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On Shared Human Capital, Promotion Tournaments, and Exponential Law Firm Growth (book review)

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On Shared Human Capital, Promotion Tournaments, and Exponential Law Firm Growth

TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM. By Marc Galanter† and Thomas M. Palay.†† Chicago and London: University of Chicago Press, 1991. Pp. ix, 189. $27.50.‡

Reviewed by Vincent Robert Johnson*

I. Focusing on Large Firms

Viewed from any perspective, the large[1] American law firm is a major player, a dominant feature on the legal landscape. Typically housed in comfortable quarters and often with offices in several cities, large law firms exert an enormous influence on the operation of the legal system. Their attorneys bring to the representation of clients not merely legal talent, but business connections, financial resources, and legions of support personnel. By using those assets, large firms play a leading role in defining the tone and pace of professional life. Serving the interests of mainly corporate clients, these firms' actions influence the content of the law, the ethics of lawyering, and the public's expectations about the legal profession.[2]

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1. The terms "large" and "big" are used interchangeably herein to describe law firms. As Galanter and Palay write, "The big firm consists of a 'large' number of lawyers—just how many is 'large' depends upon the place and time." P. 2; *see infra* note 30.

Between 1978 and 1990, "the number of firms with more than 100 lawyers increased five-fold . . . . [And the] number of lawyers in [those] firms jumped from 6,558 to 51,851." Stephanie B. Goldberg, *Then and Now: 75 Years of Change*, A.B.A. J., Jan. 1990, at 56, 59. More recent statistics indicate that, as of September 1990, 3 firms numbered over 1000 attorneys. *See The NLJ 250*, NAT'L L.J., Sept. 24, 1990 (Supp.), at S4, S4. The top 253 firms each had at least 131 attorneys, and 149 firms had 200 or more lawyers. *Id.* at S4-S13.

2. Whether large firm lawyers are able and willing to influence the actions of their clients, rather

Not surprisingly, large law firms have begun to attract considerable attention from both lay and expert observers.[3] Newspapers chronicle their successes and failures;[4] scholars study issues endemic to large firm

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than merely to serve their clients' expressed interests, is an important and disputed question. Notre Dame's Thomas Shaffer asserts that "the lawyer in modern business practice in the United States is a source of moral guidance for his clients" and that "business clients follow the moral advice of their lawyers." THOMAS L. SHAFFER, FAITH AND THE PROFESSIONS 132-33 (1987). On the same theme in an earlier book, Shaffer wrote:

> [L]aw-office conversations are almost always moral conversations. This is so because they involve law; law is a claim which people make on one another—that is, a claim resting on obligation, a moral claim—and for which they may seek the sanction and coercion of the state . . . .
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> . . . .
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> . . . The story of any lawyer's life is a story of moral influence on clients—sometimes paternal, sometimes what I am here calling conscientious objection, sometimes a deeper influence which depends on conversation. To suppose that clients are morally isolated, and that lawyers are incapable of changing the consciences of clients, is not truthful. Isolation as a moral idea is therefore inadequate . . . .

THOMAS SHAFFER, ON BEING A CHRISTIAN AND A LAWYER 10, 18 (1981).

In contrast, Stanford's Robert Gordon has interpreted the writing of several authors as tentatively concluding that, on the whole, outside lawyers (as opposed to in-house corporate counsel) "have neither the opportunity nor the desire to reshape their clients' business or political goals and chiefly confine their [lawyering] role to that of technical execution." Robert W. Gordon, *Introduction* to Symposium, *The Corporate Law Firm*, 37 STAN. L. REV. 271, 274 (1985) (discussing four articles: Abram Chayes & Antonio H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277 (1985); Robert A. Kagan & Robert E. Rosen, *On the Social Significance of Large Law Firm Practice*, 37 STAN. L. REV. 399 (1985); Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503 (1985); and Edward O. Laumann & John P. Heinz, *Washington Lawyers and Others: The Structure of Washington Representation*, 37 STAN. L. REV. 465 (1985)).

Others also dispute Shaffer's view. For example, Margali Larson of Temple states:

> [M]any large firm lawyers find it presumptuous to make moral judgments for their clients . . . . [T]hey tend to deny that ethical conflicts are an inevitable component of corporate practice, and they accept the reduction of ethics to legality because they know that their clients hire them precisely to "keep them out of trouble." If this is a shocking state of affairs, it does not seem either new or likely to have ever been substantially different.

Margali S. Larson, *On the Nostalgic View of Lawyers' Role: Comment on Kagan and Rosen's "On the Social Significance of Large Law Firm Practice,"* 37 STAN. L. REV. 445, 455 (1985).

I have discussed other aspects of the influence of large firms elsewhere. *See* Vincent R. Johnson & Virginia Coyle, *On the Transformation of the Legal Profession: The Advent of Temporary Lawyering*, 66 NOTRE DAME L. REV. 359 (1990).

> [E]vents which affect larger firms have a "trickle down" effect. Many attorneys move from larger firms to smaller practices; the high media profile of larger firms shapes public and professional expectations; the litigation and negotiation tactics of larger firms force smaller ones to respond in kind; and, as has long been the case, attorneys in larger firms frequently play leading roles in defining and applying the ethical standards which govern the entire profession.

Id. at 364-65 (footnotes omitted).

3. The recency of this development is suggested by the fact that as late as 1985 Robert Gordon wrote of the "almost unmapped interior of American society, its large metropolitan law firms." Gordon, *supra* note 2, at 271. He noted that "it seems astonishing that law firms should have for so long remained almost unexplored in legal scholarship." *Id.*

4. The legal work and internal operations of large firms is a staple of the daily "Law" column in

practice;[5] and books are published about the men and women who populate this elite sphere.[6] The attention lavished upon large firms thus far has tended to be atomistic, often focusing upon isolated issues or events, with little attention paid to historical roots or theoretical foundations.[7] However, a small number of more comprehensive works have also emerged. They include Richard Abel's *American Lawyers*,[8] a book

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the Wall Street Journal. *See, e.g.*, Wade Lambert & Arthur Hayes, *Westward Bound*, WALL ST. J., Jan. 29, 1991, at B6 (discussing a 180-lawyer firm's opening of a new branch office); Amy Marcus & Ellen J. Pollock, *Skadden Arps Is Slimming Down by 100 Lawyers—Temporarily*, WALL ST. J., Jan. 23, 1991, at B2 (discussing the efforts of the 1100-lawyer firm to encourage less productive lawyers to leave); Pauline Yoshihashi & Sonja Nazario, *Hourly Billing Rates*, WALL ST. J., Jan. 10, 1991, at B5 (discussing decisions by managing partners of large law firms not to raise 1990 billing rates).

Longer articles on similar topics may be found in virtually any issue of such trade tabloids as *National Law Journal*, *Legal Times*, or *Texas Lawyer*. *See, e.g.*, Gary Taylor, *Houston's Wood Lucksinger May Merge*, NAT'L L.J., Feb. 25, 1991, at 2; Eleanor Kerlow, *Sutherland, Asbill at the Crossroads*, LEGAL TIMES, Feb. 11, 1991, at 1; Amy Boardman, *Ax Falls at Gardere & Wynne*, TEX. LAW., Feb. 18, 1991, at 1.

Of course, similar fare may be found in professional magazines. *See, e.g.*, Don J. DeBenedictis, *Record-Setting Merger in California*, A.B.A. J., Nov. 1990, at 40, 40 (discussing the formation of the fifth-largest law firm).

5. "Since 1980, at least a dozen articles on law firms have appeared in mainstream law reviews." S.S. Samuelson & L.J. Jaffe, *A Statistical Analysis of Law Firm Profitability*, 70 B.U. L. REV. 185, 186 n.7 (1990); *see, e.g.*, Symposium, *The Corporate Law Firm*, 37 STAN. L. REV. 271 (1985) (exploring recent developments in corporate law firms as a starting point for scholarly analysis); M. Peter Moser, *Chinese Walls: A Means of Avoiding Law Firm Disqualification When a Personally Disqualified Lawyer Joins the Firm*, 3 GEO. J. LEGAL ETHICS 399, 399 (1990) (arguing that current conflict of interest rules should be changed to reflect the fact that "[l]aw firms in the United States are expanding rapidly . . . . [and l]awyers . . . are moving between law firms more frequently than ever before"); *cf.* Vincent R. Johnson, *Ethical Limitations on Creative Financing of Mass Tort Class Actions*, 54 BROOK. L. REV. 539, 544 (1988) (suggesting that "at least under some circumstances, the larger law practice will be subject to its own rules"); Vincent R. Johnson, *Solicitation of Law Firm Clients by Departing Partners and Associates: Tort, Fiduciary, and Disciplinary Liability*, 50 U. PITT. L. REV. 1 (1988) [hereinafter Johnson, *Solicitation of Law Firm Clients*] (discussing client solicitation by departing attorneys—an issue confronted by firms of all sizes, but especially significant for larger firms).

6. *See, e.g.*, KIM I. EISLER, SHARK TANK: GREED, POLITICS, AND THE COLLAPSE OF FINLEY KUMBLE, ONE OF AMERICA'S LARGEST LAW FIRMS (1990); JOSEPH C. GOULDEN, THE SUPERLAWYERS: THE SMALL AND POWERFUL WORLD OF THE GREAT WASHINGTON LAW FIRMS (1971); STEVEN KUMBLE & KEVIN J. LAHART, CONDUCT UNBECOMING: THE RISE AND RUIN OF FINLEY, KUMBLE (1990); ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM (1988); MARK STEVENS, POWER OF ATTORNEY: THE RISE OF THE GIANT LAW FIRMS (1987); JAMES B. STEWART, THE PARTNERS: INSIDE AMERICA'S MOST POWERFUL LAW FIRMS (1983).

