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Dead Poets and Academic Progenitors: The Next Generation of Law School Rankings (Symposium Introduction)

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Symposium Introduction

Dead Poets and Academic Progenitors: The Next Generation of Law School Rankings

PAUL L. CARON* AND RAFAEL GELY**

In an opening scene of *Dead Poets Society*,¹ John Keating, played by actor Robin Williams, asks one of the students in his English class to read the introduction to their textbook. The student begins:

Understanding Poetry, by Dr. J. Evans Pritchard, Ph.D. To fully understand poetry, we must first be fluent with its rhyme, meter and figures of speech. Then ask two questions: One, how artfully has the objective of the poem been rendered, and two, how important is that objective. Question one rates the poem's perfection, question two rates its importance. And once these questions have been answered, determining a poem's greatness becomes a relatively simple matter. If the poem's score for perfection is plotted along the horizontal of a graph, and its importance is plotted on the vertical, then calculating the total area of the poem yields the measure of its greatness. A sonnet by Byron may score high on the vertical, but only average on the horizontal. A Shakespearean sonnet, on the other hand, would score high both horizontally and vertically, yielding a massive total area, thereby revealing the poem to be truly great.²

Keating responds: "Excrement. That's what I think of Mr. J. Evans Pritchard. We're not laying pipe, we're talking about poetry. I mean, how can you describe poetry like *American Bandstand*? I like Byron, I give him a 42, but I can't dance to it."³

Law is not poetry,⁴ and ranking law schools might seem to some as absurd as the fictional Pritchard's effort to rank poetry. Keating neatly captures the reaction that the

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We want to thank the many folks at Indiana University School of Law-Bloomington who helped make the Symposium held April 15, 2005 such an enjoyable and interesting event: Dean Lauren Robel; Professors William Henderson and Jeffrey Stake; and the members and editorial boards of Volumes 80 and 81 of the *Indiana Law Journal*, particularly Kevin Kimmerling, Jennifer Mueller, David Stevens, and Shana Stump. We are grateful for the financial support provided for the Symposium by Indiana University School of Law-Bloomington, Foundation Press, and Thomson-West Publishing. We also are grateful for the financial support of our work by the Harold C. Schott Foundation.

1. DEAD POETS SOCIETY (Touchstone Pictures, 1989).

2. Tom Schulman, *Dead Poets Society: Final Script*, <http://www.peterweircave.com/dps/script.html> (last visited Aug. 28, 2005).

3. *Id.* Keating then has the entire class rip out the Introduction from their books, telling them: "This is a battle, a war. And the casualties could be your hearts and souls. Armies of academics going forward, measuring poetry. No, we will have none of that here." *Id.*

4. Indeed, Keating tells his students:

We don't read and write poetry because it's cute. We read and write poetry because we are members of the human race. And the human race is filled with

U.S. News & World Report (“*U.S. News*”) law school rankings have evoked for nearly two decades among most of the legal academy: “Excrement. . . . We’re not laying pipe.”

We come to this task of organizing the first scholarly conference on law school rankings⁵ after laying a bit of pipe ourselves in our 2004 article titled *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*.⁶ We argued that changes in the economic conditions of higher education and the legal profession, combined with increasing demands for accountability and transparency,⁷ created the market demand for measuring organizational success which *U.S. News* met with its annual law school rankings.⁸ We explored the implications of *Moneyball* for legal education in three areas.

First, we argued that law school rankings are here to stay and that the academy should work to devise ways to more accurately measure law school success.⁹ We advocated the comprehensive collection of data that users and researchers can weigh differently in arriving at competing rankings systems.¹⁰

Second, we applauded efforts begun in the past decade to quantify individual faculty contributions to law school success.¹¹ We supported measures that take into

passion. Medicine, law, business, engineering, these are all noble pursuits, and necessary to sustain life. But poetry, beauty, romance, love, these are what we stay alive for. To quote from Whitman: “O me, o life of the questions of the recurring, of the endless trains of the faithless, of cities filled with the foolish. What good amid these, o me, o life?” Answer: that you are here. That life exists, and identity. That the powerful play goes on, and you may contribute a verse.

