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Michael E. Solimine

University of Cincinnati College of Law

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Commentary

Status Seeking and the Allure and Limits of Law School Rankings

MICHAEL E. SOLIMINE*

INTRODUCTION

The rankings of law schools, published each spring by *U.S. News and World Report* (“*U.S. News*”) since 1990, are now a ubiquitous feature of American legal culture. But the rankings do not lack for controversy, as the present Symposium amply demonstrates. I will address three points about the rankings in this Commentary. First, I will address the argument that the rankings are normatively desirable to facilitate a tournament among law schools. I will consider how well the tournament model applies to institutional, as opposed to individual, participants, and how much law schools compete against each other, as envisioned by the model. Second, the tournament model and other commentary generally supportive of rankings usually assume that more information about law schools is better. Here, I address whether the pre-rankings era was as informationally deficient as is often assumed, and whether additional information in the present day is likely to be especially useful to law school applicants, or other audiences. Finally, I discuss why, despite the many criticisms of the rankings and their limitations acknowledged even by their supporters, the *U.S. News* rankings were quickly embraced by an attentive public. I link this continuing embrace by law professors and their students with the apparent fascination with rankings and status by American culture at large.

I. TOURNAMENTS, COMPETITION, AND INDIVIDUAL AND INSTITUTIONAL REPUTATIONS

Professors Baker, Choi, and Gulati in their symposium paper have applied the tournament model to law school rankings.¹ Briefly, their analysis proceeds as follows. In various employment contexts, workers can implicitly or explicitly compete against one another for increased salary, promotion, or other prizes. This competition can be conceptualized as a tournament, with the prizes inducing “employees to work harder in their current positions.”² The model has both positive and normative implications. It can explain the existence and structure of competition in a variety of employment settings, as well as other situations where individuals compete against each other for

* Donald P. Klekamp Professor of Law, University of Cincinnati College of Law. A prior version of this Commentary was presented at the Symposium on the Next Generation of Law School Rankings, at Indiana University School of Law–Bloomington on April 15, 2005. Thanks to my colleagues, Paul Caron and Rafael Gely, and to the other organizers of the symposium. Thanks also to Rafael and Michael Sauder for helpful comments on some of the ideas presented here. All errors that remain are mine.

1. See Scott Baker, Stephen Choi & G. Mitu Gulati, *The Rat Race as an Information-Forcing Device*, 81 IND. L.J. 53, 77–81 (2006).

2. *Id.* at 54.

awards. Moreover, a tournament can force the revelation of information from competitors that otherwise would be hard to observe or otherwise obtain.³

The *U.S. News* rankings, the authors argue, can facilitate a tournament among law schools. For various reasons, they acknowledge the rankings are imperfect and indeed attempt to measure an ultimately subjective concept—the quality of legal education. Nonetheless, “[i]f the ranking forces revelation of otherwise hard-to-obtain information about law schools, the objective ranking has value.”⁴ Before the rankings, they contend, most schools “did not share information about faculty scholarship and hiring, the bar-passage rate and employment status of recent graduates, the number of books in their libraries, or student-faculty ratios.”⁵ Schools that did not do well on those measures were reluctant to publicize the point. Schools that *did* do well were also reluctant, the authors say, because of the existence of “a social norm in the law school community against public bragging” prior to the *U.S. News* ranking.⁶ The rankings thus generate information that prospective law students and others can use, and facilitates competition among law schools for those students—despite what the authors acknowledge are limitations on the efficacy of the tournament model in this context. For example, they observe that many observers “may lack the ability to distinguish among the myriad of news releases and information generated by schools attempting to appear better than their peers,”⁷ and ultimately the rankings “may do little more than raise the level of noise about the quality of different schools.”⁸ Moreover, the additional information may not be put to good competitive use. The consumers of the information, they point out, will not coordinate their responses. Unlike the use of a tournament in other settings, such as the promotion of associates in a law firm, no “single consumer realizes the full benefit . . . from assessing any additional information revealed through the tournament.”⁹ Despite these shortcomings, the law school tournament here, they say, “has value.”¹⁰