7. *See* Michael Ariens, *Just a Bigger Fish*, 15 J. LEGAL PROF. 329, 331-32 (1991) (reviewing EISLER, *supra* note 6) (criticizing Eisler's chronicle of Finley Kumble for failing to investigate the broader context of changes in the American legal profession); *cf.* Gordon, *supra* note 2, at 273 ("The new legal journalism has its weak points, mostly those inherent in the form: the natural tendencies to dwell on personalities at the expense of structures, to be unable to resist repeating any quotable remark, and to glamorize its subjects sometimes to the point of absurdity.").

8. RICHARD L. ABEL, AMERICAN LAWYERS (1989). For a review of *American Lawyers*, see John S. Dzienkowski, *The Regulation of the American Legal Profession and Its Reform*, 68 TEXAS L. REV.

devoting considerable attention to large firms as part of an extensively documented treatment of the legal profession, and Robert Nelson's *Partners With Power*,[9] a study focusing on large firms as social institutions.

Against this background of increasing interest in large law firms, Professors Marc Galanter and Thomas Palay of the University of Wisconsin Law School have published *Tournament of Lawyers: The Transformation of the Big Law Firm*. Their book, which expands and refines the arguments in their recent Virginia Law Review article,[10] ranks with Abel's and Nelson's works as part of a growing body of scholarly literature that seeks to understand the ongoing metamorphosis of the American legal profession.[11] In contrast to such recent books as Kim Eisler's *Shark Tank*[12] and Steven Kumble and Kevin Lahart's *Conduct Unbecoming*,[13] both of which deal with the meteoric rise and precipitous decline of the Finley Kumble megafirm, and James Stewart's *The Partners*,[14] which a few years earlier discussed large firm lawyering in general, *Tournament of Lawyers* has nothing to say about the "passion and politics of particular firms, clients, and controversies."[15] Instead, the book focuses on the "less dramatic but fundamental patterns of [law firm] organization and growth"[16] for the purpose of understanding the "structural changes that are transforming big firms and their world in fundamental ways."[17]

451, 453 (1989) (reviewing ABEL, *supra*) (describing Abel's book as a "powerful and eloquent . . . seminal work").

9. NELSON, *supra* note 6.

10. Marc Galanter & Thomas M. Palay, *Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms*, 76 VA. L. REV. 747 (1990). Their article parallels those sections of the book that explain their theory of exponential law firm growth. The book's extensive treatment of the history and traditional structure of large firms, and the appendices presenting data from the authors' empirical research, are among the features of the book that substantially expand the scope of the article.

11. The task of tracking and critically evaluating changes in the legal profession is formidable. *See* Robert F. Drinan, *Moral Architects or Selfish Schemers?*, 79 GEO. L.J. 389, 394 (1990) ("[E]ven the most well-informed are experiencing [difficulty] in trying to understand what is happening to the legal profession in America. The numbers alone are staggering.").

12. EISLER, *supra* note 6.

13. KUMBLE & LAHART, *supra* note 6.

14. STEWART, *supra* note 6.

15. P. x. The preface to *Tournament of Lawyers* does contain a brief, thoughtful discussion of the television series *L.A. Law* (NBC). The authors suggest that McKenzie Brackman, the small law firm that is the focus of that series, is really a "homunculus, a miniaturized large firm," p. ix, "the large firm scaled down to faces that we can remember and causes that we can understand." P. x. They argue that *L.A. Law* "is important for us because it marks the arrival of the law *firm* (as opposed to the lawyer) as part of the familiar and observed moral landscape of American life." P. x (emphasis in original).

16. P. x.

17. P. 3.

Galanter and Palay's basic argument is that traditional law firm promotion practices make growth in firm size inevitable and that such growth is linked to many recent developments, including increased lateral hiring,[18] the creation of tiered partnerships,[19] and the collapse of entire firms.[20] According to the authors, "the relentless increase in the size of firms . . . is neither an incidental feature [of contemporary law practice] nor merely the result of the play of external forces."[21] Rather, large firm growth is an expression of the "fundamental structure of the law firm that crystallizes around the exchange between senior and junior lawyers."[22] Elaborating upon this theme, Galanter and Palay write:

> [T]he changes the big firm is undergoing grow out of the seeds planted by its early pioneers. We believe that the big firm, comprising partners and associates who are incipient partners, contains an inherent dynamic of growth. This dynamic is a by-product of what we call the promotion-to-partner tournament. Historically, the big law firm has structured attorney compensation and incentives around a promotion contest, which has proven to be a simple device for fostering the efficient sharing of human capital. But along with efficient governance has come growth. If the environment permits, the firm that employs such a tournament will tend to grow exponentially. Growth changes the character of the firm. Informality recedes; collegiality gives way; notions of public service and independence are marginalized; the imperative of growth collides with notions of dignified passivity in obtaining business. Eventually the firm faces the necessity of either reorganizing to support ever-larger increments of growth or reorganizing to suppress growth.[23]

While acknowledging that lamentations about commercialism and loss of professional virtue have recurred regularly for a century,[24] the authors opine that this time the crisis may be real; the "wolf" may in fact be at the door of the large firm.[25] The exponential character of law firm growth means that inevitable structural modifications will be far greater than in

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18. *See* p. 54.
19. *See* p. 122.
20. *See* p. 55 n.120.
21. P. x.
22. *Id.*
23. P. 3 (footnote omitted).
24. *See* pp. 3, 36, 68-69; *see also* p. 17 (observing that Professor A.A. Berle noted in 1933 the "abandonment of the notion that the lawyer 'was an officer of the court and therefore an integral part of the scheme of justice' and its replacement by a notion of the lawyer as a 'paid servant of his client'" (quoting Adolph A. Berle, *Modern Legal Profession*, *in* 5 ENCYCLOPAEDIA OF THE SOCIAL SCIENCES 340, 343 (Edwin R.A. Seligman et al. eds., 1933))).
25. *See* pp. 3, 69.

years past.[26] At the same time, greater dissemination of information about the legal profession in general and about law firms in particular makes it more difficult for firms to avoid challenges to traditional modes of operation.[27]

II. History and Transition

The validity of the authors' exponential growth thesis is open to question on a variety of grounds. As discussed below, their theory is predicated upon unreasonable assumptions about the economic rationality of large firm lawyers, the stability and prosperity of the firms to which they belong, and the public demand for the services that those enterprises produce.[28] Moreover, the authors' theory attempts to explain only those patterns of growth occurring in firms in which growth is largely a product of internal promotion processes; the many (and increasing) instances of growth as a product of law firm mergers and other nontraditional modes of expansion are largely ignored.[29] Nevertheless, *Tournament of Lawyers* must be credited with significant achievements relating largely to the book's marshaling of the evidence. In the course of one slim volume, Galanter and Palay present a rich history of the large law firm and its role in American society. Drawing upon numerous sources, the authors trace the growth of the big firm from its early days at the turn of the century (when "big" referred to a firm with four or more attorneys[30]) through its "golden age" circa 1960 (when life was "prosperous, stable, and untroubled"[31]) and ultimately on through the hyper-competitive 1980s[32] (when

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26. *See* p. 69.

27. *See id.*; *see also* p. 72 ("Over the past twenty-five years, the development of new lines of scholarship about the law in action made available a profusion of information about the working routines of courts and judges, about the work of lawyers, the structure and politics of the bar, the impact of legal regulation, and so forth.").

28. *See infra* subpart III(C).

29. Galanter and Palay sum up the parameters of their project as follows:

> [W]e . . . have not attempted to describe every conceivable big firm, only the promotion-to-partnership firm based on the promotion-to-partner tournament. Firms can be large without being promotion-to-partnership firms. Examples include the national multibranch law firms such as Hyatt Legal Services and Jacoby & Myers, which have an administrative hierarchy and large numbers of salaried lawyers, and which market standardized legal services to individuals.

P. 108 n.59. Also notably absent from the authors' study was Finley Kumble. Founded in the late 1960s, Finley Kumble had become one of the largest law firms in America before its demise in the late 1980s. *See* STEVENS, *supra* note 6, at 38. Its growth had relied little upon internal promotion processes, focusing instead on lateral hiring of partners and mergers with established firms. Galanter and Palay say that "Finley, Kumble was omitted [from their study] because its growth history was too short for [their] purposes." P. 143 n.8.

30. In 1892, 87 firms had 4 or more lawyers. By 1903 that number had climbed to 210. P. 15.

31. P. 20.

32. *See generally* Johnson & Coyle, *supra* note 2, at 363, 367-69 & n.34 (discussing the rapid

lateral hiring, "headhunters," and branch offices[33] became common and when many large firms merged, split up, or dissolved[34]).

Galanter and Palay begin by considering the unique style of practice that has characterized large firms. Discussing the differing status of partners and other large firm attorneys, the types of clients, the nature of the work, the support systems, and the kinds of information used to render legal services,[35] the authors contrast large firms with other types of practice. They argue that, while "any of these features can be found apart from the whole cluster, . . . the cluster hangs together in a way that gives the big firm a distinctive institutional character—a character that is changing as these features are rearranged."[36]

The authors consider in detail selective hiring[37] and promotion practices[38] which succeeded, during the first half of this century, in making the big firm the "dominant kind of law practice"[39] and in setting an "industry standard"[40] that has been "emulated in other practice settings,"[41] both in the United States and abroad.[42] Using as their benchmark a hypothesized golden age of the big firm circa 1960, the authors then chart the transformation of legal institutions generally, and of the large firm specifically, during the past generation.[43] Detailing the

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changes in lawyering in the 1980s, including increased competition in "both the marketing of legal services and the recruitment, training and retention of competent lawyers" (footnotes omitted)).

