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Distinctive Excellence

The Unusual Roots and Global Reach of Academic Brands

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The study of academic brands intersects trademark law with critical university studies around questions both empirical and conceptual, from rather mundane things like universities' trademark policies and lawsuits over T-shirts and hoodies carrying university insignia all the way to the complex cultural, political, and economic tensions that frame the conflicted identity of the modern university. Straddling the line between knowledge and business, public and private, or between its local ties to the state and its reach toward the global economy of higher education, the modern university seems to have found in brands a tool to construct a coherent and attractive image, if perhaps only skin deep, of itself, its role, and its "excellence."

WHEN AND WHY

The contours of these developments can best be traced through some general questions. How has the self-representation of universities, colleges, and polytechnics changed over time, and at what point do we see a shift in focus from individual insignia to comprehensive brand strategies managed by marketing and communication offices?¹ Is that transition reflected in a stylistic change of the marks from scholarly insignia to corporate logos, from ponderous seals and Latin mottos ("Fiat Lux," "Veritas," "Rerum Cognoscere Causas") to agile modern marks? Often consisting of just one single noun or acronym – Harvard, Michigan, UCLA,

* I wish to thank my colleagues at the UCLA School of Law for the thoughtful and detailed suggestions and criticism, which they probably will not think I have adequately answered here. Thanks to Beatrice Dumin, Kriss Ravetto, and Madhavi Sunder for their comments and support, and to Vinson Lin for his research assistance.

¹ The seal of the University of California, for instance, was designed by Tiffany & Co. in 1908, but that was an isolated commission rather than an element of a comprehensive brand strategy.

NYU, SciencesPo, LSE, etc. – modern university marks can fully convey their comprehensive brands without even mentioning the term “university.”²

Was the turn to branding driven by an attempt to strengthen the ties with students and parents as potential future donors, or was the university simply following the lead of its brand-conscious corporate partners? Either way, has the university’s turn to branding merely followed established trends or can we find something more specific to it, something inherently tied to the university and its history, like, for example, the US universities’ unique investment in sports (see Chapter 8) and the consequent engagement with the media, the world of merchandising, and audiences that have quickly grown beyond campus, embracing a national and even international public?³ Is it the nexus of sports and media that introduced a brand mentality into the university, perhaps together with that peculiar form of sports stats we now call academic rankings? And has something as mundane as Sky Sports’ decision to include US college games in their all-reaching broadcast network been instrumental in turning those academic brands into a global phenomenon?⁴

Or did it start at the other end of the geographical scale, in the local gift shop? Has the tradition of selling branded sweatshirts, umbrellas, coffee mugs, rings, and shot glasses functioned as a humble “brand incubator” where the university learned the importance of developing relations with alumni, students, and parents through souvenirs and wearable memorabilia that could also communicate the brand to other admirers in the making? Or was it just a way to generate some additional revenue, like the gift shops we have to traverse before we are allowed to exit an art museum? To put it differently, did universities start to aggressively enforce their trademarks to protect their merchandise revenue (see Chapter 7), or to control their

² Marks that consist of just a few letters seem to function more as visual logos than the mere linguistic acronyms of their longer descriptive marks like the “Massachusetts Institute of Technology” or “London School of Economics and Political Science.” Less signifies more. For instance, the minimalist “LSE” or “MIT” acronyms and logos convey much more than the teaching of economics in London or a polytechnic in Massachusetts – older referents that, in any case, are becoming both unfamiliar and irrelevant to younger audiences.

³ While the brand-building potential of sports is undisputed, how can we explain the relation between generally elevated or simply pretentious mottos like “Veritas” or “Under God’s Power She Flourishes” and the distinctly lowbrow (occasionally adolescent-sounding) names of universities’ sports teams and their mascots? How can the “Yale Bulldogs” go hand in hand with the university’s “Lux et Veritas” logo? Or how can UC Santa Cruz’s mascot “Sammy the Slug” be associated with the same research university that prominently features “Let There Be Light” in its seal? How can a mascot function as a successful sub-brand if its meaning is so radically removed from that of the main brand? (It would be a stretch, I believe, to call it product differentiation.) On the relationship between university, sports, and branding, see Mark Garrett Cooper and John Marx, *Media U: How the Need to Win Audiences Has Shaped Higher Education* (New York: Columbia University Press, 2018); Gaye Tuchman, *Wannabe U: Inside the Corporate University* (University of Chicago Press, 2011); Joshua Hunt, *The University of Nike: How Corporate Cash Bought American Higher Education* (New York: Melville House, 2018).

⁴ I owe this point to Guido Guerzoni. Grazie.

“identity” and defend their brand from dilution? And if there was a transition from the former goal to the latter, when did a counterfeit T-shirt morph into a threat to a university’s identity?

One could take a very different perspective, if only as a heuristic experiment. Could it be that prestigious academic institutions have not actually turned to branding but have instead exemplified luxury brands before that concept even existed – “Oxford,” “Yale,” or the “École Normale Supérieure” having always functioned as signs of social distinction and identity for students, alumni, and even the nation as a whole rather than as simple providers of educational services? Not unlike nineteenth-century corporate trademarks, older universities seem to identify their brand with vintage, which is unsurprising given that universities are among the oldest of corporations. Harvard, for instance, claims to be “the oldest corporation in the Western Hemisphere,”⁵ and a few other universities secured international name recognition several centuries before any of today’s brand-based businesses even existed. Could it be that the ability of brands to lend distinctiveness to their goods and services and provide “identity narratives” to their purchasers is something that the names of some universities have been doing since the late Middle Ages, thus prefiguring the very function of the modern brand?

EXPANDING MARKETS, PIVOTING ORIGINS, STRETCHING IDENTITIES

Like other corporations offering an expanding range of different products and services, modern universities have much to gain from developing distinctive brands.⁶ (Research in higher education, for instance, frequently models the university–alumni relationship in terms of “brand loyalty.”⁷) At the same time, the goal of university branding is not just to attract donors, high-achieving students, and corporate partnerships but also to give a sense of unity and identity to their

⁵ www.harvard.edu/about-harvard/harvards-leadership/president-and-fellows-harvard-corporation (last accessed February 10, 2021).

⁶ Robert M. Moore, *The Real U: Building Brands that Resonate with Students, Faculty, Staff, and Donors* (Washington: CASE, 2010).

⁷ James H. McAlexander and Harold F. Koenig, “University Experiences, the Student-College Relationship, and Alumni Support,” *Journal of Marketing for Higher Education* 10 (2001): 21–43; John M.T. Balmer and Mei-Na Liao, “Student Corporate Brand Identification: An Exploratory Case Study,” *Corporate Communications: An International Journal* 12 (2007), 356–75; Brandi A. Watkins and William J. Gonzenbach, “Assessing University Brand Personality through Logos: An Analysis of the Use of Academics and Athletics in University Branding,” *Journal of Marketing for Higher Education* 23 (2013): 15–33; M. Pinar, P. Trapp, T. Girard, and T.E. Boyt, “Utilizing the Brand Ecosystem Framework in Designing Branding Strategies for Higher Education,” *International Journal of Educational Management* 25 (2011): 724–39; A. Lowrie, “Branding Higher Education: Equivalence and Difference in Developing Identity,” *Journal of Business Research* 60 (2007): 990–99; C. Chapleo, “Do Universities Have ‘Successful’ Brands?” *International Journal of Educational Advancement* 6 (2005): 54–64.

increasingly diverse portfolio of goods and services that now extends well beyond their traditional pedagogical mission: for example, art museums, technology parks, sports and sports-related merchandising, technology licensing, executive education, hospitals, book publishing, extension courses, distance learning programs, and so on.