I too think the tournament model is not without value for evaluating law schools, but for several reasons it should be used with caution. Start with the distinction between individuals and institutions. In their excellent overview of the literature on tournaments, almost all of the examples they discuss, such as hiring and promotion by law firms and by law schools, are by individuals competing against each other. This is not surprising. It is true that in common discourse we often speak of institutions, or teams of various sorts, competing against each other. In the present situation, law schools often speak of competing against other schools for students, faculty, and other resources. But there are obvious collective action and agency problems if we are speaking of literal competition. Even if some individuals at a law school (say, the Dean) think in competitive terms, do the faculty in their teaching, scholarly, and service activities compete as such against other schools, or even a particular school or a small set of schools? Perhaps at a high level of generality there is such competition,

3. *See id.* at 56.

4. *Id.* at 78.

5. *Id.*

6. *Id.* at 79.

7. *Id.* at 80.

8. *Id.* at 81.

9. *Id.* at 80.

10. *Id.* at 78.

but surely many or most individuals at a law school are not engaged in the enterprise. Those people uninterested in a competition can free-ride on the efforts of those that do. The Dean or others will find it difficult to monitor compliance with a directive to engage in competition, given the difficulty of identifying actions that are specifically directed at competition as such, as opposed to the usual activities of faculty.

This is not to say that institutions or teams cannot compete. Consider the literal tournaments of men's and women's collegiate sports teams. There are few collective action and agency problems in those situations. All or most of the members of the relatively small teams participate in the contests; their efforts can be easily monitored and measured by their coaches, and the competition of teams leads to easily identifiable winners and losers. Few of these characteristics hold for the metaphoric competition between law schools. All of which is not to say that law schools are not engaged in tournaments of sorts. There are simply more variables to consider in applying that model to law schools.

Next, focus on the *U.S. News* rankings themselves as leading to, and reflective of, competition among law schools. As many have remarked, the order of law schools in the rankings has been relatively stable. There is some evidence that in the decades before the promulgation of the *U.S. News* rankings (or at least after World War II), the same schools that are now at the top of the rankings were also perceived as the elite schools.¹¹ More recently, Richard Schmalbeck, in an aptly titled article,¹² confirmed the durability of law school reputations by observing that while the rank ordering of particular schools will modestly change from year to year, the same schools (or at least those at the top of the rankings) remain the same. Thus, he found that the same sixteen schools occupied the top sixteen slots for the first ten years of the *U.S. News* rankings.¹³ He found more movement in the remaining cohorts set out in the rankings, but even there "consistency from year to year continues to be the rule."¹⁴ Other scholars have extended the analysis to the most recent rankings, and have confirmed Schmalbeck's results.¹⁵

11. See David C. Yamada, *Same Old, Same Old: Law School Rankings and the Affirmation of Hierarchy*, 31 SUFFOLK U. L. REV. 249, 250 (1997) (reporting opinions of law faculty of New York University in 1954); Michael Sauder, *Status Judges: The Effects of Formal Rankings on Educational Status Systems* 51–52 (Dec. 2005) (unpublished Ph.D. dissertation, Northwestern University) (on file with the Indiana Law Journal) (summarizing various pre-*U.S. News* rankings of a small number of law schools in the 1970s and 1980s).

12. Richard Schmalbeck, *The Durability of Law School Reputation*, 48 J. LEGAL EDUC. 568 (1998).

13. *Id.* at 572.

14. *Id.* at 575.

15. Michael Sauder & Ryon Lancaster, *Do Rankings Matter?: The Effects of U.S. News & World Report Rankings on the Admissions Process of Law Schools*, 40 LAW & SOC'Y REV. (forthcoming Mar. 2006) (manuscript at 14–15, on file with the Indiana Law Journal) (noting that given fine distinctions made by the *U.S. News* rankings, over half of schools change position each year, but over 80% of the schools remained in the same tier of the rankings); Sauder, *supra* note 11, at 69 n.11 (reporting that twenty-four of the law schools ranked in the top 25 in the first *U.S. News* ranking in 1987 were still in the top 25 as of the rankings released in 2003). The 1998 *U.S. News* rankings, the last examined by Schmalbeck, consisted of the following top 16 schools, in this order: Harvard, Yale, Chicago, Columbia, Stanford, Michigan, Berkeley, NYU, Pennsylvania, Virginia, Cornell, Duke, Northwestern, Georgetown, Texas, and

