



Harvard Law School Class of 1911

Faculty seated in the fourth row, left to right: Joseph H. Beale, Joseph D. Brannan, Austin W. Scott, Secretary Richard Ames, Librarian John H. Arnold, Dean Ezra R. Thayer, Samuel Williston, Bruce Wyman, John C. Gray, Eugene Wambaugh, Roland Gray, Joseph Warren.

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Before the Paper Chase: Student Culture at Harvard Law School, 1895-1915

Bruce A. Kimball

Between 1870 and 1886, Dean Christopher C. Langdell (1826-1906) designed and built at Harvard Law School (HLS) the machinery of academic meritocracy that would subsequently proliferate throughout legal education and professional education more generally.¹ Those mechanisms included: requiring a bachelor's degree or its equivalent for admissions, 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 founding of a national alumni association to support the school. To fund this new structure, Langdell also introduced a new financial strategy for professional education. He maintained that a professional school devoted to academic merit would prosper as higher standards produced better graduates who would be more marketable, making the school more attractive to prospective students.

During those first sixteen years of his administration, Langdell faced intense opposition from HLS students, faculty, and alumni, and even by the time he retired as dean in 1895 only a few other law schools had adopted his policies.² Nevertheless, James B. Ames (1846-1910), who succeeded Langdell as dean,

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1. See Bruce A. Kimball, *The Inception of Modern Professional Education: C. C. Langdell, 1826-1906* (Univ. of North Carolina Press 2009).
2. Bruce A. Kimball, Mr. Langdell's Emblematic Abomination: The Proliferation of Case Method Teaching, 1890-1915, 46 *Hist. Educ. Q.* 190, 190-244 (2006).

earnestly maintained the same course. This continuity is evident in Ames's brief annual reports, which 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 textbooks used, the number of exercises per week in each course, and the number of students who offered themselves for examination."³ Nine years into his tenure, Ames observed to the HLS alumni association "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."⁴

Having embraced Langdell's policies by 1890, the faculty were pleased by the continuity and had "no marked differences of opinion" during Ames's deanship. At faculty meetings, "there was rarely any discussion," and the dean's "recommendations were habitually accepted." From 1895 through 1909, "the school ran smoothly in the groove started by Langdell."⁵ The major development was the erection of a large new building for the school—named Langdell Hall—whose design was modeled on the building opened in 1883 during Langdell's administration: small number of large classrooms, no seminar rooms, library on the second floor, faculty offices in the stacks.⁶

In November 1909 Ames took a leave of absence from the deanship, and died in January 1910. The following September, Ezra R. Thayer (1866–1915), a practicing lawyer in Boston, assumed the office of dean and served until September 1915. Thus, the terms of both Ames and Thayer were relatively brief and essentially transitional after the 25-year revolutionary administration

3. James Barr Ames, Annual Report of the Dean of Harvard Law School 1896–97, in *Annual Reports of the President and Treasurer of Harvard College*, 160 (Harvard Univ. 1898).
4. James Barr Ames, Address, in *Harvard Law School Association, Report of the Eighteenth Annual Meeting*, June 28, 1904, 71 (Harvard Law School Assoc. 1904).
5. Samuel Williston, *Life and Law: An Autobiography* 187 (Little, Brown 1941). Despite the encouragement of President Eliot, the faculty voted in 1900 to adhere to the narrow definition of legal studies advocated by Langdell, and "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 since the law school is indisposed to take them up, they will have to be developed in the graduate school." Charles W. Eliot, *Annual Report 1900–1901*, 24–25 (Harvard Univ. 1902).
6. I am grateful to Daniel R. Coquillette for this insight.

of Langdell. Partly for this reason, the deanships of Ames⁷ and Thayer⁸ have received little attention from scholars.

In particular, the culture of the students under Ames and Thayer has been neglected. Prominent studies of legal education at the time overlooked the experience of students. In the early 1910s the Carnegie Foundation for the Advancement of Teaching commissioned a study on American legal education, and students were not discussed in the text or even included in the index.⁹ In his longer prominent study published in 1921 and also sponsored by the Carnegie Foundation for the Advancement of Teaching, Alfred Reed discussed students almost exclusively in terms of their patterns of “attendance,”¹⁰ as though students are merely the medium on which faculty and administration exercise their art. The leading historiography of legal education has also relied largely on sources produced by and focused upon the faculty or administration,¹¹ and this focus has characterized the standard historiography of HLS as well.¹² The neglect of student culture is understandable, because sources produced by the faculty and administrators are more abundant, prominent, and accessible. Nevertheless, efforts have recently been made to examine students’ experience during the critical years of Langdell’s administration,¹³ and the goal of this essay is to present and interpret research findings on student culture during the understudied administrations of Ames and Thayer.

7. Ames’s administration is treated uncritically in Charles Warren, *History of the Harvard Law School and of Early Legal Conditions in America* 461–482 (rev. vol. Lewis 1908); *The Centennial History of the Harvard Law School, 1817–1917*, 50–60 (Harvard Law School Association 1918) [hereinafter *Centennial History*]; Arthur E. Sutherland, *The Law at Harvard, A History of Men and Ideas, 1817–1967*, 206–225 (Harvard Univ. Press 1967). See Shoshana Stern, *The Good Dean: James Barr Ames, Man of Mystery* (Spring 2006) (unpublished paper in Legal History Seminar, 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).
8. The best account of Thayer’s administration is the unpublished essay: John Sheeseley, *Ezra Ripley Thayer: Dean of the Harvard Law School 1910–15* (May 2002) (unpublished third-year paper, Harvard Law School) (on file with Daniel R. Coquillette). Cf. *Centennial History*, *supra* note 7, at 50–64; Sutherland, *supra* note 7, at 226–243.
9. Josef Redlich, *The Common Law and the Case Method in American University Law Schools* (Carnegie Foundation for the Advancement of Teaching 1914).
10. Alfred Z. Reed, *Training for the Public Profession of the Law* 153–4, 195–9, 495 (Carnegie Foundation for the Advancement of Teaching 1921).
11. William R. Johnson, *Schooled Lawyers: A Study in the Clash of Professional Cultures* 120–153 (New York Univ. Press 1978); Robert B. Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Univ. of North Carolina Press 1983); William P. LaPiana, *Logic and Experience: The Origin of Modern American Legal Education* (Oxford Univ. Press 1994).
12. Warren, *supra* note 7; *Centennial History*, *supra* note 7; Sutherland, *supra* note 7.
13. Bruce A. Kimball, *Law Students’ Choices and Experience during the Transition to Competitive Academic Achievement, 1876–1882*, 55 *J. Legal Educ.* 163, 163–207 (2005).

Extending over a period of four years, this research began with bibliographical searches on the some 3,000 students who attended HLS between 1895 and 1909. An examination of all the bibliographical entries yielded about 100 students who wrote and preserved books, articles, diaries, notebooks, letters or other accounts of their personal and professional life. About fifty students were found to have left accounts of their time at HLS, and those accounts were supplemented by searches for material concerning HLS students through contemporary newspapers, HLS faculty minutes, HLS catalogs, and annual reports of the HLS dean and Harvard University president. All these sources provide the evidence for this essay.

A central finding of this research is that writings by and about students who attended HLS under Ames do not give evidence of the destructive academic competition and anxiety that has been associated with HLS and other elite law schools during the late 20th century and has been attributed to the meritocratic reforms that Langdell instituted between 1870 and 1886. Instead, this study indicates that cultural and economic aspects of student experience—ironically enhanced by certain enrollment policies—restrained or alleviated student anxiety under Dean Ames, and that the erosion of those factors and the adoption of new policies under Dean Thayer laid the groundwork for the gradual emergence of the so-called “Paper Chase” in the 1920s and 1930s.

I.

In the 1960s a highly critical literature about the education at elite law schools began to appear and then gained widespread attention after certain themes were popularized by the movie *The Paper Chase* (1973), based on the book of the same name.¹⁴ While doubtlessly prompted in part by the contemporaneous criticism of meritocracy in higher education,¹⁵ the critiques of legal education issued not only from current students¹⁶ but also successful young graduates¹⁷ and mental health counselors¹⁸ and persisted into the 21st century.¹⁹ These critics targeted not the heavy workload in law school, but “the underlying relationship of teacher to student” in the Socratic case-method

14. John J. Osborn, *The Paper Chase* (Houghton Mifflin 1971).
15. Gerald Grant & David Riesman, *The Perpetual Dream: Reform and Experiment in the American College 179–192* (Univ. of Chicago Press 1978).
16. Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 *Yale Rev. L. & Soc. Action* 71, 71–90 (1970); Scott Turow, *One-L* (G.P. Putnam’s Sons 1977).
17. Joel Seligman, *The High Citadel: The Influence of Harvard Law School* (Houghton Mifflin 1978); Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System* (Afar 1983).
18. Alan A. Stone, *Legal Education on the Couch*, 85 *Harv. L. Rev.* 392, 392–441 (1971).
19. Richard D. Kahlenberg, *Broken Contract: A Memoir of Harvard Law School* (Hill and Wang 1992); Jaime Marguart & Robert E. Byrnes, *Brush with the Law: The True Story of Law School Today at Harvard and Stanford* (Renaissance Books 2001).

classroom, where students could “be publicly insulted, day after day.”²⁰ Thus, “the peculiar privilege which Socraticism grants a teacher to invade the security of every student in the room means that in the wrong hands it can become an instrument of terror.”²¹

In addition to the threat of classroom humiliation, critics assailed the cutthroat competition of the elite schools, yielding “the typical emotional pattern of the not fabulously successful law student: Intense effort and anxiety during the first year; withdrawal, depression, and disengagement from classroom involvement during the second year; renewed anxiety and concern about occupational opportunity and ability during the third year.”²² The great majority of students, in fact, were “not fabulously successful” and suffered from that emotional pattern because only a very small percentage of the class could achieve distinction, since “virtually the only honor for distinguished first-year performance is a place on the...*Law Review*.” As a result, “the law review system exaggerates the worth of a tiny minority of students” and “lessens respect for all non-law review related activities.”²³ Given the threat of Socratic humiliation, the cutthroat competition, and the slim chances for distinction, examination periods created an “atmosphere of rancor and tension”²⁴ and “brought out the ugliest side of people.”²⁵

Though dramatized and overdrawn at times,²⁶ such criticism made the Paper Chase the “emblem” of education at elite law schools during the late 20th century. Buttressed by many associated critiques, the Paper Chase became “the specific figure which concentrates and intensifies a much more general

20. Kennedy, *supra* note 16, at 76.

21. Turow, *supra* note 16, at 296. See Andrew P. Thomas, *People v. Harvard Law School: How America’s Oldest Law School Turned Its Back on Free Speech*, 10 (Encounter Books 2005); Lee S. Shulman, *Signature Pedagogies in the Professions*, 134 *Daedalus*, 52 (Sept. 2005).

22. Stone, *supra* note 18, at 426. See Rolando J. Díaz et al., *Cognition, Anxiety, and Prediction of Performance in 1st-Year Law Students*, 93 *J. Educ. Psych.* 420, 420 (2001).

23. Seligman, *supra* note 17, at 176-7.

24. Turow, *supra* note 16, at 181, 183.

25. Kahlenberg, *supra* note 19, at 28.

26. A. Schwartz, *The Paper Chase Myth: Law Students in the 1970s*, 27 *Soc. Perspectives* 87, 87-100 (1985); Robert Granfield & Thomas Koenig, *Learning Collective Eminence: Harvard Law School and the Social Production of Elite Lawyers*, in *Social Problems Across the Life Course*, at 744 (Helena Lopata et al., ed., Rowman & Littlefield Publishers 2003); Kennedy, *supra* note 17, at 3.

reality.” Being “emblematic”²⁷ or even “iconographic,”²⁸ the Paper Chase came to signify the culture of the elite law schools that had “Harvardized”²⁹ themselves over the previous century.