The geographical spread of the services offered by the modern university is as conspicuous as the increasing diversity of their nature. More than ever, the university is trying to reach beyond the traditional physical boundaries of its campus. As we see among luxury brands (see Chapter 6), the trend toward academic branding is visibly tied to globalization, in this case the conspicuous transformation of higher education into a global market in which universities compete for foreign students (who often pay higher fees), while also franchising their brands to satellite campuses and partnerships like NYU Abu Dhabi, Yale-NUS, MIT-Skoltech, and so on. (This is a trend that premier museum brands like the Guggenheim and the Louvre have also been pursuing, pointing to the emergence of a global market for “cultural brands,” not just academic ones.)⁸ Even when the ambitions are less than global, the mobilization of academic brands is still associated with the university’s attempt to reach beyond its physical campus. Examples are the development of online distance learning programs that crucially rely on the brand to offset possible doubts about their pedagogical value (see Chapter 4), or the use of brands like “Stanford” or “UCLA” with strong associations to top medical schools and hospitals to leverage a university’s entry into broader regional health care markets.⁹

What prestigious universities share with famous museums like the Louvre or the Guggenheim (but not with other corporations with equally distinctive brands and global recognition) is that, until recently, they have been physically unmovable, and for good reasons. Corporations can relocate both their headquarters and production facilities (the latter virtually anywhere in the world), but universities and museums have drawn most of their distinctiveness from their history in the places where they have grown,¹⁰ creating a resemblance between their brands and the “terroir” that

⁸ The franchising of the Guggenheim Museum also indicates a conscious attempt to create a “trade dress” effect by commissioning the design of all its foreign museum buildings to Frank Gehry, who has used his signature tri-dimensional effect produced by undulating titanium panels to create very different buildings that at the same time display an unmistakable brand-like family resemblance.

⁹ I thank Joel Braslow for this point.

¹⁰ Because the image and institutional culture of technology-focused institutions involve the future more than the past, their relatively short pedigree may even be seen as a sign of distinction. For the same reasons, the reputation of such universities is also less dependent on their location and “terroir.” Even though Stanford seems to be connected to a specific local innovative ecology, it is one that Stanford helped constitute. Whether Stanford made Silicon Valley or vice versa is a matter of debate while, by contrast, it is clear that Paris made the Louvre.

geographical indicators try to capture (see Chapter 5).¹¹ A trademark relates a good or service to an origin, but not literally so. It needs to connect the good to a source to guide the customer through his/her purchasing choices, but it would be irrelevant to that function of the trademark to disclose the precise identity or physical location of that origin: “We may safely take it for granted that not one in a thousand knowing of or desiring to purchase ‘Baker’s Cocoa’ or ‘Baker’s Chocolate’ know of Walter Baker & Co., Limited,” or of where Walter Baker & Co. may be located.¹²

But it is commonly known that the Louvre is based in Paris, the Uffizi in Florence, the Guggenheim in New York, Oxford in Oxford, and Cambridge in Cambridge. In several cases, they have been occupying the same buildings for centuries – buildings that prospective students or visitors could find pictured in print media and now online, imagining themselves visiting or studying there.¹³ Far from incidental, the locations of these institutions are intertwined with both the experience of their brand and the genealogy of its appeal. Universities and museums become distinctive through accumulation in one place: by bringing works of art from different places and periods to one museum building; many books and manuscripts in different languages and on different topics to one library; and many distinguished faculty and top-performing students to one campus. While most corporations can sell and ship their goods anywhere in the world, tourists and students have traveled to very specific places to enjoy the services of academic and museum brands – brands that could have hardly come into being outside of those locations and without their specific historical roots to them.¹⁴

“Enjoyment,” however, means something quite specific in this case. It does not refer primarily to purchasing a branded good to take it home or wear it, but rather to paying tuition or admission in order to spend time in a cultural institution, admire its collections, use its libraries, learn, do research, meet other people, etc. Though

¹¹ Among the substantial literature on the subject, see Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press, 2012).

¹² *Walter Baker & Co., Ltd. v. Slack*, 130 Fed. 514, 518 (C. C. A. 7th, 1904), discussed in Frank Schechter, “The Rational Basis for Trademark Protection,” *Harvard Law Review* 40 (1927): 813–33 (at 815).

¹³ It is also worth noticing that the connection between institutional identity and location is less relevant to the brand of museums of contemporary art, which are by definition newer institutions that can be successfully established in a variety of different locations, with shallower roots, if any, in the local cultural terroir. Comparable differences might also be seen between older broad-spectrum universities and more recent elite institutions that have specifically tied their image to high-tech. It would be difficult to imagine Oxford having grown a brand like the one it has in Oxford, England in, say, Pasadena, California. At the same time, one could imagine Caltech having developed its strong brand in other locations.

¹⁴ In the case of museums, their brand is obviously rooted in their direct genealogical connections to prestigious past sovereigns, relations that developed and are reflected in the museum’s present location – the Hermitage Museum being the czars’ former palace, the Uffizi in the former Medici Galleria, etc. To some extent, that can also be said of some of the oldest universities like Cambridge or Oxford and their relationship with past sovereigns, aristocrats, and the Church.

universities and museums may include gift shops, they do not function like shops. Nor can universities be easily treated as sites of so-called experiential purchasing, “the manufacturing of experiential consumer practices, that is, [the] consumption of non material objects.”¹⁵ Like going on a cruise, the college experience involves expenditures and emotions, but obtaining an academic degree requires work and the fulfillment of requirements that the student has modest control over. Academic curricula allow for choices but are not a buffet. Recent studies of brand identification in higher education suggest that in fact buffets are not the point. The main long-lasting source of alumni allegiance is “recalled academic experience,” not “recalled social experience.”¹⁶ Among those who feel connected to their alma mater, the memory of parties fades away faster than that of transformative educational experiences – experiences the student had to work for, not just pay for.

At the same time, the recent transformation of those local institutions imbued in local sociocultural charisma into internationally recognized brands through the globalization of higher education (or, in the case of museums, the emergence of mass tourism) has also created the conditions of possibility for them to branch out from their original locations. I argue, however, that universities could not have franchised prior to becoming academic brands because an earlier geographical spread would have preempted the development of the very brand that eventually enabled their franchising. The university changes constantly through generational flows of students, faculty, administrators, curricula, and programs, and yet it is perceived to remain “one” by staying physically put, by growing around its first buildings, which always remain (if still standing) part of the campus. Unlike other corporate trademarks, therefore, a university’s mark always points to a real physical point of origin, even when that location is not explicitly featured in the mark. There would be no academic brand without an original campus. (That might also explain why it is difficult to imagine a successful university mark becoming generic and losing its ability to function as a trademark.)¹⁷

Unsurprisingly, mobility means something quite specific in the case of the university. NYU’s expansion to Abu Dhabi, for instance, exemplifies a form of movement that is conceptually closer to grafting than to franchising. Unlike restaurant chains (or corporate headquarters) that can be located virtually anywhere

¹⁵ Eva Illouz, “Emotions, Imagination and Consumption: A New Research Agenda,” *Journal of Consumer Culture* 9 (2009): 377–413 (at 386–87).

¹⁶ Adrian Palmer, Nicole Koenig-Lewis, and Yousra Asaad, “Brand Identification in Higher Education: A Conditional Process Analysis,” *Journal of Business Research* 69 (2016): 3033–40 (esp. 3037–38).

