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THE WISCONSIN LAWYER IN THE GILDED AGE: A DEMOGRAPHIC PROFILE

J. GORDON HYLTON*

In spite of the impressive body of scholarly writing devoted to the legal history of Wisconsin, surprisingly little attention has been paid to the development of the Wisconsin legal profession in the nineteenth century. Biographies have been written of individual lawyers like William Ryan and Robert LaFollette; there have been studies of particular law firms and of legal education; but there has been little written on the bar as a collective body.¹

In this regard, the records of the United States Census contain a rich treasure of information pertaining to the legal profession. The Bureau of the Census began collecting occupational data in 1850. In 1870, it began to publish detailed information pertaining to the personal characteristics of those included in specific occupational groups. From the census records, it is possible to construct a composite picture of the Wisconsin bar from 1870 to 1900.

I. SIZE AND GROWTH OF THE LEGAL PROFESSION

Although records pertaining to the computational practices of the United States Bureau of the Census in the nineteenth century are scant, it appears that the category "lawyer" in the Ninth through Twelfth Censuses (1870-1900) included all individuals who made their living through the provision of legal services whether or not they were members of the bar.² This is not, however, a reason to dismiss the reported census totals as inaccurate. In 1910, when the Census reported the two

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1. See, e.g., ALFONS J. BEITZINGER, EDWARD G. RYAN: LION OF THE LAW (1960); WILLIAM R. JOHNSON, SCHOOLED LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES (1978); ELLEN LANGILL, FOLEY & LARDNER: ATTORNEYS AT LAW, 1842-1992 (1992); DAVID P. THELEN, ROBERT M. LAFOLLETTE AND THE INSURGENT SPIRIT (1976).

2. The treatment of lawyers by the United States Census Bureau is examined in detail in J. Gordon Hylton, *Counting Lawyers: The United States Census as Source of Information on the Legal Profession, 1850-1910* (unpublished manuscript, on file with the author).

categories (lawyer and non-lawyer legal professionals) separately, there were only 148 non-lawyer, legal professionals in Wisconsin, compared to 1876 lawyers.³ Had the two groups been added together, non-lawyers would have accounted for only 7.35% of the total. Moreover, there is evidence that the percentage of non-lawyer professionals included in the lawyer total for earlier years was much lower. In 1880, for example, the United States Census reported 1198 lawyers in Wisconsin. The following February, Moses Strong, the president of the Wisconsin State Bar Association, compiled a list of all lawyers currently practicing in the state. Strong's list contained the names of 1259 lawyers, a figure that suggests that the vast majority of those counted as lawyers in the 1880 Census were in fact practicing lawyers.⁴ A total of 1326 lawyers counted in the 1885 Wisconsin state census also reinforces the accuracy of the 1880 Census total.⁵ The 1880 and 1910 figures strongly suggest that the Census totals for Wisconsin for the years 1870 through 1900 are not seriously inflated by the inclusion of non-lawyers.

According to the published Census reports, the total number of lawyers in Wisconsin rose from 785 in 1870 to 2249 in 1900, an overall increase of 186.5%. During the same period, the population of the state grew by 96.2%, meaning that the bar grew at a rate roughly 1.75 times that of the population as a whole. This figure is very close to the national ratio of 1.85 to 1 for the period 1870 to 1900. Table 1 contrasts the growth of the American and Wisconsin bars in relation to general population growth.⁶

3. See 4 BUREAU OF THE CENSUS, THIRTEENTH CENSUS OF THE UNITED STATES: POPULATION, 1910, OCCUPATION STATISTICS 150-51 (1914).

4. See 1 REP. PROC. MEETINGS ST. B. ASS'N WIS. 45-46, 262-98 (1881). In addition to the practicing lawyers, Strong's list included the names of 96 lawyers no longer in active practice. Although Strong reported the total number of lawyers in his survey as 1349, his actual list contains 1355 names. See *id.* at 45, 298.