Indeed, Harvard Law School, the largest elite school and the progenitor of that education, became the focus of this criticism,³⁰ which has lately subsided.³¹ In particular, the Paper Chase culture—characterized by humiliation of students, terror and anxiety during exams, invidious and rancorous competition, and depression and withdrawal—is assumed to be entailed by the academic meritocracy that Langdell established between 1870 and 1886 and that Ames and Thayer heartily sustained.³² At the very latest, the Paper Chase, according to the most scholarly historical account, arose at the beginning of the 20th century in association with “the Frankfurter-Langdell conception of democracy,” that is, academic meritocracy.³³

The same assumed link between the Paper Chase and the HLS meritocracy appears also in older celebratory accounts of arduous education at HLS. These accounts maintain that, indicative of the “joy of competition” at HLS, “studying is and always has been *the* thing to do,” at least since Langdell’s administration.³⁴ From that point, it became “fashionable to work. Gone was the college distinction between sports and grinds,”³⁵ for HLS students

27. Quotations concerning “emblem” are drawn from Raymond Williams, *Marxism and Literature* 101–102 (Oxford Univ. Press 1977).
28. See Erwin Panofsky, *Iconography and Iconology: An Introduction to the Study of Renaissance Art*, in *Meaning in the Visual Arts: Papers in and on Art History*, at 26–54 (Doubleday 1955).
29. David A. Frank, *Harvardizing the University [of Texas]*, *Alcalde* 10, Feb. 1923, at 1807–1809.
30. In 1968 Yale Law School converted its grading system from letter grades to a modified pass-fail system, partly to alleviate the destructive competition and anxiety among students. Seth S. Goldschlager, *Revolution at Yale: Credit/No Credit Replaces Traditional Grades*, *Harvard Law Record* v. 48, no. 1, Jan. 30, 1969, at 5; Laura Kalman, *Yale Law School and the Sixties: Revolt and Reverberations* 91–94 (Univ. of North Carolina Press 2005). But HLS made few changes, and it ranked 154th out of 165 law schools in student satisfaction in a 1994 national survey. Subsequently, during the 1990s, the school ranked last five times in other annual surveys of student quality of life at law schools. Seth Stern, *Harvard Law Changes the Pace of Its Paper Chase*, *Christian Science Monitor*, Oct. 24, 2000 at 13.
31. Kevin Washburn, *Elena Kagan and the Miracle at Harvard*, 61 *J. of Legal Ed.* ____ (2011). See Megan Woolhouse, *She’s Thawed Harvard Law*, *Boston Globe*, Jan. 4, 2009. In 2009 HLS followed Stanford Law School in converting to a grading system similar to that of Yale. Kevin Zhou, *Stanford Law Changes Grading System*, *Harvard Crimson*, May 30, 2008; Andrew Kalloch & Chris Szabla, *Faculty Approve New Grading System*, *Harvard Law Record*, Oct. 3, 2008.
32. In most of the Paper Chase critiques the two assumptions are implicit. One explicit example is Turow, *supra* note 16, at 296–7.
33. Seligman, *supra* note 17, at 40–41.
34. *Centennial History*, *supra* note 7, at 129 (emphasis in original).
35. Edward H. Warren, *Spartan Education*, 9 (Houghton Mifflin 1942).

“have seldom cared to take a large part in athletic activities.”³⁶ Here, too, some accounts proudly date “the exhausting struggle for survival and fierce competition for grades” at HLS to the beginning of the 20th century, but still identify it with the machinery of academic meritocracy built by Langdell. However, this causal link depended critically on certain cultural and economic influences on the students enrolled in the school.³⁷

II.

The comprehensive review of writings by and about students under Dean Ames yields a number of insights about their culture at HLS between 1895 and 1909. One of the most arresting is to challenge the historiographical assumption made by the commentators of the Paper Chase. It is already known that during Langdell’s administration there is little evidence of humiliation, anxiety, or rancorous competition among students, although the new honor track did encourage and reward hard work and ambition.³⁸ But students’ experience in that period does not necessarily rebut the historiographical assumption. Langdell’s commitment to academic meritocracy was a distinctly minority view within HLS until at least the early 1880s, within Harvard University until 1890, and within legal education until at least 1910.³⁹ This marginal status explains, in part, why the Paper Chase culture did not arise among HLS students during Langdell’s administration, and additional reasons are suggested by aspects of student culture described below.

During Ames’s administration, the dean and faculty made no deliberate effort to alleviate academic pressure and, in fact, raised the minimal academic standards. As of 1897 “special” students (non-degree candidates) were required to pass annually the same number of passing grades as “regular” students (degree candidates) in order to continue enrolling in the school. Soon thereafter, the passing grade on examinations was increased from 50 to 55. In 1900 the number of courses required for continued enrollment was increased to four.⁴⁰ Yet, these increases in minimal standards did not prompt the complaints about anxiety, resentment, humiliation, or depression that were heard in the late 20th century. Students’ writings were not uncritical, for individual professors or particular issues were sometimes targeted, but students’ assessments of the faculty, the experience, and the school as a whole were remarkably positive.⁴¹

36. Centennial History, *supra* note 7, at 55.

37. Sutherland, *supra* note 7, at 221-2.

38. Kimball, *supra* note 13, at 163-207.

39. Kimball, *supra* note 2, at 190-244.

40. HLS Faculty, Minutes of Meetings, Harvard Law School Library Special Collections, Oct., 17, Nov. 1897, Nov. 12, 1900.

41. This finding might be discounted on the hypothesis that more successful students tend to preserve or publish their recollections, giving a roseate tone to the extant writings. Yet, the bibliographical search yielded accounts of drop outs and low achievers, and the discounting hypothesis might equally apply to the late 20th century Paper Chase criticism.

To be sure, many students worked extremely hard. A member of the class of 1902 and his roommate “would work late every evening and about midnight prepare ourselves a good cup of tea over a gas lamp. This enabled us to go on for another hour or so.”⁴² In March 1900 a 3L wrote, “A beautiful day, but little time to appreciate it. A law school man’s life at this season of the year—especially his third year with his finals and bar examinations looming in front of him—is no ‘grand sweet song.’”⁴³ In sum, “one feels that he has to work,” a student from North Dakota observed in October 1909.⁴⁴

Indeed, the work ethic of HLS students was a matter of marvel and scandal among the Boston newspapers of the time, which reported: “Under the strain of five examinations and the preparation for them, there are men every year who break down under the task, and men have even affected their health permanently.”⁴⁵ In June 1900 the *Boston Journal* announced:

William Thornton Parker, Jr., a third-year student in the Harvard Law School died at the Cambridge Hospital...caused by an abscess on the brain, as a result of overstudy.... Mr. Parker had been taking his final examinations and had been working very hard. He was an exceptionally brilliant man, being an A man in the law school, having graduated from the Massachusetts Institute of Technology in 1897 with the highest honors.... He came to Harvard and entered the law school, where he began the study of law. He worked day and night over his subject, and so it is no wonder that he finally broke down and went crazy.... This time of year in the law school, during the final examinations is very hard and, in fact, the work is so hard that it is a wonder that many more do not break down. It was said some time ago that, if the work in the law school was not lessened at once, several men would certainly be the victims of brain fever, and this turned out to be true in the case of Parker.⁴⁶

This journalistic hyperbole is not corroborated by any official reports or personal testimony. But students did state: “The faculty gives the students thoroughly to understand that they want no men who are not willing to

42. Robert L. Hoguet, *An Autobiography*, 30-31 (Vantage Press 1986).

43. John F. Neal, *Diaries for the month of March 1900*, Chest of 1900, Time Capsule Project (Harvard University Archives Mar. 3, 1900).

44. Letter, Robert H. Montgomery to Father, in Robert H. Montgomery, *Letters, 1909-1912* (Oct. 2, 1909) (on file with Harvard Law School Library Special Collections, 1 folder). See Harrison Tweed, *Reminiscences*, Transcript of Interview Conducted for the Columbia University Oral History Research Program on Feb. 27, 1963, leaf 8 (Microfilming Corporation of America 1972); Henry S. Breckinridge, *Reminiscences*, Transcript of Interview Conducted for the Columbia University Oral History Research Program, leaf 45 (Microfilming Corporation of America 1972).

45. *Breaks Record*, Boston J., June 25, 1900, at 10.

46. *Killed by Overstudy*, Boston J., June 8, 1900, at 2.

work.”⁴⁷ Yet, the students expressed little anxiety or resentment, maintaining “that’s what people went to Harvard Law School for: to work.”⁴⁸

Some students also testified that they competed intensely for grades.⁴⁹ One who attended in the last three years of Ames’s tenure, earned As, made the *Harvard Law Review*, and went on to a stellar career in law and finance in New York City, wrote: “Of course ...we were all competing...I had my way to make and wanted to make it. I’d clearly understood that, ever since I was a small boy.”⁵⁰ A fellow student recalled, “So, it was absorbing and the competition was strong. My immediate friends and roommates were good students and were obviously going to do well and it was up to me to do well, too.”⁵¹ Thus, the naturally competitive high-achievers entered the lists without hesitation, and the faculty advised the students to succeed academically if they wished to make their fortunes in New York City where “lawyers are the servants of businessmen.”⁵² By 1900 it was well known that the elite law firms in large commercial centers sought to recruit the top students.⁵³

Meanwhile, some students dropped out, even as early as the mid-year break after receiving the results of practice mid-year examinations, which the faculty introduced as an experiment late during Ames’s tenure.⁵⁴ And the newspapers, always eager to record the extreme demands of HLS, reported

47. Letter, Albert F. Veenfliet to Papa and Mamma, in Albert F. Veenfliet, Letters to his Family and Harvard Memorabilia, 1902-1909 (Oct. 7, 1906) (on file with Harvard University Archives, 1 box).
48. Dorothy Clemens, Max Thelen, Straight into the Law: The Years 1880-1924, 34 (R. Anderson 1983).
49. On the rising significance of educational achievement in the professions, particularly law, see Burton J. Bledstein, *The Culture of Professionalism: The Middle Class and the Development of Higher Education in America* 121-28 (W.W. Norton 1976); Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* 74-101 (Oxford Univ. Press 1976); Bruce A. Kimball, *The True Professional Ideal in America, A History* 198-300 (Basil Blackwell 1992).
50. Nicholas Kelley, Reminiscences, Transcript of Interview Conducted for the Columbia University Oral History Research Program by Wendell Link in 1952-1953, leaves 39-40 (Microfilming Corporation of America 1972).
51. Tweed, *supra* note 44, at leaf 8. See Letter, Montgomery to Mother, *supra* note 44, at Nov. 24, 1909.
52. Long Makes Plea for Jury System, Boston J., Feb. 17, 1906, at 12.
53. Robert W. Gordon, Legal Thought and Legal Practice in the Age of American Enterprise, 1870-1920, in *Professions and Professional Ideologies in America*, at 82 (Gerald L. Geison ed., Univ. of North Carolina Press 1983). See also Robert W. Gordon, *The Ideal and the Actual in the Law: Fantasies and Practices of New York City Lawyers, 1870-1910*, 51-74; Wayne K. Hobson, Symbol of the New Profession: Emergence of the Large Law Firm, 1870-1915, at 3-19; Gerard W. Gawalt, The Impact of Industrialization on the Legal Profession in Massachusetts, 1870-1900, 107-9, all in *The New High Priests: Lawyers in Post-Civil War America* (Gerard W. Gawalt ed., Greenwood Press 1984).
54. Letter, Austin W. Scott to his family, in Austin W. Scott, Letters from a Law Student to his Family, 1906-1908 (Feb. 20, 1907) (Harvard Law School 1974).

the large number of students who “were ‘flunked,’ as the college expression is for men who do not pass their examinations.”⁵⁵ Likewise, the stringent monitoring of examinations offended some students, such as a Princeton graduate accustomed to an honor system, who “was shocked...to find myself in what should be a temple of justice, if you will, where the trust in the honor of the student was such that during an examination a proctor followed him to the toilet.”⁵⁶

Competition to be selected for the editorial board of the *Harvard Law Review*—considered by some late 20th century critics as a primary stimulus of the Paper Chase⁵⁷—also commenced during Ames’s administration. Founded in 1886, the *Review* had become a distinguished outlet for professional scholarship by 1902. But the student writing was not uniformly strong, and in the following decade “the *Review* devoted its energies to shoring up its credibility” in student scholarship.⁵⁸ The president of the *Review* started filing annual reports to its Board of Trustees, membership began to be determined by scholastic rank, and the number of editors was increased from fifteen to thirty, twelve in the second year and eighteen in the third-year class.⁵⁹ The faculty let it be known that selection to become an “editor of the *Harvard Law Review*...is one of the greatest honors that can come to a man in his law school career, and is given only to the highest scholarship students.”⁶⁰ High-achieving students began to covet membership,⁶¹ observing that selection resulted from a wholly legitimate process “in democracy”⁶² and conferred status and authority among students.⁶³

Notwithstanding these rigors, the absence of anxiety, resentment, or rancor in the extant records of students during Ames’s administration is striking. Despite the academic demands, students reported camaraderie, robust discussions, and cooperative study groups.⁶⁴ What makes the prevailing

55. Breaks Record, Boston J., June 25, 1900, at 10.

56. Breckinridge, *supra* note 44, at leaf 45.

57. Seligman, *supra* note 17, at 40.

58. Thiru Vignarajah, Presidents’ Perspectives: A History of Student Writing on the Harvard Law Review, 1887–1952, 5 (Spring 2005) (unpublished paper in Legal History Seminar, Harvard Law School) (on file with Daniel R. Coquillette).

