes enacted in New York during the Platt years "affected special subjects, such as single individuals, businesses, or places." MCCORMICK, *supra* note 256, at 84.

329. Letter from George C. Austin, N.Y. State Assemblyman, to Nicholas M. Butler, Dean, Columbia University (Feb. 17, 1897) (Butler Papers, *supra* note 266).

330. *Id.*

331. *The Standard of Legal Education*, *supra* note 319, at 6.

legislation "a bill to establish a Platt Law School."<sup>332</sup> When Chase explained that Albert Boardman was Frank Platt's law partner and a New York Law School Trustee, the paper dismissed it. "To ask us to ignore the connection of Mr. Platt and his family with the government of this state, both legislative and executive, is asking too much. The connection of this family with any measure before the Legislature creates a presumption that the measure will not be passed on its merits."<sup>333</sup> Like Dewey's organizational efforts, however, the effort to identify the bill with the Platt machine apparently backfired because it hardened the political resolve of the forces that supported the bill and, in effect, turned it into machine legislation.

Although a great array of distinguished educators turned out to oppose the bill, they fared no better at the February 24 hearing.<sup>334</sup> The educators concentrated on issues that are familiar from the discussion of the conflict between Dwight and Low over the purpose of legal education.<sup>335</sup> They argued that the idea that a law degree could be anything other than a sign of scholarship must be rejected. The "question was not of a man's right to a legal education," according to James Taylor of Vassar, "but whether or not a degree [should] stand for scholarship."<sup>336</sup> "[A] degree without scholarship behind it," Professor G.M. Forbes of the University of Rochester claimed, "was a fraud on its face."<sup>337</sup> Scholarship, the educators asserted, could only thrive in public or nonprofit institutions with substantial endowments. "There was a line," Forbes stated, "between a private institution, like New York Law School, and the great universities, which were of a public nature and not money-making enterprises."<sup>338</sup> "When the compensation or support of an institution is entirely dependent on fees," warned Seth Low, "it is impossible to keep up a standard of excellence. The tendency is

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332. *Editorial Note*, *supra* note 299, at 6.

333. Chase, *supra* note 302, at 7 (editor's commentary in response to Chase).

334. Besides William Doane on behalf of the Regents, Presidents Seth Low of Columbia and James Taylor of Vassar, Chancellors James Day of Syracuse and Henry MacCracken of NYU, and Professors Nicholas Butler of Columbia and G.M. Forbes of the University of Rochester appeared to speak against the bill. *See The New-York Law School*, *supra* note 267, at 3. In addition, A.V.V. Raymond of Union College spoke against the bill. *Law School Incorporation*, N.Y. COM. ADVERTISER, Feb. 25, 1897, at 3. The February 24 hearing was held in the Senate chamber with the judiciary committees of both houses present.

335. *See supra* notes 68-70 and accompanying text.

336. *Opposing Law School Bills*, BROOK. DAILY EAGLE, Feb. 25, 1897, at 7.

337. *Id.*

338. *The New-York Law School*, *supra* note 267, at 3.

unavoidably toward the increase in attendance and consequently of fees, for the detriment of excellence and thoroughness in methods."<sup>339</sup>

In his response, Frank Platt pointed out that "nearly every judge in the city of New York had indorsed the measure."<sup>340</sup> The legislators seemed to agree with him. "From the questions which some of the committee asked, and the way in which they were put," reported the *Brooklyn Daily Eagle*, "there was left in the mind of the spectator little doubt as to the fact that many of them favor the proposed legislation."<sup>341</sup> Although the *Commercial Advertiser* joined the *New York Times* and the *Evening Post* in condemning the legislation and published an editorial "approv[ing] of the stand taken by the officials of Columbia and New York universities,"<sup>342</sup> Dewey and Butler saw the writing on the wall. The realization that support for the bill in the legislature remained solid despite the united opposition of educators sent the two of them in search of a compromise that would save the embarrassment of losing the battle against the bill in a public forum. Butler, who was in Albany on the 24th for the hearing, arranged then to meet with George Austin the following Saturday, February 27.<sup>343</sup>