¹⁷ Could you imagine a scenario where a famous university brand – e.g., Cambridge, Princeton, or Berkeley – would become a generic designator for higher education itself, the way Kleenex, Thermos, or Aspirin have come to be used as the name for an entire class of products rather than a specific member of that class? If you cannot, I believe it is because academic brands, no matter how famous they become, never refer to more than one specific university in its location, or to its possible satellites, which are satellites, not franchises.

because they are specific to nowhere, in the case of prestigious universities and museums the “original plant” stays back in Paris, New York, or Cambridge, while the “brand cuttings” are spliced onto other newer institutional stocks, in other locations, where more people may enjoy their fruits. All that a restaurant chain’s brand can convey is the consistency of its menus and ambience, but university and museum satellites deliver a little bit of the real thing – for example, some courses taught by faculty from the original campus, or some artwork from the original collection. It’s a chain, but it’s original. What spreads is not just the brand as a sign different from other signs but also some unique things and persons – something “auratic” – that come from the brand’s place of origin. (A satellite Louvre museum featuring only photographic reproductions of artwork on display in Paris would not work, in the same way that a satellite campus of a major university would not be attractive if all that the two shared was a course catalog.)¹⁸ The exhibits at the Louvre Abu Dhabi do not need to include the Mona Lisa, and Yale does not need to ship its Nobel Prize winners to Singapore, but something more than the brand as sign, something material and from the center – a “cutting” – needs to be grafted onto the new branches, or perhaps just sent to the satellite campus for a little while.¹⁹ A mere “university chain” – that is, a centerless chain identified only by its mark and perhaps by the trade dress of its buildings – would just look like another for-profit college populating nameless strip malls.

If I have stressed the specificity of academic brands it is because it does not seem to match entrenched views about the function of marks and its historical trajectory. In his seminal 1927 article, Frank Schechter argued that:

The signboard of an inn in stage-coach days, when the golden lion or the green cockatoo actually symbolized to the hungry and weary traveler a definite smiling host, a tasty meal from a particular cook, a favorite brew and a comfortable bed, was merely “the visible manifestation” of the good will or probability of custom of the house; but today the trademark is not merely the symbol of good will but often the most effective agent for the creation of good will, imprinting upon the public mind an anonymous and impersonal guaranty of satisfaction, creating a desire for further satisfactions. The mark actually *sells* the goods.²⁰

Schechter contrasted the premodern “Golden Lion” signboard with the function of modern trademarks, stressing the difference between marks that consumers took to

¹⁸ Even if the course syllabi are the same, it makes a crucial symbolic difference who teaches them. One can find all MIT syllabi and course materials online, but using them on your own or with a tutor, however competent, would not produce an “MIT education.”

¹⁹ Another figure for this transfer could be the relic – a material and unique testimonial that is made to circulate in time and space from the center of charisma. I am following Eva Illouz’s suggestion that, “The relic marks the irruption of the past inside the present through a unique and unreproducible object. Consumer goods are similar to relics in that they also open up inside the present a temporal breach: however what is opened up here is not the past but the future, through infinitely reproducible goods” (“Emotions, Imagination and Consumption,” 396).

²⁰ Schechter, “Rational Basis for Trademark Protection,” 818–19.

signify known specific services and goods provided in a specific place by specific individual providers, and marks that no longer signify the consumers' goodwill in specifically localized services. Modern trademarks become the means through which business can create such goodwill by signaling to customers that any inn in any location bearing that sign will provide them with the quality of services they are accustomed to, whether or not they have stopped there before. Scholars may describe or locate this transition differently, but few would disagree with Schechter that it has happened, and that it established the roots of what has eventually grown into the brand economy.²¹

Surprisingly, however, academic brands still function very much like the "Golden Lion" or "Green Cockatoo." They have become global brands of academic excellence, and yet they remain essentially tied to specific campuses and to the services that specific, known individuals like a university's distinguished faculty provide. Contrary to Schechter's otherwise remarkably accurate forecast of the future of trademarks, the "Green Cockatoo" (*sub specie* Oxford) has become a global brand, signifying *both* goodwill *and* its own value as a floating signifier of academic excellence.²² It has gone global by remaining essentially local and thus playing two signifying functions (or signifying two kinds of value) at the same time.

FROM *BILDUNG* TO EXCELLENCE

Academic branding goes hand in hand with broader neoliberal management and cultural trends like the erosion of the university's traditional (if inconsistently upheld) nonprofit stance, or the perception of education as a product with students as its consumers, but there may be more to it than that.²³ The recent expansion of the university's activities and services as well as its new global ambitions have created a broad identity crisis across academic institutions. Even those universities that proudly claim their status as public institutions feel compelled to frame their "publicness" as a distinctive brand element:

The University of California is located wherever a UC mind is at work. At any given moment, people in the UC community are exploring, creating and advancing our shared experience of life in California and beyond. These [brand] guidelines ensure

²¹ Deven R. Desai, "From Trademarks to Brands," *Florida Law Review* 64 (2012): 981–1044; Rochelle Cooper Dreyfuss, "Expressive Genericity: Trademarks as Language in the Pepsi Generation," *Notre Dame Law Review* 65 (1990): 397–424; Barton Beebe, "The Semiotic Account of Trademark Doctrine and Trademark Culture," in Graeme B. Dinwoodie and Mark D. Janis (eds.), *Trademark Law and Theory: A Handbook of Contemporary Research* (Cheltenham and Northampton, MA: Edward Elgar, 2009), 42–64 (esp. 58–64); Mark P. McKenna, "The Normative Foundations of Trademark Law," *Notre Dame Law Review* 82 (2013): 1840–1916 (esp. 1896–1916).

²² On brands as floating signifiers, see Beebe, "Semiotic Account," 60–63.

²³ Christopher Newfield, *Hy and Industry: Business and the Making of the American University* (Durham, NC: Duke University Press, 2004).

we express these shared values with every communication. In short, this site helps us all “Speak UC.”²⁴

For better or for worse, brands have become the university’s idiom of self-representation and marketing, but probably also the medium through which the so-called university of excellence – private, public, elitist, or inclusive – has come to think about itself. Trademark scholars have shown that brands function as discursive tools that allow consumers to construct or project their identities as self-styled narratives tied to the purchase and display of specific branded goods and the claim to values deemed to be associated with them.²⁵ The university appears to engage in a comparable process of self-fashioning. As the head of the UC Marketing Communication Department puts it, the goal of an academic brand is “to create a coherent identity that would help us tell the UC story in an authentic, distinctive, memorable and thoughtful way.”²⁶ The relation between branding and narrating the university does not stop at the level of corporate strategy but trickles all the way down to mundane fund-raising practices, where the university reaches out to potential donors by presenting them with students’ poignant stories of personal challenges followed by sterling professional successes that were enabled (and, it is implied, could only have been enabled) by that very unique university.

In *The University in Ruins* (1997), Bill Readings argued that the emergence of the now-pervasive discourse of excellence signaled a radical shift in the nature and function of the university and its relationship to the state.²⁷ The university of excellence – the one we inhabit – is the successor to the nineteenth-century German research university that, functioning as the educational wing of the state, was meant to lead its students to *Bildung*. More than the development of professional skills, the Humboldtian university was meant to support a process of individual and cultural development aimed at attuning the students’ sense of self to a specific culture. It was part of a clear educational program framed by the nation-state’s view of what culture and nation should be and sought to mold its students to produce a certain kind of citizen and civil servant. Assumptions about culture and nation went hand in hand with assumptions about education, curriculum, the students’ social background, and the function of the university, enabling one to think of the “quality” of the university as an index of how well it performed this state-specific function.

²⁴ <http://brand.universityofcalifornia.edu/#!the-university-of-transformation> (last accessed December 13, 2021).

²⁵ Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* (New Haven, CT: Yale University Press, 2012).

²⁶ “Meet Vanessa Correa, UC’s Creative Director,” *The California Aggie*, December 6, 2012, <https://theaggie.org/2012/12/06/meet-vanessa-correa-uca-creative-director> (last accessed February 15, 2021).

²⁷ Bill Readings, *The University in Ruins* (Cambridge, MA: Harvard University Press, 1997), 21–43.