59. *Id.* at 1; Centennial History, *supra* note 7, at 140.

60. A Student Drowned, E. C. Mansfield of Harvard Law School, Boston J., Nov. 1, 1902, at 1.

61. Phanor J. Eder, Reminiscences, Transcript of interviews conducted for the Columbia University Oral History Program by John T. Mason in 1964–1965, leaves 8–9 (Microfilming Corp. of America 1972).

62. Felix Frankfurter, Felix Frankfurter Reminiscences, Recorded in Talks with Dr. Harlan B. Phillips, 27 (Reynal & Co. 1960).

63. Letter, Scott, *supra* note 54, at Sept. 24 & Oct. 13, 1907.

64. See Neal, *supra* note 43, at Mar. 13, 1900; Martin Mayer, Emory Buckner 21 (Harper & Row 1968); Guy Emerson, Reminiscences, Transcript of interviews conducted for the Columbia University Oral History Program by Harlan B. Phillips in 1951, leaf 18 (Microfilming Corp. of America 1972); Wirt Howe, Autobiography, leaves 159–160 (on file with Harvard College

positive tone more remarkable is that the school and the faculty were extremely stressed by overcrowding during Ames's deanship. In fact, until Langdell Hall was opened in 1907, conditions, by the dean's own account, were abysmal. The school was plagued by "the inadequacy of [library] stack, the lecture rooms and Professors' rooms and of the administration and cataloguing accommodations." Furthermore,

[T]he 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.⁶⁵

Nevertheless, a student who attended during the period addressed by Ames made no complaint while recalling that "about 500 or 600 students" crowded into Austin Hall "and all the lectures and other activities of the school were held there."⁶⁶

When questioned about students' equanimity at HLS, Felix Frankfurter, who excelled in his studies from 1903 to 1906, attributed it primarily to the evident fairness of the evaluations of academic merit: "the objectivity of the marking. . .—'no kissage by favors' has always been the slogan there—creates an atmosphere and habits of objectivity and disinterestedness" and "respect for professional excellence."⁶⁷ Indeed, HLS students seem to have sincerely appreciated their most accomplished classmates, as the Harvard Overseers Visiting Committee to the Law School found in 1903.⁶⁸ One outstanding student attending at the time was future HLS professor Warren Seavey, whose roommate maintained that "Seavey would smoke his pipe, play tunes on his mandolin and study his law assignments all at the same time. His easy

Library Depository); Dwight G. McCarty, At Harvard Law School 1901-1904, leaf 128 (unpublished autobiography typewritten draft chapter) (on file with Harvard Law School Library Special Collections); Warren A. Seavey & Donald B. King, A Harvard Law School Professor: Warren A. Seavey's Life and the World of Legal Education 9 (W. S. Hein 2005).

65. James B. Ames, Annual Report 1903-04, 181 (Harvard Univ. 1905).

66. McCarty, *supra* note 64, at leaf 123.

67. Frankfurter, *supra* note 62, at 27-28.

68. 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.

concentration and clear thinking enabled him to do more work in an hour than most would accomplish in two.... He was recognized as brilliant by his fellow classmates.”⁶⁹

Consequently, students expressed appreciation for the academic demands of the school. “It was the custom in the Harvard Law School in those days to work, just as it is the custom in some institutions not to.... It was an interesting and rather stimulating atmosphere. I enjoyed the law school because it was, again, a discipline,” wrote an LL.B. graduate of 1911 who never practiced law.⁷⁰ An Iowan who returned home to practice after graduating in 1904 observed, “I never worked harder in my life.... But it was intensely interesting, and I was learning to think for myself.”⁷¹ A student from the University of Chicago recalled that his one year, 1901–02, at HLS “as an educational experience, was the best I ever had. The students came from all parts of the country and many different colleges.... The classes were conducted on a level of dignity and earnestness which was something new to me.”⁷²

These explanations, however, merely appear to consider benign the meritocratic machinery that seventy years later began to be viewed as malignant. What substantively restrained or alleviated competition, humiliation, anxiety, and resentment among students?

III.

One cultural factor was the paternalism of “The Big Four” senior professors—Ames, James B. Thayer, James C. Gray, and Jeremiah Smith—who set the tone on the twelve-member faculty.⁷³ Langdell had introduced the revolutionary idea of hiring professors from recent honor graduates soon after they completed law school, and this approach gradually became the policy of HLS by 1900.⁷⁴ But the young professorial meritocrats on the faculty at that point were still overshadowed by the senior four, all known as “fine gentlemen of the old school,” having “a kind of calmness” and “a wider grasp of life.”⁷⁵

Born in 1831, Thayer was the most senior professor on the faculty and father of Ezra. He had practiced law for eighteen years and established himself as a significant literary figure before joining the HLS faculty in 1874 and becoming a renowned scholar of evidence and constitutional law, revered

69. Seavey & King, *supra* note 64, at 13–14.

70. Emerson, *supra* note 64, at leaf 17.

71. McCarty, *supra* note 64, at leaves 123, 127.

72. Henry J. Bruère, *Reminiscences* Transcript of interviews conducted for the Columbia University Oral History Program in 1949, leaves 12–13 (Microfilming Corp. of America 1972).

73. Quotation is from Warren, *supra* note 35, at 6.

74. Bruce A. Kimball, *The Principle, Politics, and Finances of Establishing Academic Merit as the Standard of Hiring for the Teaching of Law as a Career, 1870–1900*, 31 *Law & Soc. Inquiry* 617, 617–648 (2006).

75. Kelley, *supra* note 50, at leaves 41, 68.

by students.⁷⁶ “Pops Gray”⁷⁷ had served as an officer in the Civil War before beginning to lecture at HLS in 1869, and he maintained a busy practice in Boston throughout his tenure, while becoming a leading expert in property. Another of these “fine...scholarly...and true gentlemen” was “Jerry Smith.”⁷⁸ Appointed to the HLS faculty in 1890, he had practiced for thirty years as a lawyer and a justice of the New Hampshire Supreme Court and provided insights into practice that the students particularly appreciated.⁷⁹

Hired as an assistant professor in 1875, Ames was the anomaly, the first product of Langdell’s new hiring policy, who joined the faculty right after completing his law studies without having practiced law. But due to “the sweetness and charm of his personality” and “his amiable disposition and his cordial welcome,”⁸⁰ he attracted students. Upon becoming dean in 1895, Ames “put away all his plans for study and writing, and devoted his life to the service of his pupils.”⁸¹ Thus, “his desk was in the stacks of the law library and he was always accessible to any student at any time.”⁸² More than any other professor, the “beloved Dean Ames”⁸³ was consulted by students either on campus or at home for academic, professional, and personal advice.⁸⁴ Known as “the Good Dean,” he also set an ethical tone for the school.⁸⁵

Even discounting for exaggeration, such accounts of the paternal “Big Four” during the 1900s convey a tone far different from the late 20th century Paper Chase portrayals of faculty. The most significant difference may lie in teaching, though paternalism did not mean freely dispensing compliments, which were extremely rare,⁸⁶ or blunting the Socratic edge of discussion. “They are all very courteous of course, and Dean Ames especially so, but they want results, and they won’t tolerate slothful thinking.”⁸⁷ As a 1L from Ohio wrote to his parents

76. James Barr Ames, James Bradley Thayer, Proceedings of the American Academy of Arts and Sciences 37, 1902, at 679–681.

77. Letter, Scott, *supra* note 54, at Feb. 2, 1908.

78. *Id.* at Nov. 12, 1906.

79. Tweed, *supra* note 44, at leaf 9; Neal, *supra* note 43, at Mar. 19, 1900; Breckinridge, *supra* note 44, at leaves 42–3; Warren, *supra* note 35, at 6.

80. [Sarah R. Ames], Memoir of James Barr Ames, in James Barr Ames, Lectures on Legal History and Miscellaneous Legal Essays by James Barr Ames, at 24–5 (Harvard Univ. Press 1913).

81. *Id.* at 13–14.

82. McCarty, *supra* note 64, at leaf 137.

83. Frankfurter, *supra* note 62, at 25–26.

84. Letter, Scott, *supra* note 54, at Jan. & May, 1907.

85. Joseph H. Beale, Jr., Langdell, Gray, Thayer, and Ames: Their Contribution to the Study and Teaching of Law, 8 N.Y.U. L. Q. Rev. 385, 394 (1931). See Frankfurter, *supra* note 62, at 19–20.

86. Letter, Scott, *supra* note 54 at Dec. 9, 1906.

87. Letter, Montgomery to Helen, *supra* note 44, at Oct. 15, 1909.

in 1906, “the professors, each of whom are aggressive and sharp, and several of whom are considered ‘brilliant lights’ in law, put the students through a sort of cross examination, in a way, to confuse them. No matter what the student says, the lecturer is always back at him with a lively retort.”⁸⁸ Thus, whether “you agreed with the decision of a case, or you didn’t...you were subjected, by the Socratic [M]ethod, to a catechism that was sometimes quite embarrassing.”⁸⁹ But it was not mean-spirited or terrorizing, as in the Paper Chase classroom.

For example, “I can remember to this day Professor Ames...in the most delightful, gentlemanly and urbane manner...drew me into another position where I was ridiculous...and dismissed the matter by saying, ‘Well...I can assure you that five hundred years ago the vast majority of lawyers would have agreed with you.’ The class roared with laughter, and I should have been very glad to have the floor open and let me down to another level.”⁹⁰ Similarly, “my best story about Ames is about one lecture in trusts, which was his specialty. He asked me a number of questions and I answered them, thinking I was doing very well in my answers.... It was all done so calmly and quietly and in such a gentlemanly manner that I didn’t appreciate [that] instead of giving the right answers I was giving the wrong ones. But I did learn something from that experience.”⁹¹ Significantly, in all these instances, the students, though embarrassed, did not recall the incidents as painful or humiliating. Ames, in particular, “loved the battle of wits; but he never argued simply for the sake of victory.”⁹² More generally, the senior professors might “rip[] up the experts in good style,” but not the students.⁹³

Another cultural factor was the presence of ill-prepared students, particularly Harvard College graduates, at HLS. In the 1870s Langdell had proposed the unprecedented admissions requirement of a bachelor’s degree, and it took two decades to establish that criterion. As late as 1905, the percentages of college graduates among students at many leading university law schools still fell far short of that standard: Harvard 99, Columbia 82, Chicago 60, Yale 35, Pennsylvania 35, Northwestern 31, Michigan 13, Cornell 10, and Illinois 7.⁹⁴ Furthermore, HLS in 1893 had begun discriminating among the bachelor’s degrees that it would recognize as qualifying for admission. As of 1903, HLS admitted the graduates of only about 150 colleges as “regular” students, that is, degree candidates. Graduates of other colleges or non-graduates could be

88. Letter, Veenfliet, *supra* note 47, at Oct. 7, 1906.

89. Breckinridge, *supra* note 44, at leaf 44. See Kelley, *supra* note 50, at leaves 37-39, 42; Tweed, *supra* note 44, at leaves 10-11; Letter, Montgomery to Mother, *supra* note 44, at Jan. 29, 1910.

90. Breckinridge, *supra* note 44, at leaf 44.

91. Kelley, *supra* note 50, at leaf 10.

92. [Sarah R. Ames] Memoir of James Barr Ames, *supra* note 80, at 8.