Austin and Butler met to discuss the bill on Sunday the 28th, "[Austin] representing its supporters, and [Butler] speaking for its opponents."<sup>344</sup> They tentatively agreed to a settlement.<sup>345</sup> First, the Regents were to reconsider their ill-advised requirement of passing the New York bar examination as a prerequisite to receiving an LL.B. degree. Second, the Regents would pass an ordinance requiring a three-year course for the LL.B., with the proviso that "it should not apply to New York Law School until every other law school in the state had formally agreed

339. *Opposing Law School Bills*, *supra* note 336, at 7.

340. According to Chase,

[t]wenty-eight of the judges of the New York Supreme Court in New York City and Brooklyn signed a letter which was submitted to the Board of Regents and also to the legislative committees, asking that no action be taken in regard to the New York Law School which should be otherwise than favorable.

NEW YORK LAW SCHOOL, *supra* note 109, at 6. Contrast Butler's apparent failure to elicit support among his acquaintances in the organized bar. See *supra* notes 288-91 and accompanying text.

341. *Opposing Law School Bills*, *supra* note 336, at 7.

342. *Law School Incorporation*, *supra* note 334, at 3. Even the *Albany Law Journal* condemned the bill. See *Current Topics*, 55 ALB. L.J. 129, 130 (1897).

343. See Letter from Nicholas M. Butler, Dean, Columbia University, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Feb. 25, 1897) (Butler Papers, *supra* note 266).

344. See Letter from Nicholas M. Butler to Frank Pavey, *supra* note 276.

345. See *id.*

to accept it."<sup>346</sup> Third, the Regents were "to be urged to alter their administrative relation to the New York Law School" so that its faculty could set their own examinations and mark the papers.<sup>347</sup> Fourth, the Regents' LL.B. examination was to be opened up to students who had attended other law schools in the state for two years "to afford opportunity for men of exceptional power and who might prove themselves capable of doing three years work in two years, to get a degree."<sup>348</sup> In return for remedying the law school's complaints by "purely administrative measures," Austin would allow the bill to die in committee.<sup>349</sup> Unfortunately for Butler, events among the Regents intervened to foil this compromise before it could develop.

The Regents met the day after Austin and Butler reached their agreement so that they "might sustain as a whole the action taken by a part of the executive committee and Secretary Dewey against the [charter] bill."<sup>350</sup> In accordance with the new strategy of arranging an administrative compromise to the conflict, Dewey, Upson, and Doane abandoned the aggressive stance they had taken at the legislative hearings. "When [the Regents] met," St. Clair McKelway observed, "the tone was that of a sucking dove in distinction to the thunderous denunciation of the Law School Bill at the legislative hearing."<sup>351</sup> Dewey and his allies also appear to have realized that they had overstepped their authority by organizing public opposition to the charter bill. "[W]rongs were admitted," according to McKelway.<sup>352</sup>

McKelway, who had been a friend of New York Law School since its formation, was very disturbed by the Regents' role in the conflict over the charter bill and by Dewey and the Executive Committee's role in formulating policy for the Regents. The Board of Regents, he told Dewey soon after the meeting, had developed a "habit of moving its members as pawns for a predetermined program."<sup>353</sup> Responding to Dewey's intimation that McKelway had misunderstood his conduct, McKelway wrote,

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346. *Id.*

347. *Id.*

348. *Id.*

349. Letter from Nicholas M. Butler, Dean, Columbia University, to George C. Austin, N.Y. State Assemblyman (Mar. 15, 1897) (Butler Papers, *supra* note 266).

350. *Regents Offer No Opinion*, *supra* note 261, at 14.

351. Letter from St. Clair McKelway, Editor, *Brooklyn Daily Eagle*, and Regent of the University of the State of N.Y., to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Mar. 15, 1897) (Dewey Papers, *supra* note 1).