According to Readings, this framework came to an end in the late twentieth century with the distinct weakening of the relationship between the university and the state, which enabled or caused the university to become a more open and flexible system or, as some say, an entrepreneurial one. Even in those cases where the state still provides some financial support, there is no longer a unified notion of *Bildung* that the university is expected to deliver on behalf of the state. (Readings did not mention brands, but the current tendency among public universities to downplay the name of their state in their main mark (“Berkeley”) embed it into a logo-like acronym (“GaTech,” “ASU,” “UCLA”) or treat it more as a geographical indicator than a sociopolitical partnership (“Michigan,” “Cal”) seems to index a change in the connection between the state and the university.)

The university has also slowly opened up to students with more diverse cultural and ethnic backgrounds, new fields that extend well beyond the traditional liberal arts, and forms of professional training that were previously deemed non-academic. In the UK and Germany, for instance, the strong traditional distinction between universities and polytechnics or *Hochschulen* has been abolished. At the other end of the spectrum, artistic training, which used to be housed in academies, is now commonly offered by the university. The multiplication of new fields exemplified by adding “studies” after a seemingly endless range of different questions or materials – cultural studies, gender studies, media studies, innovation studies, border studies, etc. – is yet another illustration of this pedagogical shift from a unified *Bildung* toward an ever-expanding range of questions and constituencies.

Taken together, these transformations have led to the substitution of the concept of quality with that of excellence. We no longer have a unified notion of education and its goals that can comprehend the many fields we now see, each with their own specific goals and modes of evaluation.²⁸ The landscape of the university’s constituencies has also significantly expanded, further complicating the judgment of what counts as an appropriate curriculum.²⁹ The concept of excellence has emerged in response to this predicament in order to create the impression that something like a unified notion of quality can be found across its many different instantiations, including future ones, despite the patently different criteria used to assess such excellence. Being excellent means that you are “great” at doing what you do no matter what that is – a notion of quality so pliable as to be applicable to any and all of the university’s services, including parking.³⁰ Excellence acknowledges the utterly

²⁸ The same shift may also point to the roots of the requirements that our institutions (or, in the case of law schools, the American Bar Association) have introduced, requiring that we specify our courses’ “educational objectives” and “learning outcomes” – questions that would have sounded rather strange in nineteenth-century Germany, where they would have all received the same obvious answer: *Bildung*.

²⁹ Readings, *University in Ruins*, 24: “excellence is not a fixed standard of judgment but a qualifier whose meaning is fixed in relation to something else. An excellent boat is not excellent by the same *criteria* as an excellent plane.”

³⁰ Readings, *University in Ruins*, 24.

local notion of quality while simultaneously intimating that quality is equally present in all of its local manifestations – *una et multipla*. (Paradoxically, the same lack of fixed reference that makes excellence so pliable and effective can also bring it dangerously close to genericness. No matter what they do, all universities can now freely or shamelessly cast themselves as “institutions of excellence”).

Academic brands aim to transform the evanescence of academic excellence into an asset, filling the gap left behind by the disappearance of a unified idea and function of the university while capitalizing on the possibilities this opens up. The discourse of excellence has framed the university’s move to diversify its scope well beyond that of its institutional ancestors, and while we can no longer define what the university is or does, we can brand it and thus create the effect of unity in its absence. It is as if two virtualities, when superimposed, create the optical illusion of an actuality. Excellence projects a form of quality that can only function by having no unitary definition, while the academic brand projects itself as the unitary origin of that excellence. That “origin,” however, is virtual. It only exists as a trademark, a sign defined as: “any word, name, symbol, or device . . . used . . . to identify and distinguish his or her goods . . . from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.”³¹ The university may be confused about its mission, but it’s precisely this identity crisis that is turning it – whatever “it” may be – into an increasingly valuable brand.

BRANDING BY NUMBERS?

The relationship between the discourse of excellence and the turn to branding can be traced to today’s widespread reliance on metrics for evaluating academic work (see Chapter 3). This may seem paradoxical given that bureaucratic number-crunching looks hardly comparable to the graphic simplicity and immediacy of a logo, or the inherently qualitative storytelling that brands promote. The symbiosis of brands and metrics, however, is rooted in the complementarity of their differences and in the fact that metrics have come to be treated as the best way to manage the assessment of excellence. As a result, university rankings have become inextricably tied to brand-building.

For centuries, the peer evaluation of colleagues’ research has been one of the distinctive features of the academic world. Today’s supporters of metrics argue, however, that the parameters for the judgment of quality based on peer review are too opaque, prone to bias, and deploy different field-specific standards of evaluation. Instead of chasing after something as undefinable as quality, they have successfully proposed to focus on quantifiably salient features of the work, like assessing its post-publication impact as measured by the citations it receives. A citation is treated as a distinct event, not an opinion. Positive or critical, the citation happened. And being

³¹ § 45 (15 U.S.C. § 1127), emphasis mine.

reliably recorded in an article's footnotes and references, citations can be easily added up and elaborated to produce a variety of indexes. Quality has been turned into excellence, and in this case excellence has been made measurable by using "publication impact" as its proxy.³²

Excellence is inherently field-specific and thus potentially incommensurable across the spectrum of academic disciplines and genres. But if one can make excellence look measurable through proxies, then the university can have its cake and eat it too, holding on to the specificity and locality of excellence while also implying that excellence can be objectively assessed (and used to make sound decisions) across different disciplines, institutions, and contexts. Furthermore, if one agrees that excellence can be translated into numbers even in the most difficult of scenarios involving the notoriously elusive evaluation of research excellence, it follows that it's easy to assume all other forms of university excellence are also quantifiable, with even less difficulty, covering pretty much anything the university does or will do. Finally, unlike judgments of quality, assessments of impact can be scaled up, using aggregate metrics of the impact of the publications of individual scholars to measure the impact of departments, schools, and universities. *And then rank their relative "excellence."*

Metrics and brands are two complementary ways of capturing academic excellence and communicating it not only to the insiders of a given field, but especially to non-specialists. Brands reduce the customer's search costs and, likewise, metrics can be helpful to those who need to make decisions about a publication or a product whose production process or technical details they know little or nothing about, all the way down to students and parents trying to decide where their tuition money should go based on metrics-based university rankings. Being associated with numerical figures, metrics has the look of objectivity, while brands do not. Still, the main metric outcome of academic evaluation – rankings – is effective precisely because of the ubiquitous and endless public and private conversations and commentaries it constantly fuels. If metrics did indeed get things right, we would not need all the competing rankings we have, nor would they be discussed, questioned, or compared as actively and pervasively as they are – as numerical tea leaves.³³ In sum, from the academic consumer's point of view, metrics, rankings, and brands are part of the same conversations and decisions. Rankings are made of numbers, which makes them "look numerical," but are viewed, used, and discussed as qualities.

³² Mario Biagioli, "Quality to Impact, Text to Metadata: Evaluation and Publication in the Age of Metrics," *KNOW: A Journal on the Formation of Knowledge* 2 (2018): 249–75.

³³ The development of different global university ranking protocols is seen as an attempt to provide a fuller picture, fill gaps, and correct the biases of other ranking systems – a path to ever-improving precision and objectivity. But what if all the rankings we see were just evidence of a proliferation of many different, even possibly incommensurable metrics because they are, in fact, measuring differently construed objects?

