

CONNECTICUT LAW REVIEW

VOLUME 48

NOVEMBER 2015

NUMBER 1

Feature

Modernism and Antimodernism in the Federal Courts: Reflections on the Federal District Court for the District of Connecticut on the 100th Anniversary of Its New Haven Courthouse

JOHN FABIAN WITT

The story of the federal courthouse on the New Haven Green is a perfect parable for the modern history of the federal district courts around the country. One hundred years ago, architect James Gamble Rogers built a post office with a courtroom attached as an afterthought. In the century since, the United States has built its lower federal courts into institutions of the first rank. If we want to understand the federal district courts and their contribution, including the District Court for the District of Connecticut, we need to be students of recent American history. And there is no better structure for encapsulating the story of the lower federal courts than a building built as if a post office for the ancients, repurposed as a temple of justice for moderns, backed by the authority of the federal government, and filled with people who for one hundred years now have heroically taken the rule of law to be a sacred mission.

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JOHN FABIAN WITT*

I. INTRODUCTION

I am very pleased to have been asked to speak here this afternoon. Many thanks to Chief Judge Janet Hall for inviting me, to Judges José Cabranes and Jeff Meyer for help and encouragement along the way. Many, many thanks to Julie Jones of the U.S. Courts Library in Hartford for help in assembling the materials and slides I have today, and to Clerk of Court Robin Tabora whose generous guided tour to this wonderfully interesting building helped give me an in-person sense of its beautiful courtrooms and its amazing people.

We are here of course on the occasion of a centennial. The story of architect James Gamble Rogers and the design and building of this wonderful structure is an interesting and important one. I will get to it in due time. But with your permission, I will begin not one hundred years ago, but fifty. It was then that this building came closest to coming down, which is an interesting story, known to some of you in the room. It is a story worth dwelling on a bit here, in our celebration of the enduring Richard Lee Courthouse.

For if we want to understand the federal district courts, including the District Court for the District of Connecticut, and their contribution to American history, we need to be students of *recent* American history.

II. JUDGE TIMBERS'S MYTH

As many of you know, as some of you may remember, and as all of you can tell simply by walking around downtown New Haven, this was once a “model city” for the mid-century project of urban renewal. Under

* Allen H. Duffy Class of 1960 Professor of Law and Professor of History, Yale University. This is the text of a lecture delivered on October 30, 2014 before the judges of the United States District Court for the District of Connecticut and guests on the occasion of the 100th anniversary of the federal post office and courthouse building on the New Haven Green and the 225th anniversary of the Judiciary Act of 1789. Many thanks to the Honorable José Cabranes for inspiring this lecture, to Denny Curtis and Judith Resnik for teaching me about the architecture of justice, and to Jessie Agatstein, Abigail Moore, and Spencer Todd for research assistance.

the very same Mayor Lee for whom this building is named, the Elm City was at the vanguard of the high-modernist project of razing the cobbled-together neighborhoods of America's helter-skelter urban development from the turn of the twentieth century and replacing them with utopian skyscraper dreams: highways and clean modern lines of concrete and glass.¹

Examples include the Oak Street Connector; the Coliseum; the Knights of Columbus building; the mall and what is now the Omni Hotel; the old Macy's building where Gateway College now stands; and the Paul Rudolph-designed brutalist parking garage along Temple Street.²

Startlingly, in an irony that I am sure many have noted before me, Mayor Lee's fervor for modernist urban planning produced, in 1965 and 1966, a decision by the New Haven Redevelopment Agency and the federal government's General Services Administration to knock down this building—the building that would later be named after Lee himself. The Mayor endorsed a plan conceived by the architect I.M. Pei, modeled on Pei's still-controversial Government Center in Boston, to raze virtually everything then on the block, from the Green to Orange Street, from Chapel on the south to Elm on the north, and to replace it with a massive New Haven Government Center, punctuated by a twenty-nine-story tower and open modernist plaza.³

The project proposed to relocate the federal court spaces to undistinguished rooms in a new building on the corner of Chapel and Orange, where they would have occupied a small part of a building mostly dedicated to other government agencies.

Enter Chief Judge William Timbers. Judge Cabranes reminded the members of the Connecticut Bar Foundation this past spring of Judge Timbers's endearing eccentricities. He loved his dogs. He spoke in a whisper, so much so that he came to be known as "Whispering Willie."⁴

But in 1966, Timbers was right in line with his colleagues. He and the other judges on the district court angrily opposed the proposal. For 177 years, Timbers stormed, the federal court in New Haven had been

¹ See VINCENT SCULLY, *AMERICAN ARCHITECTURE AND URBANISM* 237 (1969).

² See RACHEL D. CARLEY, *NEW HAVEN PRES. TRUST, TOMORROW IS HERE: NEW HAVEN AND THE MODERN MOVEMENT* 21–23, 25–30 (2008), http://newhavenmodern.org/system/dragonfly/production/2013/10/09/14_26_41_524_NewHaven_TomorrowIsHere_Carley2008.pdf [<http://perma.cc/NN3U-Y7KL>] (providing photographs and history of the aforementioned New Haven construction projects).

