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management in higher education (e.g. Deem et al. 2007; Ferlie et al. 2008), there are very few examples of collective action against the introduction of managerial practices, and even fewer of a capacity to prevent or halt their implementation. Most studies describe gamesmanship as the first resistance strategy.

Last but not least, the lack of resistance could be attributable to US News’ monopoly on the publication of law school rankings in the USA. As the authors state on p. 189, ‘the USN is the only ranking that is broadly used and taken seriously by those in legal education’. There seems to be no, or very few alternative measures that could moderate the impact of the US News rankings. This is rather different from the experience in Europe. National rankings are still rare, and existing ones must compete with national evaluation bodies (e.g. the Research Excellence Framework in the UK, the HCERES—Agency for the evaluation of higher education in France), and with international rankings that often developed before the national ones and compete with one another (Jiao-tong, THE, QS, U-multi rank, etc.). US News has a monopoly given that research is not as central at law schools as it is in other disciplines, and its results cannot as easily be hierarchically evaluated (and therefore ranked) as in other disciplines (such as economics, of course, but also chemistry or physics).

In the end, the question remains whether this ranking process is reversible. It appears to have strengthened over time, with the impact of US News rankings becoming more and more important to the operations of US law schools. The strength of the Engines of Anxiety book is to make us feel the in-depth and seemingly ineluctable influence of these engines in situations where the publishers of rankings are monopolistic and where tuition is the main source of funding.

Feeling the numbers

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For three years, when I was in college in Paris, I had a very old-style mathematics professor. By American (though not French) standards, she was a particularly harsh grader. Out of a ranking scale from 0 to 20, the best students usually scored a 10 or 12. It was not infrequent for the class average to revolve around 6 or 7 out of 20. But what was most remarkable about Mrs H. (let’s call her that) was the way she handled the release of the grades. She started with the best ones and went down, slowly. So you would hear her shout “10...9...8...7...!” and suddenly you were unable to look at her, or anyone else in the class for that matter. Her comments would start at ‘pas mal’ (not bad) for the top grade, and become increasingly rude and dismissive. The process was purposefully anxiety-inducing, and she certainly lacked empathy. She wanted you to feel your place.

Occasionally, I would score better than expected. She never failed to remark on it: ‘Fourcade, whatever happened to you this time?’ But when the improvement started to
persist in my third year, I suddenly became a different kind of person in her eyes. I was re-
categorized. I had jumped a tier.

Even though I did not like her manner, I never really questioned Mrs H.’s grades because,
after all, this was mathematics. My answers to the problems were right or wrong, period. So
I took my grades to be a fair reflection of my abilities, and her judgment to be objective.

It was a bit different in the other subjects. There, the grading process was always
shrouded in mystery. My strengths were in French literature and philosophy. My work in
the social sciences and foreign languages—I can safely reveal this, now that I am a sociolo-
gist working at an American university—was weaker. I never quite knew why some of my
professors liked, and others disliked, my essays and oral presentations. Believing in the
objectivity of the whole process always took a bit of magical thinking. My classmates and I
discussed those grades more. There were divine surprises but also a lot of resentment floating
in the air, and a feeling that some, including myself, benefited from unfair, unspoken advan-
tages. Perhaps Mr R., the philosophy teacher, was fond of me because I had the reputation
of taking very neat notes. And it is possible that Mr L., the social sciences teacher, really dis-
liked the fact that I chatted incessantly in the back of the room. These impressions, whether
true or not, might have informed how each one of them approached my class work.

The ranking system that Wendy Espeland and Mike Sauder study in their marvelous
book, the US News and World Report rankings of US law schools, has a bit of both ele-
ments: it is composed of numerical measures and reputational ones. The LSATs and GPAs
on the one hand, and perceptions of a school’s reputation on the other, collected from
unknown experts throughout the legal field. The meshing of the two is what gives the system
its strength: their combination is ‘objective enough’ to have a naturalization effect, and it is
‘subjective enough’ to project the social authority of a deeply ingrained status order. The
ranked institutions experience the system’s real world effects with ruthless effectiveness: a
school with a 160 LSAT average knows it will be difficult to attract a student who scored at
170, bar some heroic financial and marketing efforts. With great empirical precision and
analytical skill the authors document how, in the span of 30 years, US News has become
impossible to ignore and has spurred major resource transfers within law schools. The con-
sequences for admission practices have been especially noteworthy: the system has led
schools to focus obsessively on the LSAT as opposed to the GPA and other characteristics of
applicants, including diversity and valuable personal commitments. This also means that
funds and scholarships have been reallocated to bolster the kinds of priorities that the ranker
cares about, rather than those that academic leaders constructed as important in a pre-
ranking era.