The establishment and function of brands significantly overlap with those of reputation – the construction of a product’s quality as knowable and reliable by connecting it to a reputable provider or origin. The same applies to academic rankings (especially those of *U.S. News & World Report*, assiduously followed by US universities).³⁴ While expressed in numbers, rankings like USNWR rely primarily on the qualitative reputation that universities and departments earn from key academic opinion leaders such as upper administrators from other institutions. (They do not measure reputation the way measuring tapes measure the length of wood planks, but rather simply bestow a quantitative look to qualitative judgments of distinction.) Both brands and rankings are about creating an effect of distinction in the eyes of the beholder – a distinction that is then stabilized by spreading its recognition to other people, often through networks of consumers, including the students themselves. Additionally, both academic rankings and brands are becoming increasingly effective and valuable as a result of the globalization of those markets. Students and their families rely on academic rankings and their branding effect to choose among hundreds of universities they have little or no direct knowledge of. At the same time, those same universities use metrics when trying to identify and hire top faculty talent from places that may be beyond the reach of traditional recruitment networks based on name recognition. A thousand citations, it would appear, speak louder than a letter of recommendation. Similarly, universities rely heavily on metrics during the student admissions process, carefully evaluating whether an applicant’s “ranking” – their scores on the SAT, GRE, LSAT, etc. – will contribute to or diminish both the school’s brand and its own ranking.

The global branding game, however, is not played on an even field. Up-and-coming universities that have not yet established a global reputation face an additional challenge as they try to become more distinctive: there are too many of them, and they may be geographically too far removed to be known by opinion leaders in countries “that matter.” It is therefore interesting that some newer global ranking systems (especially those developed in Asia, like the *Academic Ranking of World Universities*, ARWU) do not privilege reputation by opinion leaders (like the USNWR does), but instead emphasize quantitative metrics (faculty productivity, journal impact factors, etc.).³⁵ This suggests that numerical ranking has become a way to build academic brands when and where emergent universities are still unknown to the “opinion leaders” of the Global North, either because they are still

³⁴ Ellen Hazelkorn, *Rankings and the Reshaping of Higher Education* (London: Palgrave Macmillan, 2015); Barbara Kehm, “Global University Rankings: Impacts and Applications,” in Mario Biagioli and Alexandra Lippman (eds.), *Gaming the Metrics: Misconduct and Manipulation in Academic Research*, (Cambridge, MA: MIT Press, 2020), 93–100.

³⁵ The *U.S. World & News Reports* rankings do include some quantitative elements, but they concern undergraduate programs – like incoming students’ test scores, expenditure per student, etc. – not research output. Ben Wildavsky, *The Great Brain Race: How Global Universities Are Reshaping the World* (Princeton University Press, 2010), 100–40.

emerging or because they are too far away and outside of the cognoscenti sphere, or both. Metrics and rankings function as branding by numbers – converting numbers into reputation for those institutions that do not yet have prominent reputations. They can also work the other way around, converting the reputation that known academic brands have in the eyes of opinion leaders into numbers that are then translated into rankings.

For instance, a university that is ranked between 400th and 500th globally has only an miniscule chance of developing a valuable brand anytime soon, or even of having its name known and recognized outside of its region. However, if that same university manages to have its faculty achieve a strong publication output in relatively reputable journals, it will quickly start to move up in rankings like the ARWU that focus on quantitative performance indicators, not qualitative reputation. Eventually it may be able to break into the top 200, and then perhaps even the top 100, at which point it may develop some name recognition precisely by having its name seen by the millions of people from around the world who pore over those rankings, assiduously comparing them to see who is moving up and who is heading down. (But very few people read the entire ranking list, so universities outside the top 100 are probably not likely to have their name seen by many, thus condemning their emergent brand to dwell in the shadows a while longer.) And if, hypothetically, an up-and-coming university was lucky enough to make it to the top twenty (which is exceedingly difficult, given the first-entrant advantages of older institutions), its brand would become strong and distinctive enough to endure just based on the reputation it would have gained through the very rankings that brought it to the attention of academic leaders in the first place, and whose opinions will feed both the brands and the future rankings of top universities.

I propose we think of these rankings – the ranked lists of university names on a screen or page – as global billboards. Not only are these rankings accessed and assessed nonstop by millions of people, but, while inherently and directly derived from metric evaluations of the “excellence” of hundreds of universities, they are experienced as visual objects, as ranked “logo walls.”³⁶ More than a gateway to branding (which I have argued they also are), global rankings may be the petri dish in which academic brands grow, the screen on which a university’s name will be seen and recognized in relation to others that precede and follow it on the list. Metrics and brands are therefore two technologies of distinctions that are seamlessly spliced together, even sharing the same medium: the ranked list – a list that while looking “objective,” functions in fact as material for conversations and interpretations, even disputes, among its users. In the same way that consumers of luxury goods will disagree in their evaluation (that is, the ranking) of this year’s Fendi, Chanel, or Hermès collections, so too will the students (and their parents) who are

³⁶ By 2010, just the ARWU alone was already receiving 2,000 viewings per day, despite being a newcomer in the rankings market (Wildavsky, *Great Brain Race*, 112).

considering which Ivy League university is “the best.” Rather than destabilizing the brands, however, these conversations and disagreements over whether the ranking of a certain university is correct (or correct in certain rankings and wrong in others) are in fact constituting and reinforcing them by teasing out the things that make a particular university “so special” and different from others.³⁷

BRANDING – AND ROTTING – FROM WITHIN

One distinctive feature of academic brands is that they tarnish from within, that is, they can be damaged by some of the same associations that made them distinctive to begin with. An example of this is the controversy, studied by Janet Halley, surrounding Harvard Law School’s seal, the design of which was borrowed from the family crest of an eighteenth-century slave owner from a slave-trading family and early key donor – Isaac Royall, Jr. – whose 1781 bequest went to fund Harvard’s first Chair in Law, thus seeding the establishment of the law school itself (see Chapter 9). An association that had been seen as seminal to the school’s beginning (and then to the distinctiveness of its ancestry-fed brand) has now turned against it.

Notice that this is different than a corporation harming its reputation by producing defective goods like, say, Boeing damaging its brand by selling crash-prone 737 Max airplanes. Nor is the harm to the Harvard Law School brand comparable to the tarnishment that actors external to the Coca-Cola Company caused by manipulating its mark “Enjoy Coca-Cola” into “Enjoy Cocaine.”³⁸ It also differs from the Proud Boys’ recent use of Fred Perry polo shirts or yellow kilts by Verillas – an LGBT-owned brand. While these brands were dismayed to see their products become part of the Proud Boys’ unofficial uniform, they had no cause of action against them given that the shirts and kilts were lawfully purchased, and the brand itself had not been manipulated.³⁹ All they could do was pull those items off their racks to prevent further purchases. As with the Royall scandal at the Harvard Law School (HLS), this controversy did not follow from recent actions by the brand owners or because of any substandard quality of the goods and services involved, but resulted from the radically new (and politically opposite) associations that the consumers – the Proud Boys and HLS students, respectively – attached to or rediscovered in the brands well after their original establishment.

³⁷ These numbers are meant as measures, but to the reader they function like symbols; not “1” as a numeral but “Number one!”; not “#59” but “Best University in Russia,” and so on. They look like factual measures of performance – mathematical signs – but function like visual symbols, that is, evidence of brand recognition. The higher your university appears on the billboard, the more distinctive it is. More than a table of performance measurements, a ranked list of university names could be thought of as a space of comparative advertisement.

³⁸ *Coca-Cola Co. v. Gemini Rising, Inc.*, 346 F. Supp. 1183 (EDNY 1972).

³⁹ Elizabeth Segran, “Why the Far Right Proud Boys Co-opted these Polo Shirts,” *Fast Company*, October 7, 2020; “LGBT-Owned Kilt Maker Denounces Kilt-Clad Proud Boys,” *BBC News*, December 15, 2020.

