



Dean James Barr Ames, c. 1900

Pach Brothers
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Impoverishing “the greatest law school in the world”: The Financial Collapse of Harvard Law School, 1895–1909

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Among the recent financial problems of Harvard University, those of its law school are particularly onerous, because the recession of 2008–09 caught the school in the middle of a large building project, forcing it to continue to spend heavily while the value and income of its endowment declined dramatically.¹ This present difficulty makes an examination of the impoverishment of Harvard Law School (HLS) that occurred a century ago particularly intriguing. The financial collapse during the administration of Dean James Barr Ames (1846–1910) has been overlooked by scholars,² but had a profound impact on the school by depriving it of resources needed for continued development and undermining its position at the time as “the greatest law school in the world.”³

While struggling to recover from the financial disaster over the next four decades, HLS lost what had appeared in 1900 to be an unassailable position of leadership and fell back into the pack of other leading law schools at major universities. This result demonstrates the prescience of the statement made in 1906 by Harvard University President Charles W. Eliot: “In the competition

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1. Harvard Law School, Endowment Projections Force Budget Cuts, *Harvard Law Today*, July 2009, at 2; Layoffs at Harvard Rattle Law School, *Massachusetts Lawyers Weekly*, July 6 2009.
2. Shoshana Stern, “The Good Dean”: James Barr Ames, Man of Mystery (Spring 2006) (unpublished term paper, Harvard Law School) (on file with Daniel R. Coquillette); Charles E. Loeffler and Daniel R. Coquillette, James Barr Ames (1846–1910) in *Universal Jurists*, 4 vols. (Rafael Domingo ed., Marcial Pons 2005).
3. William H. Taft, Oration in Harvard Law School Association, Report of the Eighteenth Annual Meeting, 15 (Harvard Law School Association 1904).



President Charles W. Eliot, c. 1900

Courtesy of Harvard University Archives

between American universities, and between American and foreign universities, those universities will inevitably win which have the largest amounts of free money,” that is, unrestricted cash funds.⁴ HLS essentially squandered its “free money” during the administration of Dean Ames from 1895 to 1909, leaving it destitute and unable to recover for a number of complicated reasons until the 1960s.

This outcome entailed several profound ironies. HLS impoverished itself by violating the path-breaking financial policies of President Eliot (1834–1926) who, during his administration from 1869 to 1909, laid the foundation for the university’s subsequent financial preeminence. Why did “the most successful of the university’s professional schools,” in Eliot’s words,⁵ ignore his own far-sighted financial policies that brought prosperity to those other schools, and why did Eliot permit, even encourage, the law school to do so? Secondly, Eliot, Ames, and the HLS faculty and alumni continued to think of HLS as the most successful professional school at Harvard or “in our country or in the world,”⁶ even though the finances of HLS had deteriorated below those of other Harvard professional schools by the time Ames and Eliot stepped down in 1909. Finally, and most remarkably, HLS failed in its efforts to recover financially precisely because it was widely viewed at Harvard as enormously successful and prosperous, and the school found it difficult to convince everyone—including itself—that it needed help.

I.

By the end of the 19th century, HLS had achieved unquestioned preeminence among law schools in the United States. The school attained this leading position, on the one hand, because, during his administration from 1870 to 1895, HLS Dean Christopher C. Langdell (1826–1906) established the model of academic meritocracy that would proliferate throughout legal and professional education over the next century.⁷ That model incorporated the admissions requirement of a bachelor’s degree or its equivalent, the sequenced curriculum and its extension to three years, the inductive pedagogy of teaching from cases, the hurdle of written examinations for continuation and graduation, the written examination posing hypothetical problems, the program of study leading to academic honor, the independent career track for faculty, the transformation of the library from a textbook dispensary to a resource for scholarship, and the national alumni association actively supporting the school. On the other

4. Charles W. Eliot, Annual Report of the President 1905–06, 54–55 (Harvard Univ. 1907). Annual reports of the presidents, treasurers, and deans of Harvard were published each year by the university and are cited below as “Annual Report” with the corresponding year noted.

5. Charles W. Eliot, Address, in Harvard Law School Association, Report of the Eighteenth Annual Meeting, 68 (Harvard Law School Association 1904).

6. *Id.*

7. See Bruce A. Kimball, *The Inception of Modern Professional Education: C. C. Langdell, 1826–1906* (Univ. of North Carolina Press 2009).

hand, Langdell instituted a new successful financial strategy for professional education, maintaining that a professional school devoted to academic merit would prosper because higher standards would produce better graduates who would be more marketable, making the school more attractive to prospective students.

As a result, HLS maintained the highest academic standards for admission and graduation of any law school in the country, while at the same time increasing the enrollment and geographic range of its students beyond that of any counterpart. “The school, I am glad to say, grows year by year more national. This year 740 graduates come to us from more than 100 colleges.... Some 70 men, formerly students of this school, are now teaching law in other schools,” observed Ames in 1904.⁸ In the following year, the percentages of college graduates among students at leading university law schools were as follows: Harvard, 99 percent; Columbia, 82 percent; Chicago, 60 percent; Yale, 35 percent; Pennsylvania, 35 percent; Northwestern, 31 percent; Michigan, 13 percent; Cornell, 10 percent; and Illinois 7 percent.⁹ In 1909, HLS was “larger than at any previous time in its history,”¹⁰ and “reached its highest point in numbers and influence.”¹¹ Furthermore, this expansion “both in the number of students and in the development of its library and material resources... was attained in spite of the requirement of a college degree as a condition for admission to regular standing, and in spite of other stringent regulations designed to maintain a high standing.”¹² In fact, the increase in enrollment and in academic standards were not in tension but mutually reinforcing, because “the cause of the remarkable development of the school since 1870-71” lay in “the spreading confidence in our standards and methods as illustrated by our graduates.”¹³ Consequently, “the school is now larger than at any previous time in its history, in spite, or in consequence, of the raising of its standards,” observed President A. Lawrence Lowell, soon after succeeding Eliot in 1909.¹⁴

Testimony to the school’s preeminence was abundant. In 1898, the famous Oxford legal scholar Albert V. Dicey asserted, “Harvard is quite ahead of the universities of the U.S....and the law school is their greatest triumph,”

8. James B. Ames, Address, in Harvard Law School Association, Report of the Eighteenth Annual Meeting, 70-71 (Harvard Law School Association 1904). See Charles W. Eliot, Annual Report 1904-05, 39 (Harvard Univ. 1906).
9. Eliot, *supra* note 8, at 39.
10. A. Lawrence Lowell, Annual Report of the President 1909-10, 16 (Harvard Univ. 1911).
11. Samuel Williston, Annual Report of the Dean of the Law School 1908-09, 164 (Harvard Univ. 1910).
12. Ezra R. Thayer, Annual Report of the Dean of the Law School 1909-10, 136 (Harvard Univ. 1911).
13. Charles W. Eliot, Annual Report 1902-03, 20-21 (Harvard Univ. 1904). Eliot misquotes James B. Ames, Annual Report of the Dean of the Law School 1902-03, 168.
14. Lowell, *supra* note 10, at 16.

and recommended importing the HLS system into England.¹⁵ The 1903 report of the Harvard Overseers Visiting Committee assigned to assess the law school, observed, “It is almost needless for the Committee to say that the legal education given at the Harvard Law School is the best ever given either in England or America...and the school, as a whole, is today the model for law schools throughout the country.”¹⁶ In 1904, non-alumnus and future U.S. President and Supreme Court Chief Justice William H. Taft called HLS “the greatest law school in the world,”¹⁷ confirming the view of President Eliot, who was not given to extravagant praise: “If there be a more successful school in our country or in the world for any profession, I can only say that I do not know where it is. The school seems to have reached the climax of success in professional education.”¹⁸

Commensurate with the rise of its prestige, influence, and enrollment, HLS became wealthy. Initially, the great majority of students, alumni, and local lawyers opposed Langdell’s introduction of the academic meritocratic model, and the enrollment at HLS dropped precipitously at several points during the 1870s, causing revenue to fall dramatically due to the school’s heavy reliance on tuition.¹⁹ But in the early 1880s, the school received three significant gifts for a new building, an endowed professorship, and a fund to purchase books, and in the mid-1880s enrollment began to climb rapidly and continued to grow through the last ten years of Ames’s deanship.²⁰ From 132 students in 1870–71, the enrollment surpassed 400 for the first time in 1892–93, then 500 in 1897–98, 600 in 1899–1900, 700 in 1903–04, and 800 in 1911–12.²¹ Already in 1887, Eliot announced publicly, “the law school is now in a position of great strength.”²² Ten years later, trying to recruit a new faculty member, he observed, “The