5. See CENSUS ENUMERATION OF THE STATE OF WISCONSIN 37-38 (1886).

6. The statistics in Table 1 and following paragraphs, unless otherwise noted, are drawn from, or calculated based on, information by the Bureau of the Census: NINTH CENSUS: THE STATISTICS OF POPULATION OF THE UNITED STATES (1872); STATISTICS OF THE POPULATION OF THE UNITED STATES AT THE TENTH CENSUS (1883) [hereinafter TENTH CENSUS STATISTICS]; COMPENDIUM OF THE TENTH CENSUS: 1880, pt. II (1888); COMPENDIUM OF THE ELEVENTH CENSUS: 1890 (1892); REPORT ON THE POPULATION OF THE UNITED STATES AT THE ELEVENTH CENSUS: 1890, pt. II, (1897) [hereinafter ELEVENTH CENSUS REPORT]; COMPENDIUM OF THE ELEVENTH CENSUS: 1890, pt. III (1897); TWELFTH CENSUS OF THE UNITED STATES: 1900, SPECIAL REPORTS—OCCUPATIONS (1904) [hereinafter TWELFTH CENSUS OCCUPATIONS] and POPULATION, pt. II, at 541 (1902).

TABLE 1. GENERAL POPULATION GROWTH AND GROWTH IN THE NUMBER OF LAWYERS				
UNITED STATES			WISCONSIN	
Year	Population	Lawyers	Population	Lawyers
1870	38,558,371	40,736	1,054,670	785
1880	50,189,209	64,137	1,315,497	1,198
1890	62,979,766	89,630	1,693,330	1,691
1900	76,212,168	114,168	2,069,042	2,249

Although the rate of growth of the Wisconsin bar in the late nineteenth century generally paralleled that of the American bar, the actual number of lawyers, per capita, in Wisconsin was significantly less than in other parts of the United States. In 1870, there were only 74 lawyers per 100,000 persons in Wisconsin, compared to a national average of 105 per 100,000. Only in Connecticut, Delaware, Georgia, North Carolina, and South Carolina was the ratio lower.⁷ Illinois, by way of contrast, had 106 lawyers per 100,000; Michigan had 99; Iowa, 122; and Minnesota, 102. Although the number of lawyers in Wisconsin grew rapidly during the next three decades, Wisconsin never caught up with most of its fellow states in this category. In 1880, its ratio of 91 lawyers per 100,000 placed it ninth from the bottom on a list of American states, and in 1890, it again ranked ninth from the bottom. In 1900, its ratio of 109 per 100,000 placed it even lower, ranking 39th of 45 states.

This pattern was even more dramatic in Milwaukee. As Table 2 illustrates, the Milwaukee bar actually grew more slowly in the 1870s than the city's population as a whole, a pattern which stands in sharp contrast to that of most American cities. In the 1880s, the bar and the general population grew at the same rate, and it was not until the 1890s that the bar's rate of growth exceeded that of the city as a whole.

7. If one relies exclusively on the totals published in the 1870 Census, Vermont would have a lower ratio as well. However, the total of 72 lawyers listed for that state is almost certainly a misprint. In 1860, there were 416 lawyers in Vermont; in 1880, the number was 424. There seems to be no possible explanation for this disparity other than error.

Year	Milwaukee Population	Increase	Milwaukee Lawyers	Increase
1870	71,440	—	108	—
1880	115,587	61.8%	154	42.6%
1890	204,468	76.9%	274	77.9%
1900	285,315	39.5%	455	66.1%

As with the state, the number of lawyers per capita in Milwaukee was well below that of most large cities in the United States. In 1870, Milwaukee ranked 17th among the nation's thirty largest cities with a ratio of 151 lawyers per 100,000 residents. Milwaukee was far behind Washington, D.C., which featured the largest per capita concentration of lawyers with 339 per 100,000. Even among midwestern cities, Milwaukee fell well below the norm. Chicago (210), Detroit (171), Indianapolis (315), and St. Louis (284) all had far more lawyers per capita. As Table 3 illustrates, between 1870 and 1880 the number of lawyers per capita dropped fairly dramatically and remained at the lower level until 1890.