A crucial difference, however, is that Fred Perry and Verillas could end those associations by stopping the sale of these goods: “We decided we really didn’t want their money,” says the owner of Verillas.⁴⁰ But Royall is not an unwanted customer the Harvard Law School can disassociate itself from by simply pulling a product off its shelves. He did not buy anything from them but, over two centuries ago, provided a gift that helped to build a school that in 1936, in a gesture of retroactive gratitude (or in an attempt to construct its own heraldic prestige), decided to reinforce the relationship with Royall by adopting his family crest as its logo.⁴¹ As loudly and thoroughly as HLS may now repudiate or reduce the visibility of that association (see Chapter 9), it cannot be easily undone because it is literally constitutive of the brand. If trademarks like “Harvard Law School” function as signifiers of origin, then Royall’s gift and name constituted the origin of the origin or, so to speak, the goodwill behind the goodwill. Simply removing the Royall seal from all HLS buildings, merchandise, and stationery will not erase that origin.

Compared to conventional brands that grow from the inside – from the design and management of distinctive marks supported by goods and services of reliable quality – academic brands gain a significant portion of their distinctiveness from literally incorporating the names and distinctiveness of individual or corporate donors. (That strategy would be distinctly counterproductive for common corporate brands, unless carefully framed as an occasional “collaboration”). From endowed Chairs to named buildings, institutes, fellowships, conference centers, hospitals, museums, and sport facilities, the university is made more distinctive and prestigious not only by taking the donors’ money to pursue excellence and distinction, but by borrowing their distinction – their names – as well. Perhaps we could think of a campus as a surface on which different marks are inscribed, a scaled-up logo wall with the many names and marks of its individual and corporate donors functioning like the tesserae of a larger mosaic – the university brand.

But while it would be tempting to see this as an accumulation of endorsements – the way companies strengthen their brands by having their products endorsed by famous people – the university does not pay for these “endorsements” but is actually paid by and for receiving them. It may look like a strange *quid pro quo* where it is not clear who is advertising whom, but it works well precisely because of that. The donors seek to present the institution’s acceptance of their gift as having gained a

⁴⁰ “LGBT-Owned Kilt Maker Denounces Kilt-Clad Proud Boys.”

⁴¹ As Janet Halley shows in this volume, the Royall family coat of arms was both fake – the family had no title to it – and pirated, taken from an old aristocratic English family, the medieval Earls of Chester. In the 1830s, long after the sun of heraldry had set, Harvard sought to produce antique-looking emblems for its residential houses and schools as part of its tricentennial celebrations. In that context, HLS reappropriated the coat of arms that the Royalls had appropriated from the Earls of Chester in the eighteenth century. The Royalls do not appear to have objected to the HLS shield, nor does Prince Charles (the heir to the Earl of Chester title since the fourteenth-century merger of the earldom of Chester into the principality of Wales).

place on that peculiar logo wall we call a campus. At the same time, academic brands thrive on those donations not only economically but also semiotically, their distinctiveness feeding off the corporate or individual distinctiveness of the donors. Brands branding brands. What we find in the university, therefore, is not just one brand (or one that, like Supreme, enters into brand collaborations with other companies) but rather a full-fledged “kinship network of marks,” some big some small, all articulated on or around the main university brand.

The distinctiveness of the academic brand grows in part from the way these names signal a connection between the university and people and corporations that matter – distinctive actors that are believed to be discerning enough to recognize how good the university is, and rich enough to donate to it, thus establishing or reinforcing a “relationship.” The distinctiveness of the academic brand, therefore, is not exclusively rooted in the quality of the goods or services being provided by the university, but in the quality of the relationships that develop on or around them. Curiously, even if one does not recognize the name of the donor after whom something is named, the very fact that that thing has been gifted or endowed conveys the message that the university is important, or important enough.

The presence of donors’ marks, names, or brands conveys “brandedness,” that is, that the university is distinctive because of these other marks that are associated with it, even though one may not be able to recognize the specific names one is looking at on the façade of a building, attached to a university Chair, a fellowship, or to one of the several centers and institutes listed on a university’s website.⁴² (The analogy here is with jackets overloaded with multiple Western brands – many not just copied but plainly made up – that Indian youth in Chennai buy because of the stylishness they associate with the sheer quantity of logos displayed on these clothes, despite the fact that they can hardly recognize them.)⁴³ This points to a seemingly paradoxically constructive relationship between genericness and distinctiveness in academic brands (see Chapter 2). A donor’s name that is not recognizable by a viewer is by definition not distinctive, at least in the eyes of that viewer. It stands for, and can be replaced by, the name of any other unrecognizable donor. And yet, the bare presence of that name, however unrecognizable to many people, creates an effect of distinctiveness, like an unknown signature on a painting.⁴⁴

Kinship networks of marks are not always happy ones. In addition to the controversy at the Harvard Law School, Oxford’s struggle to hold on to its world-famous Rhodes Fellowship while acknowledging the white supremacist views and ardent imperialist commitments of its founder, Cecil John Rhodes, indicates that more

⁴² Constantine V. Nakassis, “Counterfeiting What? Aesthetics of Brandedness and Brand in Tamil Nadu, India,” *Anthropological Quarterly* 85 (2012): 701–22.

⁴³ Nakassis, “Counterfeiting What?” 702–03.

⁴⁴ A cynical mind might argue that it could be beneficial to universities to add fake donors’ names on buildings – just to create the impression that those building were endowed – and that other suitable donors might then want to follow suit.

university brands are suffering from the changing political connotations of formerly distinction-producing associations.⁴⁵ (Other universities are now establishing “naming committees” to review such scenarios, suggesting that they are becoming the new normal.⁴⁶) The debate on these issues has been primarily focused on the racist dimensions of these marks, which are the most offensive. That focus, however, has deflected attention from what these controversies can teach us about the specificity of academic brands, that is, the way their distinctiveness feeds on their associations with distinctive partners – past and present – and how the meaning of those associations is always in the eyes of the beholder.

Companies can sustain their brands by tweaking their look and by modifying their goods and services in response to customers’ appreciation or criticism of their quality, but universities – especially older ones – have fewer options. They may partially modify their curricula in response to critiques of the brand’s association with donors that have become unacceptable, and they may also end the relationship with those donors provided they are recent and/or peripheral enough to the brand.⁴⁷ But the Royall endowment is or has become too close to the genealogical roots of HLS to be simply excised. What can be reworked – partially and with difficulty – is not so much the product beyond the brand but the associations that make up the brand.

BRANDS BEFORE BRANDS?

The emergence of the brand economy has gone hand in hand with a trend toward the proprietization of marks. Originally trademark did not protect a property right in the mark but an exclusive right to use that mark in commerce in relation to specific goods and services.⁴⁸ The legal protection of trademarks was justified on the grounds

⁴⁵ Yale has renamed Calhoun College after Grace Murray Hopper, a woman mathematician, computer scientist, and Navy rear admiral (<https://news.yale.edu/2017/02/11/yale-change-cal-houn-college-s-name-honor-grace-murray-hopper-o>, last accessed December 13, 2021). It was originally named after John Calhoun, a prominent nineteenth-century alumnus who happened to be an outspoken white supremacist and supporter of slavery. Other universities, including Georgetown, Princeton, and the University of Texas at Austin, have been engaging in comparable renamings. In the wake of the scandal surrounding the opioid epidemic in the US, it is worth considering the future of Sackler museums at various universities, from Harvard to Beijing.

⁴⁶ Thomas Rosenbaum, “Letter to the Caltech Board of Trustees,” January 3, 2021, https://inclusive.caltech.edu/documents/18180/CNR_Cover.pdf (last accessed February 15, 2021). I wish to thank Dan Kevles for this reference.

⁴⁷ It is going to be instructive to see if and how US universities will rearrange their relationship with the Sackler family in the wake of the opioid crisis scandal. On Tufts’ ambiguous response, see Rick Seltzer, “Tufts Strikes Sackler Name From Campus,” *Inside Higher Ed*, December 6, 2019, www.insidehighered.com/news/2019/12/06/tufts-will-remove-sackler-name-medical-campus-drawing-rebuke-purdue-pharmas-owners (last accessed March 15, 2021).