15. A. V. Dicey to Elinor M. Dicey (13–14 Nov. 1898), *quoted in* Memorials of Albert Venn Dicey, 164 (Robert S. Rait ed., MacMillan 1925).
16. Overseers Standing Committee to Visit the Law School, Report (Apr. 8, 1903), Reports of the Visiting Committees of the University Overseers, 1890–1970, (on file with Harvard University Archives), v. 1b, 720–21.
17. Taft, *supra* note 3, at 15.
18. Eliot, *supra* note 5, at 68.
19. See Charles W. Eliot, Annual Report 1880–81, 26–27 (Harvard Univ. 1882); Charles W. Eliot, Annual Report 1883–84, 34 (Harvard Univ. 1885); The Centennial History of the Harvard Law School, 1817–1917 39 (Harvard Law School Ass’n 1918); Letter from Charles W. Eliot to William C. Lane (Oct. 2, 1922) (Charles W. Eliot Papers, Harvard Univ. Archives, box 68, f. 1874 A-G). Citations to Eliot’s papers in the Harvard Univ. Archives follow the pre-2006 citation system.
20. Charles W. Eliot, Annual Report 1881–82, 26–27, 30 (Harvard Univ. 1883); Charles W. Eliot, Annual Report 1884–85, 54 (Harvard Univ. 1886); Charles W. Eliot, Annual Report 1889–90, 24 (Harvard Univ. 1891); Charles W. Eliot, Annual Report 1896–97, 25 (Harvard Univ. 1898).
21. James B. Ames, Annual Report 1905–06, 163 (Harvard Univ. 1907); Ezra R. Thayer, Annual Report 1910–11, 131 (Harvard Univ. 1912).
22. Charles W. Eliot, Annual Report 1885–86, 13 (Harvard Univ. 1887).

pecuniary condition of the law school is distinctly prosperous. It has had a large surplus for several years past.”²³ Indeed, beginning in 1886-87 the annual surplus began to grow ever larger:

Year	Annual Surplus of HLS (dollars) ²⁴
1886-87	2,850
1887-88	8,291
1888-89	6,525
1889-90	12,193
1890-91	11,635
1891-92	18,314
1892-93	16,355
1893-94	13,666
1894-95	27,046
1895-96	24,089
1896-97	10,615
1897-98	33,107
1898-99	27,547
1899-00	32,963
1900-01	33,529
1901-02	42,346
1902-03	33,550
1903-04	48,761
1904-05	44,119
1905-06	49,448

As a result, HLS accumulated an enormous cash reserve. It is difficult to calculate the exact total at any given time because certain gifts and other funds for current use were received, carried, and then expended at various points. Nevertheless, the overall trajectory was a rapid ascent “owing chiefly to more tuition fees,”²⁵ as enrollment grew. In 1895, Eliot put the surplus at \$112,004 and

23. Charles W. Eliot to Blewett Lee (Mar. 13, 1897), Charles W. Eliot Papers, (Harvard Univ. Archives, box 91, letterbook, 1889-98, leaves 167a-168).

24. Winthrop H. Wade, *Twenty Years of the Harvard Law School Association*, 8 (Harvard Graduates' Magazine 1907). Dollar amounts are from the year listed.

25. *Annual Report of the Treasurer of Harvard University 1889-90*, 5 (Harvard Univ. 1891).

two years later at \$133,000.²⁶ At the high point in about 1906, the unrestricted cash reserves of the school approximated \$498,000. This huge cache of “free money” was five times the annual budget of the school and exceeded the sum of all its endowed funds, totaling about \$394,624.²⁷ By comparison, Columbia University Law School, generally recognized as “the nation’s second best” law school at the time,²⁸ lacked any significant cash reserves and was seeking gifts for a new building.²⁹ At Yale, the law school became solvent in the 1890s and began to accrue endowment and to construct a new building, but it lacked the enrollment and tuition base of either Harvard or Columbia, as well as deep-pocketed alumni in the financial centers of New York or Boston.³⁰ Nor was the University of Chicago Law School yet a competitor, given that between 1902 and 1904 it borrowed HLS Professor Joseph H. Beale to serve as founding dean and establish the HLS model there.³¹ At the beginning of the 20th century, therefore, the preeminence of HLS in academic standards, wealth, and prestige seemed insurmountable.

II.

With success came problems. Austin Hall, the new building completed in 1883, had been expected to house the school for fifty years, but was already outgrown by 1891.³² Space was so constricted by September 1895 that the 1Ls had to line up several hours early to secure a classroom seat, and an embarrassed President Eliot appointed a committee “with full power to determine the mode of assigning seats to first-year students, it being understood that the formation of a line of students several hours before the assignment of seats should not be repeated.”³³ By 1897, when the entering class numbered 209,

26. Charles W. Eliot, Annual Report 1894-95, 27 (Harvard Univ. 1896); Eliot to Lee, *supra* note 23.
27. As of July 31, 1906, HLS had cash reserves of \$347,742, a discretionary cash account designated for the use of the library of \$100,000, and a cash surplus for the 1905-06 academic year of about \$50,000, exclusive of gifts toward endowment of \$116,250. Annual Report of the Treasurer 1905-06, 67, 102-103 (Harvard Univ. 1907).
28. Robert A. McCaughey, Stand, Columbia: A History of Columbia University in the City of New York, 1754-2004, 231 (Columbia Univ. Press 2003).
29. Julius Goebel, Jr., A History of the Law School of Columbia University, 186 (Columbia Univ. Press 1955).
30. Frederick C. Hicks, History of the Yale Law School to 1915, 210-15 (Yale Univ. Press 1935); Brooks M. Kelley, Yale: A History, 276-77, 340-41 (Yale Univ. Press 1974); John H. Langbein, Law School in a University: Yale’s Distinctive Path in the Later Nineteenth Century, *in* History of Yale Law School, 60-61 (Anthony T. Kronman ed., Yale Univ. Press 2004).
31. Charles W. Eliot, Annual Report 1901-02, 44 (Harvard Univ. 1903); Letter from Joseph H. Beale to Charles W. Eliot (Oct. 27, 1903) Charles W. Eliot Papers, (Harvard Univ. Archives, box 274-275).
32. Charles W. Eliot, Annual Report 1890-91, 19 (Harvard Univ. 1892). C. C. Langdell, Annual Report of the Dean of the Law School 1890-91, 114 (Harvard Univ. 1892).
33. HLS Faculty, Minutes of Meetings, Harvard Law School Library Special Collections, 30 Sep. 1896.

it became evident to the president, the dean, and the Overseers Visiting Committee that “two costly improvements will need soon to be made for the law school. Its building will have to be enlarged, and the class of the first year will have to be divided into two sections.”³⁴ Even though the faculty tightened standards for admission and continuation,³⁵ enrollment continued to grow, and the president wrote in 1900, “An immediate enlargement of the building is imperatively demanded.”³⁶

By 1904, Dean Ames maintained that the overcrowding was threatening the students’ work at HLS, because, apart from

the inadequacy of [library] stack, the lecture rooms, and professors’ rooms, and of the administration and cataloguing accommodations...the insufficient accommodations of the reading room are a serious menace to the effectiveness of the school. When the students numbered 400 or less, a large majority of them did the greater part of their work in Austin Hall. They were always sure of finding a seat at a table.... Being within easy reach of all the books, they formed the habit of consulting freely the authorities, and gained a familiarity with the reports and treatises.... Today the students, as a rule, do the greater part of their work in their own rooms. Many would prefer to work in Austin Hall, but the small seating accommodation makes it impossible to count upon obtaining a place at a table, and many students abandon the attempt to get one...a return to the former practice of making the reading room the chief place of work of the students is imperatively demanded, if the school is to maintain its high standard.³⁷

In the meantime, planning for additional space had begun, but foundered on disagreements and delays. In winter and spring of 1898 the HLS faculty developed a plan for enlarging Austin Hall, and asked the Harvard Corporation to authorize the project. In fall 1899, the faculty again requested authorization, but the corporation balked, preferring a new building to an addition and citing the rising construction costs. In January 1901, a new faculty committee debated whether to enlarge Austin Hall or erect a new building and began consulting with architects.³⁸ Eliot’s leave of absence during winter delayed progress until June, when he and the corporation endorsed architectural plans for a new building. During the last half of 1901, the faculty persuaded the corporation to

34. Eliot, Annual Report 1896–97, *supra* note 20, at 25. See James B. Ames, Annual Report 1896–97, 162–63 (Harvard Univ. 1898); James B. Ames, Annual Report 1897–98, 162 (Harvard Univ. 1899); Overseers Standing Committee to Visit the Law School, Report (Apr. 13, 1898), Reports of the Visiting Committees of the University Overseers, 1890–1970, Harvard University Archives, v. 1a, 527–28.