Year	United States		Wisconsin		Milwaukee	
	1870	105.6	—	76.4	—	151.2
1880	127.8	+21.0%	91.1	+22.4%	132.8	-12.2%
1890	142.3	+10.2%	99.9	+9.7%	134.3	+1.1%
1900	149.8	+5.3%	108.7	+8.8%	159.5	+18.8%

Even with the growth in the number of lawyers per capita in Milwaukee in the 1890s, the ratio of lawyers in Milwaukee actually declined even further relative to other large cities. With a ratio of 159 per 100,000, in 1900, Milwaukee ranked 25th among the nation's thirty largest cities. All five cities with a lower ratio—Allegheny, Jersey City, Pittsburgh, Providence, and Worcester were in the Northeast, and most were only a few miles from another major city. Milwaukee was still far behind all the other large cities in the upper Midwest. At the turn of the

century, Chicago featured 254 lawyers per 100,000 residents; in Detroit, the number was 240; in Minneapolis, 348; in St. Paul, 294.

It is difficult to explain why the number of lawyers per capita remained so low relative to other states. It does appear that the rate of attrition from the ranks of the Wisconsin bar was fairly high. In his survey of lawyers practicing in the state in 1881, Wisconsin State Bar Association President Moses Strong also sought to compile the names of those who had practiced law in Wisconsin, but were no longer living in the state. In addition to the 1259 lawyers currently practicing and 96 who were living in the state but no longer practicing law, Strong compiled the names of 481 deceased lawyers and 1147 lawyers who had practiced in the state, but no longer resided in Wisconsin.⁸ The number of former lawyers was particularly high for Milwaukee County, where the list of former lawyers who had left the state outnumbered those currently there by a margin of 342 to 186.⁹ Whether the degree of attrition from the legal profession was higher in Wisconsin than in other states cannot be easily determined because of a lack of comparable information from other jurisdictions.

II. THE GEOGRAPHIC DISTRIBUTION OF LAWYERS

Although the proportion of Wisconsin lawyers practicing in Milwaukee increased from 13.8% in 1870 to 20.2% in 1900, the vast majority of Wisconsin lawyers continued to practice outside of the state's largest metropolitan area. Because the late nineteenth-century censuses report occupational data only for states and large cities, and not for counties, the published census records provide no insight into the distribution of Wisconsin lawyers throughout the rest of the state.¹⁰ However, because of the above-mentioned survey of the Wisconsin bar in February 1881, we do have a county by county breakdown for that year. Because of the small population of many Wisconsin counties in the early 1880s, county by county per capita ratios could be very misleading. However, by dividing the state into ten districts, as illustrated by the attached map, one can see the general distribution of lawyers within the state.¹¹ (See Table 4.)

