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John M. Conley

Scott Baker

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THE PROFESSION IN PROFILE: A COMMENTARY ON BAKER AND PARKIN

JOHN M. CONLEY* & SCOTT BAKER**

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INTRODUCTION

George P. Baker and Rachel Parkin have performed an extraordinary service to those who study the legal profession by compiling their Martindale-Hubbell (“Martindale”) dataset. As is evident even from the preliminary analyses set out in this initial article, it will now be possible for the social science community to examine longstanding assumptions about the profession and test original hypotheses with unprecedented depth and precision. In this Commentary we will begin to explore some of that potential. We begin by reconsidering just what Baker and Parkin have created. We then address a series of substantive questions, revisiting some of the authors’ analyses and suggesting directions for future work.

I. THE NATURE OF THE DATA

At the outset, it is worth emphasizing that Baker and Parkin have done an exceptionally thorough and intelligent job of organizing and characterizing the Martindale data. As they acknowledge, the Martindale listings do not comprise a census of “the legal services

* William Rand Kenan, Jr. Professor of Law, University of North Carolina School of Law. B.A., 1971, Harvard University; J.D., 1977, Duke University School of Law; Ph.D., 1980, Duke University.

** Associate Professor, University of North Carolina School of Law. B.A., 1994, Miami University; J.D., 2000, University of Chicago; Ph.D., 2001, University of North Carolina.

industry,”¹ nor are they a random or otherwise representative sample.² The listings exclude government, in-house, and other non-firm lawyers; the private firm lawyers who are included are self-selected; and the smallest offices are probably underrepresented.³ Nonetheless, the authors make a persuasive case⁴ that they have come close to a complete census of all lawyers working in firms of five or more.

Is this a sensible cutoff? A large number of lawyers are excluded; Baker and Parkin estimate that firms of fewer than five comprise about 30% of all lawyers.⁵ While the other 70% are not “the industry,” they make up the subset that probably handles most of the nation’s commercial litigation and the vast majority of the business work for all but the smallest local enterprises. Significantly, this subset is also the subject of the most widely-discussed “trends” in the industry, including firm growth, expanded multi-office practice, increased leveraging of associates, greater use of “off-track” positions, diversification along race and gender lines, and the demise of the midsize firm. Baker and Parkin have thus given us the resources to assess the reality of these trends from a quantitative perspective, and that is where we turn next.

II. LAW FIRM GROWTH AND CONSOLIDATION

We came to our first reading of the article with expectations shaped by the qualitative (sometimes anecdotal) literature⁶: even over the short period of the study (1998–2004), undeniable trends would leap out of the figures and tables. But our reaction was the opposite: we were struck by how little things had changed, at least in absolute terms. For example, Baker and Parkin describe “a particular pattern of industry consolidation.”⁷ Yet the raw data indicate that this pattern has been modest indeed.⁸ In six of the seven years of the study, the number of firms was between about 15,500, and 15,900; it “spiked” at just over 16,000 in 2000, at the height of the dot-com

1. George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C. L. REV. 1635, 1639 (2006).

2. *See id.* at 1642–46.

3. *Id.* at 1639.

4. *See id.* at 1639 & nn.3–4.

5. *Id.* at 1644.

6. For a review of much of this literature, see John M. Conley & Scott Baker, *Fall from Grace or Business as Usual? A Retrospective Look at Lawyers on Wall Street and Main Street*, 30 LAW & SOC. INQUIRY 783 (2005).

7. *See Baker & Parkin, supra* note 1, at 1650.

8. *See id.* at 1650 fig.2a.

boom. Over the same period, the average firm size increased from about eighteen to just under twenty lawyers. Yes, an increase in consolidation, and one that will inevitably be statistically significant, given the size of the sample,⁹ but is this a trend of practical significance for those who study the profession?

Similarly, the authors report, in accord with the conventional wisdom,¹⁰ that “firms are growing by starting, and especially acquiring, new offices.”¹¹ But again, the raw data offer only marginal support. The number of offices (as opposed to firms) did grow from 1998 through 2000—but only from about 21,000 to about 21,700, or 3.3%.¹² Then the number drops a bit, and bounces around a mean of about 21,600. Over the whole study period, the number of lawyers per office increases steadily, but the increase is from about 13.5 to about fourteen. An alternative reading of these data might thus be: Law firms hardly reacted at all to seven years of economic turbulence. Firms opened a few new offices as the economy boomed through the end of 2000. Then, as the economy slowed in the wake of the dot-com crash and the 9/11 terrorist attacks, firms cut a handful of offices.¹³ Over the same period, the average size of offices did not change appreciably.