35. HLS Faculty, *supra* note 33, at Oct. 8, 1897; Nov. 17, 1897; Nov. 12, 1900.

36. Charles W. Eliot, Annual Report 1899–1900, 17–18 (Harvard Univ. 1901).

37. James B. Ames, Annual Report 1903–04, 181 (Harvard Univ. 1905).

38. HLS Faculty, *supra* note 33, at Feb. 24, 1898; Mar. 17, 1898; Nov. 6 & 13, 1899; Jan. 28, 1901. See also Feb. 1 & 18, 1901.

enlarge Austin Hall instead, and during 1902 plans were drawn and contracts tendered, but construction was postponed again due to the high cost.³⁹

Meanwhile, enrollment had stabilized so the faculty and the corporation decided in 1903 to shelve the project, over the protest of the Overseers Visiting Committee. Then a large increase in the entering class in fall 1903 prompted the faculty to urge that construction begin in the spring.⁴⁰ During 1904, however, the corporation dug in its heels and refused to approve the addition to Austin Hall, thinking it insufficient; and in December, the faculty capitulated and agreed to an entirely new building.⁴¹ When plans were completed in June 1905, the faculty asked the corporation to authorize the project immediately so the building “can be ready for use by the opening of the fall term of 1906,”⁴² lest “a whole year will be lost.”⁴³ But the corporation waited until fall 1905 to solicit bids and construction finally began in spring 1906.⁴⁴ The structure was to be named in honor of Langdell, the only living professor to have a building named after him at Harvard.⁴⁵

The decade of delays and consultations were frustrating to all concerned,⁴⁶ including, perhaps, Langdell, who died in July 1906 before Langdell Hall was opened. Yet, Eliot believed that the process had improved the final plan,⁴⁷ although many felt that the appearance of Langdell Hall did not harmonize with its surroundings.⁴⁸ The aesthetic issue was significant because the edifice

39. Letter from Charles W. Eliot to James B. Ames (Jun. 10, 1901) (Charles W. Eliot Papers, Harvard Univ. Archives, box 92, letterbook, 113); HLS Faculty, *supra* note 33, at Jun. 22, 1901; Eliot, *supra* note 32, at 43-44.
40. Eliot, *supra* note 13, at 20; HLS Faculty, *supra* note 33, at Dec. 24, 1903; Report, Overseers Standing Committee, *supra* note 16, at 719-20.
41. Charles W. Eliot, Annual Report 1903-04, 25 (Harvard Univ. 1905); HLS Faculty, *supra* note 33, at Dec. 12, 1904. *But see* HLS Faculty, *supra* note 33, at Jan. 16, 1905.
42. Letter from Francis C. Lowell and Thomas N. Perkins, Committee of the Corporation on the Law School Building, Report to the Corporation (Jun. 22, 1905), Charles W. Eliot Papers (Harvard Univ. Archives, box 276-277). *See* Eliot, *supra* note 8, at 58.
43. Letter from Francis C. Lowell to Charles F. Adams (Jun. 22, 1905), Charles W. Eliot Papers (Harvard Univ. Archives, box 276-277).
44. Eliot, *supra* note 8, at 39. *See* HLS Faculty, *supra* note 33, at Oct. 3, 1905.
45. Overseers Standing Committee, *supra* note 34, at 527-28; Eugene Wambaugh, Langdell Hall and the Earlier Buildings of the Harvard Law School, in 20 *The Green Bag*, 302 (1908).
46. Overseers Standing Committee to Visit the Law School, Report (Feb. 28, 1906), Reports of the Visiting Committees of the University Overseers, 1890-1970, Harvard University Archives, v. 1b, 883.
47. Eliot, *supra* note 8, at 39.
48. Albert F. Veenfliet, Letters to his Family and Harvard Memorabilia, 1902-09, Oct. 1, 1906 (on file with the Harvard Law School Library Special Collections); Austin W. Scott, Letters from a Law Student to his Family, 1906-1908, Oct. 4, 1906 (Harvard Law School 1974); James B. Ames, Annual Report 1906-07, 153 (Harvard Univ. 1908); Eliot, *supra* note 4, at 26-27.

was massive. Due to financial constraints, only three-fifths of Langdell Hall was erected at this time, yet even that fraction was twice as large as Austin Hall; and when completed, Langdell Hall was expected to “remain for many years one of the largest buildings in Cambridge.”⁴⁹ Construction went on throughout the year 1906–07, and by the time the building was opened in October 1907,⁵⁰ everyone had apparently tired of the project. Prompted as much by custom as enthusiasm, plans were made for a dedication ceremony, and Eliot invited A. V. Dicey to come from Oxford and give the dedication address. But when he declined, the initiative lost steam, and since there was no donor to honor, the event was cancelled. When the remaining two-fifths of the building was completed in 1929, a dedication was held, at which point Langdell scarcely received any mention.⁵¹

A significant reason for the ambivalence and 10-year delay in planning and building Langdell Hall was that the entire cost, amounting to about \$400,000, was paid out of the unrestricted cash reserves of the school.⁵² Already in his annual report for 1896–97 President Eliot wrote that “fortunately the [tuition] earnings of the school are large enough” to cover the expense of a new building, and he repeated the point in 1900.⁵³ In his 1898–99 report, Dean Ames stated without qualification, “The expense of the new building will be met wholly from the surplus earnings of the school.”⁵⁴ Given this approach, there was no reason to rush the expenditure, and Eliot even noted that the delay in 1902 meant, “the annual surpluses of the school can be accumulated to cover the extra cost of the new building.”⁵⁵ Conversely, the Overseers

49. Wambaugh, *supra* note 45, at 305. See Eliot, *supra* note 4, at 26–27.

50. Eliot, *supra* note 4, at 26–27; Veenfliet, *supra* note 48, at Oct. 1, 1906; Ames, Annual Report, 1906–07, *supra* note 48, at 153; Scott, *supra* note 48, at Oct. 4, 1906, Oct. 16, 1907, Jan. 8 1908; Wambaugh, *supra* note 45, at 302.

51. HLS Faculty, *supra* note 33, at Feb. 21, 1907, Mar. 21, 1907, May 20 & 28, 1907, Jun. 22, 1907; Letter from Charles W. Eliot to Albert V. Dicey (May 28, 1907), Charles W. Eliot Papers, (Harvard Univ. Archives, box 96, letterbook, 84); [Sarah R. Ames], Memoir of James Barr Ames, in James Barr Ames, Lectures on Legal History and Miscellaneous Legal Essays (Harvard Univ. Press 1913); F. A. D. Atwood, Old Folks’ Day, New Boston, N.H., Jun. 13, 1907, Thirteenth Reunion, 6n (John B. Clarke 1908).

52. The building itself cost about 365,000 dollars, and furnishings apparently ran another 35,000 dollars. Annual Report of the Treasurer 1905–06, 10 (Harvard Univ. 1907); Annual Report of the Treasurer 1907–08, 14 (Harvard Univ. 1909); Annual Report of the Treasurer 1908–09, 12 (Harvard Univ. 1910); Wambaugh, *supra* note 45, at 303–4; Francis Rawle, A Hundred Years of the Harvard Law School, 1817–1917, Harvard Graduates’ Magazine 26, Dec. 1817 at 186; Lowell to Adams, *supra* note 43.

