Simkovic

Thoughts on "What Happened to the Class of 2010? Empirical Evidence of Structural Change in the Legal Profession" by Deborah Merritt (March 11 version)

Deborah,

Thank you very much for sharing your interesting working paper with us. First, I'd like to applaud you for the large amount of work you've clearly put in tracking down employment information for more than 1,000 law graduates. It must have been a lot of hard work. Frank and I have used data sets collected by the Census Bureau, which greatly cuts down on the amount of labor and also much more reliably produces a nationally representative sample and a consistent methodology and definitions over time.

What you have now

As of now, what I think you have is an isolated case study of the employment status and occupational categories of law graduates in Ohio who graduated in 2010, four year after graduation, in 2014, using an unusual methodology (lets call it Directory-based data collection or DBDC) and unusual definitions of terms.

Given the data that you have, I would suggest reframing the article as a limited case study and an exploration of a novel approach to gathering employment data and making the claims much more modest.

What you could do with a bit more work

There are some places you could go with this with a bit more work, and you'll have to decide which offers the best bang for your buck. If I were you, I would probably compare your methodology to Census data for Ohio and see how the results from your approach (DBDC) stack up against contemporaneous census data. That could be useful to you and future researchers who want to use DBDC.

You could also try to restrict the NALP or AJD sample to just Ohio residents, but you're still going to have a lot of problems with inconsistent methods and definitions, and you have to check if the sample weights permit a representative sample within state.

If you want to do a lot of work and be very patient, you could repeat your study across the country simultaneously, or do the same thing again in a year or two and have some comparison overtime.

Suggested Edits—Claims within the limits of the current data

Assuming no additional data gathering, I suggest the following edits:

(1) You may want to soften claims that Ohio is a large, nationally representative employment market and that we can generalize from your results to the U.S. as a whole; instead you may want to describe it as a relatively low-paid regional market and note serious selection bias issues

a. Ohio is <u>not</u> a nationally representative state in terms of its legal employment market based on BLS OES data

i. Average lawyer's earnings in Ohio are substantially below the national average (Around $109K per year in Ohio vs. $132K per year for the U.S. as a whole in 2013) http://www.bls.gov/oes/current/oes231011.htm

Check the Census data in CPS or ACS, which will include more solos and law firm partners; the difference (Ohio vs. National) could be even bigger (or smaller).

ii. Some of the firms you describe as Ohio firms do not describe themselves in those terms

For example, Jones Day's website says it has no headquarters, but its largest office is in New York and its managing partner resides in Washington D.C.

Only around 300 of the ~1,700-2,000 lawyers at the firm work in Ohio. There are far more Jones Day lawyers in New York and Chicago combined than in the whole state of Ohio.

iii. The Ohio legal market seems to be small relative to the population

Ohio has around 3.7 percent of the population and only 3 percent of the lawyers in the country.

iv. Many law schools in Ohio are low ranked

Ohio State is top 50; Case western is 50-100; Cincinnati is 50-100. I think the other 5 law schools are all in the bottom half (ranked below 100).

How big were the graduating classes from all of these schools relative to the national average and relative to each other?

Does this mean your sample of graduates is going to have relatively more graduates of low-ranked schools than the national average?

You note in the paper a correlation between law school rank and job outcomes (and rightly do not say it is causation, given the selection issues).

b. There is selection bias affecting your sample, apparently with the best students leaving the state of Ohio for more robust legal markets

For example, looking just at Ohio State's 509 report for 2011, there were 24 students who took the NY bar vs. 136 who took the Ohio bar, and the New Yorkers had much higher bar passage rates (11% above the state average for NY vs. 1.3% above the state average for Ohio), which is consistent with positive selection out of state. More detailed data will probably also show movement to Illinois for the Chicago legal market and to other major legal markets.

The students who are leaving Ohio without bothering to take the Ohio bar exam are probably the ones with the best job prospects, and these are not going to get picked up in your sample.

The students who leave regional markets for greener pastures do get picked up by NALP and after the JD, however, so you're not making an apples to apples comparison.