33. *See* pp. 47-48, 54.

34. *See* pp. 54-55 & n.120; *see also* Johnson, *Solicitation of Law Firm Clients*, *supra* note 5, at 6 (discussing split-offs, break-ups, and lateral hiring).

35. *See* pp. 4-9.

36. P. 4.

37. *See* pp. 23-26.

38. *See* pp. 26-32.

39. P. 20.

40. P. 14.

41. P. 18; *see* p. 2 ("Like the hospital as a way to practice medicine, the big firm provides the standard format for delivering complex services . . . . The specialized boutique firm, the public-interest law firm, the corporate law department—all model themselves on a style of practice developed in the large firm.").

42. *See* pp. 2, 18-19.

43. Of the large law firm circa 1960, Galanter and Palay write: "The form had been tested; it was well established; it exercised an unchallenged dominance. It was a time of stable relations with clients, of steady but manageable growth, of comfortable assurance that an equally bright future lay ahead." P. 20.

Detailing the characteristics of that golden age is a challenging task, for during that era "[l]arge-firm law practice was . . . shrouded in confidentiality." P. 69. Indeed, according to some sources, confidentiality of information about the operation of large firms continued well into the 1970s. Thus, one author recently wrote:

> It hardly seems possible in 1989, when journalists often can't get lawyers off the phone, but in 1979 most corporate lawyers wouldn't even return a phone call from a reporter . . . .
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> . . . The top salaries of law partners, unlike those of *Fortune* 500 executives, was one of the most tightly held secrets in American business. Nor did anyone have a clue

forces behind the transformation[44] and the efforts of firms to cope with resulting pressures,[45] the authors conclude:

> [L]arge law firms find themselves in an environment with more lawyers, competing with more large firms like themselves, all supplied with more technological infrastructure, involved in more contested activity in more varied arenas with more contenders, using a larger, more indeterminate and more diffusely bounded body of legal knowledge.[46]

Assessing the present state of affairs, Galanter and Palay write:

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about the profits of the top firms . . . .

. . . .

Information about clients was also a closely kept secret . . . . All business affairs were held closely under wraps . . . .

EISLER, *supra* note 6, at 112-15.

Nevertheless, based upon a copious review of extant literature, Galanter and Palay sketch the chief outlines of large firm lawyering at the dawn of the 1960s. *See generally* pp. 24-32.

44. According to the authors:

> In the course of [the past] twenty-five years, there has been a great change in scale of many aspects of the legal world: the amount and complexity of legal regulation; the frequency of litigation; the amount and tenor of authoritative legal material; the number, coordination, and productivity of lawyers; the number of legal actors and the resources they devote to legal activity; the amount of information about law and the velocity with which it circulates.

P. 37.

The authors observe that recent decades have brought a "rapid succession of new technologies," p. 42, such as photoreproduction, computerization, electronic mail, and fax machines, and that the size of the profession multiplied: "[n]ot only were there more lawyers, but they were younger, less experienced, better educated, and more diverse in background and outlook than their predecessors." P. 39. Simultaneously, there was a "general shift to larger units of practice" as more attorneys worked in larger firms. P. 45. Client relationships also tended to be less enduring, as corporations employed increased numbers of in-house counsel who frequently exercised greater scrutiny over retained outside attorneys, often relegating big firms to work on "task-specific ad hoc engagements." P. 50.

Competitive pressures were exacerbated by Supreme Court decisions striking down minimum fee schedules and permitting lawyer advertising. *See* p. 52 n.100. While rulings allowing lawyers to advertise made it possible for consumers to obtain information about legal services, the rulings had the added effect of unleashing a torrent of facts principally of interest to lawyers. Attorneys were no longer afraid to talk to the press for fear of being charged with attempting to circumvent advertising restrictions, and a variety of publications began to carry a "steady diet of detailed backstage information about firm structure, hiring policy, marketing strategies, clients, fees, and compensation." P. 71 (footnote omitted). The result was a new profession-wide interest in staying equal with, or ahead of, other firms. *See* pp. 52-53.

45. To cope with competitive pressures, big firms developed lavish summer recruitment programs, *see* p. 55, raised salaries, *see* pp. 56-57, increased associate-to-partner ratios, *see* p. 59, launched aggressive marketing campaigns, *see* p. 53, created partnership tiers, *see* p. 58, increased reliance on nonlawyer personnel, *see* p. 65, and broadened their services to include such "non-legal" businesses as investment advice, economic consulting, and real estate development, *see* p. 66. In addition, large firms sought to operate more like the businesses they predominsntly served. As Galanter and Palay write of the modern legal profession: "Firms rationalize their operations; they engage professional managers and consultants; firm leaders worry about billable hours, profit centers, and marketing strategies." P. 52.

46. P. 45.

> [I]n the early 1990s we find that the big firm of the first two-thirds of the century is becoming something else. The large agglomeration of specialist lawyers organized around the "promotion to partnership tournament" is still there—indeed it is much larger. But a cadre of permanent salaried personnel (paralegals, second-tier associates, and permanent associates/senior attorneys) now surrounds that promotion-to-partnership core. Within the core, promotion comes to fewer entry-level associates and it often comes later. For those who achieve promotion, the meaning of partnership has changed. The prospect of an orderly procession to unassailable eminence has been replaced by entrance to an arena of pressure and risk amid frenetic movement.[47]

Admittedly, it is possible to find in the works of other writers[48] portions of the story tracing the birth and growth of large law firms and their recent transformation into what Galanter and Palay refer to as the "Later Big Firm."[49] Yet *Tournament of Lawyers* is notable by reason of its comprehensive treatment of the subject and because of the clarity, richness, and efficiency with which the story is told. So, too, the ground covered by the book is not so familiar, nor are the authors' fresh insights so infrequent, that the journey is uninteresting. For example, Galanter and Palay take special care to dispel misconceptions concerning the rigidity with which the "up-or-out" promotion policy—a basic element of the big firm structure—was applied in years past.[50] They document several

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47. Pp. 75-76.

48. *See, e.g.*, Wayne K. Hobson, *Symbol of the New Profession: Emergence of the Large Law Firm, 1870-1915*, *in* THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA 3 (Gerard W. Gawalt ed., 1984) (discussing the early American law firm); WAYNE K. HOBSON, THE AMERICAN LEGAL PROFESSION AND THE ORGANIZATIONAL SOCIETY 1890-1930, at 141-209 (Harold Hyman & Stuart Bruchey eds., 1986) (chronicling the rise of large law firms); JAMES W. HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS 306-08 (1950) (discussing the rise of metropolitan law firms); Robert W. Gordon, *Legal Thought and Legal Practice in the Age of American Enterprise*, *in* PROFESSIONS AND PROFESSIONAL IDEOLOGIES IN AMERICA 70 (Gerald L. Geison ed., 1983) (developing the history of legal practice from 1870 to 1920); *see also* AMERICAN BAR ASSOCIATION COMMISSION ON PROFESSIONALISM, IN THE SPIRIT OF PUBLIC SERVICE: A BLUE PRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 1-9 (1986) (discussing changes that have affected the legal profession generally in the past 25 years); Michael S. Ariens, *A Uniform Rule Governing the Admission and Practice of Attorneys Before United States District Courts*, 35 DEPAUL L. REV. 649, 649-51 (1986) (describing increased attorney mobility and the growth of interstate law practice); Johnson & Coyle, *supra* note 2, at 360-64 (discussing law firms' increasing use of staff attorneys, of-counsel positions, and temporary lawyers to remain competitive).

49. Pp. 75-76; *see infra* note 150 (describing the "Later Big Firm").

50. *See* p. 28 ("[T]he 'up-or-out' rule . . . prescribes that after a probationary period the young lawyer will be admitted to partnership or will leave the firm.").

In a particularly interesting passage, Galanter and Palay take the position that "[t]hough it has been the typical practice, there is no intrinsic reason that . . . firms must fire the losers" of the promotion-to-partner tournament. P. 100. They reason that "[s]o long as losers receive total compensation substantially less than winners, the incentive effect of the tournament will remain." *Id.*;

instances, covering much of the last century, in which large firms employed attorneys on an indefinite, continuing basis,[51] and the authors conclude that it is "easy to overestimate the rigor with which the up-or-out rule was in fact applied."[52] Galanter and Palay then perceptively make the seemingly correct argument that recent trends within the legal profession favoring creation of staff attorney positions and nonequity partnerships[53] are not employment innovations, but current-day continuations of a tradition of permanent nonpartner employment.[54]

Similarly, the authors cast doubt on the proposition that the "classic pattern of dividing the proceeds of the big-firm partnership was some approximation of giving each partner an equal share—or a share by seniority (the so-called 'lockstep' system)."[55] With citation to authority sufficiently obscure that the reader is unlikely to have read it, Galanter and Palay write: "If this [theory of compensation based on equality or seniority] was ever true, by circa 1960 the prevailing practice was to divide profits according to individualized shares rather than by a norm of equal participation."[56] The implicit suggestion is that the "eat what you kill" theory of partner compensation—which some writers have strongly identified with the 1970s and 1980s[57]—may have a considerably earlier origin.

Other incidental points in Galanter and Palay's history of large law firms are equally illuminating. In their discussion of the golden age of large firms circa 1960, the authors refer to a prior "wave of European and

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see p. 100 n.46 (observing that the up-or-out promotion system "has not prevented firms from having a cadre of well-paid permanent associates").