53. Eliot, Annual Report 1896–97, *supra* note 20, at 25. See Eliot, *supra* note 36, at 17–18.

54. James B. Ames, Annual Report 1898–99, 174 (Harvard Univ. 1900).

55. Eliot, *supra* note 31, at 44.

Visiting Committee argued that, since the money was in hand, construction could begin as soon as possible.⁵⁶ In any case, the financing arrangement was widely known and publicized at the time.⁵⁷

The depletion of its “free money” had significant consequences for HLS. First, it eliminated the reserves that could carry the school through difficult times without drastic cuts. For example, the Panic of 1907 caused other schools at Harvard to feel pinched.⁵⁸ In addition, the loss of reserves made any decline in enrollment and tuition an immediate threat. Although the total enrollment of HLS was still strong and growing in 1904–05, the graduates of Harvard and other colleges had begun to exhibit a worrisome shift away from enrolling in law school toward entering business.⁵⁹ In the late 1910s the threat was realized when World War I brought a precipitous drop in enrollment.⁶⁰ Moreover, depleting the cash reserve entailed the loss of annual income from the interest on that fund. In 1914, Ames’s successor as dean, Ezra R. Thayer, lamented the loss of \$15,000 in annual income that previously had come from investing the cash spent on Langdell Hall.⁶¹

Finally, the maintenance cost on the new building increased annual expenses significantly. Annual “general expenses” at HLS more than doubled from \$11,752 before Langdell Hall came on line to \$25,633 afterward.⁶² Concurrently, the university introduced a new policy of distributing overhead charges to the units,⁶³ and HLS showed a new “University charge” in 1907–08 of \$7,165, which grew to \$9,148 in 1908–09. These new factors reduced the annual surplus of the school from \$41,351 in 1905–06 to \$11,452 in 1908–09, and then produced a deficit of \$16,262 in 1911–12, which continued thereafter. In

56. Overseers Standing Committee, *supra* note 16, at 719–20.

57. Wade, *supra* note 24, at 8; Transcript, Austin W. Scott, Harvard Law School as it used to be (Nov. 15, 1964) (Harvard Law School Library Special Collections); Rawle, *supra* note 52, at 186; Wambaugh, *supra* note 45, at 303–4.

58. Wallace B. Donham, The Graduate School of Business Administration, 1908–1929, in *The Development of Harvard University since the Inauguration of President Eliot 1869–1929*, 534 (Samuel E. Morison ed., Harvard Univ. Press 1930).

59. Eliot, *supra* note 4, at 26–27. A. L. Lowell, Annual Report 1911–12, 17–18 (Harvard Univ. 1913); Bailey B. Burrill, Professional Distribution of College and University Graduates, 78 (U.S. Office of Education 1912); McGruder E. Sadler, A Comparative Personnel Study of Ministerial, Medical, and Law Students 1–51 (1929) (Ph.D. dissertation, Yale Univ.).

60. Rawle, *supra* note 52, at 186.

61. Letter from Ezra R. Thayer to Mark A. D. Howe (Mar. 28, 1914) (on file with Harvard Law School, Dean’s Office Records, Harvard University Archives, box 1: Dean Thayer Correspondence Subject Files, f. University Relations 1). See *The Centennial History*, *supra* note 19, at 57, 107, 114–15, 119.

62. Annual Report of the Treasurer 1905–06, 10 (Harvard Univ. 1907); Annual Report of the Treasurer 1908–09, 12 (Harvard Univ. 1910).

63. Eliot, *supra* note 31, at 11–14; Eliot, *supra* note 8, at 58–9.

Ames's final year as dean—1908–09—the cash reserves of HLS had fallen from an amount equaling five times the annual budget to one quarter of the annual budget, or \$31,660.⁶⁴

Given the clear prospect of this financial collapse as the plans to build and finance Langdell Hall unfolded between 1897 and 1907, it is ironic that Harvard officials continued to celebrate the prosperity of HLS. In 1904, Eliot testified, “the law school is the most successful of the university’s professional [s]chools...in the relation of its receipts to its actual disbursements and its desirable expenditures.”⁶⁵ In view of this “great prosperity,” the salaries of HLS professors were raised in 1904, and the president affirmed, “The pecuniary prosperity of the school, quite in contrast with the condition of the other departments of the university, made this action possible and just.”⁶⁶ As late as 1907, a history of the HLS alumni association commended the “extraordinary growth” of the school in various measures, including the surplus.⁶⁷ Published in 1908, the standard scholarly history of HLS applauded “the great series of benefactions which have since provided so ample an endowment for the institution.”⁶⁸ Even after retiring in 1909 and observing the deficits of the school, Eliot continued to maintain, “The law school is the most successful department of the entire university.”⁶⁹

So loud and incessant was the drumbeat about the school’s prosperity that prominent administrators and alumni of the university continued to affirm it well into the next decade. When Harvard University conducted its first modern fundraising campaign, between 1916 and 1920, the assistant comptroller informed the leaders of the campaign: “The law school which, I understand, is going to raise some money, is easily the wealthiest department of the university.”⁷⁰ The campaign chairman, who worked with fellow alumnus James Pierpont Morgan in New York, replied, “I agree with you that the law school, so far as I can see, doesn’t seem to need money nearly as much

64. Annual Report of the Treasurer 1905–06, 10 (Harvard Univ. 1907); Annual Report of the Treasurer 1907–08, 14 (Harvard Univ. 1909); Annual Report of the Treasurer 1908–09, 12 (Harvard Univ. 1910); Annual Report of the Treasurer 1911–12, 15–16, 132–35 (Harvard Univ. 1913).

65. Eliot, *supra* note 5, at 68.

66. Eliot, *supra* note 41, at 25.

67. Wade, *supra* note 24, at 8.

68. Charles Warren, *History of the Harvard Law School*, 428 (vol. 2, Lewis 1908).

69. Letter from Charles W. Eliot to Albert V. Dicey (May 2, 1913), Charles W. Eliot Papers, (Harvard Univ. Archives, box 401).

70. Letter from Robert F. Duncan to Thomas W. Lamont, Records of Harvard Endowment Fund, 1916–1939 (Dec. 13, 1916), Records of Harvard Endowment Fund, 1916–1939 (Harvard Univ. Archives, Correspondence of Thomas W. Lamont, box 1916–1917, f. 1916).

as the rest of the university.⁷¹ As a result, the university campaign did not incorporate into its list of “urgent needs” the HLS effort to raise endowment funds in honor of its centennial in 1917.⁷²

III.

Ezra R. Thayer, who became HLS dean in 1910, was apparently the first to comprehend and analyze the financial decline of HLS. Coming to the deanship from a law firm outside of HLS, he arrived unaware of the problem but in his second year analyzed expenses, revenue, enrollment, and tuition in prior decades and foresaw not only the coming deficits but also the structural problem in HLS finances.⁷³ Furthermore, he realized “that the mistake about our wealth is widespread and I think this is an unhealthy situation.”⁷⁴

Thayer then looked for ways to publicize the “poverty” of HLS to the Harvard community, a radical departure from the message of the prior fifteen years. His annual report of 1912–13 began “bringing to the public attention some facts about our financial condition,” although “I have had some doubt about the right way of publishing them because one feels some embarrassment about a public wail concerning the poverty of his institution.”⁷⁵ He next proposed to the editor of the *Harvard Alumni Bulletin* that that periodical “might be a good way of bringing to the public attention some facts about our financial condition The idea that the law school needs money will no doubt surprise most people. The general impression is that the school is rolling in wealth. This is not surprising considering the record of the school. . . . But the conditions which made such things possible. . . are now altogether changed as can easily be shown; and. . . the impression that we are so rich is not a healthy one.”⁷⁶ The *Bulletin* printed Thayer’s comments, extracted from his annual report, while observing, “the fact that there can be any need for money [in the law school]. . . will be noted with some surprise.”⁷⁷

71. Letter from Thomas W. Lamont to Robert F. Duncan, Records of Harvard Endowment Fund, 1916–1939 (Dec. 20, 1916) (Harvard Univ. Archives, Correspondence of Thomas W. Lamont, box 1916–1917, f. 1916).
72. Ten Millions for Harvard, President Lowell Sets Forth the Needs of the University, *reprinted from* the Harvard Alumni Bulletin, Jun. 26, 1919 (Harvard Endowment Fund Committee 1919); Eliot Wadsworth, Campaign Book of the Harvard Endowment Fund Committee, July 1919, Records of Harvard Endowment Fund, 1916–1939, 2–5 (Harvard University Archives, Correspondence of Thomas W. Lamont, box 1918–1921); The Harvard Endowment Fund, Harvard and the Future, 9 (Harvard Univ. Press 1919).
73. Six-page chart, Law School, Dean’s Office Records (on file with Harvard Univ. Archives, box 1 Dean Thayer Correspondence Subject Files, f. University Relations).
74. Letter from Ezra R. Thayer to Francis C. Huntington (Mar. 24, 1914) (Ezra Ripley Thayer Papers, 1882–1915, Harvard Law School Library Special Collections, box 9, f. 9–4).
75. Thayer to Howe, *supra* note 61. See Ezra R. Thayer, Annual Report of the Dean of the Law School 1912–13 (Harvard Univ. 1912).
76. Thayer to Howe, *supra* note 61.
77. News and Views, Harvard Alumni Bulletin, Apr. 8 1914.