Our quibbles about the interpretation of the data should not be read as diminishing what Baker and Parkin have accomplished. On the contrary: they have finally given us some data to argue over. The best proof of the significance of the data is that two simple figures have allowed us to question major elements of the conventional wisdom about the profession. It can only get better as the dissemination of their work prompts more and more researchers to examine more and more alleged trends. Efforts to correlate structural developments in the legal profession and general economic trends strike us as especially promising. Equally important will be the assessment of which law firm strategies prove to be economically successful.

9. See *id.* at 1653 n.34.

10. See John M. Conley, *How Bad Is It Out There?: Teaching and Learning About the State of the Legal Profession in North Carolina*, 82 N.C. L. REV. 1943, 1986–91 & nn.233–52 (2004).

11. See Baker & Parkin, *supra* note 1, at 1651.

12. *Id.* at 1650 fig.2b.

13. For documentation of these economic trends, see Press Release, Bureau of Econ. Analysis, U.S. Dep’t of Commerce, Gross Domestic Product tbl.7 (Nov. 5, 2005) (illustrating GDP growth as percentage change from one year earlier), available at <http://www.bea.doc.gov/bea/newsrel/gdpnewsrelease.htm>.

III. THE ALLEGED DEMISE OF THE MIDSIZED FIRM

Another much-discussed “trend” that Baker and Parkin assess is the purported “shakeout of midsized firms” because they are unable to compete for corporate business with growing national firms.¹⁴ Here, too, the big news seems to be that there is no news. Big firms have clearly gotten bigger: the percentage of all lawyers working in the largest firms (more than 389) almost doubled over the course of the study, from under 10% to over 18%.¹⁵ But they are growing at the expense of all kinds of firms, not just those in the middle. In fact, Baker and Parkin’s market-by-market analysis of changes in the distribution of lawyers¹⁶ suggests no pattern at all.¹⁷ Given the intensity of the concern expressed by some lawyers from the midsized firms,¹⁸ this is an issue that will bear ongoing scrutiny against the accumulating data.

IV. LEVERAGING

As Baker and Parkin report,¹⁹ another important element of the standard model of the profession is that leveraging, or the ratio of nonpartners to partners, is substantial and likely to increase.²⁰ Once again, however, the most striking feature of the new data is how little seems to be happening. First, as Baker and Parkin note, “[t]he value of average leverage seems surprisingly low.”²¹ Even in the ten largest legal markets, there is barely more than one associate per partner,²² and firms with New York offices may mostly account for the ratio being above 1.0.²³ Both nationally and in the ten largest markets, the leverage ratio increased by only about one-tenth of an associate over

14. See Baker & Parkin, *supra* note 1, at 1658; Martha Neil, *Caught in the Middle*, A.B.A. J., July 2003, at 37.

15. See *id.* at 1659.

16. *Id.* at 1661 tbl.5.

17. Baker and Parkin find in the same data “an even more pronounced decline of the midsized firm.” See *id.* at 1661. We simply do not see it. In their middle size decile, for example, six markets show small decreases, while four show increases of similar magnitude. They also suggest that in San Francisco, a boom in start-up and intellectual property boutiques may account for “growth in most of the smallest five deciles.” *Id.* That growth, however, ranges from 0.3% to 1.6% over four deciles, with a 0.9% decline in a fifth, hardly a change warranting a theory to account for it.

18. See Conley, *supra* note 10, at 1991–92.

19. See Baker & Parkin, *supra* note 1, at 1663–65.

20. See Conley, *supra* note 10, at 1987 n.239; Neil, *supra* note 14, at 33–34.

21. Baker & Parkin, *supra* note 1, at 1666.

22. In 2004, there were 1.17 associates per partner. *Id.* at 1666 tbl.6.

23. See *id.* at 1668 tbl.7.

the period of the study.²⁴ Contrary to conventional wisdom, that modest increase has been driven by the smaller firms, while leveraging has actually decreased in the largest firms.