Id.

5. We thus plead guilty to leading “[a]rmies of academics going forward, measuring [law schools].” *Id.*

6. Paul L. Caron & Rafael Gely, *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*, 82 TEX. L. REV. 1483 (2004) (reviewing MICHAEL LEWIS, *MONEYBALL: THE ART OF WINNING AN UNFAIR GAME* (2003)). *Moneyball* tells the story of Billy Beane, a baseball player who “failed” despite marvelous physical talents, and who became general manager of the Oakland Athletics and challenged the conventional wisdom about baseball. Beane ruthlessly exploited inefficiencies in measuring individual player contributions to the success of a baseball team. By chucking traditional subjective measurements of players in favor of new objective methods of player evaluation, Beane and the Oakland A’s have enjoyed amazing success in recent years when competing against larger-market teams. *Id.* at 1487–99.

7. We noted that “[t]he tectonic plates of the legal education landscape are inexorably moving in the direction toward greater accountability and transparency in this era of increased computing power and Internet capabilities.” *Id.* at 1547.

8. *Id.* at 1499–1513.

9. We noted that, “[i]n our view, law schools are faced with a clear choice. We can continue resisting public demands for accountability and transparency through rankings. But such resistance is futile, as a market that demands rankings of brain surgeons and heart-transplant programs will not accept protestations from the legal academy that what we do is simply too special to be evaluated with objective measures.” *Id.* at 1554.

10. *Id.* at 1515–20.

11. *See id.* at 1520–28 (noting contributions of Ted Eisenberg & Martin Wells *Rankings and Explaining the Scholarly Impact of Law Schools*, 27 J. LEGAL STUD. 373 (1998); Brian J. Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 J. LEGAL STUD. 451 (2000); Jim Lindgren & Daniel Seltzer, *The Most Prolific Law Professors and Faculty*, 71 CHI.-KENT L. REV. 781 (1996).

account both quantitative and qualitative measurements of faculty performance.¹² We provided data that confirmed the relationship of productivity and impact measures of scholarship and that provided support for isolating background and performance characteristics in predicting future faculty scholarly work.¹³

Third, we used Billy Beane as a prototype and identified the qualities that enabled him to revolutionize baseball.¹⁴ We then shifted the focus to deans and presented data measuring decadal scholarly productivity and impact.¹⁵ We contrasted these figures with the corresponding faculty data and evaluated deans' scholarly performances both in the period prior to becoming dean and while serving as dean.¹⁶ We also offered some surprising predictions, based on the data, of the qualities that a future dean will need to assume the mantle of the Billy Beane of legal education.¹⁷

12. Caron & Gely, *supra* note 6, at 1528–39.

13. For example, we compared the background and performance of two groups of law professors: (1) the fifty young scholars identified by Professor Leiter as the most-cited young law faculty, and (2) fifty other young scholars who entered law teaching at the same (or similar) school and at the same time as each of the most-cited young scholars. (By matching entering school and year, we attempted to control for other factors that might affect scholarly performance.) Our results showed that the most-cited young faculty outperformed the professors in the comparison group in terms of citation counts and productivity counts (number of articles, number of articles in the top law reviews, and number of books). The most-cited professors started writing earlier, continued to write more often, and produced more impactful scholarship than the professors in the comparison group. *Id.* at 1539–43.

We also examined whether background variables predict future scholarly performance. We found that although there was no statistically significant difference between the means of any of the “pedigree” variables of the two groups, there was a statistically significant difference with respect to the two pre-hiring publication performance measures: the most-cited professors published about twice as many articles before entering the profession and were more likely to have published a student note than the professors in the comparison group. These findings suggest that pre-hiring publication may be a helpful predictor of future scholarly success. *Id.* at 1543–44.

14. *Id.* at 1544–47.

15. Our data indicated that 93–96% of deans had held prior law school teaching positions and had engaged in legal scholarship with some regularity prior to becoming dean. *Id.* at 1547–48.