In 1915, Thayer committed suicide, setting back the effort to repair the finances of HLS. No dean before or after so frankly confronted the problems of the school's tuition-dependent model and the imprudence of spending the HLS surplus while incurring new expenses.⁷⁸ Thayer's insights informed the HLS fundraising appeals in 1916 and 1917, even though most university administrators and HLS alumni remained uncomprehending due to the annual surpluses achieved by the school in the past. In fact, these HLS appeals even made explicit comparisons to show that the school's student/faculty ratio and endowment/student ratio were much worse than at other Harvard schools.⁷⁹ Celebrations had become confessions. But HLS attracted little sympathy, and its centennial campaign raised barely a quarter of the goal of \$1.1 million.⁸⁰

Yet, greater than either the irony that HLS collapsed financially while Eliot, Ames, and the faculty and alumni continued to think of it as Harvard's most successful professional school, or the irony that HLS failed to recover financially during the 1910s because it was widely viewed as prosperous, was the irony that HLS impoverished itself by violating the fundamental financial policies of President Eliot. It was Eliot who laid the foundation for Harvard's subsequent financial preeminence by positing and instituting several path-breaking policies during his administration from 1869 to 1909. Eliot embedded these policies in his thirty-nine annual reports, which he wrote with the intention to explain not only the affairs of Harvard University, but also the best way to run a university.⁸¹

One of his cardinal policies was that universities ought "to spend every year all their income"⁸² and never carry over a surplus from a given year. In fact, Eliot maintained, "it is not possible to avoid occasional deficits," because "to avoid deficits invariably would mean to aim deliberately at an annual surplus, and to keep sufficient reserves to guarantee that annual surplus. This cautious policy, which is appropriate to an industrial or commercial establishment, the

78. Thayer to Howe, *supra* note 61. Thayer observed about HLS in the 1890s: "[T]he students were packed in Austin Hall, which was no where nearly large enough to give them proper accommodations, and the classes handled by a single teacher grew to be...a good deal larger than they should have been."
79. William Caleb Loring, James Byrne, and William C. Osborn, *To the Graduates of the Harvard Law School* (Harvard Law School Library Special Collections 1917); Rawle, *supra* note 52, at 186; *The Centennial History*, *supra* note 19, at 170-73.
80. Roscoe Pound, *The Law School*, in *The Harvard Endowment Fund, Harvard and the Future*, 12-13 (Harvard Univ. Press 1919). The total raised in the HLS centennial campaign does not appear to be recorded in any records identified thus far. But that no more than \$250,000 could have been raised can be inferred from [List of] "\$10,000 and Over [Gifts] Endowment Fund," [c. late 1920] and [List of] "Subscribers who have pledged \$25,000.00 and Over, September 10, 1920. Corrected to Nov. 1920," both in Harvard Endowment Fund Committee, *Records of Harvard Endowment Fund, 1916-39* (Harvard Univ. Archives, box "Lists, reports, statistics, etc." 1919-25, f. Various Statistics).
81. Letter from Charles W. Eliot to Charles F. Thwing (Feb. 17 & 28, 1898) (Charles F. Thwing Papers, Case Western Reserve Univ. Library Special Collections, box 5, f. 1).
82. Charles W. Eliot, *Annual Report 1882-82*, 41 (Harvard Univ. 1883).

president and Fellows [of the Corporation] think not to be the best in an educational and charitable institution.”⁸³ The supposed profligacy of Eliot’s policy of deficit spending has been criticized in at least one prominent analysis without appreciating that Eliot’s purpose was to justify the institution’s need for gifts.⁸⁴ As he wrote to the president of Johns Hopkins University in 1887, “So long as the community sees that the trustees [of Johns Hopkins] can and do build out of income...new endowments will be somewhat improbable.... Is it not time to mortgage—so to speak—your whole income, as we do at Harvard? A man who can build a good home without touching his principal is sure to be counted rich.”⁸⁵

Another of Eliot’s fundamental policies was to avoid dependence on tuition and instead to build a large endowment of invested funds, preferably unrestricted. “The law of supply and demand...never has worked well in the province of high education,” asserted Eliot in his inaugural address of 1869.⁸⁶ He related this policy particularly to the faculty of arts and sciences, but it was no less true that “a professional school of high grade ought not to depend on tuition fees.... In law schools, as in other educational institutions, it is only the elementary instruction, given year after year to large classes, which can be self-supporting.”⁸⁷

Recognizing that donors rarely give unrestricted endowment funds, leaving full discretion to university authorities to spend the income, Eliot repeatedly announced a third guideline: “There is no more desirable gift to a university than a fund to endow a professorship.”⁸⁸ The reason that “of all university endowments the most fundamental and permanently valuable are endowed professorships”⁸⁹ is that such a gift “sets free resources now used to meet those charges” for salary.⁹⁰ In a sense, endowment for a professorship is fungible, since salaries have to be paid one way or another. Hence, “whoever endows one of the...professorships which have no endowment” and “whoever gives an unrestricted fund contributes by its full amount to the same end.”⁹¹

Another cardinal financial policy was not to fund the construction of buildings out of university resources because, on the one hand, “experience

83. Eliot, *supra* note 13, at 53.

84. Seymour E. Harris, *Economics of Harvard* (McGraw-Hill 1970) (repeatedly criticizes Eliot on this point).

85. Letter from Charles W. Eliot to Daniel C. Gilman (Oct. 29, 1887) (Daniel Coit Gilman Papers, Johns Hopkins Univ. Library Special Collections, Ms. 1).

86. Charles W. Eliot, *Inaugural Address*, reprinted in *A Turning Point in Higher Education*, 20 (Harvard Univ. Press 1969).

87. Eliot, *supra* note 22, at 13.

88. Eliot, *Annual Report 1906-07*, 38.

89. Eliot, *supra* note 31, at 61.

90. Eliot, *Annual Report 1883-84*, *supra* note 19, at 44.

91. *Id.*

has shown that new buildings will be provided by gift nearly as fast as they are needed.”⁹² On the other hand, experience also showed that “as fast as new resources are placed in their hands...the Corporation incur new permanent charges.” Gifts, in fact, are expensive and buildings more so, because “enlargements, improvements, and repairs fall upon the Corporation.”⁹³ Mindful of this problem of paying for the maintenance of buildings received as gifts, Eliot announced a new policy in 1903 that Harvard would not accept any gift for a building without an accompanying endowment to pay for its maintenance.⁹⁴

Those five policies culminated in a sixth: Harvard always needed more gifts. Eliot’s consistent approach was to identify more needs and point to the limitations of resources. When acknowledging that “the total endowment of the university continues to increase,” Eliot unflinchingly observed, “nevertheless, many urgent needs weigh upon the minds of the faculties and the governing boards.”⁹⁵ Even while gratefully recognizing enormous gifts, the president was utterly shameless in asking for more in the next breath: “It may seem strange to urge the need of further endowments immediately after the receipt of the large...Endowment Fund; but the fact is that...the income of that fund is not applicable to charges already incurred, or to any expansions of the work of the College.”⁹⁶

Given his insistence on applying these six policies to all other sectors of Harvard, it is ironic not only that HLS—the most successful professional school—violated them, but did so with Eliot’s concurrence and even encouragement. As noted above, HLS began accumulating an annual surplus in 1887, and Eliot and others publicized it and crowed about the school’s “prosperity.” No other unit of Harvard received this treatment in the 2,700 pages of Eliot’s annual reports. Before HLS began accumulating its large surplus, the president urged the school to escape dependence on tuition and seek gifts for endowment, as prescribed by his general policies. Shortly after Dean Langdell arrived in 1870, Eliot emphasized that “the law school is very inadequately endowed, and is therefore somewhat dependent...upon the number of its students. It is this deplorable dependence which debases so many of the professional schools of this country.”⁹⁷ In 1878 Langdell concurred, and in 1880 Eliot repeated, “the endowment of the law school is deplorably small.”⁹⁸ In the mid-1880s

92. Eliot, Annual Report 1882-83, 41 (Harvard Univ. 1884).

93. Eliot, *supra* note 82, at 42.

94. Eliot, *supra* note 13, at 25.

95. Eliot, Annual Report, 1900-01, 49-50 (Harvard Univ. 1902).

96. Eliot, *supra* note 8, at 24.

97. Charles W. Eliot, Annual Report 1871-72, 21-22 (Harvard Univ. 1873). See Charles W. Eliot, Annual Report 1872-73, 17, 30-31 (Harvard Univ. 1874).

