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Rankings: A Dramatization of the Incentives Created by Ranking Law Schools

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A DRAMATIZATION OF THE INCENTIVES CREATED BY RANKING LAW SCHOOLS

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Abstract

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Sellers in a competitive market shift resources from attributes buyers don't care about to attributes buyers do care about. In markets in which buyers rely on imperfect signals for quality, sellers move resources away from improving the quality of their product to enhancing the illusion of quality. For example, before freshness dating, when consumers tested the freshness of bread by squeezing it, bakers reportedly added chemicals to bread to preserve its softness longer, thereby creating the illusion of freshness. Similarly, law school rankings encourage schools to shift resources away from improving the quality of the education they provide in favor of investing in improving their standings in the rankings. Consequently, under the guise of serving the market, rankings which are based on the wrong criteria are likely to subvert the market because they both fail to measure accurately the quality of a school's education and reduce the quality of legal education.

This piece dramatizes some of the ideas discussed in the preceding paragraph. It takes the form of a fifteen-minute play with three characters: a law school dean, a junior law professor, and a law student. The play illustrates how the incentives created by a ranking system could affect law schools and their administrators, faculty, and students. The play format is intended to make the ideas expressed more vivid.
LESLIE
You've been admitted to other law schools and they're wooing you. So why should you come to our law school? First, our faculty. Teaching is our top priority. We pride ourselves on the quality of our teaching. And we don't just see students in the classroom. Our professors are always available to the students, to go that extra mile so you're prepared for the practice of law. Second, our degree is worth a lot to you. Our place in the rankings is secure, and we have consistently moved up in recent years. That will help you get jobs. Many of our graduates practice law at big firms but if that holds no appeal for you, we will train you to represent individuals and small businesses with their legal problems. In fact, most of our graduates find that type of practice more fulfilling than any other, and so they choose to practice law in a small firm setting, or even as solo practitioners.

(Brief blackout. When the lights come up, LEE is sitting at a desk. FRED knocks.)

LEE
Oh hi Fred, what's up?

FRED
I came to say goodbye, professor.

LEE
Goodbye?

FRED
Well, I don't know how to say this, but I'm dropping out of law school.

LEE
But Fred, that's terrible! You have so much talent! Your contributions in class were excellent.

FRED
Thanks professor.

LEE
I can't imagine it's a problem with grades.

FRED
No, I'm like, in the second tenth of the class. Maybe the third.
Then why?

It's a financial thing.

Tuition?

Yeah, and living expenses. Loans.

But with your ability, you should be able to get a good job. You'll make enough to pay back your loans.

Well, my grades won't get me to the top firms. So yeah, if I were to stay, I'd be looking at making enough to pay back my loans and live on if I don't spend too much, but not much more. But it'd take a long time to get rid of those loans at that rate.

Would your loans really be that much?

Oh yeah. If I finish, I'll owe $180,000. Maybe more if the school keeps raising tuition. It's like having a mortgage without the house. But if I cut my losses now, well, I'd owe a lot less and I can get a job right away and start paying the loans back.

But you'd still owe for the loans you already took out.

Whatever. I can't do anything about that. You know what really sucks? So many of my classmates have lower grades than me but are still getting a free ride.

Did you try to get a scholarship?

I asked for one after I got my grades, but the office said it doesn't work that way.

I see.
So what's the point? I mean, taking out loans to pay for my education so I could get the job that'll let me pay off the loans?

LEE
Fred, maybe I can help. Let me talk to the dean about a scholarship. I'd hate to lose you. You're the kind of person who could make a difference.

FRED
No thanks professor. I'm outta here.

LEE
Just give me a week. You've already put in so much time and effort, what's one more week?

FRED
Can't do it. I can get my tuition money back for this semester if I drop out by tomorrow, but if I let it go a week, I'll lose my chance to get the money back and I'll owe even more.

LEE
I'll speak to the dean today then.

FRED
OK, I guess it's worth a try.

LEE
It's a deal. Don't do anything until you hear from me.

FRED
Can I ask you something professor? How do you do it? I mean, not to get too personal or anything, but law pros don't make big firm money either--

LEE
Oh I didn't have loans. I guess I was one of those scholarship students.

FRED
If you'd had the loans, would you be teaching today? (Brief blackout. When the light come up, LEE is onstage with LESLIE)

LEE
Leslie, didn't anyone ever teach them to write?