16. We found that deans on average had not published as much (measured by number of articles), nor had they had as much scholarly impact (measured by citation counts), as either the most-cited young scholars or the comparison group of young scholars. *Id.* at 1548–49. Our data also revealed that higher-ranked schools tend to hire stronger scholars as deans, *id.* at 1549–50, and that deans continue to publish, albeit at a lower rate, after assuming a deanship, *id.* at 1550–51.

17. We concluded that “[t]he conventional wisdom in legal education—by insisting that deans when hired be leading scholars and that they continue to be engaged in substantial scholarship during their deanship—is contrary to the lessons in *Moneyball*. Billy Beane’s example suggests that the revolutionary dean who can help define organizational success and properly value individual contributions to that success may turn out to rank below the mid-range in scholarly productivity and impact measures.” *Id.* at 1552–53. From the do-what-we-say, not-what-we-do department: after the publication of our *Moneyball* article, we participated in our law school’s dean search process, which culminated in the hiring of Louis D. Bilionis, Samuel Ashe Distinguished Professor of Constitutional Law at the University of North Carolina School

This Symposium is an outgrowth of our *Moneyball* article. With the approaching twentieth anniversary of the first *U.S. News* law school rankings, it is a particularly propitious time to take a fresh look, to hear new voices, and to reconsider issues surrounding law school rankings. Many of America's most thoughtful law professors (as well as academics in other disciplines) gathered on April 15, 2005 at the Indiana University School of Law–Bloomington to discuss “The Next Generation of Law School Rankings.” Many of the participants previously have written about law school rankings, but others have not—all are poets, and many have laid rankings pipe before. The papers and commentary presented at the event and recorded in these pages reflect a wide array of creative, challenging, and captivating perspectives on the rankings tableau. In the pages that follow, we are confident that you will agree that we have fulfilled the goals we set for the Symposium:

The *U.S. News & World Report* annual law school rankings are the 800-pound gorilla of legal education. Although met with varying degrees of skepticism and hostility, the *U.S. News* rankings affect virtually all aspects of law school operations. A myriad of alternative rankings have emerged in recent years, seeking better and more accurate ways of measuring law school performance.

The goal of this Symposium is to deepen our understanding of rankings and their effects on legal education. The participants in this Symposium will examine the need for law school rankings; the effects of rankings on legal education; and the various new approaches to addressing the public's insatiable demand for ever more and increasingly sophisticated rankings, which permeate not only legal education but also all aspects of American life.¹⁸

The Symposium papers and commentary make an enormous contribution to our understanding of rankings and their effects on legal education. At the April 15, 2005 event, we organized the papers and commentary into three sets of panels: (1) Framing the Rankings Debate,¹⁹ (2) Rankings Methodologies,²⁰ and (3) Other Voices in the Rankings Debate.²¹

of Law and a prodigious and influential scholar (and, as it turns out, a long-time devotee of fantasy baseball).

18. Indiana University School of Law–Bloomington, *The Next Generation of Law School Rankings, The Symposium*, available at http://www.law.indiana.edu/front/special/2005_rankings_nextgen (last visited Oct. 16, 2005).

19. Articles: Richard A. Posner, *Evaluating Law School Rankings*, 81 IND. L.J. 13 (2006); Cass R. Sunstein, *Law School Rankings: A Market Test*, 81 IND. L.J. 25 (2006).

Commentary: Russell Korobkin, Keynote Address, *Harnessing the Positive Power of Rankings*, 81 IND. L.J. 35 (2006); Brian R. Leiter, *How to Rank Law Schools*, 81 IND. L.J. 47 (2006).

20. Articles: Scott A. Baker, Stephen Choi & G. Mitu Gulati, *The Rat Race as an Information Forcing Device*, 81 IND. L.J. 53 (2006); Bernard S. Black & Paul L. Caron, *Ranking Law Schools: Using SSRN to Measure Scholarly Performance*, 81 IND. L.J. 83 (2006); Tracey E. George, *Law Schools and the New Legal Science*, 81 IND. L.J. 141 (2006); William D. Henderson & Andrew P. Morriss, *Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings Era*, 81 IND. L.J. 163 (2006); Michael Sauder & Wendy Espeland, *The Benefits of Multiple Evaluations: A Comparison of Law and Business School Rankings*, 81 IND. L.J. 205 (2006); Jeffrey E. Stake, *The Interplay of Rankings Criteria and Effects: Toward Responsible Rankings*, 81 IND. L.J. 229 (2006).