98. Charles W. Eliot, Annual Report 1878-79, 28 (Harvard Univ. 1880). See C. C. Langdell, Annual Report of the Dean of the Law School 1876-77, 91 (Harvard Univ. 1878).

the president stated, typically, “it is to be hoped, that the legal profession and the community are beginning to perceive the importance of endowing professional as well as college education.”⁹⁹

However, after the three gifts of Austin Hall, the professorship, and the book fund arrived in the early 1880s and the annual surpluses began to appear in the late 1880s, Eliot ceased lamenting the law school’s tuition dependence and small endowment though he continued doing so for every other unit at Harvard. For HLS, he began to observe instead that the “surpluses...will be available for use in any period of temporary depression.”¹⁰⁰ Regarding another Harvard department, Eliot stated in 1906 his customary injunction that “it is very desirable to diminish the dependence...on the receipts from students.” But, a few pages later, he observed that “the extraordinary prosperity of the law school continued during the year 1904-05, the number of students being larger than ever.”¹⁰¹ HLS was apparently exempt from Eliot’s policies and could depend on tuition.

The dean, the faculty, and the Overseers Visiting Committee of HLS did not agree. In a major address at the American Bar Association in 1895, HLS Professor James B. Thayer maintained, “Our law schools must be endowed as our colleges are endowed. If they are not, then the managers must needs consult [sic] the market, and...bid for numbers of students instead of excellence of work.”¹⁰² In the late 1890s, as HLS became overcrowded, Dean Ames and the Overseers Visiting Committee expressed “regret that a large portion of the surplus earnings of the school should be used for no better purpose than an extensive enlargement of the building.”¹⁰³ Instead, they requested in 1898 that the surplus be moved into an endowment for a professorship honoring Langdell, partly to preserve the money and also because “the appearance in the Treasurer’s Report of a surplus fund...would be a serious obstacle to... raising the money for the addition to Austin Hall by contributions from the alumni of the school.”¹⁰⁴ Although this request was entirely consistent with the view that Eliot had pressed on the president of Johns Hopkins University and everyone else over the previous three decades, he and the corporation balked, saying that “it would be more complimentary to Langdell if the alumni of the law school should contribute...a Langdell professorship rather than a means of extending Austin Hall.” More generally, they opposed “reducing the

99. Eliot, Annual Report 1881-82, *supra* note 20, at 30. See Eliot, Annual Report 1883-84, *supra* note 19, at 34; Eliot, Annual Report 1885-86, *supra* note 22, at 13.

100. Eliot, Annual Report 1894-95, *supra* note 26, at 27.

101. Eliot, *supra* note 8, at 14, 39.

102. James B. Thayer, The Teaching of English Law at Universities, 9 Harv. L. Rev. 169, 184 (1895).

103. Ames, Annual Report 1896-97, *supra* note 34, at 164. See Ames, Annual Report 1897-98, *supra* note 34, at 166-67; Overseers Standing Committee, *supra* note 34, at 527-28.

104. Letter from James B. Ames to Charles W. Eliot (Jan. 31, 1898) (Charles W. Eliot Papers, Harvard Univ. Archives, box 100).

surplus of the law school by making a specific appropriation of a large part of it” because “the entire fund is now disposable, principal and interest.”¹⁰⁵ This response seemed to directly contradict Eliot’s emphatic policies about avoiding a surplus, increasing endowment, endowing professorships, and financing buildings.

In March 1898, Ames and faculty countered by asking that \$100,000 of the surplus be transferred into a professorship or an endowment for the library,¹⁰⁶ and a month later the Overseers Visiting Committee asserted that “the endowment of the law school is very moderate” and urged that “as large a portion as possible of the existing surplus [be] devoted to the endowment of additional professorships.”¹⁰⁷ Nevertheless, in May 1898, the corporation voted to move only \$100,000 of the surplus into a new Law School Library Fund, “the income of which shall, *until further order of the Corporation*, be applied towards the administration expenses of the law library.”¹⁰⁸ Although this move may have wisely recognized that donors were less inclined to support “administration” than a building or a professorship, the designated library fund was still a cash reserve, not a sacrosanct endowment. Furthermore, Eliot’s reports made no announcement about needs of the school. Then, while the surplus grew by tens of thousands of dollars each year between 1898 and 1907, the corporation created a Langdell professorship but did not endow it, and the salary was paid by the current revenues of the school.¹⁰⁹ In 1903, Eliot stated even more baldly and publicly that the annual surpluses of HLS “can be accumulated to cover the extra cost of the new building.”¹¹⁰ HLS was still the only unit at Harvard that had enough money to meet its needs by Eliot’s account, and his annual reports did not make appeals on behalf of the school.

Meanwhile, no one associated with HLS seems to have made any effort to raise money, as the ambivalent planning to increase the space went forward in the early 1900s. In 1897, Dean Ames and the faculty discussed “raising the money for the addition to Austin Hall,”¹¹¹ but none of their annual reports, meeting minutes, or extant correspondence indicate any action taken subsequently. Nor did the alumni association help.

105. Letter from Charles W. Eliot to James B. Ames (Feb. 1898), Charles W. Eliot Papers (Harvard Univ. Archives, shorthand box 317, legal Pad 28/98-10/98, 6p. from end).

106. HLS Faculty, *supra* note 33, at Mar. 17, 1898; Letter from James B. Ames to Edward Hooper (Mar. 18, 1898), Charles W. Eliot Papers (Harvard Univ. Archives, box 266-267).

107. Overseers Standing Committee, *supra* note 34, at 528.

108. Harvard Univ. Corporation, at May 9, 1898 (Corporation Records, Harvard Univ. Archives); Annual Report of the Treasurer 1897-98, 38, 74-75 (Harvard Univ. 1899) (emphasis added).

109. Letter from James B. Ames to Charles W. Eliot (Dec. 30, 1902), Charles W. Eliot Papers (Harvard Univ. Archives, box 100); Harvard University Corporation, *supra* note 108, at Apr. 27, 1903.

110. Eliot, *supra* note 31, at 44.

111. Ames to Eliot, *supra* note 104.

Founded in 1886, the Harvard Law School Association (HLSA) was created “to advance the cause of legal education and to promote the interests and increase the usefulness of the Harvard Law School.”¹¹² Over the next two decades HLSA spent \$17,375 on its own organization, publications and meetings, while contributing \$7,231 to the school for portraits, prizes, and lectures and another \$1,649 to the *Harvard Law Review*.¹¹³ While the crisis and debate about the surplus and overcrowding of their alma mater unfolded between 1897 and 1907, the alumni contentedly observed that “the life of the association...was unmarked by any important or striking event.”¹¹⁴ At the same time, HLSA was accumulating its own surplus of nearly \$12,000 and, unable to decide how to spend it, commissioned portraits of two senior faculty in 1905 and offered to equip the reading room in the extension of Austin Hall. HLSA then canceled those gifts when the decision was made to build Langdell Hall.¹¹⁵ In 1907, epitomizing the tone of self-congratulation surrounding the school, the HLSA officers extolled their association for fulfilling its purpose, demonstrated by “the extraordinary growth of the Harvard Law School during the [twenty] years of the life of the law school association.”¹¹⁶ This correlation demonstrated the causal role of HLSA, in their view. In 1910, as Dean Thayer began to grapple with the financial collapse of the school, the HLSA president “congratulate[d] the association on its continued success and prosperity” and on its capacity “in some degree at least, to fulfill its proper function of being of practical benefit and assistance to the law school.”¹¹⁷

The failure of the dean, faculty, and alumni at HLS to obtain or even seek gifts is all the more surprising given that HLS was surrounded by this activity. Many professors, administrators, and “friends” of other units at Harvard were approaching donors, following up on the needs identified in Eliot’s annual reports. In 1900, for example, the philosophy faculty drew up a detailed plan, publicized it in Harvard publications, and successfully solicited funds for a new building for their department, which was completed early in 1906.¹¹⁸ Such efforts throughout the university produced “a remarkable inflowing of

112. Harvard Law School Association, Report of the Organization and of the First General Meeting, 1886, 10 (Harvard Law School Association 1887).