As Baker and Parkin acknowledge,²⁵ however, the growth in the use of nonequity or second-tier partnerships may render these statistics meaningless.²⁶ Unfortunately, the Martindale listings do not distinguish between equity partners, who are the profit-sharing owners of the firm, and their nonequity counterparts, who tend to be glorified associates without any of the rights of owners. It may be that the conventional wisdom is right, with rampant leveraging disguised by the use of an oxymoronic title. While certainly not Baker's and Parkin's fault, this is a major lacuna in the data. Given the importance of understanding the two-tiered partnership phenomenon, we can only hope that they or others can close it.

V. PROMOTION TO PARTNER

Baker and Parkin conclude that “[as] the importance of soliciting business increases for partners in law firms, current partners may find it more difficult to make new partner decisions.”²⁷ They cite an increase in average time to partnership from 9.13 to 9.65 years over the study period, and an ostensibly striking decline in promotion rate from 6.7% to 5.2%.²⁸ Their data seem to tell a more complex story, however. For one thing, all of the drop in promotion rate occurred in 2001. In 2000, the promotion rate was 6.3%. It nosedived to 4.6% in 2001, then climbed slowly back to 5.2%. Is this a structural trend toward making fewer partners, or a drastic response to the economic events of 2001, followed by a period of more restrained expansion?²⁹

Baker and Parkin's city-by-city data are equally hard to interpret.³⁰ Promotion rates have declined everywhere over the study period, but the data from most of the cities support the idea of 2001 as a crisis year. Years to promotion vary widely and apparently unsystematically from city to city. In New York, the 500-pound gorilla of the legal world, the time to partnership has hardly changed

24. *Id.* at 1666 tbl.6.

25. *See id.* at 1666.

26. *See* William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691, 1694–98 (2006).

27. *See* Baker & Parkin, *supra* note 1, at 1669.

28. *Id.* at 1671 tbl.9.

29. The two-tiered partnership phenomenon adds further complexity to the data: many of these “promotions” may involve simply giving an associate a raise and the title of (nonequity) partner. *See* Conley, *supra* note 10, at 1987 n.239.

30. Baker & Parkin, *supra* note 1, at 1672 tbl.10.

at all, while in Washington, the country's second-largest legal market, it has actually decreased. So once again, do the aggregate numbers reflect a trend, or merely the short-term reactions of local legal communities to changing economic circumstances? From our perspective, we are several more years of study away from being able to infer that partners are finding it harder to make promotion decisions.

VI. WOMEN IN THE PROFESSION

Consistent with other sources,³¹ Baker and Parkin find that the representation of women in the profession is increasing, especially at the entry level.³² The percentage of lawyers who are women increased from 23% in 1998 to 26% in 2004; the comparable increase at the first-year associate level was from 40% to 47%.³³ Comparing these two trends, Baker and Parkin conclude that the overall figure underrepresents "the current level of gender equality because the existing stock of lawyers is mostly male,"³⁴ they characterize the increase in female first-year associates as evidence "that women have made significant inroads."³⁵

But these numbers also support a different story, one that has been widely told in the legal profession literature.³⁶ It is that women are being hired in representative numbers but are disproportionately dropping out before reaching partnership. In this view, the first-year associate percentages, rather than being a necessary corrective to the underrepresentative overall numbers, are in fact an *overrepresentation* of "the current level of gender equality."³⁷ The inroads are thus less significant than they seem. We look forward to the future efforts of Baker and Parkin, or other users of their data, to resolve this half-empty/half-full dilemma.

CONCLUSION

We conclude with the thought with which we began: that Baker and Parkin have created a uniquely valuable resource for students of

31. See Conley, *supra* note 10, at 2012–13.

32. See Baker & Parkin, *supra* note 1, at 1652 tbl.4.

33. *Id.*

34. *Id.* at 1652.

35. *Id.*

36. See, e.g., Elizabeth Chambliss & Christopher Uggen, *Men and Women of Elite Law Firms: Reevaluating Kanter's Legacy*, 25 LAW & SOC. INQUIRY 41, 41 (2000); Conley & Baker, *supra* note 6, at 790.

37. Baker & Parkin, *supra* note 1, at 1652.

the legal profession. Even in this, their initial exposition and analysis of the data, they have materially advanced the critical assessment of some of the major issues confronting the profession. And as our comments on a few of their topics illustrate, they have also provided the raw materials for others (us, in this case) to challenge their analyses. In the long run, the result can only be a much better-informed debate about the state and future of the profession.