Commentary: Lawrence A. Cunningham, *Scholarly Profit Margins and the Legal*

Now, with the benefit of having heard the presentations and read the finished drafts of the papers and commentary, we see two dominant themes that cut across our original organization and harken back to the opening of *Dead Poets Society*: (1) Poetry: The Case For and Against Rankings and (2) Laying Pipe: Building a Better Rankings Mousetrap.

I. POETRY: THE CASE FOR AND AGAINST RANKINGS

A. *The Case for Rankings*

Russell Korobkin delivered the keynote address and nicely captures the dominant theme of the Symposium in the title of his paper, *Harnessing the Positive Power of Rankings: A Response to Posner and Sunstein*.²² For all that has been said about law school rankings in general, and about the *U.S. News* rankings in particular, most of the Symposium participants agree that rankings can serve a positive function in legal education by advancing the debate from its existing relatively narrow confines²³ into new frontiers. Professor Korobkin takes the Symposium's first step on this journey by challenging the notion that rankings should serve as a measure "directly or indirectly [of] the quality of education offered by the institutions that are ranked."²⁴ Instead, he argues that consumers of legal education "view educational rankings not merely as an aggregate measurement of value, but as valuable in and of themselves."²⁵ In particular, Professor Korobkin believes that rankings serve a coordinating function helping to match high-quality students with other high-quality students as well as with high-quality employers. Under this model, rankings and the corresponding competition for status will inevitably occur. The question, thus, becomes what should rankings measure? Professor Korobkin offers two guiding principles: (1) rankings should encourage the production of some public good, and (2) this public good should be of a type that law schools are competent to produce. Professor Korobkin argues that the production of legal scholarship meets these two principles.²⁶

Scholarship Network: Reflections on the Web, 81 IND. L.J. 271 (2006); Theodore Eisenberg, *Assessing the SSRN-Based Law School Rankings*, 81 IND. L.J. 285 (2006); Rafael Gely, *Segmented Rankings for Segmented Markets*, 81 IND. L.J. 293 (2006); Michael E. Solimine, *Status Seeking and the Allure and Limits of Law School Rankings*, 81 IND. L.J. 299 (2006).

21. Articles: Alex M. Johnson, Jr., *Deconstruction of the Holistic Approach to Admissions: The Pernicious Effect of Rankings*, 81 IND. L.J. 309 (2006); Nancy B. Rapoport, *Eating Our Cake and Having It, Too: Why Real Change Is So Difficult in Law Schools*, 81 IND. L.J. 359 (2006).

Commentary: Sam Kamin, *How the Blogs Saved Law School: Why a Diversity of Voices Will Undermine the U.S. News Rankings*, 81 IND. L.J. 375 (2006); Rachel F. Moran, *Of Rankings and Regulation: Are the U.S. News and World Report Rankings Really a Subversive Force in Legal Education?*, 81 IND. L.J. 383 (2006); Patrick T. O'Day & George D. Kuh, *Assessing What Matters in Law School: The Law School Survey of Student Engagement*, 81 IND. L.J. 401 (2006).

22. Korobkin, *supra* note 19.

23. *See, e.g., id.* at 40.

24. *Id.* at 40.

25. *Id.* at 40.

26. *Id.* at 44; *see also* Russell Korobkin, *In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems*, 77 TEX. L. REV. 403 (1998).