As evidenced by the rankings, then, there is *some* competition among law schools, but not very much. Schmalbeck suggested that the relative lack of movement in the rankings was largely due to the unchanging reputations of most American law schools. That durability, he argued, was due to several factors, including what he viewed as the suppleness of most law schools. For example, technological change has not been destabilizing, since most law instruction is not premised on technology as such,¹⁶ and one might add, to the extent that it is, most law schools quickly absorbed and provided for the technology in question. He also suggested that law schools typically “absorb new paradigms rather than being revolutionized by them.”¹⁷ Most law schools are relatively homogenous when it comes to curriculum and other institutional aspects of law school life.

Other scholars have advanced similar reasons for the relative lack of competition among law schools. Stewart Sterk has argued that “[a] ‘brand name’ law school, no matter how badly managed, cannot easily dissipate its power to attract able students. For many applicants, it is association with the brand name, rather than the education the student expects to receive or the cost associated with that education, that makes a school attractive.”¹⁸ He also suggests the paucity of competition is driven by the presumption that many applicants pick a school based on geography or cost, not educational quality, and that after the first year, transfer to higher-ranked schools is possible but for various reasons is not pursued by a large percentage of students.¹⁹ There are also institutional barriers to inter-law school competition. It is well accepted that the law school accreditation standards of the American Bar Association (ABA) and the Association of American Law Schools had the effect, whether intended or not, of standardizing many aspects of legal education and stifling meaningful experimentation among law schools.²⁰ Nor is it clear that law school administration and faculties would have the desire or incentives to engage in meaningful competition, even if more such opportunities were available.²¹

UCLA. Schmalbeck, *supra* note 12, at 570 tbl.2. The *U.S. News* rankings for 2005, issued on the eve of the present symposium, listed the same top sixteen schools, in virtually the same order. USNEWS.COM, AMERICA’S BEST GRADUATE SCHOOLS 2006) (2005), http://www.usnews.com/usnews/edu/grad/rankings/rankindex_brief.php.

16. Schmalbeck, *supra* note 12, at 586. In a similar vein, he observed that had law and economics, or critical legal analysis, “become the dominant mode of analysis,” throughout or in large parts of legal education, one might expect the University of Chicago or Buffalo Law Schools to rise to the top of academic reputations. *Id.* That did not occur, even though those schools of thought did attain particular prominence, at least in legal scholarship, during the last decades of the 20th century.

17. *Id.*

18. Stewart E. Sterk, *Information Production and Rent-Seeking in Law School Administration: Rules and Discretion*, 83 B.U. L. REV. 1141, 1145 (2003) (footnote omitted).

19. *Id.* at 1146. For a similar critique of applicant and student behavior, see Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 477 (2004).

20. Paul L. Caron & Rafael Gely, *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*, 82 TEX. L. REV. 1483, 1504–06 (2004); Sterk, *supra* note 18, at 1145 n.9.

21. For a skeptical appraisal of the competitive instincts of law schools, see Caron & Gely, *supra* note 20, at 1507–08 (arguing that law schools are not like typical profit-maximizing or nonprofit firms, and instead seek to advance the preferences of the faculty); Nelson Lund, *The Rehnquist Court’s Pragmatic Approach to Civil Rights*, 99 NW. U. L. REV. 249, 285 (2004)

Finally, it is not entirely clear how the *U.S. News* rankings themselves facilitate competition. Earlier, I suggested that the utility of the tournament model was weakened by the lack of an objective measure of which school wins the contest. Arguably, the *U.S. News* rankings supply that measure. But the components that make up the rankings can have their own homogenizing affect. Since every school is scrutinized by the same factors, it arguably discourages schools from engaging in innovations, such as emphasizing public interest law, serving the legal needs of local communities, or aggressively admitting students with lower grades and Law School Admission Test (LSAT) scores from segments of society underrepresented among lawyers—all of which will not be reflected in, or might even lower, their rankings.²² To be sure, virtually all law schools engage in these activities, to some degree, but that is the point. Few if any law schools make these or other innovations a *major* part of their missions.²³ We can debate whether these innovations do in fact make a school qualitatively better. But the criteria found in the rankings seem to dampen efforts to act outside accepted norms of law school life.²⁴