51. *See* pp. 28-29, 64 n.168; *cf.* p. 35 (noting "less up-or-out pressure" in firms outside New York).

52. P. 28; *see* p. 100 n.46 ("[T]he up-or-out promotion system has been more a paradigm than a hard-and-fast rule. Its administration, except for a period during the 1960s and 1970s, has not prevented firms from having a cadre of well-paid permanent associates.").

53. *See* p. 64; Johnson & Coyle, *supra* note 2, at 370-72; *see also* Barbara Lyne, *Diversity Increases, Rate of Growth Slows*, NAT'L L.J., Sept. 24, 1990 (Supp.), at S2, S2 (asserting that the nonpartner tiers of of-counsel attorneys, contract partners, senior associates, and special attorneys emerged around 1985).

54. *See* p. 64 ("In the early 1970s permanent associates were described as 'a dying breed . . . .' But before the end of the decade, the institution was reinvented."); p. 29 ("[I]t was not to be long before [permanent associates] were phased back in.").

55. P. 31. One authority asserts that the equal share theory continues to have "many adherents." *See* Henry Hansmann, *When Does Worker Ownership Work? ESOPs, Law Firms, Codetermination, and Economic Democracy*, 99 YALE L.J. 1749, 1785 (1990) ("[M]any of America's largest and most prosperous law firms have long followed a practice of sharing the partnership's earnings equally among all partners of a given age, regardless of individual productivity.").

56. P. 31 (citing ROGER SIDDALL, A SURVEY OF LARGE LAW FIRMS IN THE UNITED STATES 43, 48 (1956)).

57. *Cf.* Samuelson & Jaffe, *supra* note 5, at 196 (indicating that recent trade publications have recommended "marginal product ('eat what you kill')" compensation methods).

Washington [branch] offices [that] had been largely abandoned"[58] and to the use of "temporary lawyers"[59] to deal with fluctuations in demand—once again suggesting that phenomena commonly associated with the last decade have older historical antecedents.[60]

III. The Theory of Exponential Growth

The latter half of *Tournament of Lawyers* is devoted to a detailed examination of the authors' principal contention, namely that the promotion practices of large firms inevitably entail exponential growth.[61] In addressing that subject, the book dramatically changes personality. The reading becomes slow, the argument complex, and the use of technical jargon apparently indispensable.[62] So abrupt is the transformation from the lucid, easy-going historical treatment offered in the first half of the work, one might think that the latter chapters were written by different authors.

The change of style is more than a matter of inconvenience for the reader, for it impedes assessment of the validity and significance of the authors' thesis on law firm growth. Only after the reader has cleared a path through the dense vegetation of graphs, equations, and what Julius Getman might call "scholarly voice"[63] is it possible to weigh the argu-

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58. P. 23.

59. P. 30.

60. *Cf.* pp. 47-48 (discussing recent growth of foreign offices and of branch offices in Washington and other cities); Johnson & Coyle, *supra* note 2, at 363 n.12 (collecting sources discussing the recent growth of domestic and foreign branch offices); *id.* at 368 n.30, 375 n.65 (discussing the creation of temporary lawyer placement agencies beginning around 1984 and the "increased" use of temporary lawyers during the late 1980s).

61. The authors use the term "exponential growth" to mean growth that results from a "constant percentage increase." P. 87.

62. Examples of the authors' use of specialized language abound: "That is, taking advantage of the nonrival aspects of surplus human capital results in interdependencies that create substantial risks for the lender." P. 96. And again:

> We can see how well the traditional story approximates the actual data by estimating the intercept and slopes of the kinked linear function (KLF) that best fit the growth history of each of the law firms in our sample. Visual comparisons of the representative curves drawn from these estimates and simple statistical tests of goodness of fit can give us some gross indicators of how well the kinked linear model performs as an estimate of individual law-firm growth patterns.

P. 78.

63. Distinguishing "scholarly voice" from "professional voice," "critical voice," and "human voice," Professor Getman writes:

> The law reviews are currently filled with articles written in scholarly voice and covering a broad political and intellectual spectrum. Their common thread is the use of nonlegal scholarship as the point of departure.
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> . . . .
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> . . . [S]cholarly voice tends to be far removed from the emotions, language, and understanding of the great majority of human beings . . . .

ments. In the end, it appears that the authors' account of big firm growth is premised on ideal conditions, which do not exist in contemporary law practice. Thus, even assuming that the authors are able to persuasively explain past growth patterns, it is difficult for their model to illuminate current events.

A. The Empirical Data

In their effort to understand changes in law firm size, the authors have assembled an impressive array of data about two groups of large firms. Group I consists of 50 firms that numbered among the very largest in the country in 1986; Group II encompasses another 50 firms that in 1988 ranked roughly between the 200th and 250th largest.[64] The growth patterns of those firms were determined by the authors from past listings in Martindale-Hubbell.[65] Not surprisingly, the historical information obtained by those efforts confirms the widely held belief that in recent years large firms have grown at unprecedented rates.

With the aid of graphs, tables, and regression formulas, the authors draw two conclusions from the data: first, that the growth patterns of the firms in the study are exponential rather than linear; second, that beginning around 1970 the pace of exponential growth quickened.[66] These conclusions cause the authors to reject what they describe as the "shock theory" of recent law firm growth.[67] According to that theory, an "external shock" around 1970 caused a dramatic increase in firm growth, which until that time had been best described by straight lines sloping gently upward.[68] Instead, the authors see recent growth as the product of two factors: (1) the inherent tendency of large firms to grow exponentially due to the manner in which they are structured;[69] and (2) nonstructural forces that have hastened the rate of exponential expansion.[70] Thus, the authors argue that much of the recent explosion in law firm size is traceable to the

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> The fantasies that scholarly voice suggests are those of the author as a careful scientist, coolly examining the workings of the legal system to make it more rational, or as a dedicated intellectual whose broad familiarity with contemporary learning permits her to analyze the system without falling prey either to the sophistries of the courts or the assumptions of traditional scholarship.

Julius G. Getman, *Voices*, 66 TEXAS L. REV. 577, 580-81 (1988).

64. *See* pp. 22, 143-44.

65. *See* pp. 140-43.

66. *See* pp. 87-88.

67. *See* p. 87 ("All agree that firms are much larger today than they were even twenty years ago. But in our view, they did not get that way by a sudden change alone.").

68. *See* pp. 78, 87.

69. *Cf.* p. 98 ("We argue that the rapid growth we currently observe relates directly to the specific governance structure used by law firms to protect shared human assets from opportunistic conduct.").

70. *See generally* pp. 110-16 (surveying leading theories put forward to account for the accelerated growth of law firms after 1970).

nature of the large firm itself; such growth would have taken place even in the absence of the many external forces that in recent decades have otherwise transformed the practice of law.[71] While outside forces undoubtedly have catalyzed the explosion, their effect, the authors argue, is less than supposed by adherents to the "shock" theory. According to Galanter and Palay, external events simply "kinked" further the upward growth curves which, in any event, would have grown increasingly steep.[72]

The authors spend little time attempting to explain the events that may have "shocked" law firms into more rapid growth after 1970.[73] They speculate that the upward "kink" in growth curves may be attributable to (1) increases in the supply of lawyers; (2) more frequent law firm mergers; (3) increased demand for legal services generally, or for corporate work in particular; (4) changes in the relationship between in-house corporate counsel and retained outside firms; or even (5) changes in the ways that businesses use the law and lawyers.[74] Content to leave the "kink" issue to another day,[75] the authors devote the bulk of their attention to the

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71. *See* p. 88 ("[B]ig law firms, as presently structured, have a built-in 'growth engine' responsible for a significant share of the growth 'spurt' witnessed since 1970. In particular, we contend that roughly half of the growth is a by-product of the mechanisms used by law firms to govern the sharing of human capital."); p. 107 ("[A] firm that grows exponentially will eventually exhibit large jumps in membership quite apart from external shocks. We argue, therefore, that these sudden spurts in law-firm size actually result, in significant part, from the inevitable product of a long-term, historic process begun on the day the firm institutionalized its promotion tournament.").

72. *Cf.* p. 88 ("[W]hatever changes occurred in the early 1970s to make law firms grow faster do not, and probably cannot, entirely explain the growth witnessed either before or after 1970.").

73. The authors candidly acknowledge that their exploration of the "kink" in post-1970 growth is "hardly exhaustive." P. 110.

74. *See* pp. 110-16.

75. *See* p. 116.

Two other co-authors, including a lawyer who headed the rapid expansion of what was once a 700-plus lawyer firm, have argued that changes in the legal profession have simply "paralleled [those in] other segments of the economy, in advertising, on Wall Street, in banking, and in the accounting profession." KUMBLE & LAHART, *supra* note 6, at 40. They write:

> First, more and more American companies, which only a few years before had concentrated on local and regional markets, were viewing themselves as national concerns. Advertising, investment banking, commercial banking, accounting, and the law had to follow their clients' lead and deliver their professional services on a national basis, or risk losing the clients' business. So, they either opened offices in other parts of the country or merged their way into new markets . . . .
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> Second, clients started to demand more efficient delivery of legal services. The well-heeled, larger firms . . . came up with the significant new capital needed to improve efficiency . . . . [I]t was far easier for a firm of seventy-five lawyers to bear the cost of such improvements than for a firm of twelve . . . .
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> Third, the legal profession as a whole was seeing a pronounced trend toward specialization. As clients' businesses expanded, they needed more and more specialized services . . . . [T]hat became a strong impetus to the growth of the firm.

Id. at 40-41.

question of whether the organizational structure typical of large firms necessitates exponential growth.