³ See SCULLY, *supra* note 1, at 243–44, 250 (displaying aerial view of the 1966 New Haven development); see also *Government Center, New Haven, CT, 1968–1981 Project Not Built*, UNIV. MASS. AT DARTMOUTH: PAUL RUDOLPH & HIS ARCHITECTURE, <http://prudolph.lib.umassd.edu/node/4695> [<http://perma.cc/T4QA-QZUU>] (last visited Sept. 4, 2015) (discussing and depicting New Haven development plans of potential government center that was ultimately cancelled).

⁴ José A. Cabranes, Remarks at the Annual Reception of the Connecticut Bar Foundation (Apr. 24, 2014) (on file with author).

prominently located near the historic New Haven Green.⁵ Timbers liked to remind people that the District of Connecticut was “the oldest seat of any federal court in the Nation.”⁶ To locate a court with such history and dignity alongside executive branch agencies, Timbers argued, would make the courts seem like “some sub-agency” of the White House.⁷ The position of the court and the architectural distinction of its home, Timbers protested, had long been symbolic of the “rugged independence” of the federal judiciary as a distinct branch of the government.⁸

Now, this idea—that the lower federal courts have long been a central institution in communities like New Haven, and that their significance and architectural integrity as courts run back to the Founders—is a widespread one.⁹ We can recognize it in the classical Beaux-Arts architecture of this very courthouse, at least in its current incarnation. Indeed, we can find manifestations of this idea in federal courthouses all over the country, where classical facades aim to leave the impression of timeless authority running back to the original Judiciary Act of 1789, if not before.¹⁰

But, the idea that the lower federal courts have had such a central role in the lives of our communities until quite recently is deeply misleading. Let me explain.

III. THE FEDERAL COURT IN NEW HAVEN

Let’s start with the actual homes of the federal court in New Haven before the completion of this building. Timbers leaves us with the impression that the court stood in a majestic position on the Green. In reality, the court was several doors down from the Green on College Street for its first decade.¹¹ It had a somewhat better position in the first half of the nineteenth century, but it never had a facility sufficient to the work of

⁵ See *State’s Federal Judges Vote to Keep Post Office Quarters*, NEW HAVEN REG., Nov. 25, 1966, at 1.

⁶ *Town of East Haven v. E. Airlines, Inc.*, 293 F. Supp. 184, 188 (D. Conn. 1968).

⁷ Charles C. Goetsch, *A History of the New Haven Federal Courthouse*, 59 CONN. B.J. 380, 383 (1985).

⁸ *Id.*

⁹ See, e.g., Jonathan D. Rosenbloom, *Social Ideology as Seen Through Courtroom and Courthouse Architecture*, 22 COLUM.-VLA J.L. & ARTS 463, 463, 503–08 (1998) (discussing the historical significance of American federal courts). Architect Bill Pederson, designer of three federal courthouses in Minneapolis, Portland, and Buffalo, has expressed a vision of the courthouse as “an urban gathering place” in “a dialogue of community.” Barry A. Muskat, *So Far, So Good: The New Federal Courthouse*, BUFFALO SPREE (Dec. 2009), http://www.buffalospree.com/buffalospreamagazine/archives/2009_12/1209architecture.html [<http://perma.cc/5Q88-E37X>].

¹⁰ See JUDITH RESNIK & DENNIS CURTIS, REPRESENTING JUSTICE: INVENTION, CONTROVERSY, AND RIGHTS IN CITY-STATES AND DEMOCRATIC COURTROOMS 171–72 (2011) (discussing how the architectural features of many federal courthouses are intended to inspire respect for the tradition and purpose of the judiciary).

¹¹ Goetsch, *supra* note 7, at 381.

being a court. In fact, throughout its first decade, federal trials took place in borrowed space in state house buildings.¹² From 1859 to 1919, the court finally had a courtroom to call its own—but only at the cost of sharing space in the U.S. Post Office building, located a block and a half from the Green on Church Street. The courtroom was stuck on the third floor, two flights of stairs up from the post office and one flight up from the Customs Service. Precisely as Judge Timbers would later worry, the District Court had been relegated to a subordinate coexistence with an agency of the executive branch.¹³

The light architectural footprint of the early court went hand-in-hand with a tiny docket. Indeed, as recently as 1904, in the federal district courts across the country, there were fewer than 30,000 filings of civil and criminal cases combined.¹⁴

Most of these were diversity cases, not federal question cases, since federal question jurisdiction did not exist until 1875,¹⁵ and barely mattered in jurisdictions outside the South for several more decades still. As such, when we look at the great cases of the nineteenth century in the U.S. Supreme Court, it is no coincidence that the lion's share came out of the state supreme courts: examples include *McCulloch v. Maryland*¹⁶ and *Gibbons v. Ogden*,¹⁷ testing the outer boundaries of Congressional authority; *Trustees of Dartmouth College v. Woodward*¹⁸ and *Proprietors of the Charles River Bridge v. Proprietors of the Warren Bridge*,¹⁹ defining

¹² *Id.* at 380.