93. Letter, Scott, *supra* note 54, at Feb. 2, 1908.

94. Charles W. Eliot, Annual Report of the President of Harvard University 1904-05, in Annual Reports of the President and Treasurer of Harvard, at 39 (Harvard Univ. 1906).

admitted only as “special” students, ineligible to earn the degree unless their grades at HLS averaged within 5 percent of the mark required for honors.⁹⁵ Consequently, the HLS student body was academically stronger than at any other law school, as one student from the early 1900s recalled: “There were about 500 or 600 students...from all over the United States, and they were all college graduates...or brilliant students who came to Harvard because of the high standing of the law school.”⁹⁶

Even this relatively high standard, however, permitted many ill-prepared students to enroll because in the 1900s “achievement of an undergraduate degree from a respectable American college...was no very extraordinary feat of intellect. This was the era of the ‘gentleman’s C.’” Therefore, the admissions standard “involved little selectivity” because “any student...with a diploma from one of a long list of colleges could enroll without any more credentials.”⁹⁷ Implied in this judgment is the provincial assumption that shortening the list to the older New England colleges would have increased the selectivity. But, in fact, many of the weak students came from Harvard or Yale, whose graduates constituted nearly 50 percent of the student body.⁹⁸

Ironically, the deans of HLS, beginning with Langdell, kept careful track of the number of Harvard College graduates and used that to measure the academic quality of the HLS student body: the more the better.⁹⁹ But, as Harvard President Charles W. Eliot observed in 1909, “The present standard of labor for many lazy and unambitious young men who spend four years in Harvard College is deplorably low, or, in other words, the standard which the College itself sets for mere pass work is so low that it can hardly be said to call for labor in any proper sense.”¹⁰⁰ HLS students from other colleges concurred. A Rutgers graduate, who earned money by tutoring Harvard undergraduates, asserted in 1906, “I think a fellow can graduate [from Harvard College]... and know lots less than...to get through Rutgers, for instance. And yet [the law school] refuse[s] to admit graduates of some colleges of ‘2nd rank’ except under certain conditions. I saw a letter from the dean of one of the ‘2nd rate’ Southern colleges, the University of Kentucky, I think, who was...furious that the law school refused to admit one of their alumni unless he had a certain standing.”¹⁰¹

95. Harvard University, Law School Catalog 1903–04, 4–7, 11 (Harvard Univ. 1903).

96. McCarty, *supra* note 64, at leaf 123. See Frankfurter, *supra* note 62, at 26.

97. Sutherland, *supra* note 7, at 221.

98. Williston, Annual Report of the Dean of Harvard Law School 1907–08, in Annual Reports of the President and Treasurer of Harvard, at 165 (Harvard Univ. 1909); Harvard University, Law School Catalog 1908–09, 47 (Harvard Univ. 1908).

99. *See id.* at 165.

100. Charles W. Eliot, Annual Report of the President of Harvard University 1907–08, in Annual Reports of the President and Treasurer of Harvard, at 18 (Harvard Univ. 1909).

101. Letter, Scott, *supra* note 54, at Oct. 11, 1906.

The justification for preferring Harvard B.A.s also was belied by the undergraduate market for tutors. The Harvard College Appointments Office eagerly recruited graduates of other colleges to tutor Harvard undergraduates, especially if they became “familiar with the Harvard examinations.” By the same token, the 2L tutor of an HLS classmate with a Yale B.A. observed that his tutee “is docile enough and wants to learn provided it is not too great an effort. It is not a vital matter with him.”¹⁰²

Conversely, it was “a matter of common knowledge” according to a 1L in 1904-05, that “the young men who come from western and southern colleges are generally among the pick of the [graduates from those] institutions.”¹⁰³ Naturally, if HLS students “were [financially] poor and if they came from far—meaning North Dakota, or the Southwest, or the Pacific Coast—they were likely to be topnotchers in their respective colleges.”¹⁰⁴ Furthermore, after coming across the country at great expense, these students worked even harder at HLS than at their alma mater, so the HLS students “who were particularly outstanding were the western men.”¹⁰⁵

The presence of weak students contributed to professors’ frequent practice of identifying the strongest students in a class and then teaching “chiefly by means of Socratic dialogues between himself and fifteen or twenty of the best students who formed, so to speak, a Greek chorus.”¹⁰⁶ Many students preferred this approach,¹⁰⁷ perhaps because the strong students got to talk and the weak ones to refrain. In addition, the practice prevented class meetings in which a professor “spent about half the time answering foolish questions which the askers, had they stopped to think, could easily have answered themselves; so that only about half of the time was there any use in taking notes.”¹⁰⁸

The weak preparation of some students, notwithstanding the uniquely high admission standard of HLS, prompted the faculty in 1898 to consider “further restrictive measures,” including “a requirement for admission, for graduates

102. Quotations are from Letter, Scott, *supra* note 54, at Oct. 4, 1906 & Nov. 20, 1907.

103. Mayer, *supra* note 64, at 15-16.

104. Frankfurter, *supra* note 62, at 26.

105. Clemens, *supra* note 48, at 34. In 1912 Dean Ezra R. Thayer still found it disappointing that Harvard College graduates did less well than expected and attributed it to their taking on too much teaching in the College to earn money. Ezra R. Thayer, Annual Report of the Dean of Harvard Law School 1911-12, in Annual Reports of the President and Treasurer of Harvard, 135-6 (Harvard Univ. 1913). Among students at Harvard generally, President Eliot observed, “there will naturally be a larger percentage of idlers among the rich students than in either of the other groups [of poor or middle class students], because the rich lack the motive of impending need; but nevertheless, many of the richer students will be found in the upper quarter of their respective classes.” Charles W. Eliot, University Administration, 215 (Houghton Mifflin Co. 1908).

106. Warren, *supra* note 35, at 7. See Letter, Scott, *supra* note 54, at Apr. 10, 1907, Apr. 28, 1907, Mar. 8, 1908.

107. Overseers Standing Committee, *supra* note 68.

108. Letter, Scott, *supra* note 54, at Apr. 28, 1907.

of all colleges except Harvard, that the applicant should have stood in either the first three-fourths or the first half of his class at college.” However, since “a man might well be in the last half of a graduating class” in certain colleges, “yet exceed both in natural abilities and in acquirements another applicant for admission who had been graduated in the first half of his class” at another college, the faculty rejected the idea.¹⁰⁹

HLS therefore continued to enroll many ill-prepared students, and the attrition rate for first-year students averaged about 17 percent while edging upward during the Ames’s administration, even as the enrollment increased from 475 to 719. Including special students, the first-year attrition percentages were:

Class of			
1898	11	1904	16
1899	10	1905	13
1900	21	1906	21
1901	14	1907	24
1902	13	1908	18
1903	23	1909	19 ¹¹⁰

The presence of the weak students buffered student anxiety in a number of ways. First, many who left felt little anxiety, not expecting to remain from the outset. Second, in absolute terms, the presence of low-achievers saved high-achievers from being assigned low grades. Finally, in relative terms, the presence of low-achievers prevented high-achievers from being ranked low. Consequently, anxiety, resentment, and depression over academic performance were alleviated.

Apart from weak preparation, the writings of some HLS students expressed little motivation or interest to study law. A surprising number of students reported that they enrolled to please or obey their fathers, and the simplicity and ease of admission to HLS in the 1890s and 1900s doubtlessly facilitated the young men’s acquiescence when finding that “my father...thinks I am to be a lawyer.”¹¹¹ Not surprisingly, a number of such students soon left, reporting

109. 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.
110. I am grateful to Eric F. Fox for computing these figures from lists of students in the Quinquennial Catalogue of the Law School of Harvard University (Harvard Law School 1939). Because students left and reappeared and also moved in and out of the “regular” and “special” categories, as discussed below, these figures are subject to interpretation and not easily calculated.
111. Rupert S. Holland, *The Count at Harvard: Being an Account of the Adventures of a Young Gentleman of Fashion at Harvard University*, 151 (L. C. Page 1906). See Breckinridge, *supra* note 44, at leaf 1; Howe, *supra* note 64, at 147-8; Eder, *supra* note 61, at leaves 8-9; Tweed, *supra* note 44, at leaves 4-5; Emerson, *supra* note 64, at leaves 15-16.

that “the year at law school was a mistake.... I didn’t do very well, because my heart wasn’t really in it.”¹¹² The presence of these students, like those ill prepared, diluted the academic competition at the school.

Compounding the influence of unmotivated students was the presence of socially distracted students, a cultural factor strengthened by the preponderance of Harvard College graduates as well as those from Yale and Princeton. Harvard B.A.s flocked to HLS precisely because enrollment there allowed them to continue their undergraduate friendships and activities, and it was easy for them to enroll: They simply presented their diploma to the HLS registrar and signed up for classes. As one member of the HLS class of 1904 wrote: “The impulse to go back to Harvard was strengthened by the fact that, while I had graduated in 1900, several of my close friends were in the class of 1901 and would still be at Harvard. Yet others of my class were staying at Harvard to enter the law school. Those youths were very dear to me. The combined pull of the several allurements drew me back to Harvard and to registration in the law school.”¹¹³

These Harvard College graduates often continued their involvement in undergraduate organizations, such as the *Harvard Lampoon* or the *Harvard Monthly*.¹¹⁴ Others obtained positions as proctors, charged with maintaining control and discipline in the undergraduate dormitories that they had previously occupied.¹¹⁵ The preponderance and strong network of Harvard B.A.s resulted in their dominating HLS student affairs. When a non-Harvard alumnus was elected secretary of his HLS class in 1902, the unusual event was reported in the Boston newspapers, and even then the upstart was a Yale alumnus.¹¹⁶ The high number of Harvard College graduates therefore diluted not only the quality of the HLS student body but also its commitment to legal study. This factor reduced academic pressure and attendant anxiety or resentment among the most driven and talented students, who generally could not penetrate the “clannishness”¹¹⁷ of Harvard, Yale, and Princeton alumni.

This cultural factor was then magnified by the anomaly that Harvard College seniors were allowed to enroll at HLS and complete both their undergraduate and 1L work simultaneously. This overlapping registration allowed Harvard

112. Walter E. Sachs, *Reminiscences*, Transcript of interviews conducted for the Columbia University Oral History Research Program in 1956 and 1964, leaf 16 (Microfilming Corp. of America 1972). See Stanley Washburn, *Reminiscences*, Transcript of an interview conducted for the Columbia University Oral History Research Program in 1950, leaf 27 (Microfilming Corp. of America 1972).

113. Mark F. Sullivan, *The Education of an American* 145 (Doubleday, Doran & Co. 1938).

114. Henry G. Pearson, *A Business Man in Uniform*, Raynal Cawthorne Bolling 12 (Duffield & Co. 1923); Geo. Oliver Carpenter to Arthur F. Gotthold, in Arthur F. Gotthold, *Scrapbook of Harvard Student Life, 1896-1910*, at May 14, 1901 (on file with Harvard University Archives) [hereinafter *Carpenter to Gotthold*].

115. Kelley, *supra* note 50, at leaf 37; Neal, *supra* note 43, at Mar. 23, 1900.

116. *Yale Man Honored*, Boston J., Feb. 26, 1902, at 5.

117. *Centennial History*, *supra* note 7, at 135.

seniors to reduce by one year their overall enrollment, and the resulting economy was a favorite idea of President Eliot.¹¹⁸ But Ames considered it “deplorable” because “the law work of Harvard Seniors...was inferior not only to that of Harvard graduates, but also to that of [HLS students] at large.”¹¹⁹ Examples were legion. During his overlap year 1899–1900, one Harvard senior recorded his “cuts” from HLS classes as follows: “Property I (all of the dates): 14. Contracts I (all of the dates): 19. Torts: 10. Cont[tracts II?]: 11. Pleading: 12. Criminal Law: 15. Total: 98.”¹²⁰ Another Harvard senior during an overlap year in 1903–04 failed his HLS final examinations in May 1904, was voted a reprieve by the faculty due to “ill health,” and passed those examinations in May 1905. He next enrolled as a Special Student during 1905–06 and was finally voted the LL.B. in June 1911. The record is ambiguous as to whether he ever received the B.A.¹²¹ Dean Ames seems to have become preoccupied with trying to eliminate or curtail the enrollment of Harvard seniors.¹²² But they continued to enter, likely due to President Eliot’s support, and the HLS faculty meetings were consumed by discussions and votes on the individual cases of academic status, deficiency, and remediation of Harvard seniors, usually at the beginning and end of the academic year.

Even more than the Harvard College graduates, the presence of Harvard seniors diluted the commitment to legal study at HLS because many “had no intention of ever becoming lawyers; and even those who were genuine law students were greatly handicapped...by the natural diversion of...the social activities of seniors in the College.”¹²³ The publication of this statement in the HLS *Centennial History* (1918) demonstrates the significance of the issue. Likewise, publication of *The Count at Harvard: Being an Account of the Adventures of a Young Gentleman of Fashion at Harvard University* (1906) by a Harvard B.A. and LL.B. who completed an overlap year in 1900–01 demonstrates the public reputation for social gaiety and academic frivolity among these students and among Harvard undergraduates in general.¹²⁴ In fact, Rupert Holland’s *The Count at Harvard* (1906) may be a fitting antistrophe to Scott Turow’s *1L* (1977).

118. See Charles W. Eliot, Annual Report of the President of Harvard University 1897–8, in Annual Reports of the President and Treasurer of Harvard, at 35–36 (Harvard Univ. 1899).