In *The Rat Race as an Information Forcing Device*,²⁷ Scott Baker, Stephen Choi, and G. Mitu Gulati apply their revelation tournament framework²⁸ to the law school rankings context. Revelation tournaments are two-stage competitions: at the first stage, candidates compete with one another based on objective, easily measurable criteria; at the second stage, decision-makers use “hard-to-observe,” subjective information generated in the first stage to select a “winner.” The revelation tournament framework helps the authors explain why promotion decisions, such as law firm partnership decisions, appear to be based on pedestrian considerations such as billable hours (clear-cut, objective factors), not on sound judgment and legal acumen (messy, subjective factors). While associates are logging in their billable hours during the first stage of the tournament, partners observe the other “hard-to-measure” characteristics of the associates’ work during the second stage.²⁹

Like Professor Korobkin, Professors Baker, Choi, and Gulati acknowledge that the *U.S. News* rankings are an inaccurate measure of the quality of legal education. Yet to the extent that rankings have “information-forcing attributes,” they result in the “revelation of otherwise hard-to-obtain information about law schools” and thus give value to the objective tournament.³⁰ The *U.S. News* rankings have forced law schools to share information about faculty scholarship and hiring, bar passage, library collections, and employment status of recent graduates. The rankings thus have provided law schools “with an excuse to gather information about [their] law school and publicize it.”³¹ The type of “revealing” that has taken place through rankings, however, is not necessarily consistent with the revelation thesis: neither the information that is being revealed, nor the ability of the decision-makers (i.e., law school applicants) to use that information, makes the rankings context entirely appropriate for a revelation tournament.³²

Finally, Nancy Rapoport explores the implications of rankings in heretofore unaddressed aspects of law school operations: faculty governance and strategic planning.³³ Law schools, like higher education more generally, have been subject to increasing pressures to become more efficient—to behave “more like a business.”³⁴ Law schools have responded by, among other things, adopting businesslike practices such as strategic planning and benchmarking. Dean Rapoport discusses the role of rankings in these efforts. Rankings can play a positive role by forcing languid faculties into needed changes. Rankings also can be an impediment to real change, however, by

27. Baker, Choi & Gulati, *supra* note 20.

28. Stephen Choi & G. Mitu Gulati, *Choosing the Next Supreme Court Justice: An Empirical Ranking of Judicial Performance*, 78 S. CAL. L. REV. 23 (2004); Stephen Choi & G. Mitu Gulati, *On Tournaments for Appointing Great Justices to the U.S. Supreme Court*, 78 S. CAL. L. REV. 157 (2004).

29. Baker, Choi & Gulati, *supra* note 20, at 56.

30. *Id.* at 78.

31. *Id.* at 79.

32. *Id.* at 79–80.

33. Rapoport, *supra* note 21. Note that the case for rankings thus was made by papers in all three of the panels at the Symposium. See *supra* notes 19–21 and accompanying text.

34. Rapoport, *supra* note 21, at 362.

encouraging vacuous goals—for example, the evanescent quest for, in Dean Rapoport's words, "top 50-ness."³⁵

As we explain in detail in our *Moneyball* article, we too share this positive view of rankings.³⁶ We particularly applaud the rankings for bringing needed accountability, transparency, and discipline into the law school world,³⁷ a point recently echoed by Robert M. Lloyd:

Another factor working to harden law schools is the often-maligned U.S. News rankings of law schools. Although school administrators claim the ratings are irrelevant (all the time working like Enron executives to make their numbers look better), the fact remains that the ratings provide the primary incentive for schools to make their students and faculty accountable. The effect of the rankings goes far beyond administrators' egos. Administrators know that the rankings are a key factor in students' choices of law schools and that schools which drop in the rankings will see a decline in the number and quality of their applicants. Rankings can also affect the job prospects of the schools' graduates. Just as competition hardened American business and Vietnam hardened the armed forces, the rankings have the potential to harden law schools. Already, some law schools have started to impose discipline that would otherwise be unthinkable.³⁸

B. The Case Against Rankings

During what one might call the "First Generation of Law School Rankings," the dominant reaction to *U.S. News* focused on the pernicious effects of rankings on law school operations.³⁹ The concern is that law schools will target resources to move up the rankings hierarchy at the expense of their educational mission and without carefully considering the unintended consequences of such a shift in resources. Several Symposium participants made elegant and forceful critiques of rankings along these lines.⁴⁰

Jeffrey E. Stake⁴¹ provides a list of "action items" of dubious educational value that law schools can use to "game" the *U.S. News* rankings.⁴² Professor Stake also criticizes

35. *Id.* at 361; see also Nancy B. Rapoport, *Ratings, Not Rankings: Why U.S. News & World Report Shouldn't Want to be Compared to Time and Newsweek—or The New Yorker*, 60 OHIO ST. L.J. 1097 (1999).