In considering the authors' arguments, it is useful to note that the empirical data supporting a theory of exponential growth is less than overwhelming. The authors acknowledge that in terms of describing the underlying data, a kinked linear function (KLF) model and a kinked exponential function (KEF) model both do a "reasonable job,"[76] that "neither model unambiguously fits the firm-size data better,"[77] and that it can be said only "that the KEF model of firm size works as well as the KLF model."[78] The authors' claim that the data shows a pattern of exponential growth appears to rest primarily on the rather slender reed that when the ability of the models to predict future growth is compared, using data gathered through 1986,[79] "the KEF model is a better predictor of 1988 size."[80]

B. Promotion Tournaments and the Sharing of Human Capital

Galanter and Palay subscribe to the view, commonly identified with Ronald Gilson and Robert Mnookin, that lawyers organize law firms and employ promotion tournaments in part because such arrangements permit an efficient sharing of human capital.[81] In the simplest of terms, human capital is the talent, training, reputation, or relationships[82] that allow a lawyer to attract business. A lawyer who can bring in more clients than he or she personally can serve has excess human capital.[83] To the extent that such resources can be shared,[84] the lawyer's income can be increased by lending those assets to others.[85] Some lawyers have human capital

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76. P. 84.

77. P. 82.

78. P. 84.

79. *Id.*

80. Pp. 84-87.

81. *See* Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313 (1985); Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567 (1989); *see also* B. Peter Pashigian, *Comment [on Gilson & Mnookin]*, 37 STAN. L. REV. 393 (1985) (suggesting that the implications of Gilson and Mnookin's sharing model be tested with additional data).

82. *See* pp. 89-90.

83. *See* p. 90 (defining "surplus human capital" as "more capital assets than [attorneys] can productively use by themselves"); *see also* p. 91 ("An attorney may find herself with surplus human capital as a result of the constraints on her personal supply of labor, which is ultimately fixed by the working hours in the day."); p. 92 ("All attorneys have some human capital. Some have more than they productively can combine with their own labor to produce additional income.").

84. Not all forms of human capital can be shared. "The owner of certain assets—innate intelligence, aptitude, intuition, or physical presence—cannot transfer them to others . . . . But most attorneys possess a mix of sharable and unshareable assets." P. 91.

85. P. 92.

deficiencies because they are able to complete more work than they individually can procure.[86] If those persons sell their labor to lawyers with surplus human capital, they too can increase their incomes. Viewed in this context, law firms provide an organizational arrangement through which lawyers with excess human capital (partners) may enlist the services of lawyers with an excess supply of labor (associates) under conditions that are mutually beneficial.[87] As devices for facilitating the borrowing and lending of human capital, law firms are preferable to external market mechanisms, because standard law firm practices minimize the transaction costs associated with the exchange, such as "gathering information, monitoring performance, negotiating and communicating agreements, and protecting against opportunistic behavior."[88]

According to the authors, law firms increase in size because they structure themselves around a promotion tournament—a governance mechanism under which a small number of associates are selected for the super-reward of partnership after an extended apprenticeship.[89] The tournament creates an incentive for associates to labor diligently on behalf of the firm[90] and at the same time provides an opportunity for partners to scrutinize associates' efforts.[91] The system runs smoothly as long as associates are able to verify by their own observations[92] the accuracy of

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86. *See id.* (discussing "[n]et borrowers of human capital").

87. *See* p. 107 ("The law firm can he viewed as an internal market for the lending and borrowing of human capital.").

88. P. 93; *see generally* pp. 94-98 (discussing transaction costs and opportunistic conduct).

89. In the firms studied by the authors, promotion rates during the period from 1950 to 1986 ranged between 5.34% and 8.19%. *See* p. 104.

90. *See* p. 102 ("By promoting some but not all of the associates the firm communicates to them that it will reward productivity but not shirking; therefore, the associate will exert a maximum effort to win the contest.").

The significance of partnership as a motivating factor is captured by the following passage:

> Partnership is everything to lawyers. When young attorneys come to a firm, the first thing they want to know is how long it takes to make partner and what are the criteria. It used to be that once a partner always a partner. . . . That's less true today . . . . Still, partnership remains very important; something all lawyers strive for. It gives them a sense of status among their peers. It sets the mantle of maturity on them. It admits them to the world of responsibility and the riches lawyers can accumulate. . . . What they say binds the firm. It ties them to the destiny of the firm. They are taken more seriously by clients. . . . And they can charge more for their time.

KUMBLE & LAHART, *supra* note 6, at 29.

91. *See* pp. 99-100 (discussing incentives and monitoring). The authors take a rather sanguine view of the supervision process, stating: "At least initially, partners carefully watch over associates, amending and supplementing their work as needed. During this period, partners closely evaluate the work product and behavior of their newly hired associates and act as quality-control supervisors." P. 99. Reports from my former students now practicing in large firms suggest that this view of the process is more myth than reality. *Cf.* Debra C. Moss, *Law Job Trends*, A.B.A. J., Apr. 1990, at 36, 36 (observing that, according to one placement agency, "the competitive environment has forced older lawyers to spend more time in practice and less time training their junior counterparts").

92. *See* p. 101 (discussing verification by associates of whether a firm has paid out the agreed

the firm's implicit assurances that, on average, a given percentage of each entering class will be promoted after a period of time.[93]

However, according to the authors, these same factors inevitably produce law firm growth.[94] Once an associate is promoted to partner, the firm must hire new associates both (1) to replace the promoted lawyer as the supplier of the labor needed to maximize the use of other partners' surplus human capital;[95] and (2) to furnish a new supply of labor so that the firm may fully utilize the newly created partner's surplus human capital,[96] which presumably was developed during the apprenticeship and ultimately recognized by the act of promotion.[97] These hirings increase the size of the firm[98]—unlike hirings necessary to replace former associates who depart from the firm after losing the promotion tournament.[99]

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prizes). A firm that reneges on promotion promises risks "adverse reputational and motivational effects" which may impair both recruitment and productivity. P. 102. It would seem that similar untoward consequences would flow from the relatively recent law firm practice of "firing" unproductive partners. *Cf.* Boardman, *supra* note 4, at 1 (discussing the firing of at least five partners at the Dallas law firm of Gardere & Wynne). The value of the partnership prize is substantially diminished if the award comes to be viewed by associates as not permanent, but revocable.

93. *See* p. 106 ("By its actions toward preceding classes, the firm implicitly tells the associates what percentage can expect to win promotion."); p. 101 (noting that it is "essential" to declare in advance that on average a fixed percentage of associates will be promoted "because it communicates to associates that it is in the firm's own interest to award the prize of partnership to those who have produced the largest combined bundle of output, quality, and capital").

94. *See* p. 99 ("We argue that the mechanism chosen in most firms to monitor performance (and to reconcile conflicting incentives) has lead [sic] *inevitably* to a pattern of exponential growth." (emphasis in original)); *see also* p. 103 ("The tournament, with its fixed promotion percentage, not only provides incentives for associates to work hard, but also usually guarantees that the firm will grow at least exponentially.").

95. *See* p. 102 ("[A]t the end of the tournament, the firm must replace . . . all those who win and are promoted."); *see also* p. 107 ("As the firm promotes the designated percentage of associates, it must replace them and *must also hire enough new associates to keep the associate-to-partner ratio from falling.*" (emphasis in original)).

96. *See* p. 107 ("The firm needs these additions to the associate pool to support the new partners by using the new partners' shareable human capital."); p. 103 (noting that a firm's growth from one year to the next depends in part upon "the number of associates that it must hire the next year to replace the newly promoted partners *and* to meet the next period's associate-to-partner ratio" (emphasis in original)).

97. *See* p. 100 ("The firm evaluates associates [for partnership based] on their production of two goods: high-quality legal work and their own human capital.").

The validity of premise (2) stated above in the text is not obvious. For example, one of my colleagues at St. Mary's University, Professor Geary Reamey, noted on a draft of this review in May 1991:

> I seriously doubt this premise. Most partners promoted through the ranks of the big firm have little or no chance to develop surplus human capital. They are more likely to continue doing the work originated by the rainmakers for quite some time, ultimately becoming a replacement for the dead or retired. Many lawyers have careers like this. A few become rainmakers.

98. *See* p. 102 ("By replacing promoted attorneys the firm grows by the number of promotions.").

99. *See id.* ("If the firm fires the losers, then it must also replace them, but their replacement has the effect of maintaining firm size, not increasing it.").

New associates then participate in a promotion-to-partner tournament, the outcome of which will trigger a new round of promotion and hiring, *ad infinitum*.[100]

According to the authors, promotion rates tend to remain stable because the integrity of a firm's compensation package depends upon the ability of associates to observe promotion percentages over extended periods of time. That is, promotion rates generally remain constant because once set they are costly to change.[101] Moreover, the ratio of associates to partners tends also to remain constant or increase, the authors claim, "because firms generally establish a promotion percentage that will leave it with partners who have at least as much human capital as the average of the existing partners."[102] "To do otherwise would not be in the interest of the existing partners," for the prohibitive costs of accurately measuring the productivity of individual partners tends to ensure that firms base "some percentage, and often a significant percentage, of a partner's income on the average productivity of the firm."[103] "Because the promotion percentage is constant and the associate-partner ratio is constant or increasing, the firm's percentage growth rate will be constant (exponential) or increasing (faster than exponential)."[104]

C. *Doubts About Premises*

To be sure, Galanter and Palay's growth thesis is an interesting intellectual construct. Drawing upon the insights of a number of disciplines, it seeks to illuminate employment practices that, despite widespread use, have generally escaped study. Yet it is far from clear that the authors are correct in arguing that "the mechanism chosen in most firms to monitor performance (and to reconcile conflicting incentives) [namely, a promotion tournament] has lead *inevitably* to a pattern of exponential growth."[105] As discussed below, the validity of their theory may be questioned on at least four grounds.