352. *Id.*

353. *Id.*

I learned all the facts I did learn from office data alone, for I saw no data on the other side at all . . . . The board was called to take a certain action when it should have been left free to determine its own course. All the office matter was one sided. The institutions were summoned to a levy en masse on the same side. The argumentation was all on one side. We were even promised all the speeches on one side . . . and none on the other.<sup>354</sup>

The more conciliatory attitude that Dewey and his allies adopted at the meeting was too little too late. "This change of tone," McKelway observed, "followed the discovery that the bill had more friends in the legislature than [the Regents] had and that the School itself had some friends on the board. The cooing and the discovery had been better had they been earlier."<sup>355</sup>

By the end of the four-hour meeting, the Regents rescinded their January 21 ordinance, reconfirmed the two-year LL.B. course,<sup>356</sup> and "severely condemned" "[t]he use of the power of the board, by some of its employees [sic], to manufacture or to evoke expressions against the New York Law school."<sup>357</sup> Although Butler sent in his proposed compromise, it "was beaten because it was not favored and because his assurance that it would be acceptable to the New York law school was ascertained to be without foundation."<sup>358</sup> McKelway hoped, he told Dewey later, that this turn of events would check the Board's "increasing tendency to heat water for others, into which it falls itself."<sup>359</sup>

McKelway's paper, the *Brooklyn Daily Eagle*, published a lengthy account of the meeting, detailing the Regents' refusal to condone Dewey's conduct.<sup>360</sup> The article was followed by a stinging editorial aimed at Dewey and his cooperation with the university law schools in persecuting New York Law School.<sup>361</sup> The March 1 meeting, the *Eagle* reported, brought to the attention of many Regents the fact "that the remarkable demonstration" against New York Law School had been "organized from

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354. *Id.*

355. *Id.*

356. Minutes of the Regents of the University of the State of N.Y. 395 (Mar. 1, 1897).

357. *Regents Offer No Opinion*, *supra* note 261, at 14.

358. *Id.*

359. Letter from St. Clair McKelway to Melvil Dewey, *supra* note 351.

360. See *Regents Offer No Opinion*, *supra* note 261.

361. See *No Trade Unionism in Lawyer-Making*, BROOK. DAILY EAGLE, Mar. 3, 1897, at 6.

. . . the office of the Regents by methods akin to those of party machines."<sup>362</sup> In league with "[w]hat very much resemble[d] a law school ring,"<sup>363</sup> Dewey had produced "a levy en masse, the appearance of which was spontaneous, but the cause of which was due to a concerted management that was not unlike the production of effects in practical politics."<sup>364</sup> The opponents of the bill had engaged in an illegitimate attempt "to shape or control legislative action."<sup>365</sup>

The March 1 meeting of the Regents scuttled Butler's attempt to quietly settle the dispute. Several days later, Chase told a reporter from the *Commercial Advertiser* "that the passage of Assemblyman Austin's bill to incorporate [the] school was now practically assured."<sup>366</sup> At their March 18 meeting, the Regents further amended their ordinances to guarantee New York Law School's autonomy, and appointed a committee to approach the school about a compromise.<sup>367</sup> By this time, however, there would be no turning back. On one side of him, George Austin had the state's educators and Butler's friends in both houses and, on the other, the Republican organization. He tried to stall the bill on two occasions.<sup>368</sup> He also attempted to distance himself from it. "[Austin] was out of the house when the bill was advanced," Dewey wrote Butler, "some thought, intentionally so to escape the responsibility."<sup>369</sup> Those

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362. *Regents Offer No Opinion*, *supra* note 261, at 14.

363. *Id.*

364. *No Trade Unionism in Lawyer-Making*, *supra* note 361, at 6.

365. *Regents Offer No Opinion*, *supra* note 261, at 14.

366. *The Austin Bill May Pass*, N.Y. COM. ADVERTISER, Mar. 4, 1897, at 1.