LESLIE
My favorite is the apostrophe. They just sprinkle them in anywhere. Except where they belong.
Lee: Apostrophe apostasy!

Leslie: The high schools just don't teach grammar anymore.

Lee: Exactly. So Leslie, let's start a writing center.

Leslie: A writing center?

Lee: Sure. Some law schools have them.

Leslie: Interesting idea. But we don't have the budgetary flexibility for that.

Lee: It doesn't have to cost any money. I'll do it.

Leslie: You?

Lee: Sure, I can start small, take on a handful of the worst students, and then if it works--

Leslie: But is that the best use of your time?

Lee: Well you agree that they need it--

Leslie: Yes, but that's a different question from what we're going to do about it.

Lee: I could make the time.

Leslie: We didn't give you a reduced teaching schedule so you can teach more.

Lee: Well, I've been getting the writing done.

Leslie: Oh no one argues about that. The tenured faculty is very pleased with your progress. Very pleased. But when you're
building a career, the more you can get out, especially early on . . . . You have real potential as a scholar. That free-market law and economics stuff you do gets great placements in the law reviews.

LEE
Thank you. But I'd like to give something back to the people who pay my salary. And the students with writing problems are the ones who need me most. It makes me feel like I'm really doing something when I teach the weakest students.

LESLIE
The best thing you can do for them is improve our position in the rankings. And the best way to do that is enhance our reputation by writing.

LEE
But by the time my writing could have an impact on our reputation, the students here now will have graduated.

LESLIE
Oh, but their reputations will always be inextricably intertwined with ours. We're supplying their credentials. Look, I've got an idea. How about if we have our Graduate Scholars staff a writing center?

LEE
Those are the people we hire for a few months six months after they graduate?

Right.

LEE
Am I right that we hardly pay them anything?

LESLIE
Well, we're not a rich institution. But they're better off taking what we give them than not working at all.

LEE
But if they can't get jobs with anyone else, they're probably not good writers either.

LESLIE
Some of them might be. I don't know.

LEE
I know that those people have spent a lot of money on tuition too, and we want to help them and enhance their resumes and all, but wouldn't we be better off hiring someone to teach
our students how to write? Maybe over the long run that would get more of our students jobs when they graduate.

LESLIE
Perhaps. I'll ask the Long Range Planning Committee to look into it. But I don't know if they'll buy diverting the money for the Graduate Scholars for a writing program.

LEE
Why not?

LESLIE
Well, because the Graduate Scholars program enhances our employment statistics, and that's one of the things the rankings take into account.

LEE
We don't even have anything for those students to do--

LESLIE
Graduates.

LEE
Graduates. Anyway, we don't even have any work for them.

LESLIE
Oh we have work for them. Some of your colleagues use them for research assistance. Or filing. Besides, lots of law schools do it to bolster their statistics. I got the idea from another law school I was inspecting for accreditation.

LEE
Could we maybe hire some current students who can write well to staff a writing center? I have this wonderful student, Parker, who'd be perfect--

LESLIE
Fred Parker?

LEE
I think that's his first name, yes. Do you know him?

LESLIE
Yes, he's been seeking a scholarship.

LEE
I think he'd be a good candidate for a scholarship. He has very good grades. Made some great comments in class. If there's anything I can do to help his case . . . And some of the students I've been thinking of with writing problems have scholarships. If they have them . . .
LESLIE
No it doesn't work like that. We don't give students merit scholarships as rewards when they're here. We give them merit scholarships to induce them to come in the first place.

LEE
But don't some students lose their merit scholarships because they don't get good enough grades?

LESLIE
Yes, their grades have to be in the top half of the class and even though the admissions criteria predict that they'll do well, the criteria are not perfect predictors.

LEE
Could you use some of that money to give him a scholarship? How many students lose their scholarships?

LESLIE
Well, we give them to 60% of the entering class, so at least 10% lose them. Usually a bit more.

LEE
You mean it's impossible for all the incoming students to retain their scholarships?

LESLIE
They don't know that of course. And we don't know who'll lose them.

LEE
But isn't that--I don't know--

LESLIE
If we didn't do it that way, we wouldn't get the entering class statistics we need to keep our ranking.

LEE
You mean we're buying students for the rankings?