I do not wish to overstate the point about the lack of competition. I do not deny that there is *some* competition among law schools, and that it has been facilitated (though also in some respects hindered) by the *U.S. News* rankings. Administrators take actions to attempt to improve or maintain the rankings of their schools, many of which redound to the benefit of students and faculty at those schools.²⁵ But in my view these efforts do not lead to meaningful competition between most law schools, except at a high level of generality, and in ways that may only be measured in crude fashions.²⁶ An important

(observing that when a public law school purports to compete against a private one, it is “competition between government agencies staffed by self-perpetuating groups of life-tenured professors on one side, and tax-exempt, nonprofit, government-subsidized institutions staffed by self-perpetuating groups of life-tenured professors on the other”).

22. Sauder, *supra* note 11, at 69–71 (reporting conversations with law school administrators advancing these fears).

23. For further discussion of these points, see Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 *IND. L.J.* 229, 230–44 (2006); Leigh Jones, *Law Schools Play the Rankings Game*, *NAT’L L.J.*, April 18, 2005, at 1.

24. The current *U.S. News* rankings are based on institutional reputation (40%), selectivity of students (25%), placement of graduates (20%), and available resources (15%). *Law Methodology*, in *AMERICA’S BEST GRADUATE SCHOOLS 2006* (2005), http://www.usnews.com/usnews/edu/grad/rankings/about/06law_meth_brief.php. More recently, specialty programs at schools have been ranked, as has the level of diversity. For further discussion of these factors and how they have been modified by *U.S. News* over the years, see Caron & Gely, *supra* note 20, at 1510–11. For further discussion focusing on the use of LSAT scores in the rankings, see 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, 165–66 (2006); Carl Bialik, *Small Changes Lead to Rankings Controversy*, *WALL ST. J. ONLINE*, April 7, 2005, <http://online.wsj.com/article/0,,SB111279937006999640,00.html?public=yes>.

25. See, e.g., Leigh Jones, *Schools Turn Up Funding Efforts*, *NAT’L L.J.*, May 9, 2005, at 1, 10 (noting that annual rankings have motivated many law schools, public and private, to raise private funds to improve student-faculty ratios, and increase clinical programs and career services, among other things). See also *id.* (quoting David Yellon, Dean at Loyola (Chicago) School of Law, that “[l]aw schools now spend much more money on programs to differentiate themselves”).

26. In other words, my point is that ultimately the rankings seem to have only slightly

and perhaps ironic caveat to the foregoing is that there is some evidence of greater competition among schools in the lower rungs of the *U.S. News* rankings.²⁷

II. THE LIMITS OF MORE INFORMATION

The symposium paper of Baker, Choi and Gulati, and those of others explicitly argue or appear to implicitly assume that a greater amount of information from law schools is generated by the rankings, and that information will be put to good use by the public, particularly, though not only by, prospective law students.²⁸ To their credit, these authors are not oblivious to the possible disadvantages of more information. Baker, Choi, and Gulati concede that still more information may simply create noise about schools.²⁹ Michael Sauder and Wendy Espeland wonder about the consequences of the existence of so much competing information, generated by their suggestion for multiple rankings of law schools.³⁰ I want to press the point a bit further.

Initially, I do not fully share the seemingly widespread assumption that the pre-*U.S. News* rankings era was almost an information wasteland for law school applicants and others, as compared to today.³¹ Granted, the wealth of data found in the present *U.S. News* rankings was either simply not collected or not disseminated even when it was collected. Some important data was collected and distributed, notably in an annual guide to all law schools, then published by the ABA. The guide had narrative information about each school, and usually an applicant profile table, indicating the likelihood of admittance given an applicant's undergraduate grade point average and LSAT score.³² That information, coupled with the vaguer notions of which schools were "elite," and which were not, perhaps gave many applicants enough to go on to make somewhat rational comparisons. I do not want to overstate the point. I am unaware of any study of applicant behavior in the pre-*U.S. News* rankings era,³³ but my sense is that the information deficit of that era was not a large impediment to rational decision making by applicants.

improved the competitive environment of law schools in the pre-*U.S. News* world, where schools were only "able to identify winners and losers . . . at a rudimentary level." Caron & Gely, *supra* note 20, at 1507.