I would also be clear when discussing your results for the Ohio legal market that you are not looking at the effects of going to law school in Ohio, since you can only see the subset of people who *work* in Ohio.

If you want to try to fix this, you can try to track down graduates of Ohio law schools who moved to other legal markets using your methodology, but that's a whole lot of markets to look at. If you go this route, you also should exclude the people coming into Ohio from out of state, so you're really just looking at the folks who went to law school in Ohio.

Your discussion on pg. 53-55 likely reflects some of these selection bias issues in reverse (looking at immigrants into Ohio). People who move across state lines for a job are probably moving for a pretty good opportunity, since moving is costly.

(2) You may want to soften claims that your data permits comparisons across different time periods or inference of trends

a. As noted above you are comparing Ohio to the country as a whole, which is an apples to oranges comparison

    i. Therefore, you can't tell whether differences you are seeing are because 2014 is different from 2003 or because Ohio is different from the country as a whole

b. In addition, your methodology (DBDC) is very different from the survey methods used by NALP, AJD, and the Census.

    i. You can't tell whether any differences you observe are due to differences in time, or due to differences in methodology.

    ii. Identifying bar passers is similar to ADJ, but different from NALP and different from Census, which should include non-bar passers

        I understand that NALP is using a combination of DBDC and surveys, and also repeatedly contacting non-respondents.

        But it sounds like you're not using the survey method or repeatedly contacting the non-respondents, and that's an important difference.

    iii. ADJ includes people who passed ANY Bar, but you are just looking at bar passers in Ohio

    iv. Your definitions of key terms are very different from those used by the Census, by NALP / the ABA, and by most employment surveys.

        Unemployment has a very specific definition according to the Census Bureau. It means that you are not currently employed (at all, not even part time, not even self-employed, not even in a job that has no obvious connection to your degree) and that you are also actively seeking work.

        There is a third category besides "employed" and "unemployed" and that category is "not in labor force." So people who are in

school or tending to family obligations are "not in labor force." Non-respondents are generally dealt with through a validated weighting mechanism.

As far as I can tell, what you are doing for the 2010 Ohio law graduates is treating anyone who is unemployed, or not in labor force, or for whom you could not gather any data as "unemployed."

This is going to produce results that cannot be compared to any other data set, since your definitions of terms are so widely at variance with standard definitions used by others.

(ADJII does use "unemployment" to mean "not employed" around page 62, but this is unusual).

What you are looing at is closer to (1 – employment population ratio). Except for how you treat non-respondents.

Your job turnover definitions are also unlikely to match up with census unemployment definitions.

If you want to assume that non-respondents or those for whom no information other than home address is available are more likely to be unemployed—which seems reasonable and plausible—try sending a random sample a letter or calling them to see if you can learn their status, and get a sense of how many are really unemployed.

Consider the selection effects into Linked In. Are those opting in more likely to be employed than the general population? Are they more likely to be seeking other employment and unhappy with their current employment? Linked In is basically a tool for job seekers so unclear how the selection bias cuts.

How often was the court database out of date or incorrect? How reliable is it?

In sum, you cannot tell whether the differences you observe are due to differences in geography, selection effects, or artifacts of different methodologies and different definitions, or are genuinely do to differences in time period.

(3) You may want to avoid describing outcomes are good or bad or "poor" or "disappointing" or "only" UNLESS there is a clear comparison that makes sense

When discussing any outcome, the question is always "relative to what." For the reasons discussed above, I don't think you can compare your results to employment outcomes for law graduates at other points in time.

The comparison that usually makes sense is compared to the likely outcome without a law degree. Frank and I treat this as a bachelor's degree for people who look like law graduates (although of course in the real world it could be another graduate degree).

Right now you have no comparison group. What's happening to young bachelor's degree holders in Ohio with liberal arts or social science majors during this time period, using something that is comparable to the method you use for the lawyers?

Everything I've seen (census data, etc.) suggests that young bachelor's are having a rough time in this employment market, still better than young high school graduates but not as good as law graduates.

As we noted in our JLS article, the value of the law degree is the causal difference, not the absolute outcomes. If earnings are going down for everyone but the law grads maintain their relative advantage, the value of the degree does not go down at all.