119. James B. Ames, Annual Report 1898–99, 174 (Harvard Univ. 1900). See HLS Faculty, *supra* note 40, at Nov. 13, 1899.

120. Carpenter to Gotthold, *supra* note 114, at handwritten card of Cuts 1899–1900.

121. The student was Roscoe Walsworth. HLS Faculty, *supra* note 40, at Oct. 4, 1904, May 15, 1905, June 29, 1911; Quinquennial Catalogue of the Law School.

122. James B. Ames, Annual Report 1896–97, 160–161 (Harvard Univ. 1898); James B. Ames, Annual Report 1897–98, 164–5 (Harvard Univ. 1899); Ames, Annual Report 1898–99, *supra* note 119, at 174; HLS Faculty, *supra* note 40, at Apr. 9, 1900.

123. Centennial History, *supra* note 7, at 51. See Warren, *supra* note 35, at 468–9.

124. Holland, *supra* note 111, at 151. Holland is variously listed as a member of the Harvard College class of 1900, of the HLS class of 1902, and both a 1L and “Harvard College Senior” in 1900–01.

Although Holland's dramatization of gaiety and frivolity certainly exaggerates the reality, this culture pervaded American colleges, especially Harvard, during this period.¹²⁵ Yet that ethos was weaker at HLS. "I am surprised to see so few 'sports' up here," one Rutgers B.A. studying at HLS remarked, "While there are a few, yet the great majority seem to be anything but 'swells.'"¹²⁶ Indeed, "over three quarters of the students worked hard," observed an HLS graduate of 1900.¹²⁷ Consequently, both points are true: The culture of HLS was distinctly more academic than in college, but a significant minority of HLS students still embraced college life, and this factor also restrained anxiety, resentment, and depression arising from academic demands or competition.

The "sports" who fostered college life at HLS went far beyond joining the HLS bowling league¹²⁸ or "put[ting] in my hour" of boxing, tennis, skating, jogging, or the new game of handball.¹²⁹ The "special" category allowed and even encouraged students to enroll at HLS simply in order to enjoy the contemporary aura of Harvard athletics.¹³⁰ Certain "regular" students felt the same draw, and these "sports" made their impact in various ways.

Near the turn of the century, a Yale B.A. studying at HLS introduced basketball to Harvard. Another HLS student became national lawn tennis champion, and the HLS hockey team, composed of former intercollegiate players, defeated the Harvard varsity.¹³¹ Above all, the HLS athletes pursued "the four chief athletic sports of the day [which] are foot-ball, base-ball, rowing, and track-athletics, in the order of their popularity."¹³² Participation in track was facilitated by the location of the university's indoor practice track in the field neighboring the law school, enabling the intercollegiate pole vault champion, who had graduated from Yale College, to continue to compete in

125. See Helen L. Horowitz, *Campus Life, Undergraduate Cultures from the End of the Eighteenth Century to the Present*, 11-14, 41-55 (Alfred A. Knopf 1987).

126. Letter, Scott, *supra* note 54, at Sept. 27, 1906. See also Letter, Veenfliet, *supra* note 47, at Oct. 7, 1906.

127. Warren, *supra* note 35, at 8.

128. But Fors' Took Three Straight Strings, Boston J., Feb. 17, 1906, at 5; Two matches in the Harvard Bowling League, Boston J., Feb. 27, 1906, at 4.

129. Quotations are from Neal, *supra* note 43, at Mar. 12, 1900. See Letter, Scott, *supra* note 54, at Nov. 13, 1906.

130. Letter, Guy H. Holliday, Secretary of HLS, to Zechariah Chafee, Jr., in Zechariah Chafee, Jr., at Nov. 22, 1928 (papers, microfilm version) (on file with Harvard Law School Library, reel 51, #894). See Kim Townsend, *Manhood at Harvard: William James and Others 15-29, 80-173, 195-255* (Harvard Univ. Press, 1996).

131. Yale Man Honored, Boston J., Feb. 26, 1902, at 5; New Champion Whitman Was Defeated by Davis in a Phenomenally Played Match at Longwood, Boston J., June 21, 1900, at 8; Hockey at Harvard Law School Team Defeats the Varsity, Boston J., Jan. 19, 1900, at 3; Letter, Montgomery, *supra* note 44, at Oct. 20, 1909.

132. Neal, *supra* note 43, at Apr. 1, 1900.

national meets as a student at HLS.¹³³ Members of the Harvard crew team enrolled at HLS and continued rowing,¹³⁴ and in spring 1904 HLS hosted the former coxswain on the champion Cornell crew, who was an instructor at Cornell Law School, to learn about HLS methods while also coaching the Harvard coxswains about the advanced technique of the Cornell crew.¹³⁵

Above all, law students joined teams in football, the king of sports. Competition was keen, and if an HLS student did not measure up to the varsity, he was assigned to one of the “class” teams fielded by a Harvard College class.¹³⁶ But HLS students who had excelled in college played for the Harvard varsity, and the Harvard captain in the fall 1905 season was an HLS student.¹³⁷ Given this level of participation, athletics also drew in HLS students who did not play.¹³⁸ Even studious alumni of colleges outside New England, who initially “cannot yet get quite enough spirit [of] the ‘Rah Rah Haavards,’” soon found themselves following Harvard teams and attending Harvard games.¹³⁹

Trying to stem the athletic influence, the HLS faculty recommended and the university adopted in 1905 a new policy restricting Harvard intercollegiate teams to undergraduates.¹⁴⁰ Yet, this change simply redirected the HLS “sports” to other outlets. One was to play professionally, and at least two HLS students combined professional baseball with enrollment at HLS.¹⁴¹ Another was to coach, and HLS students coached the hockey, fencing, and football teams at Harvard.¹⁴² The most ambitious outlet was to field school teams. HLS

133. Champion Nelson Enters Pole Vault Event at Penn, Boston J., Apr. 28, 1911, at 9. Harvard to Call out Runners for Early Practice Track Work for the Indoor Season, Boston J., Dec. 5, 1911, at 9.

134. Pearson, *supra* note 114, at 12.

135. Aquatics at Harvard to Undergo a Change, Boston J., Nov. 29, 1903, at 8.

136. McCarty, *supra* note 64, at leaf 124.

137. Public Not in It, Boston J., Nov. 19, 1901, at 8; Thomas G. Stevenson, Reminiscences (Boston: privately printed, 1941), 26-27; Capt. Hurley Back in Harvard Law School, Boston J., Jan. 4, 1906, at 8.

138. Seavey & King, *supra* note 64, at 14-15; Spell of Three Years of Defeat is Broken the Tigers Only Scored a Field Goal, Boston J., Nov. 18, 1900, at 1; Letter, Veenfliet to [his sister], *supra* note 47; Clemens, *supra* note 48, at 33-34.

139. Letter, Scott, *supra* note 54, at Nov. 12, 1906, Nov. 10, 1907; Letter, Montgomery to Mother, *supra* note 44, at Nov. 5, 1909.

140. HLS Faculty, *supra* note 40, at May 15, 1905; Centennial History, *supra* note 7, at 55-56.

141. Storke Will Join the Reds April 1. Will Leave Harvard Law School To Get in Exhibition Games, Boston J., Feb. 9, 1910, at 10; Bridwell's Drive Wins for Braves with Bases Filled, Boston J., Aug. 9, 1912, at 8.

142. Breckinridge, *supra* note 44, at leaf 45; Harvard Freshmen Strong in Hockey Pick of the Prep Schools Crack Players Work out on the Squad, Boston J., Dec. 10, 1910, at 13; Coach Marshall is Now General Marshall, Boston J., Jan. 18, 1908, at 9. *See also* McCarthy May Coach Georgetown Eleven, Boston J., Jan. 30, 1908, at 8.

students formed a baseball team that regularly played other law schools¹⁴³ and a track team that entered national meets in Boston.¹⁴⁴ Finally, in response to the 1905 restriction, HLS students formed their own football team composed of college all-stars that played national teams at Harvard stadium, the largest in the country at the time. In 1910, after engaging the famous Carlisle (Pennsylvania) Indian School team, the HLS all-stars toured the south during winter vacation, playing university football teams in Nashville, Memphis, and Baton Rouge. The HLS football teams were largely composed of alumni from Harvard, Yale, Princeton, and Dartmouth, revealing again the irony that the graduates of the prestigious New England colleges, presumed to be the best candidates for admission, were sustaining the culture of “college life” at HLS.¹⁴⁵

Apart from the impact of the “sports,” the “swells” constituted another significant minority of HLS students who preferred to participate in college life than to strive for academic honors. To this group belonged a Harvard B.A. and a Princeton B.A. who attended HLS in the 1900s and concurred, “all the time I was in the Harvard Law School. . . I never cracked a book from Saturday noon to Monday morning, and I resolved that if I couldn’t get along on a good forty hours a week, I wouldn’t get along. I didn’t get along so very well, but I survived.”¹⁴⁶

Ambitious students also participated in some aspects of college life, apparently out of a gentlemanly desire to avoid both the appearance of self-promotion and the reputation of a “grind,” which even the faculty meritocrats eschewed.¹⁴⁷ Hence, a high-achieving Harvard B.A. who entered HLS in 1907 recalled, “[W]e lived very pleasantly, having been through college and knowing everybody in Cambridge and having friends and knowing people in Boston. . . but we did work.”¹⁴⁸ Likewise an ambitious Stanford graduate entering HLS in 1905 reported, “The Westerners in Boston in those days were regarded as interesting and faintly exotic creatures, not unlike the foreign students two generations later. They were lodged together in a special house and, on one

143. Yale Law School vs. Harvard Law School, Soldiers Field, Nov. 22, 1901, 3 P.M., Reserved Seat = 50 Cents, paper ticket *in* Carpenter to Gotthold, *supra* note 114; Harvard Law School Nine Beat Yale, 6-5, Boston J., May 16, 1906, at 9; Letter, Scott, *supra* note 54, at Jun. 19, 1908.

144. Bob Dunbar’s Sporting Chat, Boston J., Feb. 16, 1911, at 9.

145. Indian Eleven May Play at the Stadium Harvard Law School Team, Composed of Stars from Many Colleges, Boston J., Nov. 2, 1910, at 12; Philbin and Fish Win Fresh New Laurels. Harvard Law School Team of Varsity Veterans Fairly Outplayed the Carlisle Indian Warriors, Boston J., Nov. 17, 1910, at 12; All-Star Eleven in Scoreless Tie, Boston J., Dec. 31, 1910, at 10; Harvard All-Stars Go Broke in the South, Boston J., Jan. 4, 1911, at 1; Harvard Law School To Organize Eleven, Boston J., Oct. 10, 1911, at 9.

146. Breckinridge, *supra* note 44, at leaf 45. See Carpenter to Gotthold, *supra* note 114.

147. See Mayer, *supra* note 64, at 18-20; Letter, Scott, *supra* note 54, at Feb. 23, 1907, Mar. 18, 1908; Warren, *supra* note 35, at 8; Centennial History, *supra* note 7, at 130.

148. Tweed, *supra* note 44, at leaves 7-8.

occasion, were royally wined and dined like visiting ambassadors of another country by the wealthy members of the Hasty Pudding Club.”¹⁴⁹

Clubbing, in fact, persisted in one form or another. Groups of students formed tables at the campus dining halls, organized to provide “helpful and democratic” places to gather and dine,¹⁵⁰ although “numerous other private boarding houses feed the majority of the fellows,” according to a Harvard B.A.¹⁵¹ Some students joined “the Union, the club of the [u]niversity,” established by Harvard in 1902 as an alternative to the expensive social clubs.¹⁵² Among HLS clubs, the Wig, the Southern Club, and Phi Delta Phi had primarily social ends.¹⁵³

Nevertheless, the rest of the thirty or so clubs within the law school existed to foster legal research among their members, who spent their time preparing and arguing cases. These law clubs were ranked informally, and admission was highly competitive and ostensibly based on scholarship. “It is a great advantage to join a good club, as it throws you in with the better and more intelligent men,” recorded a Columbia University B.A. in October 1895. Even here, however, membership was heavily influenced by the distinctions of college life. “A stranger to Harvard has a poor chance” to be invited into one of the high-ranking clubs,” because “it’s one of those matters where pull is more than merit, or nearly as much; though if merit is known it may be recognized.”¹⁵⁴ A decade later, in October 1906, a Harvard B.A. confirmed the importance of social and college ties in gaining admission to the “best” law clubs:

Though the first thing in these [law] clubs is scholarship, yet socially they are something, too, for the better clubs only take fellows who are fit in every way and gentlemen. In the [high ranking] Thayer club, four Harvard men, one Princeton, two Yale, and one Williams man are taken every year. As it happens, I am the only one from my [Harvard College] class in Thayer...I know only that there are...quite a few, at least, [from my college class] who are more prominent, both in a social way and in scholarship, than I...[so] I am “tickled”—and I am sure that I have just cause to be.¹⁵⁵

149. Sally S. Zanjani, *The Unspiked Rail: Memoir of a Nevada Rebel*, 85–86 (Univ. of Nevada Press 1981). In “talking to a distinguished Boston lady,” one HLS student “mentioned that he was from Iowa. She replied, ‘We pronounce it “Ohio” here in Boston.’” McCarty, *supra* note 64, at 135. See Letter, Montgomery to Mother, *supra* note 7, at Dec. 5, 1909.
150. Quotation is from Charles W. Eliot, *Annual Report 1906-07*, 51 (Harvard Univ. 1908). See McCarty, *supra* note 64, at leaf 124; Seavey & King, *supra* note 64, at 13–14; Clemens, *supra* note 48, at 33.
151. Neal, *supra* note 43, at Mar. 31, 1900. See also Hoguet, *supra* note 42, at 30.
152. Quotation is from Letter, Scott, *supra* note 54, at Nov. 13, 1907. See Charles W. Eliot, *Annual Report 1902-03*, 39–40 (Harvard Univ. 1904).
153. Letter, Scott, *supra* note 54, at Nov. 13, 20, 1907; Apr. 5, 12, 1908.
154. Russell H. Loines, *A Selection from his Letters and Poems with Biographical Sketch and Recollections by His Friends*, 135–7 (Privately printed 1927).
155. Letter, Veenfliet, *supra* note 47, at Oct. 1, 1906.