367. On March 18, the Regents reaffirmed their commitment to the two-year LL.B. course. Furthermore, they restructured the examination system by giving the state's law schools the option of either conducting their own examinations with oversight by the University or having their examinations prepared and marked by the State Board of Bar Examiners or a board of examiners appointed by the state bar association. (The latter option resembled the regime in place in medicine and other professions in New York.) This, they believed, would guarantee against abuses like those with which Chase had charged them in October. *See Regents and the LL.B. Degree*, N.Y. TIMES, Mar. 20, 1897, at 7; *Regents May Object*, N.Y. COM. ADVERTISER, Mar. 20, 1897, at 1; Minutes of the Regents of the University of the State of N.Y. 404 (Mar. 18, 1897); Regents' Action on the LL.B. Degree (Mar. 19, 1897) (typescript press release in the Dewey Papers, *supra* note 1).

368. Austin had the bill "laid aside" pending the Regents March 18 meeting and told Butler that he would do so again after its third reading on the 22nd. *See* Letter from George C. Austin, N.Y. State Assemblyman, to Nicholas M. Butler, Dean, Columbia University (Mar. 22, 1897) (Butler Papers, *supra* note 266); Letter from George C. Austin, N.Y. State Assemblyman, to Nicholas M. Butler, Dean, Columbia University (Mar. 19, 1897) (Butler Papers, *supra* note 266).

369. Letter from Melvil Dewey, Secretary, Regents of the University of the State of

Assemblymen who could be swayed by the organization, however, fell in behind the bill and, notwithstanding the complaints of educational leaders, many other Assemblymen remained convinced of the justice of the law school's cause.<sup>370</sup> On March 24, the Assembly passed the bill 107 votes to seven,<sup>371</sup> with Austin arguing on its behalf. Writing several days later to Low, Butler interpreted Austin's letters "to mean . . . that the political pressure brought to bear upon [him] by Mr. Frank H. Platt . . . was such that he could not withstand it, without giving such offence to his political supporters and friends as would endanger his future public career."<sup>372</sup> "Having to disappoint either the educational sentiment of the State or the politicians interested in this Bill," Butler concluded, "Mr. Austin chose the former course."<sup>373</sup>

In spite of the bill's easy passage in the Assembly, the educators were optimistic about their chances in the Senate. "Dr. Butler knows many of the senators well," Dewey told NYU Dean Clarence Ashley, "and they have great confidence in his judgment."<sup>374</sup> Dewey expected that if Butler traveled to Albany and "ma[d]e a quiet canvass of the situation," there was every chance the bill could be defeated.<sup>375</sup> Although Butler agreed that their chances were better in the Senate, he did not make the trip to Albany. Instead, he continued to keep in communication with his "friends in the Senate" and by April 1 had concluded "that there [was] not much necessity in my bestirring myself further."<sup>376</sup> Dewey and the Regents hostile to the charter drew confidence from the fact that some Senators saw no reason to push the bill in light of the Regents' March 18 actions to remedy the bases of the school's complaints. Senator Lexow, who had introduced the bill in the Senate, told one of the Regents that "he hoped [the bill] might be withdrawn now that every excuse for it had been

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N.Y., to Nicholas M. Butler, Dean, Columbia University (Mar. 20, 1897) (Dewey Papers, *supra* note 1).

370. Letter from Melvil Dewey, Secretary, Regents of the University of the State of N.Y., to Nicholas M. Butler, Dean, Columbia University (undated) (Dewey Papers, *supra* note 1).

371. See STATE OF N.Y., JOURNAL OF THE ASSEMBLY, 120th Sess. 1871 (1897); *Only Six Votes Against It*, N.Y. DAILY TRIB., Mar. 25, 1897, at 3. The *Tribune* incorrectly recorded the vote as 118 to 6.

372. Letter from Nicholas M. Butler, Dean, Columbia University, to Seth Low, President, Columbia University (Apr. 1, 1897) (Butler Papers, *supra* note 266).