⁴⁸ This was not limited to US law. Nineteenth-century British trademark law displayed the same assumption. Brad Sherman and Lionel Bently, *The Making of Modern Intellectual Property Law: The British Experience, 1760–1911* (Cambridge University Press, 1999), 171–72.

that the relationship between a good and a mark conveys information about the good's origin, which helps to protect the consumer from fraud and to minimize his/her search costs while simultaneously incentivizing the producer to invest in the good's quality and reliability so as to maintain and grow the consumer's goodwill. However, with the rise of the brand, the protection of the relationship between goods and marks has been effectively rearticulated as the protection of the mark itself as a thing of value. At the same time, consumers come to seek brands in and of themselves, almost independently of their material embodiment. One no longer buys a T-shirt with a large Nike logo on it because one expects it to be of good quality due to the fact that it is made by or for Nike. Instead, consumers buy it because they appreciate the logo for what identity it enables them to construct and project by wearing it. As a prominent logos-centric fashion designer put it:

[A logo] is a symbol and, as symbols do, they attach people to each other, and the logo makes a statement, a transformative statement from person to person, letting them know that you have arrived. This is who I am. This is the statement I want to make. And the logos I have used are always associated with high-end brands, so the statement is like, "I qualify for this. Just look at me. Because I am."⁴⁹

No mention is made here of what piece of clothing the logo may be attached to – an absence that, far from accidental, points to the fact that clothes are simply the different media through which the logo is expressed rather than the goods whose origin the logo signifies.

Crucial developments in trademark law have accompanied this shift in the semiotics of the trademark and the emergence of brand economies. Since 1996, in the US, trademark infringement is no longer exclusively limited to a likelihood of consumer confusion – the consumer being swindled into buying a knockoff – but has been expanded to include the dilution of marks even in the absence of consumer confusion.⁵⁰ Even when the consumer is fully aware that s/he is buying a knockoff (and is not therefore the victim of fraud), the law now assumes that the mark itself is semiotically harmed by these knockoffs, its ability to signify distinctiveness being weakened by their circulation. It is as if the mark itself, not the consumer, becomes the victim.

To sociologists, anthropologists, and cultural studies practitioners, however, what is striking about the transition from older trademark regimes to the brand economy is the dramatic change in the role and agency of the consumer. At some level, all consumers are now influencers. Consumers buy, display, and talk about branded goods not because they take the brand to signify the quality and reliability of those

⁴⁹ "Harlem Designer Dapper Dan Talks with Vestoj Editor Anja Cronberg about Collaborating with Gucci," https://soundcloud.com/gucci_podcast, at 4:19.

⁵⁰ That trend was also associated with an expansion of types of consumer confusion, e.g., initial interest confusion, post-sale confusion, sponsorship confusion. Barton Beebe, "Intellectual Property Law and the Sumptuary Code," *Harvard Law Review* 123 (2010): 809–89 (at 851–55).

goods, but because the brand provides them with the means for self-fashioning and identity-making.⁵¹ This does not need to be a passive, uncreative process like, say, a customer decking themselves out in Gucci from head to toe, thus virtually becoming a walking billboard. Consumers' engagements with brands they purchase can enable all sorts of innovative bricolages, personalizations, and narratives which articulate the brand's meaning and associations in different ways, some of which may, in fact, be advantageous and welcome to the brand owner. (The analogy with fan productions is quite evident.⁵²)

Also clear is that those who expand the brand in different directions may straddle the line between consumers and appropriators. A fitting example is Gucci's recent appropriation of Dapper Dan's previous appropriations of Gucci's designs from the late 1980s, which eventually contributed to the shutting down of his Harlem boutique.⁵³ A "special relation" – and a Gucci collection that "homages" the former pirate – has since grown between them,⁵⁴ showing that a brand articulation that is considered unwelcome and damaging in a certain market and cultural environment may turn rather valuable when conditions change.⁵⁵ (The Harvard Law School case provides an example of the same kind of change but in the opposite direction, where one vintage brand is subsequently recast as unacceptable by a different generation of consumers/students who, as a result, try to change it.)

But no matter whether the brand is expanded, redirected, or criticized, or whether these interventions are rejected or prosecuted at some point in time and adopted or even celebrated at others, the fact remains that they are all the work of consumers or fans of various types, animated by different goals and subject positions. The law does not recognize their complex agency and, with few exceptions, their contribution goes unremunerated even when adopted by the original brand owners and integrated into the brand's further expansion.⁵⁶ (Dapper Dan is a rare exception, not the rule.)

This is particularly clear in the case of university brands. According to the Harvard Trademark Program: "Harvard University is one of the most widely known and respected trademarks of any kind. The commercial fruits of this fortunate reputation are largely attributable to the contributions of many generations of faculty, students

⁵¹ Thomas D. Drescher, "The Transformation and Evolution of Trademarks: From Signals to Symbols to Myth," *Trademark Reporter* 82 (1992): 301–40 (at 339).

⁵² Rebecca Tushnet, "Payment in Credit: Copyright Law and Subcultural Creativity," *Law and Contemporary Problems* 70 (2007): 135–74.

⁵³ Kelefa Sanneh, "Harlem Chic," *New Yorker*, March 18, 2013, www.newyorker.com/magazine/2013/03/25/harlem-chic (last accessed December 13, 2021). Yomi Adegoke, "I Came up a Black Staircase: How Dapper Dan Went from Fashion Industry Pariah to Gucci God," *Guardian*, January 14, 2021, www.theguardian.com/society/2021/jan/14/i-came-up-a-black-staircase-how-dapper-dan-went-from-fashion-industry-pariah-to-gucci-god (last accessed December 13, 2021).

⁵⁴ Sanneh, "Harlem Chic."

⁵⁵ Adegoke, "I Came up a Black Staircase."

⁵⁶ www.gucci.com/us/en/stories/advertising-campaign/article/pre-fall-2018-dapper-dan-collection-shoppable (last accessed December 13, 2021).

and staff, and therefore should be allocated for the benefit of the University as a whole.”⁵⁷ Notice, however, that while faculty and staff are paid for their contributions, students pay tuition to the university, if less so today than in the past. And while generations of students are acknowledged to have contributed to the “fortunate reputation” of the Harvard brand, the “commercial fruits” of the brand they have helped build go to “the University as a whole,” which, despite its expansive characterization, does not in fact include them in any legally meaningful fashion.

While there are obvious identity-making dynamics involved in the consumption and the reworking or hybridization of brands by consumers, some have seen the emergence of the brand economy as a sign of a fundamental shift in the ways value is produced under capitalism. Adam Arvidsson has argued that while Marx identified manufacturing as the site of value production (thus treating consumption as passive), the brand economy, while obviously capitalistic in logic, has shifted the site of value creation from production to consumption.⁵⁸ It is the consumers who create the value of the brand not only by purchasing and consuming but by engaging and transforming it – a view that is effectively endorsed by business research pointing to the co-construction of brands.⁵⁹ As in the so-called platform economy, consumers work, and their work and engagement can be tracked, extracted, and monetized by the brand owner. These trends grew visible in the 1990s, but what has gone unnoticed is that academic marks may have anticipated them by several decades.

A trip back to the gift shop suggests that the names of universities have always shared in the brand function. Students, prospective students, parents, and tourists who purchased branded umbrellas, coffee mugs, T-shirts, calendars, and other merchandise did not do so because marks like “Yale” made them think these were particularly well-made umbrellas, mugs, or color-fast shirts made of top-quality cotton. What motivated their purchases was a desire to get something with the “Yale” logo on it – something they could wear or use, showing to themselves and others that they had a relationship (actual, future, or just confabulated) with that school.⁶⁰ In sum, the merchandise purchased at a distinguished university’s gift shop were the medium that carried the brand and made it publicly visible – a brand the

⁵⁷ “Policy on the Use of Harvard Names and Insignias,” Harvard Trademark Program, <https://trademark.harvard.edu/policy-on-use-of-harvard-names-and-insignias> (last accessed December 13, 2021).