Consequently, the predominant student organizations at HLS—the law clubs—which embraced scholarship as their goal and academic merit as their criterion of membership, nevertheless observed the social distinctions of college life. This cultural influence also alleviated academic pressure and attendant anxiety among the many HLS students having no prospect of entering the self-proclaimed “best” law clubs, though they might resent their exclusion from the Harvard, Yale, and Princeton “clans.”¹⁵⁶

Another restraint on academic anxiety lay in the ready availability of jobs for college graduates, particularly those with a year or more of study at Harvard Law School, during a period when only about three in every 10,000 people held a college degree and less than 5 percent of those of age 18 to 21 were enrolled in college.¹⁵⁷ In the 1890s, elite positions in the leading professions had begun to require a college degree and a professional degree, but it was not until the 1920s that both degrees began to be expected for the upper tier of professional jobs.¹⁵⁸ Consequently, the security of employment made the option of dropping out of HLS palatable to those who had never wanted to attend or to study. Some who did not finish the LL.B. followed their ambitions into such fields as journalism, politics, social reform, or business, where they found success. Walter Sachs, member of the Goldman Sachs family, became a prominent businessman; Stanley King made a fortune in manufacturing and became president of Amherst College.¹⁵⁹ Even without the LL.B., a “special” student from California believed that his two years at HLS from 1904 to 1906 gave him “impeccable credentials and a circle of friends...useful to him in later life.”¹⁶⁰

The majority of non-graduates easily obtained jobs in law, because the three-year LL.B. from HLS was so far above the norm for legal training. As late as 1910, only about two-thirds of those admitted to the bar nationally were law school graduates and only about 8 percent were college graduates.¹⁶¹ In summer 1909, when Crawford Greene visited home in California after his second year at HLS, a prominent lawyer offered him a job, asserting that completing the LL.B. “made no...difference.” Fearing that he could not pass the California bar exam after only two years of law school, Greene was assured by the lawyer

156. Centennial History, *supra* note 7, at 135.

157. See data for 1900 from the U.S. Census *available at* <http://www.census.gov/popest/archives/1990s/popclockest.txt> and from the National Center for Education Statistics *available at* http://nces.ed.gov/programs/digest/do8/tables/dto8_268.asp. See also John R. Thelin, *A History of American Higher Education* 169 (Johns Hopkins Univ. Press 2004); Roger L. Geiger, *To Advance Knowledge: The Growth of American Research Universities, 1900-1940*, 108 (Oxford Univ. Press 1986).

158. Johnson, *supra* note 11, at 120-153; David O. Levine, *The American College and the Culture of Aspiration 1915-1940*, 13-14 (Cornell Univ. Press 1986).

159. Sachs, *supra* note 112; Claude M. Fuess, *Stanley King of Amherst* 40-41, 47 (Columbia Univ. Press 1955); Washburn, *supra* note 112; Bruère, *supra* note 72, at leaves 10-12.

160. Clemens, *supra* note 48, at 33.

161. Kimball, *supra* note 49, at 281.

that “anyone whom he and his partner...recommended would pass.” Greene immediately commenced his successful legal career and did not return to HLS.¹⁶² His experience was typical. The best available survey of career paths of an HLS class from Ames’s administration indicates, for the class of 1906, that 74 percent of the reporting graduates and 66 percent of the reporting non-graduates were working in law as of 1922.¹⁶³ Whether completing the degree or not, an HLS student could find plenty of legal jobs. Recognizing the temptation to leave HLS early, the faculty unanimously adopted the resolution in 1898 “that it is for the true interests of the law students to complete their law school course before attempting to pass the examina[tion] for admission to practice.”¹⁶⁴

Given these prospects for non-graduates, those completing the LL.B. did not need to do well academically in order to secure a good position. Of course, to the most ambitious students, “it was for blood. We were all competing. We all wanted to get into the best offices,” according to a graduate of 1908 who earned As, made law review, and went to New York City to begin his career.¹⁶⁵ But an LL.B. with a C average could still enter a law firm on Wall Street and flourish, as did Arthur Gotthold of the class of 1902.¹⁶⁶ Success was assured “even if you don’t stand at the head of your class, but survive the Harvard Law School and come out with a degree,” stated a graduate in the class of 1910.¹⁶⁷

Nor was the prospect of a higher salary a great inducement to remain and complete the LL.B., though data on this point are difficult to find. A survey in 1914 found that HLS graduates in the classes from 1902 to 1912 earned on average about \$664 in their first year and \$5,300 in their tenth year.¹⁶⁸ At the high end, one HLS graduate near the top of the class of 1912 planned to go to Ohio in order to accept a teaching position “at a salary of from \$1,800 to \$2,000 to start,” which he hoped to supplement by opening a practice on the side.¹⁶⁹ By comparison, the average earnings of all full-time employees in 1910 were \$574, and the average salary of all attorneys ranged between \$2,000 and

162. A. Crawford Greene, *East and West: A Personal Record 14-15* (A.C. Greene 1966).

163. The figures are based upon reports from 274 of the 323 students who ever attended the class at any point. Alan Fox, *History of the Class of 1906 Harvard Law School* (Jun. 22, 1922) (unpublished essay read at class dinner) (on file with Harvard Law School Library Special Collections).

164. HLS Faculty, *supra* note 40, at Feb. 24, 1898.

165. Kelley, *supra* note 50, at leaf 39. On elite law firms in the 1890s starting to recruit based on academic achievement in law school, see Kimball, *supra* note 2, at 265-66, 344.

166. Carpenter to Gotthold, *supra* note 114. See Richard Ames, *Suggestions from Law School Graduates as to Where and How To Begin Practice*, 27 *Harv. L. Rev.* 263, 263 (1914).

167. Breckinridge, *supra* note 44, at leaf 45.

168. Ames, *supra* note 166, at 261-62.

169. See Letter, Montgomery, *supra* note 44, at Mar. 27 1911, Apr. 9, 1911, Apr. 20, 1911, July 14, 1911, Feb. 2, 1912.

\$3,000.¹⁷⁰ Assuming that the average salary of HLS non-graduates was less than that of HLS graduates but more than that of the average attorney, it appears that the monetary gain for finishing the LL.B. was not very great within the first ten years of leaving HLS. Furthermore, lawyers' salaries within New England were depressed because "New England is more crowded with well-trained lawyers than almost any other part of the country and the competition is consequently keener there." As a result, HLS non-graduates who found positions outside of New England, as they usually did, likely earned close to what HLS graduates, who predominantly settled in New England, earned, at least within their first ten years.¹⁷¹

Another restraint on academic competition and anxiety stemming from students' career plans and employment prospects was the fact that HLS graduates increasingly entered business directly or soon after graduating, and academic grades were less important in that domain. The career survey of the HLS class of 1906 found that 22 percent of those reporting were working in business, banking, or property management in 1922.¹⁷² The decline in enrollment at HLS, beginning in 1904, was attributed both by Dean Ames and President Eliot to the desire of Harvard College graduates to pursue business,¹⁷³ a trend that led to the founding of the Graduate School of Business Administration at Harvard at 1908.¹⁷⁴

Consequently, the career plans of HLS students and their employment prospects mitigated competition and thereby alleviated anxiety associated with the academic demands of the school. Whether or not a student ranked high academically or even graduated, career success was fairly assured. Reasons for completing the degree or not were often circumstantial, so the HLS alumni association welcomed all those who had been students at the school for at least one year, and the published reports of the association and individual HLS

170. Kimball, *supra* note 49, at 262. In 1900, farm laborers earned annually on average \$247, factory workers and coal miners \$435, highly skilled workers \$800-1,000, and clerical workers \$1,011. Historical Statistics of the United States, Colonial Times to 1970, Pt. 1, Series D, pp. 779-93 (U.S. Department of Commerce 1975).

171. Ames, *supra* note 166, at 262.

172. Fox, *supra* note 163. See Emerson, *supra* note 64, at leaf 24; Pearson, *supra* note 114, at 22, 24-25. Businesses began actively to recruit graduates with degrees in higher education in the decade after World War I. Levine, *supra* note 158, at 45-67.

173. Charles W. Eliot, Annual Report 1905-06, 27 (Harvard Univ. 1907); James B. Ames, Annual Report 1905-06, 166 (Harvard Univ. 1907); Charles W. Eliot, Annual Report 1906-07, 12 (Harvard Univ. 1908). See E. H. Wells, Report of the Secretary for Appointments, in Annual Reports of the President and Treasurer of Harvard, at 343-9 (Harvard Univ. 1908); Charles W. Eliot, Annual Report 1907-08, 26 (Harvard Univ. 1909); James B. Ames, Annual Report 1907-08, 167 (Harvard Univ. 1909).

174. Charles W. Eliot, Annual Report 1907-08, 32-33 (Harvard Univ. 1909). The new business school sputtered along until 1920 when a 1901 LL.B. of HLS, who had succeeded in business and banking, was appointed dean and led it to prominence. W. B. Donham succeeds Gay at Harvard School, Boston Daily Globe, Oct. 7, 1919, at 13; Dean of Business School selected, Christian Science Monitor, Oct. 9, 1919, at 8.

classes between 1895 and 1910 made no status distinctions between graduates and non-graduates.¹⁷⁵ In fact, one non-graduate who succeeded in legal practice was elected to the Harvard Overseers Visiting Committee to the law school, charged to evaluate his alma mater.¹⁷⁶

IV.

While student culture and the economic context alleviated academic anxiety, resentment, and depression, the impact of those two factors was strengthened paradoxically by two school policies governing enrollment. Most important was the provision for a “special” student status. This effect was certainly the farthest thing from the intention of the faculty when, in 1893, they established the bachelor’s degree from certain select colleges as the admission standard for “regular” students and relegated graduates of other colleges to the longstanding minor “special” category.¹⁷⁷ The faculty thus regarded “special” students as *infra dig* and gradually increased the academic requirements as their number grew.¹⁷⁸ But the category also served as a refuge from academic pressure by providing a temporary holding status for those uncertain about their plans or evaluating their academic prospects.¹⁷⁹

Paradoxically, therefore, some high-achieving students, though qualified to be regular enrollees, elected special status because it allowed the flexibility of studying for a year or more and then deciding whether to pursue the LL.B., depending on their exam results and personal situation. For example, Paul Martin, a Creighton University B.A. of 1900; Samuel Brackett, a University of Iowa B.A. of 1902; and Joseph Lamson, a Bowdoin College B.A. of 1903, enrolled each year as special students until requesting and receiving the LL.B. in June 1905 or 1906.¹⁸⁰ In addition, “the capable student who knows that he can spend only one or two years at the law school is almost sure to enter as a Special Student, fearing lest, if he should enter as a regular student, he might be supposed to have failed...when he left the school without completing its course,” as President Eliot observed.¹⁸¹

Similarly, students who had completed both a bachelor’s degree qualifying them to enter as regular students and a year or more of study at another law

175. See T. H. Gage, Jr., Harvard Law School Class of 1889, Secretary’s Report, no. 2, July 1892 (Charles Hamilton 1892); William C. Wait, Harvard Law School Class of [18]85, Secretary’s Report, no. 2, June 1905 (J. C. Miller 1905); Form letter to alumni from Dean Ezra R. Thayer, in Ezra Ripley Thayer Papers, 1882–1915, Jun. 6, 1913 (on file with Harvard Law School Library Special Collections, box 8, f. 8–13).