¹³ ANN BEHA ASSOCS., HISTORIC STRUCTURES REPORT: UNITED STATES COURTHOUSE, NEW HAVEN, CONNECTICUT 13 (1990).

¹⁴ *History of the Federal Judiciary: Private Civil Cases*, FED. JUD. CTR., http://www.fjc.gov/history/caseload.nsf/page/caseloads_private_civil [<http://perma.cc/DKE8-V8EH>] (last visited Sept. 5, 2015); *History of the Federal Judiciary: Criminal Cases*, FED. JUD. CTR., http://www.fjc.gov/history/caseload.nsf/page/caseloads_criminal [<http://perma.cc/3HX2-4KLP>] (last visited Sept. 5, 2015); see also WILLIAM F. SHUGHART II & GÖKHAN R. KARAHAN, NAT'L INST. OF JUSTICE, A STUDY OF THE DETERMINANTS OF CASE GROWTH IN U.S. FEDERAL DISTRICT COURTS 1 fig. 1 (2003), <https://www.ncjrs.gov/pdffiles1/nij/grants/204010.pdf> [<https://perma.cc/UCV3-BNDQ>] (diagramming changes in the caseloads of federal courts over time); Judith Resnik, *Building the Federal Judiciary (Literally and Legally): The Monuments of Chief Justices Taft, Warren, and Rehnquist*, 87 IND. L.J. 823, 827 fig.3 (2012) (charting total number of civil and criminal filings in U.S. District Courts for 1901, 1950, and 2001 and showing that in 1901 fewer than 30,000 were filed).

¹⁵ Jurisdiction and Removal Act of 1875, ch. 137, 18 Stat. 470.

¹⁶ 17 U.S. (4 Wheat.) 316, 323–25 (1819) (establishing power of Congress, under Necessary and Proper Clause, to create a national bank).

¹⁷ 22 U.S. (9 Wheat.) 1, 22 (1824) (establishing power of Congress, under Commerce Clause, to regulate navigable waterways).

¹⁸ 17 U.S. (4 Wheat.) 518, 594–95 (1819) (finding that a charter granting land to trustees of Dartmouth College constituted a contract within meaning of Contract Clause).

¹⁹ 36 U.S. (11 Pet.) 420, 467–68 (1837) (finding that, under Contract Clause, granting of a charter to one company did not preclude granting of a charter to another for same purposes).

the contracts clause; *Prigg v. Pennsylvania*²⁰ on the fugitive slave problem; and cases like *Munn v. Illinois*²¹ and *Lochner v. New York*,²² on the authority to regulate the marketplace.

And so it should not be surprising that the District of Connecticut court never had more than one judge during the first century and a half of its existence. Indeed, only ten district judges served in the District of Connecticut during the 140 years from 1789 until 1928.²³

The District of Connecticut was hardly alone in this. The shifting residence of New Haven's federal court was matched by the peripatetic U.S. Supreme Court: a Court that was virtually homeless during much of the early part of its existence. The Supreme Court first met in 1790 and 1791 in hastily arranged rooms in New York's Royal Exchange building and Philadelphia's Independence Hall.²⁴ The unsuitability of the surroundings was no obstacle because the justices had no cases to decide in these awkward early sittings. And even when cases began to trickle in, the justices met in repurposed state courtrooms in Philadelphia's Old City Hall and then in ill-adapted rooms in the perpetually unfinished Capitol Building.²⁵ The Court regularly heard cases in a private home when construction displaced them.²⁶ (In 1803, Chief Justice John Marshall announced the decision in the great case of *Marbury v. Madison* in a rooming house!²⁷) By 1861, the Court moved to the Old Senate Chamber, where they would stay until 1935.²⁸ Even here, however, the justices had

²⁰ 41 U.S. (16 Pet.) 539, 541–42 (1842) (declaring that federal law provided exclusive remedy for return of runaway slaves).

²¹ 94 U.S. 113, 125 (1877) (recognizing power of the state to “regulate[] . . . the manner in which [a citizen] use[s] his own property[] when such regulation [is] necessary for the public good”).

²² 198 U.S. 45, 74 (1905) (holding that state law regulating working conditions interfered with freedom to contract and was therefore unconstitutional).

²³ José A. Cabranes, *Notes on the History of the Federal Court of Connecticut*, 57 CONN. B.J. 351, 372 (1983); *United States District Judges for the District of Connecticut*, U.S. DIST. COURT: DIST. CONN., http://www.ctd.uscourts.gov/sites/default/files/forms/2015HistoricJudges_0.pdf [<http://perma.cc/VZ9F-VKZT>] (last visited Sept. 24, 2015).