36. Caron & Gely, *supra* note 6, at 1528–39.

37. See *supra* note 9.

38. Robert M. Lloyd, *Hard Law Firms and Soft Law Schools*, 83 N.C. L. Rev. 667, 686–87 (2005) (reviewing MICHAEL BARONE, *HARD AMERICA, SOFT AMERICA: COMPETITION VS. CODDLING AND THE BATTLE FOR THE NATION'S FUTURE* (2004)).

39. We chronicled this reaction in our previous book review. See Caron & Gely, *supra* note 6, at 1512–13.

40. Media reports on the Symposium focused on these critiques of the *U.S. News & World Report* law school rankings. See Leigh Jones, *Law Schools Play the Rank Game*, NAT'L L.J., Apr. 18, 2005, at 1; Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. TIMES, July 31, 2005, § 4A, at 18.

41. Professor Stake is the developer and owner of the law school rankings web site, The Law School Ranking Game. Jeffrey E. Stake, The Law School Ranking Game, <http://monoborg.law.indiana.edu/LawRank> (last visited Aug. 28, 2005).

42. See Stake, *supra* note 20.

the rankings for stifling creativity among law schools and argues that the *U.S. News* methodology “discourages diversity and specialization in curricula.”⁴³ He contends that the *U.S. News* rankings produce an “echo effect,” with schools’ rankings becoming “self-fulfilling prophecies” over time, generating permanent classes of rankings winners and losers.⁴⁴

Alex M. Johnson, Jr. picks up on this theme,⁴⁵ focusing on law school admissions in light of the United States Supreme Court’s recent affirmative action decisions in *Grutter v. Bollinger*⁴⁶ and *Gratz v. Bollinger*.⁴⁷ These cases require law schools to use a “whole person” approach in their admissions process, considering factors such as the race and ethnicity of the applicant. The *U.S. News* rankings, in contrast, rely heavily on objective data such as Law School Admission Test (LSAT) scores. Dean Johnson notes that because LSAT scores are one of the few variables that law schools can control in attempting to improve their ranking, there is a palpable tension between the Supreme Court’s mandate and the practical world of law school admissions. Dean Johnson argues that the tension be solved in favor of the “whole person” approach. The solution lies in eliminating the importance of LSAT scores in computing rankings (as by, for example, using non-comparable LSAT scores) or taking LSAT scores completely out of the rankings methodology (by prohibiting the publication of scores by the ABA Section on Legal Education).⁴⁸

II. LAYING PIPE: BUILDING A BETTER RANKINGS MOUSETRAP

A number of the Symposium papers avoid the debate over the value of rankings and move instead to a discussion of how to make interstitial improvements in the rankings. These papers draw upon a variety of empirical and theoretical perspectives, and we discuss them here within three broad categories.

A. More is Better

Sociology Professors Michael Sauder and Wendy Espeland offer a comparative, interdisciplinary perspective by placing the law school rankings debate in the context of the business school rankings debate.⁴⁹ Relying on data collected in interviews with administrators, faculty, and staff, Professors Sauder and Espeland argue that the dominance of the *U.S. News* law school rankings (what they call the “single ranker” system) creates three key problems in legal education: “small changes and small differences gain disproportionate importance, control over reputation is severely restricted, and the validity of rankings goes unquestioned.”⁵⁰ In comparison, these three

43. *Id.* at 243.

44. *Id.* at 250.

45. Johnson, *supra* note 21, at 318.

46. 539 U.S. 306 (2003). For our take on *Grutter*, see Paul L. Caron & Rafael Gely, *Affirmative Refraction: Grutter v. Bollinger Through the Lens of The Case of the Speluncan Explorers*, 21 CONST. COMMENT. 63 (2004).