Your analysis does not take this into account.

The claim that there is structural change in the legal profession is not supported by data you have. If things seem bad, maybe the problem is being young. Maybe the problem is Ohio. Maybe the problem is the macro-economy in 2014 (employment population ratios remain below 2007 levels). You yourself note that the number of lawyers relative to population has increased, which suggests the legal profession is growing.

This is not new—we talked about all of these issues ad nauseum in *The Economic Value of a Law Degree,* related blog posts, and our book review of Tamanaha's *Failing Law Schools*.

It's quite possible that some law graduates are subjectively disappointed, but many recent graduates with high expectations find the real world subjectively disappointing. There are countless films dedicated to this proposition (The Graduate, Reality Bites, basically anything with Ethan Hawke and Julie Delpy).

If you want to know if there's a specific problem with law, you need to compare it to "not-law" for the kinds of people who go into law.

(4) What if earnings are going up within job categories?

Earnings can go up within job categories, so even if people are not switching to big firms, the earnings of those in smaller firms, business, and government may be increasing over time. This is a sign of progress, and what After the JD reported was happening.

Of course, the relevant question may be earnings over time relative to not law.

You don't have salary data, so you can't tell if this is happening. It would be good to try to get some salary data.

Relatedly, on pg. 19 (with the caveat of the apples to oranges comparison) it looks like you found that % unemployed or not in labor force or with no data went from 14% in 2011 down to 6.7% in 2014, which does seem like progress.

(5) You may want to reconsider your discussion of "surplus / shortage" and "underemployment" in light of the labor economics literature

There's no such thing as a shortage or a surplus in a market where price adjusts freely. There's only a quantity at a given price. It may seem to me that there's a surplus of law professors since no one wants to offer me $500,000 per year to teach, or that there's a shortage of new BMW's since no one will sell me one for $5,000, but that's not what surplus or shortage mean. These are things that only exist when there are price caps, rationing, distortions, subsidies, taxes or something else funky going on that create problems with the market mechanism. (For an interesting read on this, you might want to look at *The Knowledge Tax,* which suggests that taxes and subsidies in aggregate lead to a shortage of educated labor relative to physical and financial capital*).*

Projected job openings vs. number of law grads are basically useless. If there are too many law grads, then the return to a law degree should be lower than returns that can be had elsewhere with the same amount of risk. The relevant measure is relative returns.

If a particular job is done by some people with a law degree and some people without a law degree, that is not evidence that the law degree wasn't helpful in obtaining and succeeding on the job. The people without law degrees may have had other advantages going in (better standardized test scores, better

connections, better work ethic, whatever) and the people without law degrees may have needed the law degrees to get the job. They may earn more with the law degree than they could have without. This is basically the consensus among labor economists vis-à-vis "underemployment."

Most degrees feed into many different occupations, so you can't readily match degrees to specific jobs, you can only look at aggregate employment and earnings.

Unless you're arguing that people love being a lawyer so much that being a lawyer is worth even more than what lawyers are paid because being a lawyer carries great consumption value.

Interesting claim, but if it's true it means we dramatically underestimated the ex-ante value of a law degree, and it raises questions about why one would need to pay people so much to do something that is already very enjoyable in its own right

(6) The two year law degree

This feels really out of place and unrelated to your analysis. The question with the two year law degree is how much marginal benefit does the third year provide and is it greater or less than the marginal cost.

Your analysis is not relevant to this question, since everyone you are looking at has a 3 year law degree.

(7) How you cite us

Thanks very much for the early citation, but I don't think we're a good example of people who said that law gradates in Ohio would move into big firm jobs within a few years of graduation.

Our analysis in JLS is about *relative earnings* (taking into account unemployment and disability), not specific job categories, and we're pretty careful to point out that we're discussing the long term based on historical data, and not trying to predict short term swings during the first few years of people's careers.

(8) How you cite data

I suggest trying to be extra careful to always indicate where data is coming from—ADJ, AJDII, ADJIII, NALP, the Census, your DBDC approach). I encourage you to be mindful of definitions and data collection procedures.