²⁴ Robert P. Reeder, *The First Homes of the Supreme Court of the United States*, 76 PROC. AM. PHIL. SOC'Y 543, 545, 551 (1936).

²⁵ R. KENT NEWMYER, *JOHN MARSHALL AND THE HEROIC AGE OF THE SUPREME COURT* 398 (2001) (explaining that during the first eight years of Justice Marshall's tenure, the Court heard cases in a cramped room in the Capitol originally set aside for Senate committee hearings); Reeder, *supra* note 24, at 583 (noting that the Supreme Court's third home was in Philadelphia's City Hall).

²⁶ G. EDWARD WHITE, *THE MARSHALL COURT AND CULTURAL CHANGE, 1815–35*, at 158 (1988); Reeder, *supra* note 24, at 545 n.5 (quoting JEREMIAH MASON & GEORGE STILLMAN HILLARD, *MEMOIR AND CORRESPONDENCE OF JEREMIAH MASON* 145 (1873)).

²⁷ JEAN EDWARD SMITH, *JOHN MARSHALL: DEFINER OF A NATION* 319 (1996) (“On Thursday, February 24, . . . the justices assembled in the living room of Stelle's Hotel to announced their decision [in *Marbury v. Madison*].”).

²⁸ *The Supreme Court Building*, U.S. SUP. CT., <http://www.supremecourt.gov/about/courtbuilding.aspx> [<http://perma.cc/4GMA-KPR7>] (last visited Sept. 23, 2015).

no chambers or office space, only a single repurposed hearing room.²⁹

IV. 1914

This gives us a sense of what James Gamble Rogers was up to in 1914 when he set about to design the building in which we now find ourselves. Rogers's plan recognized the modest significance of the lower federal courts at the time. It will have escaped few of you that the chiseled marble on the outside of this building describes it as a post office first, and a courthouse distinctly second. This room we are now in was essentially where the mail was sorted. The beautiful entrance hall outside was the retail end of the post office operations. Rogers built a *post office building* with a court on the second floor.³⁰

At the cornerstone ceremony of 1914, speaker after speaker confirmed this judgment. The event celebrated the centrality of the post office to the nation. Now, we might expect as much from the president of the city Chamber of Commerce, who spoke that day.³¹ But, Governor Simeon Baldwin—at the time still a professor emeritus at Yale Law School and a former chief justice of the Connecticut Supreme Court—relegated the upstairs “temple of justice” to an afterthought and waxed poetic about the nation’s post offices.³² Their contribution to the worldwide Universal Postal Union, he announced, had led to an ever-increasing “brotherhood of nations.”³³ (Two months later World War I commenced; so much for the power of the postman!)

Even former President and future Chief Justice Taft—himself once a lower federal court judge in Ohio—described the cornerstone event as the “dedication of a *post office*” and never once mentioned the courtroom planned for the upper story.³⁴

Truth be told, in 1914, the lower federal courts had not gained all that much in stature since the nineteenth century. To be sure, they had picked

²⁹ THE SUPREME COURT: A C-SPAN BOOK FEATURING THE JUSTICES IN THEIR OWN WORDS 318 (Brian Lamb et al. eds., 2010).

³⁰ See George Nichols, *The New Haven Post Office and Court House*, 31 ARCHITECTURAL F. 85, 85–90 (1919) (explaining that more consideration was given to the design of the post office portion of the building than the courthouse portion); *Taft Wields the Trowel at New P.O.*, NEW HAVEN EVENING REG., June 4, 1914, at 1.

³¹ See Col. Isaac M. Ullman, President of the New Haven Chamber of Commerce, Address at Corner Stone Event as Chairman of the Occasion (June 4, 1914), in NEW HAVEN, CONN. FEDERAL BUILDING 1–4 (New Haven Chamber of Com. ed., n.d.), <http://ctd.uscourts.gov/sites/default/files/forms/Cornerstone%20Fed%20Ct%201914.pdf> [<http://perma.cc/TVH4-9EE8>], for the speech he recited as the Chairman of the Occasion.

³² Hon. Simeon E. Baldwin, Governor of Connecticut, Address at Corner Stone Event (June 4, 1914), in NEW HAVEN, CONN. FEDERAL BUILDING, *supra* note 31, at 4–6.

³³ *Id.* at 5.

³⁴ Hon. William Howard Taft, President of the United States, Address at Corner Stone Event (June 4, 1914), in NEW HAVEN, CONN. FEDERAL BUILDING, *supra* note 31, at 13 (emphasis added).

up some new federal statutory regimes, chief among which was the Sherman Act,³⁵ governing the law of antitrust and unfair competition.