27. See, e.g., Henderson & Morriss, *supra* note 24, at 182–86 (finding markets for students with higher LSAT scores differs for the top 50 as compared to other law schools); Schmalbeck, *supra* note 12, at 575–76 (finding relatively little movement in the rankings overall, but more in the lower tiers).

28. See Baker, Choi & Gulati, *supra* note 1, at 77–80; Michael Sauder & Wendy Nelson Espeland, *Strength in Numbers? The Advantages of Multiple Rankings*, 81 IND. L.J. 205, 212 (2006).

29. See *supra* note 8 and accompanying text.

30. Sauder & Espeland, *supra* note 28, at 225–26.

31. See, e.g., Caron & Gely, *supra* note 20, at 1508; Sauder, *supra* note 11, at 52–56.

32. The annual guide is now jointly published by the Law School Admission Council and the ABA, and contains information on each law school, much of which is similar to the information found in the rankings. See LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS (Wendy Margolis et al. eds., 2005 ed. 2004).

33. I confess that I am drawing in part on my memory of applying to law schools in the late 1970s.

Which brings me to my second concern. The *U.S. News* rankings now contain detailed information on each school beyond the applicant profile mentioned above. An applicant can now find data on, among other things, student/faculty ratios, employment rates after graduation, and bar passage rates, in addition to the notorious reputation scores. Do many, some, or even a few applicants pay any attention, much less act upon, this additional information in deciding where to apply and which offers of acceptance to take? We have remarkably little useful, systematically collected information about this important question.³⁴ That is, there has been to date virtually no studies of how applicants utilize the rankings.

Nonetheless, intuition, considerable anecdotal evidence, and some indirect data suggest that the rankings are used to *some* extent by many or perhaps most applicants. Many applicants tell admissions directors, faculty, and each other that the rankings influenced their decisions, at least in part. Studies of the applicant profiles at each school suggest that the rankings affect how many students apply to a school, the LSAT scores of those applicants, and the percentage of accepted applicants who then go to a particular school.³⁵ Still, it is not at all clear how much information *within* the rankings is used by applicants or when it is used at all. A rational applicant would presumably invest some time in investigating one or more schools, whether or not the rankings existed. But as Judge Richard Posner remarks in the present symposium, “most prospective students know in a rough way which schools or at least which tier of schools they should be choosing among.”³⁶ Moreover, as I previously suggested, many applicants may place considerable or exclusive weight on factors not found in or only indirectly reflected in the rankings, such as the geographic location or cost of attendance of a law school.

That said, a considerable fraction of applicants probably pay close attention to the rankings and the comparative information provided. But that prospect can raise its own problems. Again, one must draw inferences with caution, given the lack of empirical research on applicant behavior. But it seems likely that many applicants focus with near exclusivity on the rank order itself. On that score, there is some evidence that applicants focus closely on which tier a school is located in, in ways that presumably did not occur before the advent of the rankings.³⁷ For those applicants who go beyond the rank orders and attempt to utilize the other data, it is not clear how much that other data improves their decision making, especially given the small differences in the data among schools within the same tier. As Cass Sunstein suggests in the present Symposium,³⁸ recent work in behavioral economics suggests that applicants, when faced with too much information, will not assimilate that data in useful ways and will fall back on brand names or fads in making decisions.³⁹ Still other applicants may rely

34. See Henderson & Morriss, *supra* note 24, at 169 (remarking on the “paucity of empirical research on how rankings actually affect law schools . . . vis-à-vis prospective law students”).