8. See 1 REP. PROC. MEETINGS ST. B. ASS'N WIS. 298 (1881).

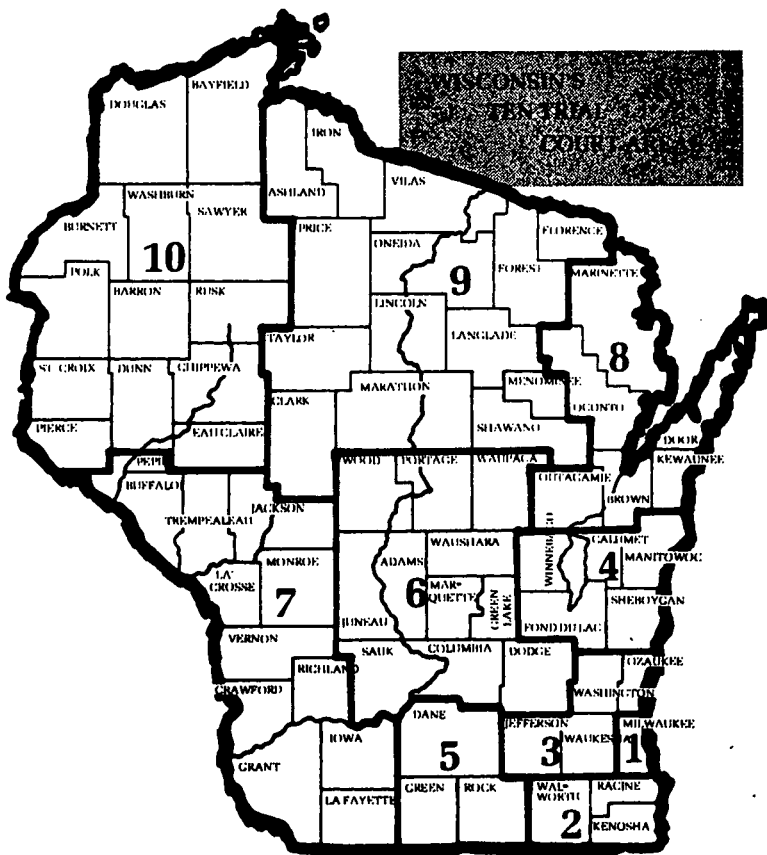
9. See *id.* at 279-84.

10. This could be calculated from the manuscript census schedules which exist for every year except 1890. However, such a project would be an extraordinarily time-consuming exercise.

11. The map is adapted from one accompanying Nathan S. Heffernan et al., *Wisconsin Courts*, 32 BADGER HIST., Mar. 1980, at 10, 14. The districts comport with the judicial districts of the state at the time of the publication of the article.

TABLE 4. REGIONAL DISTRIBUTION OF PRACTICING LAWYERS, WISCONSIN 1880			
District	Population	Lawyers	Per 10,000
I	138,253	186	13.4
II	70,720	78	11.0
III	100,016	75	7.5
IV	177,939	148	8.3
V	113,786	134	11.8
VI	208,785	168	8.0
VII	240,711	199	8.3
VIII	109,034	88	8.1
IX	45,558	51	11.2
X	110,402	132	12.0
Total	1,315,497	1,259	9.6

For District boundaries, see the map on the following page.

WISCONSIN TEN TRIAL COURT AREAS¹²

Wisconsin is divided into ten trial court areas. The ten areas are shown on this map.

Find out what path you would take on Wisconsin's pyramid of justice. It's easy. Find the district number for the county where you live. Then follow the arrows on the pyramid of courts.

In terms of per capita presence of lawyers, the state can be divided into two parts. While the variation from one section of the state to another was not enormous, lawyers were most numerous on a per capita basis in the southeastern and south central portion of the state (which included Milwaukee and the state capital, Madison) and in the far northern and northwestern portions of the state. In these areas, the number of lawyers per 10,000 residents ranged from 11.0 to 13.4. In the remaining portions of the state, the number varied only from 7.5 to 8.3. Although opportunities for lawyers appear to have been better in some

12. Reprinted with permission from The State Historical Society of Wisconsin.

parts of the state than others, by 1880, if not earlier, Wisconsin lawyers were distributed throughout the state on a relatively even basis.

III. RACE, GENDER, AND AGE

Simply put, the Wisconsin bar in the final third of the nineteenth century was overwhelming white and male, relatively youthful, and largely native-born. Given the small size of the African-American and what the Census bureau designated as "Other Colored" population of Wisconsin, it is hardly surprising that the Wisconsin bar in the late nineteenth century was entirely white. Non-caucasians accounted for less than six-tenths of one percent of the state's population in 1900, and there was only one African-American lawyer in the state.¹³ Women were ineligible for admission to the Wisconsin bar until 1877 when the legislature amended the state's bar admission statute. The 1870 Census recorded one female lawyer in Milwaukee, but if this is not an error, it presumably refers to someone who made her living supplying legal services other than representation before the state's courts of record (the circuit courts and higher) which was limited to members of the bar.¹⁴ Even after they became eligible for admission to the bar, the number of women lawyers grew very slowly in Wisconsin (as elsewhere). The 1880 Census recorded none, and the number rose to only five in 1890. While it increased to 23 by the end of the century (five of whom resided in Milwaukee), they still represented only two tenths of one percent of all lawyers.¹⁵