176. Greene, *supra* note 162, at 14–15.

177. HLS Faculty, *supra* note 40, at Mar. 23, 1893, Mar. 31, 1893, Apr. 18, 1893.

178. *Id.* at Oct. 8, Nov. 17, 1897, Nov. 12, 1900.

179. The following discussion draws upon the lists of students and their categories in the HLS annual catalogs for the years between 1895 and 1909.

180. HLS Faculty, *supra* note 40, at Jun. 24, 1905, Jun. 23, 1906.

181. Charles W. Eliot, Annual Report 1903–04, 34 (Harvard Univ. 1905).

school could choose to register as special students and take exams at the end of their first year in order to qualify for advanced standing.¹⁸² For example, Charles Elkus, a Stanford B.A. with one year of study at Stanford Law School, was permitted to try for advanced standing, but entered in fall 1902 as a regular student, then shifted to a special student to try for advanced standing, then back to a regular student, and finally received the LL.B. after three years.¹⁸³ Cyrus Inches, a King's College B.C.L. with no other bachelor's degree, enrolled as a special student in fall 1902 to try for advanced standing, but continued in that status for three years, and then received the LL.B. from HLS.¹⁸⁴ This enrollment flexibility alleviated academic anxiety by allowing high-achieving students the option of deciding whether and when to seek the HLS degree.

Equally important, regular students who failed their exams for various reasons, could move into the special status while they remediated their deficiencies, then could return to regular status without prejudice. The process demanded effort because each move required permission from the faculty and, since exams were given only once per year in June, students had to wait an entire year to retake the failed exams. As a result, students sometimes lost a year of progress unless they could successfully pass both the previous year's failed exams and all the succeeding year's exams at the same time.¹⁸⁵ Nevertheless, many students pursued this course and obtained permission from the faculty, citing ill health during the year or during exams, as did Clarence Dinehart, a University of Minnesota B.S. of 1899; Robert Dean, a Harvard College senior during 1902-03; Maurice Tennant, a DePauw University B.A. of 1902; and Herbert Lacey, a Wesleyan University B.A. of 1903.¹⁸⁶ Other typical reasons were family problems or outside work or obligations, cited by Paul Hooven, a Miami University B.A. of 1900; Fred Walsh, a Clark University B.A. of 1905; and Alexander Elder, a Harvard College B.A. of 1907.¹⁸⁷ In a number of cases of academic failure, the faculty gave no rationale for permitting certain regular students to continue as special students and attempt to remediate the failures. Thus, "the other N[orth] D[akota] fellow here got flunked in two courses but is back again and trying his luck."¹⁸⁸ The preponderance of Harvard College seniors, Harvard College graduates, and Yale College graduates in this group leads one to suspect that some indulgence of these populations may have existed.¹⁸⁹

182. HLS Faculty, *supra* note 40, at Apr. 1, 1898.

183. *Id.* at May 12, 1902, Jun. 24, 1905.

184. *Id.* at Jun. 21, 1902, Jun. 24, 1905.

185. *Id.* at Apr. 1, 1898, Nov. 12, 1900.

186. *Id.* at Sep. 5, 1902, Oct. 4, 1904, Jun. 24, 1905, Oct. 3, 1905.

187. *Id.* at Jun. 24, 1905, Oct. 1, 1907, Oct. 4, 1909, Jun. 25, 1910; Breaks Record, Boston J., June 25, 1900, at 10.

188. Letter, Montgomery to Mother, *supra* note 44, at Oct. 5, 1910.

189. See, e.g., Frediric Tier, Loren Carter, Roscoe Walsworth, Walter Hadley, and Leon Barnard in

In other cases of shifting between categories, no academic failure is listed, and it appears that students in good academic standing simply chose to move into the special category and then to shift back to the regular, as did George Boke, a University of California Ph.B. of 1894; Sinclair Kennedy, a Harvard B.A. of 1897; Mark Winchester, a Denison University Ph.B. of 1902; and Rush Sturges, a Yale B.A. of 1902.¹⁹⁰ Students in good academic standing evidently did not need faculty approval for such moves, so these cases demonstrate how the special student category provided flexibility to average students, as well as to high-achievers and low achievers, by allowing them to opt in or out of degree candidacy.

Another enrollment policy that dovetailed perfectly with the special student category was the possibility of earning an M.A. in law. A student who completed two years of study at HLS, while enrolled in either category, could elect to leave with an M.A. degree if he obtained the recommendation of the HLS faculty and completed certain academic requirements stipulated by the Harvard Faculty of Arts and Sciences. A number of high-achieving special students followed this path and went on to successful careers.¹⁹¹

By themselves, these two enrollment policies alleviated academic anxiety in several important respects. They offered students a way to study at HLS without entailing a commitment to degree candidacy. They provided the option to shift into candidacy for the LL.B. when a student's academic performance, personal circumstances, and inclination permitted. Also, they afforded the opportunity to recover from academic failure if things went awry. Finally, they offered high-achieving students the option of leaving after two years with an M.A., which some subsequently treated as a full-fledged law degree from HLS.¹⁹²

Beyond those points, the enrollment flexibility significantly enhanced the impact of the cultural factors that restrained students' competition, anxiety, resentment, and depression, notwithstanding the academic demands at HLS. Students who were ill prepared or committed more to "college life" than to legal study could pursue their non-academic interests while opting out of degree-candidacy. Even if such students failed academically, the possibility of a year's probation was readily available, as was the possibility of complete redemption, if they suddenly became academically ambitious. Meanwhile, the presence of significant cohorts of "sports," "swells," and Harvard College seniors and recent graduates ensured a robust population of C, D, and E students who could appease the faculty appetite for academic failures, which

HLS Faculty, *supra* note 40, at Oct. 4, 1904, May 5, 1905, May 15, 1905, Jun. 24, 1905, Oct. 3, 1905, Oct. 2, 1906, Jun. 22, 1907, Jun. 29, 1911; Letter, Scott, *supra* note 54, at Nov. 3, 1907.

190. HLS Faculty, *supra* note 40, at Jun. 24, 1905, Jun. 23, 1906, Jun. 20, 1908; Jun. 22, 1907, Jun. 26, 1909.

191. See Harvard University, Law School Catalog 1899-1900, 13 (Harvard Univ. 1899); Sutherland, *supra* note 7, at 241; Fuess, *supra* note 159, at 39-40; Clemens, *supra* note 48, at 33-36.

192. Clemens, *supra* note 48, at 33-36.

was, in any case, modest since the patriarchs were not inclined to “slash more severely” in order to give evidence of their high standards.¹⁹³ With the pool of low-achievers well-stocked, talented and hard-working students were virtually assured of never failing or ranking low, while the most driven and highly competitive students had an excellent chance at honors.

During the Paper Chase in the late 20th century, a depressing fact was that only about 5 percent in a given HLS class could attain the highest honor of making law review.¹⁹⁴ In 1902, when the *Harvard Law Review* was reformed, the entering class numbered 233, of whom 52 did not graduate and another 36 were Harvard seniors who were unlikely candidates for the Review, leaving about 145 students to vie for 18 spots (12.4 percent).¹⁹⁵ Discounting further for “sports,” “swells,” and those satisfied with Bs or Cs, it is probably true that a quarter to a third of those actually trying to make the review achieved the honor. After all, at least two students in 1907 and 1908 turned down an invitation to join the review in order to work part-time instead.¹⁹⁶ Meanwhile, failure to be selected by a premier law club did not necessarily impugn one’s academic standing, since the great majority of spots were reserved for alumni of the old New England colleges. Moreover, the competition for such honors could easily be discounted or disregarded when virtually every student, graduate or non-graduate, could expect to find a legal job if he wanted one, and the beginning salaries differed little. The path to riches lay in business to which many HLS students were recruited during an era when graduate business schools were just starting up.¹⁹⁷

Taken together, the cultural restraints and flexible enrollment policies—though not designed for this purpose—substantially explain President Eliot’s explicit and prescient denial of any Paper Chase at HLS prior to 1909: “The law school has been remarkably successful in utilizing grades as a legitimate stimulus to exertion...without introducing among the students any exaggerated competitive motive.”¹⁹⁸

V.

In November 1909 Ames suffered a nervous breakdown and took a leave of absence from the deanship, and in January 1910 he died. In March Ezra

193. Letter, John C. Gray to Charles W. Eliot, in Charles W. Eliot Papers, at Mar. 11, 1886 (on file with Harvard University Archives, box 74, f. 1886).

194. Seligman, *supra* note 17, at 176–77.

195. Harvard University, Law School Catalog 1902–3, 164 (Harvard Univ. 1902); Centennial History, *supra* note 7, at 140.

196. Mayer, *supra* note 64, at 18–20; Kelley, *supra* note 50, at leaf 71.

197. In the year 1900 in the United States there were three collegiate schools of business—at the universities of Pennsylvania, California, and Chicago—and one graduate school of business at Dartmouth College.

198. Charles W. Eliot, Annual Report 1907–08, 26 (Harvard Univ. 1909). *See id.* at 26–27 on grading policy at HLS.

R. Thayer (1866–1915) was appointed as the new dean, and assumed office in September 1910, leaving his legal practice in Boston. The son of HLS Professor James B. Thayer, Ezra had graduated first in his class from Harvard College, and his grades at the law school were the highest achieved by any student from 1877 to 1917, making him “one of the most brilliant students in the history of the school.”¹⁹⁹

Little-known because his tenure was cut short in 1915 when he committed suicide,²⁰⁰ Thayer “was a perfectionist,”²⁰¹ who expressed “almost morbidly anxious” assessments of his own scholarship²⁰² and relentless self-doubt about his fitness to be dean and his effectiveness.²⁰³ Commensurately, Thayer adopted purist views on most matters of academic policy. He favored a narrow definition of law, distinct from policy, as the proper subject matter for HLS, and opposed HLS faculty teaching in other departments of the university. Though he had come to the office from private practice, the new dean opposed the hiring of faculty who had practiced law or the combining of teaching and practicing law at the same time. Likewise, he discouraged students from teaching in other departments or from working at all, though he had taught in the Harvard English Department when he was a student at HLS.²⁰⁴ Above all, “Thayer’s perfectionism showed through in his efforts to improve the quality of the students enrolling at the law school and to increase the demands made of them while they were there.”²⁰⁵ If the Paper Chase at HLS has a starting point, it began with the shift in culture and policies during Dean Thayer’s administration.

The “Big Four” senior faculty passed away—J. B. Thayer died in 1902 and Ames in 1910; Smith retired in 1910 and Gray in 1913—and so did the gentlemanly paternal ethos in the faculty. The next generation of senior faculty embraced a different ethic. Among the new leaders was Joseph Beale, who “is rather sarcastic and points out in no gentle terms the absurdity of the answers given [by students]. ‘He has a dampening effect on my conversational ability,’ as one of the fellows puts it.”²⁰⁶ Another was Edward Warren, promoted to full

199. Harvard Likely To Elect Prof. Thayer. Indications That He Will Soon Become Dean of the University Law School, Boston J., Mar. 25, 1910, at 11. See HLS Faculty, *supra* note 40, at Nov. 27, 1909; A. Lawrence Lowell, Annual Report of the President of Harvard University 1908–09, in Reports of the President and Treasurer of Harvard College, at 6 (Harvard Univ. 1910).

200. Lawyer’s Body Found in Basin Dean Thayer of Harvard Law School Commits Suicide following Long Illness, Boston J., Sept. 17, 1915, at 1–2.

201. Sutherland, *supra* note 7, at 231.

202. Centennial History, *supra* note 7, at 272. See Sheeseley, *supra* note 8, at sect. V.

203. Sutherland, *supra* note 8, at 232; Sheeseley, *supra* note 8, at sect. III A 2, IV.

204. Sheeseley, *supra* note 8, at sect. III B 1–2. See Ezra R. Thayer, Annual Report 1911–1912, 135–37 (Harvard Univ. 1913).