LESLIE
Not me. The students in the bottom half of the class--at least according to the admissions statistics--are paying for it so they'll go to a school with a better ranking. Us.

LEE
The students in the bottom half of the class?

LESLIE
The ones who pay full freight. Who pay your salary, and summer research stipend, and the library resources you use,
and for your research assistants. Somebody has to pay for our operations and it's not the scholarship students.

LEE
The students in the bottom half of the class pay for other students to come in and beat them out for better grades and better jobs?

LESLIE
Well not all of them. Your buddy Parker is getting good grades. Let me just look him up--yes, fine grades. Of course, he started in the part-time program where it's easier to get good grades.

LEE
Why is that?

LESLIE
The part-timers are the students who didn't have the application credentials to get into the full-time program.

LEE
But he's in the full-time program now.

LESLIE
Oh yes, we let them move into the full-time program after one semester so they can graduate in the usual timeframe.

LEE
Then why not admit them to the full-time program in the first place?

LESLIE
Because the rankings don't take into account part-timers, only full-timers, so we can admit them without having them drag down our admissions statistics.

LEE
Well since he's in the full-time program now, what about giving him a scholarship with the money that one of the students lost for being in the bottom half of the class?

LESLIE
Oh no, that money is already budgeted for next year's scholarships.

LEE
So when you give students scholarships to get them to come, you plan for some of them to lose their scholarships so you can give them--
LESLIE
To the next year's class to get them to come, yes. And the
cycle repeats every year.

LEE
All for the rankings.

LESLIE
Look, I didn't create the rankings. I've joined in all the
statements deploring them. I tell everyone to ignore them.
That they're meaningless to people applying to law schools,
that the important thing is to find the right fit. Look,
this's the latest statement I've joined--um--here: "Sellers
in a competitive market shift resources from attributes
buyers don't care about to attributes buyers do care about.
In markets in which buyers rely on imperfect signals for
quality, sellers move resources away from improving the
quality of their product to enhancing the illusion of
quality. For example, before freshness dating, when consumers
tested the freshness of bread by squeezing it, bakers
reportedly added chemicals to bread to preserve its softness
longer, thereby creating the illusion of freshness.
Similarly, law school rankings encourage schools to shift
resources away from improving the quality of the education
they provide in favor of investing in improving their
standings in the rankings. Consequently, under the guise of
serving the market, rankings which are based on the wrong
criteria are likely to subvert the market because they both
fail to measure accurately the quality of a school's
education and reduce the quality of legal education."

LEE
That's true.

LESLIE
Yes, but no one cares. People use the rankings anyway. It's
easier to do that than to learn what you need to know to make
a decision. Which may be impossible anyway. So I have to
pay attention to them. What you law and econ guys call a
market failure.

LEE
So we're taking all this money from students and not using it
to help them one bit. No wonder tuition is so high. It has
to pay for the education of the students who pay the full
price, the education of the scholarship students in the top
half, and for all these things to improve the school's
ranking.

LESLIE
Well, you benefit from it.
LEE

What do you mean?

LESLIE

The reduced teaching load, time to write, going to conferences. That helps our rankings, sure, but do you think it helps the students?

LEE

'Course it does. If I know more about what I teach, I can teach the students better.

LESLIE

You mean in the seminar you teach on your research agenda? Which has--what, ten students?

LEE

Eight.

LESLIE

Eight, right. Those conferences you go to, do they talk about how to teach, or do they talk about abstruse theories that you won't bother conveying to your students.

LEE

Sometimes I talk about the theories to my students.

LESLIE

My daughter's a high school teacher. She had to get a master's in education, and she takes new courses in teaching every summer. If law schools really cared about teaching, don't you think we'd make our profs take at least one course in teaching instead of going to conferences.

LEE

Well, a lot of those courses are a waste.

LESLIE

And you say this because you've taken some and so you're able to evaluate them?

LEE

Well, no, but everybody knows that.

LESLIE

Oh? Do you think that people should be able to practice law without taking classes in law?

LEE

Of course not.
LESLIE
Then why would you think people should be able to teach
without taking classes in teaching? My daughter says she's
gotten a lot out of them and that they've made her a better
teacher. But in law schools, we don't put our resources into
teaching. We put them into the rankings.

LEE
But not all of this is because of rankings. Did law
professors take classes in teaching before there were
rankings?