The political justification for such a system is that it holds the schools accountable, and it
does so impartially: everyone is ranked in the same way, according to a shared metric. The
US News method subjects the use of certain kinds of social advantages, such as the reliance
on opaque social networks or legacy status, to the external control of metrics, most promi-
nently the LSAT. Whatever we think of the test as a way to assess people’s capabilities, it
delivers an unmistakable moral promise, common to all commensurating devices: the prom-
ise of equality of treatment and independence from social influence (from wealthy alumni or
trustees for instance). But this kind of equality, it turns out, is a hard master to serve in prac-
tice. As I was reading the book, I was reminded of Laurence Fontaine’s (2014) brilliant anal-
alysis of how the arrival of the market in 17th century France was celebrated as liberating the
rising bourgeois class from its personalistic entanglements and unfair exchanges with the
nobility. But, she remarked, the same logic of impersonality and equality delegitimized solidaristic assistance schemes for the poor. We find echoes of the same dilemma in the fact that the rise of US News renders the exercise of other kinds of preferences and protections, such as the desire for a school to increase its socio-economic or racial diversity, more difficult to implement: if the metric does its job, and it will, the school that embraces these kinds of redistributive social goals will most likely see its position sink. As Espeland and Sauder write, ‘the algorithm makes ethical demands on those who cater to it’ (p. 99). The more ‘objective’ and individualized the social structure of competition, the more apparently leveled and fair the playing field ex ante, the harder it is to contest its outcomes or politicize its procedures (Simon 1988).

What this book captures supremely well is the unhealthy fixation rankings produce in all the constituencies that US law schools interact with, and how an impersonal and ultimately silly tool—a crude algorithm—becomes very personal for the people it touches. Espeland and Sauder show how the machine meets not only the institution, but also the self, and even the body. All the more reason, perhaps, to regret is that the authors did not try to articulate their extraordinarily detailed empirical study of people’s feelings about their rank, and about the ranking engine more generally, with a more conceptual discussion of what “feeling the numbers” means for individual subjectivities, why lawyers seem to be particularly vulnerable to this kind of power, and what this vulnerability implies for the social order within that profession.

The identity, performance and social prospects of a law school’s administrators, faculty and students (prospective, current and alumni), have all become wrapped up in the up and down movements of the organization on the US News ladder, particularly as it crosses dreaded or desired tier thresholds. For better or for worse, the US News system has become an institutionalized engine of what Pierre Bourdieu calls symbolic violence, complete with a new derogatory lexicon (TTT, for ‘third tier trash’). Commensuration gives condescension a highly visible hook to fasten itself onto. Minuscule—and for all practical purposes meaningless—differences in ratings can suddenly authorize groups of people identified with a particular totem (a school) to look at each other obliquely, and most importantly to feel differently about themselves—that is, to accept the ranker’s arbitrary decision as if it were an oracle, an instrument of veridiction. As one of the authors’ interviewees puts it: ‘they are convinced that the things that the ranking tell them about themselves are true.’ But what is it that produces this belief, and—more importantly—what is it about lawyers that produces this belief?

In Pascalian Meditations, Pierre Bourdieu argues that ‘the practical recognition through which the dominated, often unwittingly, contribute to their own domination by tacitly accepting, in advance, the limits imposed on them, often takes the form of bodily emotions (shame, timidity, anxiety, guilt.)’ (Bourdieu 2000, p. 169, my emphasis) Yes. Hence, indeed, the appropriately chosen title for the book, Engines of Anxiety. Anxiety that relevant differences in rank are produced from irrelevant differences in scores; that institutional work to engage the school toward some morally worthy pursuit will be counterproductive with the rankings; that law school deans’ dreams of high-power, high-autonomy jobs turn out to be nothing but the uninspired life of pernickety bureaucrats trained to mechanically follow and tweak the numbers. And thus the rankings are not simply engines of anxiety. They are also engines of alienation for people who feel reduced to being ‘cogs in the machine’.