47. 539 U.S. 244 (2003).

48. See Johnson, *supra* note 21 at 318.

49. Sauder & Espeland, *supra* note 20.

50. *Id.* at 212.

problems are much less acute in the business school context because of the absence of a single or dominant ranker. Unlike the situation in the law school world in which *U.S. News* enjoys unrivaled hegemony, there are six influential business school rankings as well as dozens more that receive considerable attention. Professors Sauder and Espeland document how the ambiguity created by this multiplicity of rankings weakens the impact of small differences and small changes in rank, gives some control over reputations back to individual schools, and generally de-emphasizes the importance of rankings in the business school milieu.⁵¹

B. Tweaking *U.S. News & World Report*

Richard Posner notes that rankings are a low-cost, low-benefit—“cheap, but crude”—method of evaluating quality.⁵² Thus, it is odd that law school applicants make the momentous decision of which law school to attend based in part on rankings. Judge Posner explores whether there are alternative metrics to rank law schools that would serve the interests of law school applicants without the well-documented vices attributed to *U.S. News*. He focuses on median LSAT scores as a good starting point because they correlate highly with major components of *U.S. News* (reputation among academics [25% of the total] and reputation among judges and practitioners [15%]) and are a good measure of student preferences and reflect peer quality.⁵³ Judge Posner also includes various other measures, such as job placement, clerkship placements, and scholarly productivity. He contends that business law scholarship is a better measure than general legal scholarship, and that business law education is a better measure than general legal education, because most law students end up practicing business-related law.⁵⁴

Judge Posner’s proposed ranking methodology is remarkably consistent with *U.S. News*. Indeed, he believes that *U.S. News* “does a pretty good job grouping law schools by tier.”⁵⁵ Within each tier, however, no single ranking methodology can provide all the relevant information. Fortunately for law school applicants, it is relatively easy to find out the information he or she needs “to make an intelligent decision.”⁵⁶

William Henderson and Andrew Morriss also focus on median LSAT scores in tracking changes in law school selectivity in the 1993–2004 period.⁵⁷ Their paper is “empirical rather than normative”⁵⁸ and demonstrates that the market for high-LSAT students operates differently, depending on the rank of the law school. Professors Henderson and Morriss conclude that changes in various objective measures (starting position, cost, full-time enrollment, and reputation) affect LSAT medians only in schools outside the “top 50.”⁵⁹ They offer the following advice to deans and faculties: (1) move to a better legal market; (2) cut your price significantly; (3) start or expand a

51. *Id.* at 220.

52. Posner, *supra* note 19, at 13.

53. *Id.* at 14, 16.

54. *See id.* at 22.

55. *Id.* at 24.

56. *See id.* at 24.

57. Henderson & Morriss, *supra* note 20.

58. *Id.* at 166.

59. *Id.* at 182–86.

part-time program and offload lower LSAT applicants into it; and (4) reduce the number of seats at nearby law schools.⁶⁰ In contrast, Henderson and Morriss advise top 50 law schools to “[r]elax and enjoy the good life.”⁶¹

C. Overhauling U.S. News & World Report

Three of the Symposium papers eschew merely tinkering with *U.S. News* and instead propose entirely new rankings regimes. Although they differ in their approaches, all offer thoughtful suggestions on measuring “quality” in legal education.

Cass Sunstein builds his law school rankings model⁶² on Friedrich Hayek’s insight that “market choices, based on the preferences and judgments of countless consumers, reflect more information than could possibly be obtained by any central planner, even one who is both well-motivated and expert.”⁶³ Professor Sunstein proposes a system that ranks law schools based on “student choices, head-to-head, among relevant schools.”⁶⁴ This “revealed preference ranking” would produce a kind of price mechanism, and in that way take advantage of the information held privately by the tens of thousands of individuals who apply to law schools every year.⁶⁵