35. Sauder & Lancaster, *supra* note 15 (manuscript at 30).

36. Richard A. Posner, *Law School Rankings*, 81 IND. L.J. 13, 13 (2006).

37. Sauder, *supra* note 11, at 61–64 (summarizing interviews with law school admission directors).

38. Cass Sunstein, *Ranking Law Schools: A Market Test?*, 81 IND. L.J. 25, 32–33 (2006).

39. For a recent popular account, summarizing and discussing the literature on the possibly pernicious effects of too many choices or too much information regarding life in general, see

on the advice of family and friends, as they do when making other decisions, and give either no or only modest weight to the *U.S. News* rankings.⁴⁰

All of which is not to say that extra information found in the rankings is necessarily bad. My modest points are that it is at best unclear whether and to what extent many applicants use this information in the first instance, and the additional information, when it is used, may for various reasons skew decision making by applicants in unintended ways.

III. LAW SCHOOL RANKINGS AND STATUS

It seems that few if any people to whom law school applicants typically turn for advice recommend the use of the *U.S. News* rankings. That is, much of the “legal education establishment”—individual law schools, deans, admission directors, and college prelaw advisors—either argue against the use of the rankings, or recommend that they should be used with great caution.⁴¹ Despite (or perhaps because of) this stance, it seems that many applicants, not to mention others in the legal community, pay considerable attention to the rankings (if only to quickly determine where a school appears on the rank order itself). The same observation holds true for the other *U.S. News* rankings for undergraduate institutions, or other graduate and professional school programs. This continued fascination with rankings is indicative, at least in part, of an apparent widespread concern with status and the measurement of status in our society.

Sociologists and economists have long studied various aspects of status and reputation in American society. The recent work of Robert Frank is particularly worthy of note. In his leading book, *Choosing the Right Pond*,⁴² published two decades ago, Frank examined how people explicitly or implicitly are organized, or voluntarily organize themselves, by status in their economic and sociological relationships. His point was not simply the obvious one that, for various reasons, many or most people seem concerned with their societal status. Rather, his point was that the seeking of relational status can be an end in itself, decoupled from the merits of the underlying activity which status purports to measure.⁴³ Put another way, Frank and others have examined “positional goods,” which are “goods that are sought after less because of any absolute property they possess than because they compare favorably with others in their own class.”⁴⁴ Other scholars have built upon this work, finding in various contexts that the creation and continuation of status and rankings can independently affect the behavior of actors within that market or system in ways that seem unconnected to the underlying quality of the good or service in question.⁴⁵ Thus, while economists conceptualize a ranking as a signal of the underlying quality of a product, especially when a consumer has difficulty in assembling and measuring information about the

BARRY SCHWARTZ, *THE PARADOX OF CHOICE* (2004).

40. Mitchell Berger, *Why the U.S. News and World Report Law School Rankings Are Both Useful and Important*, 51 J. LEGAL EDUC. 487, 491 (2001).

41. *Id.* at 489–90.

42. ROBERT H. FRANK, *CHOOSING THE RIGHT POND: HUMAN BEHAVIOR AND THE QUEST FOR STATUS* (1985).

43. *Id.* at 3–34 (providing overview of literature on status).

44. *Id.* at 7.

45. For discussion of this point, see JOEL M. PODOLNY, *STATUS SIGNALS: A SOCIOLOGICAL STUDY OF MARKET COMPETITION* 1–9 (2005).

product for herself,⁴⁶ “the relationship between the signal and the quality it is signaling is not always pure.”⁴⁷

The relevance of this analysis has not been lost on evaluators of the *U.S. News* rankings. Several writers have suggested that the rankings can serve as a signal of the presumed quality, or quality of the brand, of a law school.⁴⁸ The literature on status in general can augment that point, and not only can help explain the attention paid to the rankings in the first instance, but also can suggest that the rankings themselves are not immune to the criticism that they may do a poor job of measuring educational quality. More than that, recent studies suggest that “by precisely quantifying the quality of each law school and then creating rigid and fine-grained distinctions between schools,” the *U.S. News* rankings tend to artificially inflate perceived distinctions between schools.⁴⁹ As many schools scramble each year to respond to, and hopefully affect, the rankings for the following year, it is hard to escape the conclusion that “the rankings, by transforming insignificant variations into significant consequences, play a role in creating—rather than simply reflecting—law school quality.”⁵⁰