373. *Id.*

374. Letter from Melvil Dewey to Clarence D. Ashley, *supra* note 280.

375. *Id.*

376. Letter from Nicholas M. Butler, Dean, Columbia University, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Apr. 1, 1897) (Dewey Papers, *supra* note 1).



removed by the new ordinance.<sup>377</sup> Likewise, Republican Senator Timothy Ellsworth told Vice-Chancellor Doane that he "thought the bill would not pass the senate because every possible reason for its passage had been removed."<sup>378</sup> Nonetheless, on April 6, the bill easily passed by a vote of thirty-three to seven.<sup>379</sup>

As the *Brooklyn Daily Eagle* pointed out to its readers on April 8, the Senate's passage of the charter bill made it a question of the "New York Law School Bill and the Governor."<sup>380</sup> Again, there remained reason for hope among the opponents of the bill. Friction had developed between Senator Platt and Governor Frank S. Black early in 1897. "[T]he governor made a brief effort to build up a machine of his own" before resubmitting to Platt's authority in the spring.<sup>381</sup> Furthermore, a precedent existed for vetoing special charter bills for educational institutions.<sup>382</sup> Dewey and Ashley mobilized the state's educators to write letters protesting the bill.<sup>383</sup> Butler had drafted a lengthy letter to Governor Black, explaining in detail the reasons he should veto the bill even before it passed the Senate.<sup>384</sup> Many educators also appeared at a hearing on the bill at Black's office on April 15.<sup>385</sup> These efforts, however, were all for nought. On April 19, Governor Black signed New York Law School's charter bill.<sup>386</sup>

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377. Letter from Melvil Dewey to Nicholas M. Butler, *supra* note 369.

378. Letter from Melvil Dewey to Clarence D. Ashley, *supra* note 280.

379. STATE OF N.Y., JOURNAL OF THE SENATE, 120th Sess. 1111 (1897); *New York Law School Bill and the Governor*, BROOK. DAILY EAGLE, Apr. 8, 1897, at 6. The *Eagle* listed the vote as 35 to 7.

380. *New York Law School Bill and the Governor*, *supra* note 379, at 6.

381. MCCORMICK, *supra* note 256, at 84.

382. See *supra* notes 275-77 and accompanying text.

383. See Letter from Clarence D. Ashley, Dean, New York University, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Mar. 31, 1897) (Dewey Papers, *supra* note 1); Letter from Clarence D. Ashley, Dean, New York University, to Melvil Dewey, Secretary, Regents of the University of the State of N.Y. (Mar. 27, 1897) (Dewey Papers, *supra* note 1); Letter from Melvil Dewey to Clarence D. Ashley, *supra* note 280.

384. See Letter from Nicholas M. Butler, Dean, Columbia University, to Frank S. Black, Governor of New York (Mar. 25, 1897) (Butler Papers, *supra* note 266).

385. See *New York Law School*, N.Y. SUN, Apr. 16, 1897, at 2; Letter from Melvil Dewey, Secretary, Regents of the University of the State of N.Y., to Nicholas M. Butler, Dean, Columbia University (Apr. 15, 1897) (Dewey Papers, *supra* note 1).

386. *Editorial*, 13 EDUC. REV. 520 (1897).

## IX. THE ESTABLISHMENT OF NEW YORK LAW SCHOOL

To the educators who opposed the charter bill, its enactment only confirmed their distaste for party politics and politicians. "Is this another case of 'jamming?,'" asked "a Friend of Education" in the *Daily Tribune*.<sup>387</sup> "Whatever it is," he continued,

it is a blot on Legislation, a hurt to education, a discreditable piece of business, and one for which the Republican party will have to reckon at the next election with a body of voters, not only large in number but weighty in their influence, their intelligence and their independence.<sup>388</sup>

"On one issue in which the whole educational force of the State was on one side and only the Government and the Government's son on the other," complained the *Educational Review*, "education commanded 7 votes in the Senate . . . and 7 in the Assembly . . . . [T]he Government and the Government's son have thus had the pleasure of using their short-lived power to undermine the educational system of the State of New York."<sup>389</sup>

Not surprisingly, the partisans of New York Law School took a different view. In a brief editorial entitled *All the Fact in a Nutshell*, the *Brooklyn Daily Eagle* doubted the dire predictions made in the *New York Daily Tribune*.<sup>390</sup> The bar examination system and the court of appeals's rule that required law students to complete three years of high school were "unaffected."<sup>391</sup> "The school propose[d] to lower no standard."<sup>392</sup> George Chase emphasized the same point in a pamphlet published shortly after the bill was signed. "No bill, probably, received fuller discussion in committee during the whole session of the Legislature," he emphasized.<sup>393</sup> "No bill . . . was passed with a fuller understanding of its merits."<sup>394</sup> The contentions of the bill's opponents that the school

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387. *The New York Law School*, N.Y. DAILY TRIB., Apr. 26, 1897, at 4.