113. Wade, *supra* note 24, at 7–8. In 1905 HLS alumnus James C. Carter died and left a bequest of \$100,000 to endow a professorship at HLS. Eliot, *supra* note 4, at 52–53. This gift did not result from a solicitation to Carter, who had earlier expressed “persistent and uncompromising” opposition to explicit fundraising efforts. Letter from John O. Sargent to James B. Thayer (Apr. 15, 1882) (James B. Thayer Papers, Harvard Law School Library Special Collections, box 20).

114. Wade, *supra* note 24, at 7.

115. *Id.* at 7–8.

116. *Id.* at 8.

117. Francis J. Swayze, Address, in Harvard Law School Association, Sixth Celebration and Dinner, 29–32, 37 (Harvard Law School Association 1910).

118. Eliot, *supra* note 95, at 36–37; Eliot, *supra* note 4, at 34.

gifts for several years past,” Eliot remarked in January 1907.¹¹⁹ Meanwhile, as HLSA was congratulating itself on having provided an average of \$360 a year to its alma mater, the Harvard College 25th-year reunion class in 1904 initiated the practice of donating \$100,000 to the university at each commencement.¹²⁰ Outside of Harvard, Dean Francis Wayland of Yale Law School succeeded in raising \$38,000 to complete its law building and \$150,000 for endowment by the time he retired in 1903.¹²¹ At Columbia University, \$500,000 was raised between 1905 and 1910 for a new building for its law school.¹²²

In contrast, the dean, the faculty, and the alumni of HLS simply capitulated, as the HLS *Centennial History* noted in 1918: “[A]lthough...the faculty cherished these higher ideals...it was plain that...if the only way to get the building was through sacrifice of the higher ideals...the pursuit of those ideals must be left to some other institution better endowed.... So Langdell Hall was built, and the school’s surplus spent in the undertaking.”¹²³ Indeed, the fact that the whole project was tailored to the surplus is shown by the construction of only three-fifths of the building, at a cost of \$400,000, the amount of the available surplus. No effort was made to seek donations even to supplement the school’s contribution, although Ames and the faculty “prefer to have the whole building put up at once.”¹²⁴

Within Harvard, the decline in the law school’s standing, as a result of these financial developments, appears clearly in comparison to Harvard Medical School (HMS), which rose from straggling behind HLS in 1895 to eclipsing it by 1910. From the outset of his presidency, Eliot warned HMS against tuition dependency and maintained, “no department of the university needs a large endowment more than the medical school, or better deserves one, and there is no department of the university in which the good to be done by a liberal endowment would be more direct, immediate, diffusive, and lasting.”¹²⁵ During the next thirty years, he repeated this theme in lengthy paragraphs, while calling for endowed medical professorships and gifts for medical facilities.¹²⁶ By 1900 gifts had accumulated to about \$1 million, and then, in response to “the prophetic insight and the zeal of a few of the university’s teachers of

119. Eliot, *supra* note 4, at 56-57.

120. Eliot, *supra* note 13, at 41; William Lawrence, *Memories of A Happy Life*, 228 (Houghton Mifflin 1926); Eliot, *supra* note 4, at 53-54.

121. Hicks, *supra* note 30, at 210-15; Kelley, *supra* note 30, at 276-77, 340-41.

122. Goebel, *supra* note 29, at 185-86.

123. *The Centennial History*, *supra* note 19, at 119.

124. Lowell to Adams, *supra* note 43.

125. Eliot, Annual Report 1872-73, *supra* note 97, at 33-34.

126. Eliot, Annual Report 1871-72, *supra* note 97, at 25-26; Eliot, Annual Report 1880-81, *supra* note 19, at 29-30; Eliot, *supra* note 92, at 30; Eliot, Annual Report 1883-84, *supra* note 19, at 36; Charles W. Eliot, Annual Report 1888-89, 22-23 (Harvard Univ. 1890); Charles W. Eliot, Annual Report 1897-98, 37 (Harvard Univ. 1899).

medicine,”¹²⁷ an avalanche of nearly \$4 million was promised during 1900 and 1901 in order to build five major buildings, endow professorships, and support maintenance and equipment for the buildings.¹²⁸

Due to this munificence, “the medical school now has a larger endowment than any other professional department of the university,” Eliot observed in January 1902, “This fact is the more striking, because [thirty] years ago it had the smallest endowment among the professional departments.”¹²⁹ But this prosperity did not deter Eliot from asking for more, in keeping with the cardinal financial policies that he consistently applied to HMS. In January 1907 he wrote, “the [medical] buildings and the permanent funds which accompanied them constitute the largest single addition to the resources of the university...since it received its charter in 1650...but it is already plain that...additional endowment will be indispensable.”¹³⁰ At that point, HMS was wealthy but had insatiable needs, while HLS was exhausting its reserves but needed nothing. The transposition of the two schools is exemplified by the contrast between the two-day celebration held to dedicate the five medical buildings in September 1906,¹³¹ in contrast to the failed effort to dedicate the three-fifths of Langdell Hall at its opening one year later. When appealing for funds in recognition of its centennial in 1917, HLS therefore compared its financial situation with that of the medical school, though it also had relatively fewer resources than the divinity school, the business school, or the arts and sciences.¹³²

IV.

It is difficult to explain the underlying causes or the thinking of the individuals involved in the financial collapse of HLS during the administration of Dean Ames. One is almost tempted to suggest that Eliot was trying to validate his policies by showing that a preeminent institution could come to ruin by violating them. But less perverse reasons may also be posited.

During his administration from 1870 to 1895, Dean Langdell had instituted a new financial strategy for HLS, and professional education in general, by turning upside down the traditional thinking that low standards and low tuition were necessary in order to attract students and secure sufficient revenue. With Eliot’s support, Langdell argued that raising academic standards would make the school’s degree more valuable and marketable, attracting more and stronger students; and this new approach succeeded spectacularly, after an

127. Eliot, *supra* note 4, at 28.

128. Eliot, *supra* note 31, at 26, 32-37; Thomas F. Harrington, *The Harvard Medical School*, 1192 (v. 3, Lewis 1905).

129. Eliot, *supra* note 95, at 49-50.

130. Eliot, *supra* note 4, at 28.

131. *Id.* at 27-29.

132. Loring, *supra* note 79; Rawle, *supra* note 52, at 186; *The Centennial History*, *supra* note 19, at 170-73.

initial decline in enrollment and revenue during the late 1870s.¹³³ That decline, and the institution of the new model, were financed by building a surplus in the mid-1870s and then paying out the cash reserves when the deficits occurred in the following years.¹³⁴ A few years later, that early surplus also allowed the school to furnish Austin Hall after it was built, even though enrollment had not fully recovered.¹³⁵ Consequently, Eliot may have supported and encouraged spending the surplus to build Langdell Hall because he believed that this tactic simply repeated the pattern of the 1870s on a larger scale, although he never said so. Furthermore, he may have felt that legal education would always be highly profitable because it did not “need costly equipment, and a great amount of instruction addressed to the individual,”¹³⁶ though he recognized that the expense of sustaining the HLS library was very high and might become prohibitive.¹³⁷

Another explanation for the financial collapse might be the self-satisfaction, or pride, of those associated with HLS, who may have believed that the school was simply too successful to fail. The faculty were likely surprised that “no benefactor came forward to present the new building,” or that “the Corporation did not think fit to provide more accommodations out of the general funds.”¹³⁸ Upon assuming the deanship in 1910, Thayer did not yet understand the financial problems, but he already sensed the atmosphere of complacent self-satisfaction, because he warned in his first address to the alumni association: “[W]e cannot afford, however strong may be the professional temptation, to rejoice in past triumphs, . . . congratulating ourselves on what has been done in the past. Our faces would then be turned in the wrong direction. The Harvard Law School cannot keep its present position by resting upon its past achievements.”¹³⁹ Appropriately, Thayer was speaking at the annual dinner of the alumni association, which gave itself far too much credit for very little effort or contribution.