1. Economic Rationality.—To begin with, Galanter and Palay's thesis of inevitable growth attributes to law firm employment and promotion practices a degree of economic rationality that is arguably unrealistic. They argue, for example, that law firms will select as tournament winners those associates who have amassed the most "significant amounts of both

100. *See* pp. 102, 107.
101. P. 106.
102. *Id.*
103. *Id.*
104. P. 107.
105. P. 99 (emphasis in original).

high-quality legal work and human capital,"[106] and that firms will "hesitate to allow associates with less human capital than the average partner to win" tournaments for fear of diluting the average amount of capital per partner.[107]

In fact, employment and promotion decisions often have less to do with the efficient allocation of human capital and labor than with other considerations. A firm may expand its ranks, or conversely may fail to do so, not because such actions are economically wise, but because of the impact those decisions will have on intrafirm allocations of power.[108] Or an associate may be promoted based upon the partners' sense of loyalty to the candidate's relative, friend, or patron,[109] or for any of a thousand other reasons unrelated to efficiency. So too, it is well known that qualified individuals may be denied partnership because of discriminatory practices.[110] Indeed, recently, there has even been something of a contrary trend whereby personnel decisions in some firms have been influenced by efforts to achieve racial and gender diversity by actively advancing the causes of women and minorities.[111] Experience counsels that in attempt-

106. P. 100.

107. P. 106.

108. *See* KUMBLE & LAHART, *supra* note 6, at 224 (asserting that a desirable merger was opposed and ultimately rejected because one name partner "saw it as a power base that would be loyal to" another name partner); *id.* at 216 (asserting that in the year prior to the collapse of Finley Kumble, the second largest law firm in the country, "growth had far more to do with the political advantage to be gained by the partner pushing for opening another office than it did with a rational vision of expansion").

109. For an example of the converse, see *id.* at 30 (noting one partner's refusal to admit persons to partnership to avoid depleting the partnership share of the partner's son).

110. *See* EISLER, *supra* note 6, at 114 ("Female lawyers, fooled into thinking that with hard work they could make partner, found out that the big firms could almost always find a way to dump them, rather than admit them to the most exclusive club."); Milo Geyelin & Wade Lambert, *Law Partnership Can Be Awarded As Remedy in Discrimination Case*, WALL ST. J., Mar. 18, 1991, at B8 (discussing remedies for discriminatory denial of partnership); Nina Burleigh & Stephanie B. Goldberg, *Breaking the Silence: Sexual Harassment in Law Firms*, A.B.A. J., Aug. 1989, at 46 (discussing discriminatory hiring practices and sexual harassment); Arlynn L. Presser, *Law Firm Liable for Sex Bias*, A.B.A. J., Mar. 1991, at 24, 24 (discussing a federal court ruling that a female associate was held to a higher partnership standard than males); Celeste H. Yousoof, *For Women, Road to Power Remains Rocky*, NAT'L L.J., Apr. 15, 1991, at 12 ("Women are not considered for positions of prominence as frequently as men."). *See generally* KAREN B. MORELLO, THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA, 1638 TO THE PRESENT 194-217 (1986) (discussing women in major law firms).

111. *But cf.* Jamienne S. Studley, *Employment Market: Winners and Losers*, LEGAL TIMES, Mar. 18, 1991, at 44, 44 (suggesting that the recent economic downturn may cause firms to abandon the "extra effort of minority hiring programs" and that "slashes in first-year hiring will jeopardize the best chance for minority candidates to get a foot in the door"). Of course, to the extent that these hiring moves are a means of obtaining clients, rather than securing social justice, they can be explained as simply another form of economic rationality. *See* Don J. DeBenedictis, *Changing Faces: Coming to Terms with Growing Minority Populations*, A.B.A. J., Apr. 1991, at 54, 56-57 (indicating that active minority recruitment is often intended to link the firm with important communities of potential clients or to assuage present clients' concerns about the number of the firm's minority lawyers); *id.* at 58

ing to account for human behavior, the presence of noneconomic motives be neither ignored nor understated.

Moreover, even where decision makers act with economic motivations, there may be substantial divergences in perspective. An individual participating in hiring or promotion processes may be less interested in the firm's interests than in advancing his or her own economic welfare.[112] Such motives may lead a person to vote for expanding the ranks with those from whom personal loyalty may be expected or from whom competition need not be feared—even if such action is contrary to the economic welfare of the firm. At the very least, there is reason to question the authors' belief that promotion-to-partner firms inevitably must grow exponentially because they seek to maximize the average amount of capital per partner in hiring or promoting associates. To the extent that lawyers participating in such decisions are interested in advancing other goals, exponential growth is not inevitable.

The authors' theory of exponential law firm growth rooted in the sharing of human capital reminds one of Arthur Leff's comments concerning Richard Posner's economic analysis of law:

> [As] lovely as all of this is, it is still unsatisfactory as anything approaching an adequate picture of human activity . . . .
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> . . . [S]ubstituting definitions for both facts and values is not notably likely to fill the echoing void . . . . [W]e shall have to continue wrestling with a universe filled with too many things about which we understand too little and then evaluate them against standards we don't even have.[113]

2. *Obstacles to Verification.*—More troubling, perhaps, than the authors' assumption of economic rationality is the degree to which their model underestimates the role in law firm growth of such phenomena as lateral hiring, partner defections, law firm mergers, and spin-offs. Increased merger activity is briefly discussed by Galanter and Palay as a factor potentially contributing to the "kink" in post-1970 growth curves[114] or as a means of correcting unbalanced capital-to-labor ra-

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("['I]t behooves every mid-size or large firm, just from a marketing viewpoint, to make sure they are represented by minorities and women' . . . ." (quoting a minority attorney)).

112. *See* KUMBLE & LAHART, *supra* note 6, at 249 (asserting that one large firm's opening of a Chicago office "could be traced to firm politics not to any rational growth plan" and was attributable to business from that branch being "credited" to certain partners for purposes of computing salaries).

113. Arthur A. Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 VA. L. REV. 451, 458-82 (1974).

114. *See* pp. 111-12.

tios,[115] and there are occasional references in the book to lateral hiring[116] and the like. For the most part, however, events involving a firm's gain or loss of attorneys under conditions differing from traditional recruitment and promotion processes are not integrated into the authors' thesis of exponential growth.[117] Such omissions would be understandable in a discussion limited to the large firm world circa 1960, for at that time such developments were rare. But circumstances have changed. Mergers, spin-offs, defections, and lateral hiring are now common,[118] and the import of those features cannot be underestimated by a theory that attempts to explain developments in contemporary law practice.

Contrary to the authors' seeming implication,[119] these types of events do not merely add to or subtract from the exponential growth produced by promotion tournaments. They also call into question basic assumptions underlying the authors' theory of exponential growth. Galanter and Palay assert that it is "essential" to the promotion tournament process that firms pay out the prizes they have promised and that associates are able to verify such payouts "by observing how the present and preceding classes fare."[120] Such observations are possible in a firm where membership is relatively stable and where hiring and departure

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115. *See* p. 119.

116. *See* pp. 103 n.50, 104, 108, 119.

117. *See supra* notes 73-75 and accompanying text.

118. *See* ROBERT W. HILLMAN, LAW FIRM BREAKUPS at xix (1990) (predicting that the "tumult will continue for some time to come"); Robert W. Hillman, *Law Firms and Their Partners: The Law and Ethics of Grabbing and Leaving*, 67 TEXAS L. REV. 1, 2-3 (1988) ("Firms are increasingly but temporary resting places for their partners. Lateral hiring, once confined largely to junior lawyers, now extends through all levels of a partnership."); Johnson, *Solicitation of Law Firm Clients*, *supra* note 5, at 4-5 ("Each year thousands of law firm associates leave the firms for which they have worked, and then continue to practice law, either on their own or with other attorneys. The same is true of law firm partners, although the numbers involved are considerably less."); Vincent R. Johnson, *Switching Law Firms—And Taking Clients*, TRIAL, Nov. 1989, at 117 ("Today . . . law firms merge, dissolve, or break up into competing partnerships frequently [and thus] attorneys regularly change firms."); Laurel S. Terry, *Ethical Pitfalls and Malpractice Consequences of Law Firm Breakups*, 61 TEMPLE L. REV. 1055, 1056 (1988) ("It is no longer uncommon to see headlines about lawyers defecting from their firms . . . ."); Donald R. McMinn, Note, *ABA Formal Opinion 88-356: New Justification for Increased Use of Screening Devices to Avert Attorney Disqualification*, 65 N.Y.U. L. REV. 1231, 1231 (1990) (noting the "surge in attorney mobility"); *cf.* p. 55 n.120 (noting that "about 100 firms dissolved in 1987, including about a dozen with more than thirty lawyers").

119. *See* pp. 104-05 (suggesting that increased lateral hiring of partners may act as a "shock" which "kinks" the growth rate).

120. P. 101. The authors explain the verification process:

> Each year, the associates can observe who actually wins and determine whether this corresponds to the promotion percentages they have come to expect. If the associates see the promotion percentage decline, they likely will not develop strong expectations about its ultimate level as their tournament draws to a close. Moreover, a firm that (implicitly) advertises one promotion percentage, but then unpredictably lowers it at the end of the tournament, will have difficulty recruiting in the future.