Census data pertaining to age does not provide any particularly striking insights. Given the requirement that no one could be admitted to the bar until they were 21 years of age, the legal profession was certain to be "older" than the work force as a whole. However, only a small percentage of lawyers were over 65 years of age (608 of 2249 in 1900). Perhaps the most interesting fact revealed by the reported data on age and marital status is that the Milwaukee bar was much younger than the bar of the rest of the state. In 1900, only 4.5% of Wisconsin lawyers outside

13. This was presumably William T. Green, an 1892 graduate of the University of Wisconsin Law School, who practiced in Milwaukee from 1892 until his death in 1911. See J. CLAY SMITH, *EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944*, at 466-67 (1993).

14. For statutes governing the practice of law in Wisconsin in 1870, see 1861 WIS. LAWS 218-19; and WIS. STAT. 1343-45 (1871); on the ineligibility of women, see *In re Goodell* 39 Wis. 232 (1875); for the act allowing women to practice law, see 1877 WIS. LAWS 616.

15. See TENTH CENSUS STATISTICS, *supra* note 6, at 784-85; ELEVENTH CENSUS REPORT, *supra* note 6, at 336-37; TWELFTH CENSUS OCCUPATIONS, *supra* note 6, at 145.

of Milwaukee were under age 24, compared to 9.6% of those within the city. Similarly, in the city of Milwaukee, only 27.9% of lawyers were over age 45 in comparison to a statewide figure of 42.6%. The same was true in regard to marital status. Thirty-six percent of Milwaukee lawyers were single compared to 24.1% of lawyers in the rest of the state.¹⁶

IV. ETHNICITY AND COUNTRY OF BIRTH

While persons of color and women accounted for only a tiny fraction of the Wisconsin bar in the late nineteenth century, foreign-born males were represented in much greater numbers, although the percentage of attorneys who were foreign-born never approached that of the population as a whole. As Table 5 illustrates, in 1870 and 1900, the legal profession remained largely the province of the native-born. Although the percentage of Wisconsin lawyers who were foreign-born increased from 13.1% in 1870 to 16.7% in 1890 (and from 12.0% to 19.7% in Milwaukee in the same period), the percentage actually declined in the 1890s, dropping to 13.6% for the state and 10.0% for Milwaukee. The final three decades of the nineteenth century began and ended with the bar composed of a far larger percentage of native-born Americans than the population as a whole.

Year	Wisconsin	Wis. Bar	Milwaukee	Milwaukee Bar
1870	34.6%	13.1%	47.3%	12.0%
1900	39.6%	13.6%	47.7%	10.0%

Lawyers who were foreign-born or born of immigrant parents were also much more likely to come from the ranks of those who had emigrated from English-speaking countries than the general population of foreign-born. In 1870, 49 of 103, or 47.6% of foreign-born lawyers in Wisconsin were born in the English-speaking countries of Great Britain (28), Ireland (13), and British Canada (8), compared to only 31.7% of the total foreign-born population.¹⁷ In 1900, 50.0% of lawyers with at least one foreign-born parent had parents who were born in English-speaking

16. See TWELFTH CENSUS OCCUPATIONS, *supra* note 6, at 414-17, 608-09.

17. See TENTH CENSUS STATISTICS, *supra* note 6, at 336-42, 764.

countries, compared to only 18.1% of the population as a whole.¹⁸ Tables 6 and 7 contrast the nativity of the Wisconsin and Milwaukee bars with the general Milwaukee population in 1870 and 1900.