Nonetheless, filings—civil and criminal combined—amounted to only about 40,000 nationwide in federal district courts in 1915 when this building was underway.³⁶

And still Connecticut had only one federal district judge. For nearly a decade the new Rogers building would go on with only one judge, who also, it should be noted, had a courtroom in Hartford in the similarly mixed-use U.S. Post Office and Customhouse, built in 1882.³⁷

Two things should be clear. First, Connecticut was not alone in the modesty of its lower federal courts. James Gamble Rogers designed and built a very similar post office with a courtroom on the second floor in New Orleans immediately before working on the New Haven building. Architecture critics understood that it was a post office building and described it as such, notwithstanding the well-appointed federal courtroom, which was startlingly similar in appearance to the original second floor courtroom in the 1914 New Haven building.³⁸

Second, Rogers knew how to build a proper courthouse when he wanted to. In Shelby County, Tennessee, Rogers built a courthouse that opened in 1910.³⁹ The building was a lavish, massively constructed palace of justice. Contemporaries described it with a mix of awe and mockery as “the most pretentious public building south of the Ohio River.”⁴⁰ The Shelby County building was exclusively a courthouse, with none of the ancillary agencies that would so trouble Judge Timbers here in New Haven. But it was not a federal court at all. It was a state court. It was the state courts, not the federal courts, that got their architectural due in 1919. We can see that looking up the street at the sadly underfunded state courthouse on the green, now clad in its virtually perpetual scaffolding, but in 1914 resplendent in a classical architecture that aimed to give justice timeless roots deep in antiquity.⁴¹

So the federal building here on the Green in its origins was testimony to the majesty of the federal government—it was even testimony to the

³⁵ Sherman Act, ch. 647, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. §§ 1–7 (2012)).

³⁶ See sources cited *supra* note 14.

³⁷ See Cabranes, *supra* note 23, at 356; *History of the Federal Judiciary: Historic Federal Courthouses*, FED. JUD. CTR., www.fjc.gov/history/courthouses.nsf/getcourthouse?OpenAgent&chid=5E604CBD2F9C74E38525718B00568763 [<http://perma.cc/5JFQ-CSEL>] (last visited Sept. 24, 2015).

³⁸ See *Post Office, New Orleans, La.*, 47 ARCHITECTURE & BUILDING 131–36 (1915) (providing photographs of and describing the architecture of the New Orleans building).

³⁹ AARON BETSKY, JAMES GAMBLE ROGERS AND THE ARCHITECTURE OF PRAGMATISM 81, 262 (1994).

⁴⁰ *Id.* at 83.

⁴¹ See Thomas MacMillan, *Courthouse Repairs Imminent*, NEW HAVEN INDEP. (Sept. 17, 2012, 6:07 AM), http://www.newhavenindependent.org/index.php/archives/entry/courthouse_facade [<http://perma.cc/B3VX-8GU7>] (describing issues with and delays in repairs to the courthouse in New Haven).

hopes that our national government and its agencies might contribute in some small way to the peace of mankind.

But testimony to the significance of the lower federal courts on the eve of World War I?

Not so much.

V. MODERNISM IN FEDERAL LAW

Yet change was afoot. In the world of architecture, Rogers's classical buildings were coming under increasingly withering critique. When Rogers's Sterling Memorial Library went up at Yale in the so-called Collegiate Gothic style, some critics were dismayed. "[A] monument of lifelessness and decadence," said one.⁴² The style of the age had shifted away from the Beaux-Arts of the courthouse and the neo-Gothic that Rogers was imprinting on the Yale campus. In its place were the clean modern lines of architects like Walter Gropius, whose Bauhaus school in Germany was built just a half dozen years after the courthouse in which we sit.⁴³

This was the style that would later be picked up in the rectangular forms of both the McMahon federal building in Bridgeport and the Ribicoff federal building in Hartford.⁴⁴ And it was the style that would be embraced by the architects of New Haven's urban renewal projects of the 1950s and 1960s.⁴⁵

What we should see, but often don't, is that alongside the change in architectural forms came a transformation of our law as well. The New Deal and its aftermath was our modernist moment in the law.⁴⁶ A vast new

⁴² David W. Dunlap, *A Piece of Yale's Library is Brought Back to Life*, N.Y. TIMES (Dec. 26, 2014), <http://www.nytimes.com/2014/12/27/nyregion/yale-university-library-revives-entrance-hall.html> (quoting *Harkness Hoot Denounces Yale's New Million-Dollar Gothic Buildings—Attacks "Bogus Elizabethan Mansions" on Campus*, HARV. CRIMSON (Nov. 4, 1930), <http://www.thecrimson.com/article/1930/11/4/harkness-hoot-denounces-yales-new-million-dollar/> [<http://perma.cc/6EQ8-BR78>]).

⁴³ See WILLIAM J.R. CURTIS, *MODERN ARCHITECTURE SINCE 1900*, at 186 (3d ed. 1996) (explaining how in 1920 Gropius drew up designs for the Bauhaus).