LESLIE
Not really, but the rankings have exacerbated the trend
towards scholarship and away from teaching. But hey, even
for-profit businesses have budgets for public relations.

LEE
Whoa! Aren't we supposed to be better than they are?

LESLIE
You mean, because we're a nonprofit? Or because we're a
school.

LEE
Or because we teach ethics. Even require it. Couldn't we be
more honest?

LESLIE
Sure we could. And we'd lose our scholarship students, and
our place in the rankings, and pretty soon you'd have a new
dean.

LEE
That's pretty cynical.

LESLIE
You think this job is any different from being a coach? We
lose in the competition with the other schools, we get fired.

LEE
Let's back up. Couldn't we make just one exception to
spending for the rankings and start a writing center?

LESLIE
You still don't get it! Let me spell it out for you. Nobody
cares about what the students learn here. OK? We care about
them before they get here because the rankings look at their
LSATs and undergraduate grades and how we do in attracting
them. We care about them after they leave because the
rankings take account of how many of them get jobs and
whether they pass the bar, but that's pretty much it. OK? Maybe what we do here affects the bar pass rate and whether they get jobs, maybe it doesn't, but even if it makes a difference, it clearly has so little impact that we're better off putting our resources into other things that have more of an impact on the rankings. I can't be bothered with how the students write! I can't be bothered with the students!

LEE
I see. Then let me ask just one more question.

What?

LEE
What's going to happen when the people in the bottom half of the class figure it out and stop coming?

(Brief Blackout. When the lights come up, LESLIE is putting books in a box. LEE enters.)

LEE (CONTINUED)
Leslie, I'm so sorry.

LESLIE
Well, that's what comes with falling rankings.

LEE
But you're just moving down the hall, right? To a faculty office.

For now, yes.

LEE
For now?

LESLIE
I don't think I'm going to want to stay. If I had stepped down of my own decision, sure, but not under these circumstances. It's humiliating. I'll go out on the market next year, after my so-called sabbatical is up.

LEE
Well, I'm leaving too.

LESLIE
You are? Don't do that. You have a bright future in this business. I don't expect that kind of loyalty.
LEE
No, I'm moving.

LESLIE
I see. Let me guess. A school with a higher ranking.

LEE
Well yes, but--

LESLIE
Oh you're not moving because it has a higher ranking. No, it's because the students have better entering credentials.

LEE
No, that's not it. I mean, their students do have better credentials but--

LESLIE
Of course students with the weaker admissions credentials--the ones we have here--they're the ones who need you most. And it makes you feel better to teach the ones who need you most. But you're moving in spite of that. Let's see. Are they offering you more support than we can for your research agenda?

LEE
Well yes. They have more money for summer stipends, for conferences, to send me to other schools to present my research, get feedback that'll improve my papers.

LESLIE
And how does it benefit the students who pay our salaries when you present a paper on some esoteric subject to the faculty at some other school?

LEE
Um, I'm not sure.

LESLIE
So it's not important to you that the school is ranked higher or has students with better credentials.

LEE
Not at all.

LESLIE
And that's not why you're moving.

LEE
Not really.
LESLIE
Uh huh. Then why are you moving?

LEE
I have family in the area. It'll be great to see them.

LESLIE
Close family?

LEE
Oh yes. A first cousin.

LESLIE
And how often have you visited this cousin?

LEE
That's just it! I hardly ever get to see her. But if I move--

LESLIE
How often do you speak to her on the phone?

LEE
Maybe every couple of months. I don't know.

LESLIE
I don't know either.

AFTERWORD
This is less an exploration of existing events than of the incentives rankings create for law schools. The characters in this play are wholly fictitious and the author is not aware of any school or administrator that has adopted Leslie's approach. As is the practice with plays, which are frequently regarded as a collaborative product even though a single person is often listed as the author, the ideas of others are not footnoted, but readers should understand that the author has benefited from discussions with and writings by others about the potential impact of rankings on legal education. Those seeking further information would do well to review postings on Brian Leiter's Law School Reports Blog at http://leiterlawschool.typepad.com/ and the postings of Brian Z. Tamanaha on the Balkinization blog at http://balkin.blogspot.com/. The author thanks Professors John Q. Barrett, Charles Bobis, Brian Z. Tamanaha and Margaret V. Turano, and the members of the Queens Theatre in the Park Playwright Workshop.