⁵⁸ Adam Arvidsson, *Brands: Meaning and Value in Media Culture* (New York: Routledge, 2006), 17–40.

⁵⁹ Adrian Payne, Kaj Storbacka, Pennie Frow, and Simon Knox, “Co-Creating Brands: Diagnosing and Designing the Relationship Experience,” *Journal of Business Research* 62 (2009): 379–89.

⁶⁰ This function of university merchandise is essentially different from souvenirs or postcards purchased to show that one has been to a famous site. In the former scenario, the merchandise serves as a means of identification, used to display a relationship, while the latter involves merchandise purchased during a visit to a place with which the tourist has no relationship beyond claiming to have been there, taken pictures, or enjoyed a meal.

purchaser claimed a relationship to – rather than goods whose quality was signaled by the mark.

And while students have treated university-trademarked goods as brands *avant la lettre*, their role has also gone beyond that of ambassadors or embodied advertisements of the brand. As reflected in the quote from the Harvard Trademark Program, generations of students have contributed to the Harvard brand (and, by extension, to the brand of all universities of excellence) in the same way that consumers now contribute to the articulation of the brands they purchase. Starting in the 1970s, the MIT catalog prominently featured images of students – happy, thoughtful, badly dressed, poring over instruments in labs, standing in front of blackboards covered with formulae, or relaxing on the lawn.⁶¹ By contrast, there were no such photos – and indeed no illustrations of any kind – in the printed information about the programs and courses of traditional Italian universities that I perused at the time; they contained only descriptions of curricula and lists of courses. Still operating within a version of the Humboldtian model described by Readings, the Italian university was of the state and by the state. The students were state subjects, not partners.

In hindsight, that MIT catalog exemplified an emergent trend that has since become pervasive in the US and globally: the conspicuous presence of students in virtually any kind of public representation of the university. One could say that this reflects nothing more than an advertising strategy aimed at prospective students and their parents – providing appealing pictures of happy, smart, tuition-paying students. (Even fake universities and diploma mills now hire actors to play the role of students in their fraudulent advertisements, confirming that a university can only be visually conveyed by images of students, not just pictures of buildings or descriptions of curricula.⁶²)

I suggest, however, that such representations are evidence of something more important and specific: the university's mobilization of students not just to advertise but to constitute its brand. Students do not function as customers but as usually paying partners who build their own "special" university experience as they work toward their degrees – a very special experience that is enabled, and in turn supports, a very special university and the brand that captures that uniqueness. The fact that the university seems to have adopted the logic of the brand even prior to the development of the brand economy is not evidence of our administrators' uncanny

⁶¹ <https://dome.mit.edu/handle/1721.3/115808> (last accessed 2/28/2021).

⁶² "The professors and bubbly students in promotional videos are actors, according to former employees, and some of the stand-ins feature repeatedly in ads for different schools." Declan Walsh, "Fake Diplomas, Real Cash: Pakistani Company Axact Reaps Millions," *New York Times*, May 17, 2015, www.nytimes.com/2015/05/18/world/asia/fake-diplomas-real-cash-pakistani-company-axact-reaps-millions-columbiana-barkley.html (last accessed February 15, 2021). For examples of student promotional videos: www.dailymotion.com/video/x2hfczy; <https://vimeo.com/118498304>; <https://vimeo.com/118496718>; <https://vimeo.com/118496228>.

ability to forecast the future of capitalistic modes of consumption. It points, instead, to the fact that while the university can be said to “provide” an education, the nature of education is such that the university cannot provide it as a paid service like, say, a haircut.

An education is framed and supported by the university and its faculty and staff, but it has to be produced by the student – unless that university is a diploma mill. At the same time, the students (or some other entity on their behalf) have to pay to work toward their education.⁶³ Education is a strange non-good that has to be produced by the student. This is also what makes each education – and thus each university experience – different. Unlike two cars, two pens, or two computers, two educations cannot be alike, even if two students have taken exactly the same courses, with the same professors, in the same academic terms. This is because educations are not produced on an assembly line but by individual students who are bound to work differently and choose different paths.

In other words, the logic of education is structurally analogous to that of the brand in the sense that both rely on the engagement and contribution of the consumer to achieve the self-fashioning or construct the identity that they seek – to tweak the brand to make it theirs or, with a lot more work, to become a different person, an educated one – by way of a specific path through the university and its programs.⁶⁴ In turn, the collective effect of all these very individual educational and experiential paths is the further development of the university brand.

Academic or not, the brand thrives on the fit between itself and those who buy and develop a relation with it – a mutually reinforcing process of identification that may also involve exclusionary practices.⁶⁵ (As we saw, Verillas was not happy to see its brand associated with the Proud Boys.) The university relies on some filtering techniques (such as the use of so-called performance indicators) to avoid admitting students they do not see as likely to contribute to the brand. But as any parent of college students has learned, universities also try very hard to deploy more positive forms of matching, emphasizing what “type” of student the university “looks for” or what students would be best suited to “become themselves” at that university.

⁶³ Even when an undergraduate student receives a fellowship in addition to free tuition and board, that funding is not represented as a salary to produce a certain work but as a fellowship to enable them to pursue an education. They may receive money, but are not employees and, as a result, their contribution to the university brand is a voluntary one.

⁶⁴ “Alumni find value in reflecting on mountains they have climbed and the travails endured during their education. Although possibly counterintuitive, our research might suggest that efforts to make the educational experience simpler or easier could be counterproductive for building some facets of subsequent alumni relationships.” McAlexander and Koenig, “University Experiences,” 38.

⁶⁵ For instance, think of the Abercrombie & Fitch controversy following its CEO’s remarks: “That’s why we hire good-looking people in our stores . . . Because good-looking people attract other good-looking people, and we want to market to cool, good-looking people. We don’t market to anyone other than that.” Matthew Wilson, “The rise and fall – and rise again – of Abercrombie & Fitch,” *Business Insider*, March 26, 2020.

Neither the university nor the student needs to be really distinctive, and it does not matter whether the match is made in heaven or just made up. The effect of distinctiveness comes from the intersection of the university looking for “its kind of student” (which, however, could be quite undistinctive) and the student whose university, while perhaps also undistinctive, becomes “MyUniversity” once s/he enrolls. The hybrid produced by crossing two generics is distinctiveness in the form of what Celia Lury calls a “personalized generic” (see Chapter 2).

CONCLUSION

Universities today build their brands through a variety of forms of “excellence,” which are not always tied to the valorization of their vintage. Stanford, for instance, has been remarkably successful at anchoring its brand not in tradition and pedigree but in innovation, “disruption,” and the celebration of entrepreneurial values over traditional academic ones. Those obvious differences in brand style notwithstanding, I argue that what makes the university so receptive to brand culture and economy is that, in some constitutive sense, it was always already one, well before its recent adoption of corporate managerial culture. The nature of that thing called education has framed the interaction between the university and its students as a form of brand-building, the students making the university what it is, and vice versa. Very different brands can be built on that platform. Even the story Stanford tells about itself – its brand – hinges on the entrepreneurial achievements of some of its early alumni (like William Hewlett and David Packard), which are retold to cast the university as always having supported and continuing to support a uniquely entrepreneurial culture.⁶⁶ It was that culture, we are told, that enabled it to seed and support Silicon Valley, whose uniqueness now mirrors that of the university.⁶⁷

⁶⁶ David Packard, *The HP Way: How Bill Hewlett and I Built Our Company* (New York: Harper, 1995).

⁶⁷ Annalee Saxenian, *Regional Advantage: Culture and Competition in Silicon Valley and Route 128* (Cambridge, MA: Harvard University Press, 1996), 20–27.