Pp. 106-07.

occur for the most part along predictable lines in connection with the partnership tournament. However, the same is not true in less stable environments where partners defect or are brought on board laterally, where associates are hired from other firms and given credit toward partnership, or where whole departments or groups of attorneys defect from a firm or are added to it. In such situations, it becomes difficult, if not impossible, to track with confidence the data indicating whether a firm has lived up to its promises. Moreover, the problem of verification is exacerbated where, as is ever more frequently the case, associates work in different branch offices with little opportunity to observe or become acquainted with one another.[121] This is especially true where offices are not in geographic proximity and where associates lack prior acquaintance through law school or otherwise.

Presumably, even in unstable circumstances, associates will be able to determine whether any associates at all are promoted to partner over a given period of time. But it is an entirely different matter whether those observers will be able to ascertain that, "on average, [the firm has lived up to its agreement to] promote a fixed percentage."[122] To the extent that associates cannot "easily"[123] make that determination due to the frequency of mergers, spin-offs, defections, and lateral hires, the percentage of promotions may rise or fall, temporarily or otherwise. To the extent that variable promotion rates exist, there is reason to question the authors' thesis of exponential growth, for, as they admit, their theory rests upon the proposition that a constant promotion percentage will produce a constant percentage growth rate.[124]

3. Declining Human Capital.—Another difficulty with the theory of exponential growth involves an assumption that Galanter and Palay make concerning surplus human capital. In general, they appear to take the position that, at least in aggregate, the surplus human capital of any group of existing partners remains constant or increases over an extended period of time.[125] This view, though not explicitly stated, seems to underlie a

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121. *See* Johnson & Coyle, *supra* note 2, at 363 n.12 (listing sources that discuss or document the trend toward branch offices).

122. P. 101; *see* p. 107 ("[Our theory] does not require a firm to adhere strictly to a given promotion percentage, but rather suggests that, on average, the promotion percentage cannot decline over time without the firm experiencing adverse morale or recruiting effects.").

123. The authors' model assumes that "the associate easily can verify that the firm pays out the agreed-to prizes by observing how the present and preceding classes fare." P. 101.

124. *See* p. 103 ("If the promotion percentage remains constant over time, the firm will grow at an exponential rate (constant percentage growth rate) if the associate-to-partner ratio remains constant.").

125. A related, but presumably less significant, concern relates to the authors' assumption that newly promoted partners have surplus human capital, the full utilization of which requires the firm to

number of the authors' arguments.[126] In one such line of reasoning, the authors assert that in order to maximize financial return, a firm *must* hire new associates to take the place of those who are promoted and *must* maintain at least a constant ratio of pretournament associates to pretournament partners; otherwise, those "partners would share their surplus human capital with fewer associates."[127]

Undoubtedly, many situations will warrant an assumption of steady or increasing surplus human capital. For example, as years pass, a partner may become so well recognized in a field, or may develop such extensive relations with potential clients, that the only reasonable conclusion is that even after allowances are made for enhancements in the partner's ability to serve clients efficiently, the partner has maintained or increased personal unused human capital. In other situations, however, a similar conclusion

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hire additional associates. *See* p. 107. As the authors acknowledge, an associate might be promoted based not on accrual of human capital, but on her or his attainment of an "extremely high" level of "high-quality legal work." P. 100. To the extent that this promotion criterion applies, there is no need to hire new associates, for the new partner has no surplus capital to share. Presumably, the new partner can continue to supply the labor necessary to take full advantage of the surplus human capital of other partners. *See supra* note 97.

126. *See* p. 103 ("[O]ur claim that firms will tend to grow (at least) exponentially depends upon our argument that each firm's promotion percentage remains reasonably constant and the ratio of associates to partners either remains constant or increases."); p. 106 ("The associate-to-partner ratio tends to remain constant or to increase because firms generally establish a promotion percentage that will leave it with partners who have at least as much human capital as the average of the existing partners.").

The authors do recognize the possibility that, on average, human capital per partner may decline. Thus, for example, they say:

> [W]hether a firm can increase the number of associates per partner from one period to the next depends upon whether the human capital per partner has increased. Conversely, *the firm must reduce the associate-partner ratio if capital per partner declines.*

P. 105 (emphasis added). However, this language does not contradict the authors' tendency to disregard the possibility that the *personal* human capital of partners may decline. Rather, the language reflects the authors' view of the consequences that follow from new promotions. Shortly after the language quoted earlier in this footnote, the authors continue:

> The amount of human capital the new partners bring to the firm . . . influences both the amount of human capital per partner and, consequently, the associate-to-partner ratio in the post-tournament period. If the firm sets the promotion percentage too high, the firm's average capital per partner will decrease . . . .

P. 106.

127. P. 102. The relevant passage is in full:

> If the firm did not hire associates to replace its newly promoted partners, then the pretournament partners would share their surplus human capital with fewer associates and, therefore, make less money. To maintain at least a constant ratio of pretournament associates to pretournament partners, the firm must hire new associates to take the place of those who won the tournament.

Id. At another juncture in the text, the authors argue: "As the firm promotes the designated percentage of associates, it must replace them and *must also hire enough new associates to keep the associate-to-partner ratio from falling.*" P. 107 (emphasis in original). They then add in a footnote: "Allowing the associate-per-partner ratio to decline would invariably reduce per-partner profits. Firms do, of course have this option, but we suspect they will resist it." P. 107 n.57.

is less reasonable. Malpractice and grievance actions may damage a partner's reputation; rainmaking abilities may be diminished by physical illness or senility; once-promising relations with potential clients may wither for reasons unrelated to the attorney's health or quality of work. In these and like circumstances, a lawyer's ability to attract business will decline, and so too will surplus human capital. Moreover, in many instances, a firm's aggregate human capital will be diminished by partners' deaths or by defections from the firm,[128] and, as indicated earlier, newly promoted partners may have little or no surplus human capital.[129] Consequently, there is little reason to suppose that in all or even most situations, a firm's aggregate surplus human capital will remain steady or will expand. If human capital declines, it is not necessary to maintain a constant or increasing ratio of associates to partners to fully use human capital. More specifically, any realistic possibility of a decline in a firm's surplus human capital undermines the authors' contention that large firms "*must* grow exponentially,"[130] for as they recognize, their "claim that firms will tend to grow (at least) exponentially depends upon [their] argument that each firm's promotion percentage remains reasonably constant and the ratio of associates to partners either remains constant or increases."[131]

In an effort to bolster their argument that firms are compelled to maintain constant or increasing associate-to-partner ratios, the authors cite evidence in their study of 100 large firms that such ratios historically have held steady or have tended to increase.[132] However, such data do not show that a large firm inevitably must maintain a constant or increasing ratio to fully use surplus human capital. Rather, the study indicates simply that firms with constant or increasing associate-to-partner ratios tend to grow large.

4. Economic Downturns and Insufficient Demand.—The authors' theory of exponential growth is open to question on the ground that it underestimates the role in growth of bad economic conditions. In positing their supply-side model of law firm employment practices, the authors "assume that revenue . . . constraints will not hinder a firm's growth."[133] Acknowledging that such an assumption is "[c]learly . . . unrealistic," they

128. *Cf.* p. 107 ("*So long as* the number of promotions exceeds the number of departures from the partnership, each promotion to partner will lead to net increases in both the number of partners and the number of associates at the firm." (emphasis added)).

129. *See supra* notes 125-126.

130. P. 88 (emphasis in original).

131. P. 103.

132. *See id.* (citing as sources for their study Martindale-Hubbell and the *National Law Journal*'s annual survey of law firms).

133. P. 98.

explain that it is made for "expositional convenience," and they promise to "relax" the assumption later in the discussion.[134] When the authors finally return to the subject of demand, they say little to indicate that they fully appreciate its significance. Galanter and Palay recognize that a "'revenue gap' . . . might exist in any firm at any stage of growth,"[135] and they offer a thoughtful discussion of three options for coping with such a gap: stretching existing income to cover more attorneys; reducing the firm's growth rate; or increasing the demand for legal services.[136] Yet one is left with a sense that the authors regard insufficient demand as a relatively rare occurrence—one largely unrelated to what associates expect, or to what partners do, concerning hiring and promotion.[137]

In fact, law firms are routinely faced with fluctuations in the demand for legal services and in their ability to collect revenue.[138] Localities and regions suffer economic downturns; clients' businesses falter; bills for previous services unexpectedly become worthless. Such occurrences are not deviations from the norm. Rather they are part of the practice of law, and they occur with regularity.[139] The prospect or reality of worsening economic conditions is a factor that law firms, like other businesses, must take into account in making personnel decisions.[140] As recent developments indicate, it is unrealistic to assume that, faced with a grim economic climate, a firm will slavishly adhere to a preordained associate-to-partner

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134. *Id.*; *see also* p. 37 (acknowledging that "[c]hanges in the legal world reflect changes in the surrounding economy").

135. P. 117.

136. *See* pp. 117-20.

137. In contrast, the authors are willing to entertain the possibility that law firm growth may largely be a function of increased demand. They write:

> [O]ne might argue that the law-firm growth curves simply mimic the growth in demand for big law firm services. That is, law firms might have grown exponentially because the demand for their services has grown exponentially. This is an intriguing hypothesis but one whose exploration is hampered by a lack of available data.

P. 88 n.17.

138. *See* p. 117; Ellen J. Pollock, *Big Law Firms Learn That They, Too, Are a Cyclical Business*, WALL ST. J., Aug. 15, 1991, at A1 (discussing the recent "recession" in the legal profession as contradicting big law firms' beliefs that "they were immune to hard times" and that "demand for legal work would grow forever").

139. *Cf.* Mara Tapp, *Hiring in a Recession*, A.B.A. J., Apr. 1991, at 70 (discussing law firm hiring in "the bullish '80s" and "the bearish '90s").