Professor Sunstein points out that a similar ranking system has been devised for undergraduate institutions and believes that its adoption in the law school context would be rather simple.⁶⁶ Potential problems, however, include cognitive biases and social influences. According to Professor Sunstein, a student choice ranking system could be affected by the “name recognition heuristic” (people use name recognition as a proxy for quality) as well as by “cascade effects” (applicants favor one school over another, not because they are relying on their own independent judgment, but because they are responding to the signals given by the choices of other students).⁶⁷ Professor Sunstein concludes that a revealed preferences ranking, although imperfect, would provide useful information and represent a marked improvement over existing methodologies.⁶⁸

Bernard Black and Paul Caron focus exclusively on the faculty scholarship component of law school rankings and argue that reputation surveys (by *U.S. News* and Brian Leiter) are at best partial measures of faculty quality.⁶⁹ Echoing Professors Baker, Choi, and Gulati⁷⁰ (and Michael Barone),⁷¹ Professors Black and Caron survey

60. *Id.* at 197–201.

61. *Id.* at 201.

62. Sunstein, *supra* note 19.

63. *Id.* at 28.

64. *Id.* at 27.

65. *See id.* at 28. Over the past decade, law school applicants have ranged from 72,300 (1996–97) to 100,600 (Fall 2004). Law School Admission Council, Volume Summary Data, <http://www.lsac.org/LSAC.asp?url=lsac/LSAC-volume-summary.asp> (last visited Aug. 28, 2005).

66. Sunstein, *supra* note 19, at 28.

67. *Id.* at 32–33.

68. *Id.* at 34.

69. Black & Caron, *supra* note 20.

70. *See supra* notes 27–30 and accompanying text.

71. BARONE, *supra* note 38.

existing objective measures of faculty scholarly performance (publication counts and citation counts) and argue that they, too, present a partial picture. They contend that the new “beta” Social Science Research Network (SSRN)-based measures (number of downloads and number of posted papers)⁷² “can address some of the deficiencies in these other measures” and “play a valuable role in the rankings tapestry.”⁷³ In particular, the SSRN data cover most American and many foreign law schools, favor interdisciplinary and international scholarship, and benefit younger scholars and improving law schools.⁷⁴

Like Professors Black and Caron, Tracey George proposes a scholarship-based rankings system.⁷⁵ Her approach, however, differs from existing methodologies in several important respects. Professor George identifies Empirical Legal Scholarship (ELS) as the “next big thing in legal intellectual thought.”⁷⁶ ELS couples models with the statistical method, in which researchers offer a positive theory of law or legal institutions and then test that theory with social science methods. Professor George argues that we rank law schools by how well they are positioned to ride the ELS wave. Her approach offers a “quasi-prospective perspective”⁷⁷ that differs from the traditional backward-looking rankings perspective. Professor George’s proposed metrics of a “strong ELS environment” include the numbers of law faculty with social science doctorates and secondary appointments in social science departments, as well as publications in recognized ELS journals.⁷⁸

In a different scene of the movie *Dead Poets Society*, John Keating surprises his students by leaping onto his desk and asking his class, “Why do I stand up here? Anybody?” One of the students responds: “To feel taller.” Keating replies:

No!

. . . I stand upon my desk to remind yourself that we must constantly look at things in a different way.

You see, the world looks very different from up here. You don’t believe me? Come see for yourself. Come on. Come on!

Just when you think you know something, you have to look at it another way. Even though it may seem silly or wrong, you must try!⁷⁹

The participants in this Symposium have helped us all look at law school rankings from different perspectives. For generations to come, law school deans, faculties, and administrators will struggle with the issues addressed in this Symposium. We hope that

72. Social Science Research Network, http://hq.ssrn.com/Tournaments/Tournament_display.cfm?TRN_gID=0&TMY_gID=0 (last visited Aug. 28, 2005).

73. Black & Caron, *supra* note 20, at 85.

74. *Id.*

75. George, *supra* note 20.

76. *Id.* at 141.

77. *Id.* at 142.

78. *Id.* at 149.

79. Schulman, *supra* note 2.

the ideas discussed in these pages will engender further reflection and refinement. As Keating would admonish us: "Seize the day. Gather ye [rankings] rosebuds while ye may."⁸⁰

80. *Id.*