⁴⁴ See GEN. SERVS. ADMIN., ABRAHAM A. RIBICOFF FEDERAL BUILDING AND COURTHOUSE, <http://www.gsa.gov/graphics/regions/Ribicoffmore.pdf> [<http://perma.cc/BAP9-YLZR>] and GEN. SERVS. ADMIN., BRIEN MCMAHON FEDERAL BUILDING AND U.S. COURTHOUSE, <http://www.gsa.gov/graphics/regions/McMahonmore.pdf> [<http://perma.cc/HPE3-K3G5>], for photographs and descriptions of the buildings and their architecture.

⁴⁵ See, e.g., SCULLY, *supra* note 1, at 198–204 (providing photographs and descriptions of various buildings in New Haven).

⁴⁶ See, e.g., ELLIS W. HAWLEY, *THE NEW DEAL AND THE PROBLEM OF MONOPOLY: A STUDY IN ECONOMIC AMBIVALENCE* 404–38 (1995) (examining the different political and economic viewpoints regarding monopolies during the New Deal era and the legal efforts to break up those monopolies); STEPHEN SKOWRONEK, *BUILDING A NEW AMERICAN STATE: THE EXPANSION OF NATIONAL ADMINISTRATIVE CAPACITIES, 1877–1920* (1982) (explaining the institutional struggles of Roosevelt's second term and their subsequent legal, political, and social consequences); Alan Brinkley, *The New Deal and the Idea of the State*, in *THE RISE AND FALL OF THE NEW DEAL ORDER, 1930–1980*, at 85,

federal authority aimed to rationalize the law just as the new modernism sought to bring systematic order to architecture and urban planning. In the law, the new federal authority aimed to replace not the bric-a-brac of industrial neighborhoods, but the ad hoc, historically accumulated, and often divergent bodies of state statutory and common law—bodies of law that seemed increasingly to be wanting in the face of the demands of modern life.⁴⁷

Between the administrations of Franklin Roosevelt and Richard Nixon, we witnessed a profusion of new administrative agencies staffed by experts, along with a sharp growth in federal statutes displacing a combination of state rules and market interactions.⁴⁸ This is the era that inaugurated what William Eskridge and John Ferejohn usefully call “The Republic of Statutes.”⁴⁹ Fields like labor and employment law,⁵⁰ civil rights law,⁵¹ environmental law,⁵² securities law,⁵³ criminal law,⁵⁴ pensions

86–98 (Steve Fraser & Gary Gerstle eds., 1989) (discussing different views on the economic role the federal government should play during the New Deal era).

⁴⁷ See, e.g., ALAN BRINKLEY, *THE END OF REFORM: NEW DEAL LIBERALISM IN RECESSION AND WAR* 109–11 (1996) (describing New Dealer and Antitrust Division chief Thurman Arnold and his view that federal experts and agencies should have a robust and permanent role in regulating business practices); DAVID E. LILIENTHAL, *TVA—DEMOCRACY ON THE MARCH* 156 (1944) (advocating for the concept of regionalism, whereby the federal government exercises authority “to meet regional needs to the end that the entire nation may profit”).

⁴⁸ See, e.g., DANIEL R. ERNST, *TOCQUEVILLE’S NIGHTMARE: THE ADMINISTRATIVE STATE EMERGES IN AMERICA, 1900–1940*, at 6–7, 136–42 (2014) (describing the rise of administrative law in response to the rapid growth of bureaucratic power in the twentieth century); William J. Novak, *The Myth of the “Weak” American State*, 113 AM. HIST. REV. 752, 759 (2008) (noting increased academic focus on “[t]he explosive growth of federal administration and bureaucracy in the twentieth century”); Julian E. Zelizer, *The Uneasy Relationship: Democracy, Taxation, and State Building Since the New Deal*, in *THE DEMOCRATIC EXPERIMENT: NEW DIRECTIONS IN AMERICAN POLITICAL HISTORY* 276, 276–78 (Meg Jacobs et al. eds., 2003) (arguing that despite heavy resistance to taxation, New Deal policymakers pursued a state-building agenda that substantially increased the scope of the federal government).

⁴⁹ See WILLIAM N. ESKRIDGE JR. & JOHN FEREJOHN, *A REPUBLIC OF STATUTES: THE NEW AMERICAN CONSTITUTION* 4–9 (2010) (describing the legion of statutory and administrative rights first created during the twentieth century).

⁵⁰ See, e.g., National Labor Relations (Wagner) Act, Pub. L. No. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151–169 (2012)) (“To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce . . .”).

⁵¹ See, e.g., Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.) (“To enforce the constitutional right to vote[] [and] to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations . . .”).