This critique of rankings has both descriptive and normative dimensions. It resonates with an emerging literature that decries the apparent increased concern across American society with status and rankings. That concern has afflicted human societies since the beginning of time, the critics concede, but they argue that it has recently taken more acute dimensions, based on the modern marketing and technology that are attributes of a consumer-oriented economy.⁵¹ Negative effects of the obsession with status include the overinvestment (from an economic point of view) of time and money by participants in the race for status, and underinvestment in activities or goods that do not affect one’s status.⁵² The critics of the *U.S. News* rankings, and rankings of higher education in general,⁵³ will no doubt find much to agree with here.

46. Joel M. Podolny, *A Status-based Model of Market Competition*, 98 AM. J. SOC. 829, 831 (1993). According to economists, a signal is an observable indicator of quality if it is at least partially manipulable by an actor, and the “difficulty of obtaining the indicator must be nonzero and inversely correlated with the actor’s level of quality.” *Id.* Status satisfies these criteria for signals:

Even though a producer’s status depends largely on the expressed opinions and actions of others, the producer nonetheless exercises at least some control over its status since its own past actions are important determinants of how it is perceived.

Moreover, the difficulty of acquiring a reputation for superior quality is inversely associated with the general quality level of the producer.

Id.

47. Sauder & Lancaster, *supra* note 15 (manuscript at 4).

48. *E.g.*, Russell Korobkin, *In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems*, 77 TEX. L. REV. 403 (1998); Sauder & Lancaster, *supra* note 15 (manuscript at 4–5).

49. Sauder & Lancaster, *supra* note 15 (manuscript at 34).

50. *Id.* (manuscript at 35).

51. For examples of this literature, see TYLER COWEN, WHAT PRICE FAME? 8 (2000); SCHWARTZ, *supra* note 39, at 94–95, 189–91.

52. The leading work here is again by Frank. See ROBERT H. FRANK & PHILLIP J. COOK, THE WINNER-TAKE-ALL SOCIETY (1995).

53. *See, e.g.*, Benjamin DeMott, *Jocks and the Academy*, N.Y. REV. BOOKS, May 12, 2005, at 29, 30 (referring to “the expansion during the past half-century of the numbers of people

Whatever one thinks of these anti-status arguments in general,⁵⁴ there is a paradox when it comes to the *U.S. News* rankings. As I argued earlier, there is in my view considerable (if sketchy) evidence that despite the supposed influence of the rankings, the attention devoted to the information supplied by the rankings varies considerably across different audiences. Many law school applicants, the presumed primary audience of the rankings, probably give only cursory attention to the information beyond the raw rank order. The same could be said of law school faculty when, say, deciding where to publish their law review articles. On the other hand, it appears that law school administrators *do* pay considerable attention to the richer trove of information now found in the rankings.⁵⁵ If that is the case, then the tournament generated by the rankings is played by a smaller number of players than is commonly thought. In short, to paraphrase the announcement for this symposium, the public does indeed have an insatiable demand for rankings, but so far there is no compelling evidence that the majority of the public reads beyond the ranks themselves.

seeking higher education, as well as . . . the persuasive effects of marketing values and competitive rankings, brand-name battles, [and] contests over hiring academic stars”).

54. For examples of literature challenging these arguments, see COWEN, *supra* note 51, at 101–14 (questioning apparent assumption of Frank and others that quest for fame is a zero-sum game) and Richard H. McAdams, *Relative Preferences*, 102 *YALE L.J.* 1, 18–69 (1992) (similarly questioning various aspects of Frank’s argument that quest for status inevitably leads to overinvestment in positional goods).

55. For documentation for the assertion that law school administrators, if no one else, pay close attention to the full panoply of data generated by the *U.S. News* rankings, see Nancy B. Rapoport, *Eating Our Cake and Having It, Too: Why Real Change Is So Difficult in Law Schools*, 81 *IND. L.J.* 359, 362–74 (2006); Sauder & Lancaster, *supra* note 15 (manuscript at 34–37); Sauder, *supra* note 11 (manuscript at 64).