388. *Id.*

389. *Editorial*, *supra* note 386, at 520.

390. *See All the Fact in a Nutshell*, BROOK. DAILY EAGLE, Apr. 22, 1897, at 6.

391. *Id.* Although it could have relaxed its entrance standards after the charter bill was passed, New York Law School continued to "strictly enforce" the requirements for students in its LL.B. course. Letter from Clarence D. Ashley to Henry M. MacCracken, *supra* note 186.

392. *All the Fact in a Nutshell*, *supra* note 390, at 6.

393. NEW YORK LAW SCHOOL, *supra* note 109, at 3.

394. *Id.* at 4.

wished to "lower educational standards" and "do harm to the interests of 'higher education'" had been shown to be "assertions, insinuations, and abuse" rather than facts.<sup>395</sup>

When the charter bill was introduced, two components of Theodore Dwight's legacy, the recitation method and Dwight's conception of the purpose of legal education, had been recreated at New York Law School. George Chase aimed for more than these two elements. He also sought independence when he left Columbia. "[I]f I could get a good law school established where the faculty would have ample freedom and independence, I would like it," he had written.<sup>396</sup> Independence—"the same privilege which [the] rival schools possessed"<sup>397</sup>—had not been forthcoming from the Regents and the University. Without it the school was vulnerable to the dictates of the Regents and those who might influence them. For this reason, New York Law School "couldn't get on with the office of the board of Regents and that office could not get along with it."<sup>398</sup> The aim of the charter bill, then, was not to alter or amend educational standards, but to add the element that would complete the blueprint George Chase had in mind in 1891 when he told Melvil Dewey that he wanted to found a law school.

The bill's passage, however, did more than just realize Chase's long-standing intention to recreate Theodore Dwight's law school. By granting institutional autonomy to New York Law School, the New York State legislature declined to adopt the more restrictive, academically oriented conception of legal education favored by the university-affiliated law schools. This guaranteed the continuing survival of New York Law School's policy of making legal education accessible and of accommodating the needs of students who had to work while attending law school. This policy played an important role in legal education in New York City until the late 1920s.<sup>399</sup> It was adopted when new schools were created—for example, Brooklyn Law School in 1903 and Fordham University School of Law in 1905.<sup>400</sup> The existence of schools that favored this policy guaranteed the accessibility of legal education to persons who were not endowed with the social and economic advantages

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395. *Id.*

396. Letter from George S. Chase to Melvil Dewey, *supra* note 1.

397. NEW YORK LAW SCHOOL, *supra* note 109, at 3.

398. *All the Fact in a Nutshell*, *supra* note 390, at 6.

399. See James Wooten, *Legal Education*, in *ENCYCLOPEDIA OF NEW YORK CITY* (Kenneth T. Jackson ed., forthcoming 1993).

400. On Brooklyn Law School, see LOUIS H. PINK, *CANDLE IN THE WILDERNESS: A CENTENNIAL HISTORY OF THE ST. LAWRENCE UNIVERSITY, 1856-1956*, at 240-41 (Louis H. Pink & Rutherford E. Delmage eds., 1957). On Fordham, see Robert M. Hanlon, Jr., *A History of Fordham Law School*, 49 *FORDHAM L. REV.* xiii, xiv (1980).

that attendance at increasingly exclusive institutions like Columbia, Harvard, and Yale demanded. Thus, in addition to securing New York Law School's independence, the passage of the charter bill also defined the institutional configuration of legal education in New York City for the succeeding quarter-century.