140. *See* Geoffrey C. Hazard, *Tough Times Bring Out the Flunk Curve*, NAT'L L.J., Feb. 18, 1991, at 13 ("Tough times are ahead [and will] inevitably require staff cutbacks, including lawyers."); Amy Boardman, *Akin, Gump Is Latest Dallas Firm to Fire Partners*, TEX. LAW., Mar. 18, 1991, at 3 ("The lack of business generation and a lagging demand by some of the firm's major clients led to the dismissals [of six partners, eight associates, and twelve support staffers]."); Tapp, *supra* note 139, at 70 ("Anytime the economy has the jitters, law firms, as businesses, react. Lawyers are conservative and they're going to be decreasing the size of their summer programs or, if not that, not increasing them."); *cf.* Kenneth Rutman, *Most Firms Put Brakes on Starting Salary Hikes*, NAT'L L.J., Sept. 24, 1990 (Supp.), at S3, S3 (reporting that economic conditions have led many leading law firms not to increase the starting salary for new associates).

ratio, rather than reduce the number of new lawyers being added to the ranks.[141] Yet that position is essentially the one taken by the authors. Having constructed an exponential growth model, which requires a constant or increasing associate-to-partner ratio, the authors are forced to treat departures from the model as aberrations. Somewhat surprisingly, they state that a reduction in the ratio of associates to partners driven by a "revenue gap" is a "change in the underlying structure of the firm."[142] Their discussion suggests that this change is not unlike such other structural changes as the "wide[ning] use of nonequity partnerships, paralegals, 'temporary' attorneys, 'second-tier' associates with no expectation of making partner, and the practice of retaining as permanent associates those passed over for partnership."[143] Whether other persons would regard a decline in the associate-to-partner ratio as such a fundamental change in the

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141. *See* Boardman, *supra* note 4, at 1 (reporting that a 195-lawyer Dallas law firm laid off 25 attorneys due to economic conditions); Don J. DeBenedictis, *Recruiting Decline*, A.B.A. J., Apr. 1991, at 22, 22 (noting that "recruiting at law schools was noticeably down last fall"); Ken Myers, *Latest on the Recession Front: Firms Rescind Offers to Students*, NAT'L L.J., June 24, 1991, at 4 (discussing the revocation of offers to law students for summer associate and full-time positions); Tapp, *supra* note 139, at 70 ("The current economic climate—downturn or recession, choose your term—is making law firms take a much more conservative approach to hiring."); *see also* Gary Taylor & Edward A. Adams, *More Layoffs*, NAT'L L.J., Apr. 8, 1991, at 2 (discussing the layoffs of associates and partners in Dallas and New York); Lyne, *supra* note 53, at 52 (noting that "the spectacular growth that seemed endless in the last half of the 1980s, especially in New York City, has been curtailed—and in some cases severely"). *But see* Studley, *supra* note 111, at 44 ("Recruiting the best possible talent and training them to provide top service is like oiling and honing valuable machinery. No good manager cuts maintenance, even in a depressed market.").

142. Pp. 117-18.

143. P. 118. The authors state in relevant part:

> When [a] revenue gap develops, the firm must change to survive. . . .
>
> A second strategy suggests that the firm attempt to reduce its growth rate. . . . For any given per capita partnership income, the growth rate of the firm is generally a function of four variables: (1) the ratio of associates to partners, (2) the percentage of associates becoming partners, (3) the length of time between joining the firm as an associate and becoming a partner, and (4) the number of partners leaving the firm. . . . Changing any of these variables results in an adjustment in the growth of the firm. . . .
>
> Adjusting any of the first three variables also implies a change in the underlying structure of the firm—such adjustments, that is, portend the transformation of the practice. In fact, . . . we presently witness substantial efforts in this area. For instance, the percentage of associates becoming partners seems to be declining in some firms and the years to partnership bave lengthened. In addition, law firms now make wider use of nonequity partnerships, paralegals, "temporary" attorneys, "second-tier" associates with no expectation of making partner, and the practice of retaining as permanent associates those passed over for partnership.

Pp. 117-18. The authors opine that "slowing a firm's growth potential . . . creates difficulties in recruitment, compensation, motivation and retention of productive young associates." P. 118. Although this may be true in the case of an isolated "revenue gap," there is reason to think that a firm will not have any serious difficulty in recruiting and keeping qualified lawyers if a reduction in the associate-to-partner ratio is the result of a downturn in the economy at large that has affected large firms generally. In such circumstances, actual or aspiring associates will be unable to do better elsewhere by joining a different large firm.

structure of a firm is at least open to question, because it does not affect any of the factors the authors use at the beginning of the book to distinguish large firms from other kinds of practice: the status differences between partners and associates; the types of clients; the nature of the work; the support systems and kinds of information used to render legal services; and the phenomena of promotion tournaments.[144] At a minimum, one must ask whether it is useful in understanding the growth of large firms to adopt a model that ignores bad economic news.

IV. Synthesis

If Galanter and Palay err, it is in stating their thesis too strongly. As their book makes plain, there are indeed "pressures for growth inherent in the structure of law firms," and those pressures undoubtedly have contributed to the organizational problems many firms now face as part of the "resulting struggle to accommodate increased size."[145] However, in their arguments that traditional large-firm practices make rapid expansion "*inevitabl[e]*"[146] and that firms employing those practices "*must* grow exponentially,"[147] the authors place more weight on the facts than the evidence will bear. To state their thesis so emphatically, the authors must construct a model that ignores too many realities and, as a result, speaks too faintly to the actual conditions of modern law practice. What good is it to articulate a model based on economic rationality, low attorney mobility, steady or expanding human capital, and continuing prosperity in a world where decisions are often made on noneconomic grounds, where attorneys routinely switch firms and take clients with them, where human capital declines, and where bad economic news is not uncommon? Would it not be better to state simply that some existing factors tend strongly to favor rapid growth and that in some cases these factors may produce exponential expansion?[148]

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144. *See generally* pp. 4-11. A similar argument might be made concerning revenue-gap-driven decisions to lengthen the partnership track or to alter the promotion percentage. Such moves are not fundamental changes in the structure of a firm. Indeed, the authors' discussion suggests that the length of the partnership track at given firms expanded and contracted prior to and during the "golden age" circa 1960. *See* p. 27.

145. P. 77.

146. P. 99 (emphasis in original); *see* pp. 88-89 ("The number of lawyers working for a firm inevitably will increase by a constant (or possibly increasing) percentage."); *see also* p. 87 ("Law firms have moved steadily toward the gargantuan since the inception of the modern firm around the turn of this century.").

147. P. 88 (emphasis in original); *see* p. 102 ("The promotion-to-partner tournament . . . contains an internal dynamic that explains why firms *must* grow. Growth occurs because, at the end of the tournament, the firm must replace not only the losing associates who depart, but all those who win and are promoted." (emphasis added)).

148. In fairness, it should be noted that although the authors' argument is frequently phrased in the imperative language of what a firm "must" do and what results are "inevitable," they sometimes

The authors appear to recognize dimly the tensions between their model and the realities of contemporary law practice. Thus, at one interesting juncture, near the conclusion of the presentation of their model, the authors are compelled to distinguish "must" from "can," stating unpersuasively by way of clarification: "We have argued that, as traditionally organized, the big law firm must grow. We have essentially ignored the question of whether the firm *can* grow by assuming that the firm faces no constraints to becoming bigger."[149]

The last part of the authors' book ruminates on the future shape of legal practice.[150] Whether the authors are correct in those musings is less important than that they have diligently documented the history of large firms and articulated a theory that helps to explain the internal dynamics of such enterprises. Galanter and Palay have succeeded in emphasizing the "structural component of [law firm] growth" and in making a case for the view that "as firms have grown they simply have outpaced earlier methods of monitoring and coordinating personnel, recruiting associates, and generating revenues."[151] Although their theory is open to question on a number of grounds, *Tournament of Lawyers* is a valuable book which deserves to be read and carefully considered. If not the final word on the growth of big law firms, it nonetheless makes important contributions to a better understanding of the ongoing transformation of the American legal profession.

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speak in less strident tones. For example, they say that their "claim [is] that firms will *tend* to grow (at least) exponentially." P. 103 (emphasis added); *see also* p. 3 ("*If the environment permits*, the firm that employs . . . [a promotion-to-partner] tournament will *tend* to grow exponentially." (emphasis added)).

149. P. 116 (emphasis in original).

150. *See generally* pp. 121-38. They opine that there will likely he a "period of fluidity and experimentation," p. 121, and that a likely common form of practice will he what they refer to as the "Later Big Firm," p. 122, a firm in which "the 'promotion-to-partnership' core would be reduced (in relation to the total mass of the firm) by [such] devices for slowing the effects of the promotion-to-partner tournament [as] two-tier hiring, permanent associates, paralegals and technology, contracting out, and general stretching out of time to partnership." P. 122 (footnote omitted). The authors speculate that one variation of the Later Big Firm may be "giant national (or international) firms that bear some resemblance to the 'Big Six' accounting firms in size, structure, and market concentration." P. 122 (footnote omitted). They also suggest that it may be reasonable to expect "accountants and other professionals to offer legal services," and for the Later Big Firm to engage in a "multidisciplinary or 'diversified' law practice." P. 124. Alongside large law firms, Galanter and Palay write, it is likely there will be an array of highly specialized "boutiques," pp. 125-27, "mixed-compensation or 'lifestyle' firms," p. 127, firm "networks" or "affiliation groups," p. 130, subcontracting arrangements, pp. 130-31, and expanded in-house law departments, pp. 131-32.

151. P. 77.