But there is more. The symbolic domination is incomplete because the ranking’s legitimacy is limited, in fact, for three reasons. First, component criteria and their relative weight
are by design arbitrary. Second, US News uses pretty bare coercion and will rank schools even if they provide no data. Third and most importantly, it incorporates a fairly large reputational component (40% of the score comes from ranking on a reputational survey). So contrary to the objective and egalitarian political varnish, subjective judgment still permeates that particular ‘engine of anxiety’. As my favorite Canadian poet—Leonard Cohen—says, ‘there is a crack, a crack in everything. That’s how the light gets in.’ This is the biggest crack of all. The practitioners’ survey appears to have, at least from the information presented in the book, little external accountability since (1) it is based on subjective judgment (2) these judgments are not transparent: their sources are not revealed individually, and the characteristics of the surveyed sample remain unknown. The existence of the survey likely insures that the top schools remain at the top. But it intensifies the struggle for relative status below the top. Rumors, stories, and myths become fair game, which leads schools to engage in costly and rather pointless impression-management strategies. School administrators sponsor the release of promotional brochures mostly to reassure themselves that they are being proactive, rather than out of a belief that the material is effective. In fact, the reverse is true: they know that many of the glossy magazines are headed for the trash from the moment they are sent out.

The law school deans should remind us of Max Weber’s calvinists, who know that the money they accumulate at such a high personal cost cannot tell them anything about their election by God, but who accumulate anyway because it helps them “create” the certainty of salvation for themselves (Weber, 2002, p79). This irrational course of action allows them to relieve at least some of the anxiety they experience in the face of their eminently unknowable fate. But because the deans—unlike the ascetic Protestants—recognize quite willingly the irrational and even unproductive dimension of the whole enterprise, a space also opens up for resentment and anger against a God that is, after all, man-made and in the hands of a bunch of crappy journalists to boot. Whether that resentment will ever be enough to fuel a true revolt, or whether it inspires darker gaming strategies that the authors were not privy to is unclear. (Towards the end of the book the authors offer some insight into the specific collective action problems faced by law schools, as opposed to schools of dentistry.)

My final point relates to the role of money in this whole process. Money pops up in various parts of the narrative but the authors never use those as an opportunity to conceptualize the relationship between commensuration, commodification and value. The fact is that ordinal technologies like the US News and other types of ranking are partially fungible into money (Fourcade 2016). This is true on two levels, that of institutions, and that of individuals.

First, schools can try to ‘buy their way up’, so to speak, by spending lavishly on the kinds of applicants that will bring the best ranking bangs for the buck (those with high LSATs), or paying for expensive reputational actions, or for rankings consulting work (which some ranking companies, like Times Higher Education, will happily provide for a steep fee). Obviously the wealthiest institutions, which can sustain these kinds of expenses over a long period of time, have a tremendous advantage in this struggle. Others might engage in ruinous competitive strategies. Second, the fungibility logic percolates into the life and relative market ‘value’ of applicants themselves: given the high price of tuition in US law schools, socio-economic status plays an increasingly outsized role in determining how applicants get distributed onto the social space of law schools. Everything in the system tends toward a logic in which meritorious applicants from lower social backgrounds are driven to accept better offers from lower ranked schools simply because these are the ones they can afford,
while their wealthier peers have the freedom to ‘choose’ their truly preferred (and better ranked) school. Since employers, too, pay attention to rankings upon recruitment, the rankings advantage experienced by the second type of applicant and the rankings disadvantage that the first type of applicant resigned himself to accept might compound further over their lifetime trajectories. Note that this would obviously not be true in a system where tuition is free, or nearly free. In other words, money mediates the stratification processes at work here, both in the field of schools and in the social world that it serves. This magnificent book, in short, pushes us to reflect on the social conditions under which rankings fulfil their democratic promise and perform as engines of social mobility, and those under which they give into the law of the market, and become engines of social inequality.

References