Category	Wisconsin	Wis. Bar	Milwaukee	Milwaukee Bar
Total Population	1,054,670	785	71,440	108
Native Born	690,171	682	37,667	95
% Native Born	65.4%	86.9%	52.7%	88.0%
Foreign Born	364,499	103	33,773	13
% Foreign Born	34.6%	13.1%	47.3%	12.0%
Total Black Population	2,113	0	176	0
% of Foreign Born from English-speaking Countries	31.8%	47.6%	40.2%	46.1%

Category	Wisconsin	Wis. Bar	Milwaukee	Milwaukee Bar
Total Employed Males	616,391	2,226	85,157	450
Native White, Native Parent	127,945	1,119	9,573	192
% of Total	20.8%	50.3%	11.2%	42.7%
Native White, Foreign-born Parent	241,178	803	34,580	212
% of Total	39.1%	36.1%	40.6%	47.1%
Foreign-born White	243,844	303	40,606	45
% of Total	39.6%	13.6%	47.7%	10.0%
Black and "Other Colored"	3,424	1	398	1

18. See TWELFTH CENSUS OCCUPATIONS, *supra* note 6, at 414-17, 608-09.

V. CONCLUSION

Two characteristics of the Wisconsin bar stand out from the Census material. First, the number of lawyers per capita in Wisconsin in 1870 was low compared to the national average, and the gap had not closed by the end of the century. Second, the Wisconsin bar was a far more homogenous body than the state's population. Although there were foreign-born lawyers in the state, the vast majority of Wisconsin lawyers in the late nineteenth century were white, native-born males. As a smaller, more homogenous body, the Wisconsin bar may well have experienced less of a sense of change and dislocation than their counterparts in other states.

These distinctive attributes help explain much of the professional history of the Wisconsin bar in the late nineteenth century. For example, they offer at least a plausible explanation for the peculiar history of the bar association movement in the state in the final third of the nineteenth century. If one looks at the date at which modern bar associations were first established, Wisconsin and Milwaukee appear to be at the forefront. (The Milwaukee Bar Association was founded in 1858 and the Wisconsin State Bar Association in 1877.) However, the subsequent history of those associations is one of apathy and inactivity.

Although the Milwaukee Bar Association dated back to 1858, it rarely met in the second half of the century and when it did, it was usually for a social event or to memorialize a deceased colleague.¹⁹ When the Wisconsin State Bar Association first convened in 1878, it was only the fifth such association in the United States. However, the first twenty years of its history was largely a story of canceled meetings. Although the organization's constitution called for a minimum of one meeting per year, between 1879 and 1898, only six meetings were held, and two of those occurred in 1886.²⁰

The general indifference of Wisconsin lawyers to the bar association movement, which elsewhere was the principle expression of the legal profession's effort to deal with a changing professional environment, may be explained by the size and ethnic composition of the bar.²¹ The state's

19. I have addressed this phenomenon in more detail in J. Gordon Hylton, *The Bar Association Movement in Nineteenth-Century Wisconsin*, 81 MARQ. L. REV. (forthcoming 1998).

20. For the proceedings of the Wisconsin State Bar Association through 1899, see 1-2 REP. PROC. MEETINGS ST. B. ASS'N WIS. (1878-1899).

21. On the bar association movement and its relation to professional "anxiety," see generally, JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 62-65 (1976); RICHARD HOFSTADTER, *THE AGE OF REFORM*

smaller ratio of lawyers to the general population may have meant that lawyers felt less competitive pressure in their economic lives, and as a consequence were less inclined to engage in the types of income-generating activities that so troubled lawyers in other states. Moreover, the relatively homogenous composition of the Wisconsin bar, combined with its relatively small size in any particular jurisdiction within the state, may have worked to avoid the sense of crisis that was felt by lawyers in other states where the bar association movement flourished. Further study into the demographic character of the Wisconsin bar should reveal even more of its largely hidden professional history.

151-63 (1955); ROBERT H. WIEBE, *THE SEARCH FOR ORDER, 1877-1920*, at 13-17, 116-20, 127-32 (1967).