⁵² See, e.g., National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (codified as amended at 42 U.S.C. §§ 4321–4370(h) (2012)) (“To establish a national policy for the environment[] [and] to provide for the establishment of a Council on Environmental Quality . . .”); Clean Air Act, Pub. L. No. 88-206, 77 Stat. 392 (1963) (codified as amended at 42 U.S.C. §§ 7401–7671(q) (2012)) (“To improve, strengthen, and accelerate programs for the prevention and abatement of air pollution.”).

⁵³ See, e.g., Securities Exchange Act of 1934, Pub. L. No. 73-291, 48 Stat. 881 (codified as amended at 15 U.S.C. § 78(a)–(pp) (2012)) (“To provide for the regulation of securities exchanges and

and trust law,⁵⁵ and federal tort claims⁵⁶ all witnessed the advent of massive new federal statutory regimes, and sometimes the invigoration of long-dormant older ones.⁵⁷

What this meant for the federal courts here in Connecticut, as elsewhere, was marked expansion. It was not until the early 1960s that the number of district judges in Connecticut jumped from two to four;⁵⁸ since then, the number has doubled to eight.⁵⁹ An office of chief judge for the District was established in 1948.⁶⁰

For perspective: if there were only ten district judges in the District of Connecticut in its first one hundred years, there have been nearly three times that many in the eighty-five years since.

The same pattern holds true nationwide. When this courthouse (*post office!*) was built, there were fewer than one hundred district judges nationwide;⁶¹ by 1950, there were over two hundred;⁶² today, there are over 650.⁶³ Moreover, that number does not count the magistrate judges, who do

of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes.”); Securities Act of 1933, Pub. L. No. 73-22, 48 Stat. 74 (codified as amended at 15 U.S.C. § 77(a)–(aa) (2012)) (“To provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.”).

⁵⁴ See, e.g., Law Enforcement Assistance Act of 1965, Pub. L. No. 89-197, 79 Stat. 828 (“To provide assistance in training State and local law enforcement officers and other personnel . . .”).

⁵⁵ See, e.g., Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in scattered sections of 29 U.S.C.) (“To provide for pension reform.”).

⁵⁶ See, e.g., Federal Tort Claims Act, Pub. L. No. 79-601, 60 Stat. 812 (1946) (codified as amended at 28 U.S.C. §§ 2671–2680 (2012)) (“To provide for increased efficiency in the legislative branch of the Government.”).

⁵⁷ See, e.g., Civil Rights Act of 1871, Pub. L. No. 42-22, ch. 22, § 1, 17 Stat. 13, 13 (codified as amended at 42 U.S.C. § 1983 (2012)) (combating racial violence in the Reconstruction-era South); see also *Keating v. Carey*, 706 F.2d 377, 392 (2d Cir. 1983) (Meskill, J., concurring and dissenting) (“[T]he legislative history of the 1871 Act . . . suggests that it was intended principally to assist blacks and black supporters in the post-war South . . . to preserve their newly-won freedoms.”). For the next ninety years, few plaintiffs brought § 1983 claims and the law languished. See *Developments in the Law—Section 1983 and Federalism*, 90 HARV. L. REV. 1133, 1169, 1172–73 (1977) (recognizing that “*Monroe v. Pape* resurrected section 1983 from ninety years of obscurity” and discussing the various changes in the law with respect to such claims since that decision). Indeed, it was not until *Monroe v. Pape*, 365 U.S. 167, 168, 180 (1961) and *Monell v. Department of Social Services*, 436 U.S. 658, 658 (1978) that § 1983 was revitalized and became a widespread tool for enforcing constitutional rights. *Id.*

⁵⁸ *History of the Federal Judiciary: U.S. District Court for the District of Connecticut*, FED. JUD. CTR., http://www.fjc.gov/history/home.nsf/page/courts_district_ct.html [<http://perma.cc/XZG6-BWL8>] (last visited Sept. 19, 2015).

⁵⁹ *Id.*

⁶⁰ *History of the Federal Judiciary: Chief Judges of the District of Connecticut*, FED. JUD. CTR., <http://www.fjc.gov/servlet/nGetChief?cid=200&order=c&ctype=dc&instat=ct> [<http://perma.cc/MC97-LEN9>] (last visited Sept. 5, 2015).

⁶¹ *Authorized Judgeships*, U.S. COURTS, <http://www.uscourts.gov/judges-judgeships/authorized-judgeships> (follow “Authorized Judgeships—From 1789 to Present”) (last visited Sept. 19, 2015).

⁶² *Id.*

⁶³ *Id.*

vital work in the district courts, nor the bankruptcy judges and administrative law judges, who (as my colleague Judith Resnik points out) have proliferated in the federal government in the last half century.⁶⁴

Much of this growth, of course, was propelled by a boom in the dockets. By 1997, there were three thousand filings per year in the District of Connecticut alone. Nationwide at the turn of the twenty-first century, there were more than 300,000 filings in the district courts.⁶⁵ Today that number is around 350,000.⁶⁶

The federal district courts, I submit, are modern institutions, vested comparatively recently with the vast authority they have today.