205. Sheeseley, *supra* note 8, at sect. III A 2.

206. Letter, Scott, *supra* note 54, at Oct. 2, 1906.

professor in 1908, who “is aggressive and keeps the whole class on alert... oftentimes by sheer fright. If one does not know an answer well, he is likely to make a sarcastic remark and show his ‘victim’ off to the ridicule of the class.”²⁰⁷ Nicknamed “Bull,” Warren reveled in his aggressive approach, which he rationalized in *Spartan Education*, while ironically reminiscing that, during his time as a student at HLS from 1897 to 1900, the faculty “overflowed with the milk of human kindness.”²⁰⁸ Though apparently not sarcastic in the classroom, Dean Thayer was equally caustic when recording in a notebook his judgment of the mental characteristics and capacities of the students in his classes. Most of these judgments are biting (“very weak,” “hopelessly dull”); few are laudatory, and none of these are unqualified (“strong, but brittle,” “occasionally says perfectly absurd and irrelevant things”). Thayer felt qualified to make sweeping judgments about students’ intellectual shortcomings based on their occasional remarks in class and their final exam.²⁰⁹

Contributing to the shift away from paternalism was the increasing distance between students and faculty as the student-faculty ratio rose from 36:1 in 1901 to 72:1 in 1916.²¹⁰ In response, the faculty created a paid Board of Student Advisors during 1910, Thayer’s first year as dean. The six 2Ls or 3Ls on this board were charged to keep office hours and to advise the 1Ls on methods concerning legal bibliography, research, and writing briefs.²¹¹ Though extolled for the opportunities provided to the student advisors, the role of the board essentially supplanted the former advising relationship of the faculty.

Another cultural factor, prompted by new policies, was the elimination of what Thayer called the “half-witted” and “neglectful” students, that is, the “large batch of men who have the practice of sliding through on 55s or other Ds.”²¹² This move to raise admission standards in order to exclude the bottom cohort of low-achievers was informed by a contemporaneous study, conducted by the university, which reported, “On the average the higher a man’s rank in

207. Quotation is from Letter, Veenfliet, *supra* note 47. See Emerson, *supra* note 64, at leaf 18.

208. Warren, *supra* note 35, at 6, 1–19.

209. See Manuscript Notebooks by Ezra R. Thayer, First-Year Class, 1911–1912, First-Year Class, Torts 1912–13, Evidence 1913–1914, First-Year Class, 1913–1914, First-Year Class, 1914–1915 (on file with Special Collections, Harvard Law School Library). Thayer’s frank assessments could, at times, be salutary as when he advised Cole Porter: “I want to tell you something that may injure your self-esteem, but I think it best for you. Frankly, Cole, your marks are abominable. You will never be a lawyer. But your music is very good, indeed. I suggest that you switch over to the excellent music school we have here and say nothing about it to anyone. Thus they will be gaining a talented student and we will be losing a wretched one.” Richard G. Hubler, *The Cole Porter Story 12–13* (World Publishing 1965).

210. Centennial History, *supra* note 7, at 170–171.

211. HLS Faculty, *supra* note 40, at Mar. 8, 1910; Katherine M. Porter, Learning by Doing: A History of the Board of Student Advisors, 1910–2000, 12 (Spring 2001) (unpublished third-year paper, Harvard Law School) (on file with Daniel R. Coquillette).

212. Thayer quoted in Sheeseley, *supra* note 8, at sect. III B 2.

college the better he is likely to stand in his professional studies.”²¹³ With this prompting, the HLS faculty took the first step in discriminating in admissions not only among undergraduate institutions, but also among the graduates of individual institutions. In 1913, the faculty voted to restrict admission of students from “second class” colleges to those in the top third of their classes.²¹⁴ By 1927, HLS “admitted only, first, graduates of colleges of high grade... ranking in the upper three-quarters of the class, and, second, graduates of other colleges of approved standing who ranked in the first quarter of the class during the senior year.” Then, in 1937, “a critical grade” was established for each college for its graduates to be admitted to HLS.²¹⁵ As Thayer foresaw, these steps had far-reaching consequences because the academic intensity of HLS would no longer be diluted by the ill prepared or the devotees to “college life.”

Within the school, Thayer led the faculty to raise academic demands and standards in several ways. In 1910, the faculty voted that the 2Ls, after surviving the arduous first year when attrition was highest, would face even higher demands. The required credit hours rose from ten to twelve and the minimum passing grade increased by five percentage points. In addition, the numerical cutoff for a C grade was raised from 60 percent to 62 percent for all students. These moves “carr[y] further the policy of making a high standard of capacity and diligence a condition of remaining in the school,” wrote Thayer.²¹⁶ In 1911, the faculty voted to tell the students their precise numerical grade in each course, rather than only its conversion to a letter, directing students’ attention to minute grade discriminations and, doubtlessly, increasing the degree of competition and anxiety.²¹⁷

Meanwhile, Thayer took it upon himself to set an example for the faculty by becoming one of the most brutal graders in the school, failing, for example, 25 of 41 students in his Evidence class of 1910–1911.²¹⁸ Justifying this on moral and expedient grounds, he wrote:

It is absolutely essential to the welfare of the school that we shall rigidly adhere to the standards necessary for admission to the school, and still more for remaining in it, and that we shall exclude without mercy all men who fall short of that standard. Now it is hard enough to do this at best. If you knew what I had to go through every summer of my life you would see the pressure

213. A. Lawrence Lowell, Annual Report 1909–10, 10 (Harvard Univ. 1911).

214. HLS Faculty, *supra* note 40, at Nov. 5, 1913.

215. Law Requirements Raised at Harvard, N.Y. Times, Jan. 15, 1937, at 22.

216. Ezra R. Thayer, Annual Report 1910–11, 134 (Harvard Univ. 1912). *See also* HLS Faculty, *supra* note 40, at Jun. 25, 1910.

217. Kimberly Isbel, Grade Reform at Harvard, 1968–1972, 2 (May 2000) (unpublished third-year paper, Harvard Law School) (on file with Daniel R. Coquillette).

218. Sheeseley, *supra* note 8, at sect. III B 2.

that comes to relax unless one steels his heart against the whole human race. This pressure of good nature and of wondering what difference a little more or less makes after all, is hard enough to resist at best. No faculty can avoid yielding to it more or less. The fact that we have yielded so little—so much less than is done elsewhere—is the chief thing that has kept the school up to the mark.²¹⁹

As a result, enrollment in the school declined while attrition rose. As indicated above, the attrition rate during the first year for the classes 1898 to 1909 in Ames's administration averaged about 17 percent and generally held under 20 percent. In Thayer's administration, the attrition rate during the first year edged up to an average of 27 percent and sometimes jumped over 30 percent:

Class of	
1910	27
1911	21
1912	23
1913	28
1914	36
1915	31
1916	24 ²²⁰

When President Lowell expressed concern, Thayer described this outcome as necessary and salutary: “[T]he reduction in our numbers is largely due to the increased stringency with which we have excluded the poorer men...which I think bespeaks a healthy condition of affairs in the law school.”²²¹

Similarly, the dean and the faculty tried to stoke competition by discriminating finely and parsimoniously in academic honors. They awarded honors to a smaller percentage of students,²²² and adopted the model of “an elimination tournament” when setting up the moot court competition in 1910 in honor of James Barr Ames.²²³ They also initiated the trend toward ranking hierarchically the honorary student organizations: *Harvard Law Review* reserved for the small group of highest-ranked students, Board of Student Advisors for the next, and the Legal Aid Bureau for the third-ranked group.²²⁴ Above

219. Letter, Ezra R. Thayer to Mark A. DeW. Howe, Esq., in Law School Dean's Office Records, Harvard University Archives, at Mar. 28, 1914 (on file in box 1 of Dean Thayer Correspondence Subject Files, f. University Relations 1).

220. See Fox, *supra* note 110. By 1937 the average attrition rate for 1Ls had risen to 30 percent. Law Requirements Raised at Harvard, N.Y. Times, Jan. 15, 1937, at 22.

221. Letter, Ezra R. Thayer to A. Lawrence Lowell, in Law School Dean's Office Records, Harvard University Archives, Oct. 5, 1912 (on file in box Correspondence Dean Thayer, 1907-1915, University Relations, f. Dean Thayer, Statistics, 1907-1915).

222. Sheeseley, *supra* note 8, at sect. III B 2.

223. Centennial History, *supra* note 7, at 148.

224. Isbel, *supra* note 217. Porter, *supra* note 211, at 13.

the LL.B. the faculty established a fourth year of study leading to the degree of *Scientiae Juridicae Doctor*, designed for “the production of jurists who will advance legal thought, and...will always be few,” since “quality, not numbers, is the criterion of the value of the course.”²²⁵

The cultural restraints on academic anxiety identified by students attending during Ames’s administration therefore began to erode under Dean Thayer. Though students might have bachelor’s degrees from reputable colleges, those who were ill-prepared or unmotivated began to find it harder to enter, harder to survive the first year, and harder to make it through the second year. High-achieving students found it more difficult to make honors, and the faculty introduced several ranking mechanisms to convey privately and publicly distinctions among those who did well. Led by Thayer, the faculty seemed increasingly focused on discriminating invidiously among students through pedagogical barbs and grading, all in the service of determining “what men will rise to the surface and prove to be the cream of the class.”²²⁶

These trends were arrested by the suicide of Thayer in 1915 and the precipitous decline in enrollment at HLS during World War I.²²⁷ But as enrollment began to rebound in 1919, students found that Thayer’s direction and policies persevered during the succeeding regime of Dean Roscoe Pound (1916–1936). Meanwhile, the escape hatch of ready employment began to close down in the 1920s, and the Harvard Graduate School of Business Administration began to flourish and to send its graduates into jobs formerly available to HLS graduates.²²⁸ Within the law field, it appeared “that, because a law degree had become the normal requirement for practice, men lacking a degree were no longer employable” and that HLS students “of the first-year class [who] have flunked out...have been unable to enter other law schools and that their potential careers have been ruined.”²²⁹ Thus, HLS students squeezed in Thayer’s academic vice from above and below could no longer escape into the job market, confident of success. Competition, anxiety, and resentment began to intensify.

The history of legal education has predominantly been studied from the perspective of faculty and administrators, relying on sources from those groups, which are generally abundant, prominent, and accessible. Yet, research

225. A. Lawrence Lowell, Annual Report of the President of Harvard University 1910–11, in *Reports of the President and Treasurer of Harvard College*, at 15 (Harvard Univ. 1911). See Gail J. Hupper, *The Rise of an Academic Doctorate in Law: Origins Through World War II*, 49 *Am. J. of Legal Hist.* 17, 17–18 (2007).

226. Centennial History, *supra* note 7, at 148.

227. Roscoe Pound, Annual Report of the Dean of Harvard Law School, 1917–18, in *Annual Reports of the President and Treasurer of Harvard*, at 118–123 (Harvard Univ. 1919).

228. According to my interviews conducted with two individuals who served as assistant deans of the Harvard Business School in the 1920s: John C. Baker, Oct. 19–20, 1995, Essex Falls, New Jersey; Deane W. Malott, Dec. 12, 1995, Ithaca, New York (on file with author).

229. Law Requirements Raised at Harvard, *N.Y. Times*, Jan. 15, 1937, at 22.

into the elusive experience of students can also contribute importantly to our knowledge about law schools in the past. Based upon a search and review of the extant writings of the some 3,000 students who attended HLS between 1895 and 1909, this essay has examined student culture at the school during the neglected administrations of Deans Ames (1895-1909) and Thayer (1910-1915).

A central finding of this research is that writings by and about students during Ames's deanship do not exhibit the destructive academic competition or anxiety that has been associated with HLS and other elite law schools during the late 20th century and has been attributed to the meritocratic reforms that Dean Langdell instituted between 1870 and 1886. Instead, this study indicates that cultural and economic aspects of student experience—the paternalism of the gentlemanly senior faculty, the enrollment of ill-prepared or unmotivated students, the distractions of college life, including an emphasis on athletics and social activities, and the assurance of finding a job and securing a decent income without graduating—restrained or alleviated students' competition, anxiety, and resentment, notwithstanding the academic demands at HLS. The impact of those cultural factors was enhanced by the enrollment flexibility provided by the special student category and the M.A. degree, though not by faculty design.

During the succeeding administration of Ezra Thayer from 1910 to 1915, those cultural factors began to erode. At the same time, Thayer and the faculty adopted new policies intended to “exclude without mercy” low achievers, and, for the survivors, the dean sought to “steel[] his heart” and discriminate invidiously and minutely because “it is absolutely essential to the welfare of the school.” Weaned on the “milk of human kindness” by the Langdell-Ames generation, the next cohort of faculty seemed intent on outdoing their forebears, but could conceive no other mission than continuing “in the groove started by Langdell” and increasing the speed of the meritocratic machinery. As the escape hatch of the job market began to close on non-graduates after World War I, students were harnessed into an academic competition from which there was no escape, and in the 1920s and 1930s they commenced to set off on the “Paper Chase.”