Whether due to pride or complacency, it is clear that HLS stagnated administratively. Under Ames, the school “ran smoothly in the groove started by Langdell. There were no marked differences of opinion.” The faculty offered no innovations, for “there was rarely any discussion,” and the dean’s “recommendations were habitually accepted.”¹⁴⁰ In fact, the floor plan for the new Langdell Hall followed closely that of Austin Hall built in 1883 under

133. Kimball, *supra* note 7, at 221-24.

134. C. C. Langdell, Annual Report of the Dean of the Law School 1875-76, 28 (Harvard Univ. 1877); Eliot, Annual Report 1878-79, *supra* note 98, at 27-28.

135. Eliot, Annual Report 1883-84, *supra* note 19, at 35.

136. Eliot, Annual Report 1893-94, 19 (Harvard Univ. 1895).

137. Eliot, *supra* note 36, at 17-18.

138. The Centennial History, *supra* note 19, at 57, 107.

139. Ezra R. Thayer, Address, in Harvard Law School Association, Sixth Celebration and Dinner, 39 (Harvard Law School Association 1910).

140. Samuel Williston, *Life and Law: An Autobiography*, 187 (Little, Brown 1941).

Langdell: Small number of large classrooms, no seminar rooms, library on the second floor, faculty offices in the stacks. Furthermore, against Eliot's preference, the HLS faculty decided to persevere in Langdell's narrow view of law, "limiting the instruction given in that school to law determined by courts. They therefore would not admit to the school such studies as institutional history, government, political science, and administration national, state, municipal, or colonial. The demand for instruction in these subjects at universities is manifestly increasing; but...will have to be developed in the graduate school."¹⁴¹ The HLS faculty thus ceded vast tracts of academic and curricular territory due to a longstanding commitment to the purity of their field.

Dean Ames was personally content to remain in Langdell's groove. His brief annual reports rarely addressed new issues and primarily updated with new data the tables that Langdell had developed concerning "the courses of study and instruction during the year, the text-books used, the number of exercises per week in each course, and the number of students who offered themselves for examination."¹⁴² Nine years into his tenure, Ames observed to the HLSA "how solidly the new foundations of the law school were laid during [Langdell's] administration.... His originality and his far-sighted sagacity... still dominate[] the conduct of the school. For this reason, I have very little to report to you that is new."¹⁴³ At points, as the overcrowding and financial crises loomed, even the Overseers Visiting Committee became impatient with Ames's docility, making an unprecedented reprimand when describing his annual report as "on the whole, a decided understatement of the school's immediate needs."¹⁴⁴

Ames's decanal stagnation stemmed, in part, from administrative ineptitude. He refused to surrender any detail of administration to a secretary, and wrote out all his letters longhand to be copied on the typewriter.¹⁴⁵ Though much beloved, he was apparently unable to analyze matters strategically and chart an effective course of action. Hence, he continued in the old ways. His scholarship had a strongly esoteric flavor, importing long out-dated English doctrine into modern controversies.¹⁴⁶ Even in his field of expertise—negotiable paper—Ames was not consulted when the Uniform Negotiable Instruments Law was drafted during the 1890s, and he did not see it until the new law had been adopted by four states, a fact demonstrating his total detachment from actual legislation and practice of his time. The strong technical objections that he later published about the law reflected "his slender experience with

141. Eliot, *supra* note 95, at 24-25.

142. Ames, Annual Report 1896-97, *supra* note 34, at 160.

143. Ames, Address, *supra* note 8, at 71.

144. Overseers Standing Committee, *supra* note 34, at 527.

145. [Ames], *supra* note 51, at 13-14; Williston, *supra* note 140, at 184.

146. [Ames], *supra* note 51, at 18; Learned Hand, Foreword, in Samuel Williston, *Life and Law*, vii (Little, Brown 1941). I am grateful for the assessment of Daniel R. Coquillette on this point.

the practical business of legislation” and lack “of practical contact with the world of affairs.” As a result, Ames’s technical critique was largely ignored, and litigation rarely arose over the supposed defects that he identified.¹⁴⁷

In 1907, when Ames expressed interest in assuming a named professorship in jurisprudence at HLS, Eliot asked him, “Should you advise the faculty to have a new dean more directly connected with the training of practitioners, or should you be willing to continue to be dean?..You will correctly infer from these questions that I have been turning the matter over in my mind lately, and feel the need of conference with you.”¹⁴⁸ Since HLS professors commonly moved among the named professorships without changing their roles or duties, as did Langdell, Eliot would scarcely have asked this question if he were entirely satisfied with Ames’s administration. Ames decided to forego the professorship and remain as dean.

Ames’s decanal stagnation also stemmed from his exhausting workload, which certainly contributed to his early death. Students observed that “the dean doesn’t walk, he always runs, seeming to be in eternal haste. He never goes up stairs without taking at least two steps at a jump.”¹⁴⁹ In the absence of any institutional strategy, he primarily responded to the overcrowding crisis by heroically assuming more teaching himself, and his annual reports reveal that he taught as many, or more, courses than any other faculty member, while also serving as dean. During his last full academic year in 1908–09, Ames taught five courses with enrollments of 268, 231, 145, 6, and 2 students. In fall 1909, he began to have a nervous breakdown, suffering some aphasia and amnesia. In November, he took a leave of absence and died in January 1910 at the age of 64.¹⁵⁰

Meanwhile, Eliot retired in June 1909 after forty years as president. During his final decade, critics had begun to argue that he over-emphasized professional education and funneled too many resources to Harvard’s professional schools while neglecting the undergraduate college. After the medical school received its enormous gifts in the early 1900s, Eliot himself began to worry in 1904 that such a large proportion of the university’s endowment was restricted to the professional schools.¹⁵¹ Consequently, Eliot may have refrained from including HLS among his annual narrative of Harvard’s needs both because the law school exemplified Eliot’s commitment to professional education and because he wondered whether that commitment was unbalancing the

147. Arthur E. Sutherland, *The Law at Harvard, A History of Men and Ideas, 1817–1967*, 212–13 (Harvard Univ. Press 1967). See James B. Ames, *Negotiable Instruments Law: Necessary Amendments*, 16 *Harv. L. Rev.* 255 (1900).

148. Letter from Charles W. Eliot to James B. Ames (Aug. 9, 1907), *Charles W. Eliot Papers*, (Harvard Univ. Archives, box 96, letterbook, leaf 127½).

149. Scott, *supra* note 48, at May 22, 1907.

150. Lowell, *Annual Report 1908–09*, 6 (Harvard Univ. 1910); *The Centennial History*, *supra* note 19, at 188–89.

151. Hugh Hawkins, *Between Harvard and America: The Educational Leadership of Charles W. Eliot*, 263, 275, 284–7 (Harvard Univ. Press 1972).

university's resources. In a sense, HLS was "too successful" to need money, and Eliot was unwilling to promote its needs, having extolled its wealth and accomplishments.

Whatever the explanation, it took decades for HLS to recover from the financial collapse under Dean Ames. The sudden death of Dean Thayer, the lack of university support for the 1917 centennial campaign, and the steep drop in enrollments during World War I prevented any rapid recovery. Eliot's successor, President A. Lawrence Lowell, though an alumnus of HLS, took far more interest in the Graduate School of Business Administration, and the university did little to support another unsuccessful fundraising campaign by HLS in the mid-1920s. Consequently, the school had to borrow a \$1.5 million from the university to finish construction of Langdell Hall in 1929. The Great Depression followed, and in 1936, when James Landis succeeded Roscoe Pound as dean, HLS was still financially weak and received not a single endowed professorship during the 1930s.¹⁵²

When Erwin Griswold became dean in 1946, he found that HLS "had 'a great reputation' and 'a superb library,' but was 'unbelievably poor,' with a large mortgage on its major building, Langdell Hall; inadequate dormitory accommodations and no dining facilities; a faculty that once had been distinguished, a student-faculty ratio of more than 50 to 1; and bad-to-nonexistent alumni relations."¹⁵³ By that point, the once unrivaled leadership of HLS had declined to *primus inter pares* at best, as other leading university law schools, especially at Yale and Columbia, had caught, if not surpassed, "the greatest law school in the world."

152. Sutherland, *supra* note 147, at 304.

153. Morton Keller & Phyllis Keller, *Marking Harvard Modern: The Rise of America's University*, 253-54 (Oxford Univ. Press 2001).