VI. BACK TO JUDGE TIMBERS

But if this is right, we have here in New Haven something of a puzzle. How do we explain Judge Timbers and his colleagues? If their authority is the product of the United States' modern departure in governance, shouldn't they have embraced the modernist urban planning of the age? If these things, as I have suggested, ran together, why did they come apart so sharply fifty years ago?

An answer lies in the curious story of this courthouse we've just told—and in the work of the people who labor within it. I think we're now in a position to see something distinctive about American law and the work of the federal district courts—and about the message embodied in this courthouse. In the United States, the modern effort to govern the vastly complicated social life of the twentieth and twenty-first centuries was run through a Constitution and a culture that gives an important place to law and lawyers.

Modernist administration did not displace earlier institutions—though sometimes (like Mayor Lee) it had aimed to do just that. Ultimately, it came to work through those earlier institutions. And so, the twentieth century project of federal authority was run through the district courts like ours here today, through the courts that had once shared back rooms with postal services. Modern social regulation was layered on top of an older

⁶⁴ See Resnik, *supra* note 14, at 888 (discussing the increase in number of federal judgeships over last half century); Judith Resnik, "Uncle Sam Modernizes His Justice": *Inventing the Federal District Courts of the Twentieth Century for the District of Columbia and the Nation*, 90 GEO. L.J. 607, 619–21 (2002) (describing the growth in the number of non-Article III federal judges in twentieth century).

⁶⁵ See *Federal Court Management Statistics*, U.S. COURTS, <http://www.uscourts.gov/report-name/federal-court-management-statistics?> (follow page 3 hyperlink; then follow "U.S. District Courts—Federal Court Management Statistics—Profiles" hyperlink dated Sept. 30, 1999) (last visited Sept. 5, 2015) (indicating that, in 1999, just over 300,000 cases were commenced in district courts).

⁶⁶ See *Federal Court Management Statistics*, U.S. COURTS, <http://www.uscourts.gov/report-name/federal-court-management-statistics?> (follow "U.S. District Courts—Federal Court Management Statistics—Profiles" hyperlink dated June 30, 2015) (last visited Oct. 24, 2015) (indicating that, in the twelve-month period ending June 30, 2015, nearly 375,000 cases were commenced in district courts).

regime of *courts*, which have (in turn) done their best to preserve what was valuable in our longstanding legal traditions while adopting the important interventions of the New Deal and Great Society projects.⁶⁷

In this sense James Gamble Rogers's work is not a disappointing failure for its refusal to adopt the modern forms. Instead, it is the perfect embodiment of the layered project of modern federal law, and Rogers—the perpetual borrower of the forms of the past for modern functions—is a perfect architect for federal justice in the twenty-first century.⁶⁸ It's no coincidence that in the early 1930s, architect Cass Gilbert—himself one of the modern planners of New Haven and its Green—built a new U.S. Supreme Court building in Washington that paralleled the classical form of the New Haven building we celebrate today.⁶⁹

Rogers's work in New Haven embraced an anti-utopianism. He rejected the radically new forms of his contemporaries as dangerous departures from the past. But he wasn't blind to the new imperatives of the modern world. To the contrary, his rootedness in the past worked as a kind of coping mechanism for—or antidote to—the brave new world of the twentieth and twenty-first centuries.⁷⁰

To me, it is hard to imagine a better structure for encapsulating the story of the lower federal courts than a building built as if a post office for the ancients, repurposed as a temple of justice for we moderns, backed by the authority of the federal government, and filled with people who for one hundred years now have heroically taken the rule of law to be a sacred mission. Thank you for being such wonderful custodians of this space. The rest of us are grateful.

⁶⁷ See KAREN ORREN & STEPHEN SKOWRONEK, *THE SEARCH FOR AMERICAN POLITICAL DEVELOPMENT* 115–18 (2004); see also John Fabian Witt, *The King and the Dean: Melvin Belli, Roscoe Pound, and the Common-Law Nation*, in *PATRIOTS AND COSMOPOLITANS: HIDDEN HISTORIES OF AMERICAN LAW* 211, 213–14 (John Fabian Witt ed., 2007) (“In the United States, the social policies of the modern state . . . were often poured like new wine into the old bottles of common-law courts and private institutions.”).

⁶⁸ BETSKY, *supra* note 39, at 1 (describing Rogers as “an interpreter of traditional forms applied to modern functions”).

⁶⁹ See, e.g., Paul Spencer Byard, *Representing American Justice: The United States Supreme Court*, in CASS GILBERT, *LIFE AND WORK: ARCHITECT OF THE PUBLIC DOMAIN* 272, 287 (Barbara S. Christen & Steven Flanders eds., 2001).

⁷⁰ See BETSKY, *supra* note 39, at 39 (noting that Rogers “appropriated historical types and transformed them into lucid representations of the new institutions they housed”).