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# **The Rationality of Law Students' Career Choices**

by

**Aaron Haas**

## ABSTRACT

Two of the major problems confronting the legal profession today are increasing rates of job dissatisfaction and the persistent problem of encouraging lawyers to work in public interest settings. These two problems are actually connected in an important way. Researchers have found that lawyers earning the highest salaries, typically in large law firms, are also the most dissatisfied with their profession, while lawyers working for government agencies, public interest organizations, and educational institutions are among the most satisfied. In other words, encouraging more law students to enter public service law could address both the problem of unhappiness in the profession and the underrepresentation of disadvantaged people with legal needs. Indeed, by reconnecting the legal profession with the notion of service to society, a professional ethic that seems to have disappeared in recent decades, we may be able to improve the profession more broadly for its own sake and for the positive impact it can and should have on society at large.

In this essay, I examine why and how so many law students who have no intention of working at a firm or are interested in public interest as they begin law school end up accepting offers from large firms upon graduation. To address this paradox, we must understand the logical processes law students use in making their career decisions, and how these process may be flawed or biased. Recent findings in behavioral economics, which show the limits of rationality, shed light on this question. In particular, behavioral economics shows us that people have bounded willpower, bounded rationality and bounded self-interest, which all serve to encourage behavior which is not strictly self-interest maximizing, as that concept is understood in traditional economics.

In this article, I argue that law students have shown bounded willpower, bounded rationality and bounded self-interest in this context. I divide this essay into three parts. In the first part, I address this question by looking at the bounded willpower, bounded rationality, and bounded self-interest of law school students. In the second part, I look at the effectiveness, or lack thereof, of different ways law schools have responded to the limited rationality shown by students, in particular public interest requirements and loan forgiveness plans. In the final part, I make suggestions for ways of addressing this issue, in light of the lessons learned from the first two parts.

Two of the major problems confronting the legal profession today are increasing rates of job dissatisfaction and the persistent problem of encouraging lawyers to work in public interest settings. The high reported rates of job dissatisfaction in the legal profession, the high attrition rates at major firms, and the large numbers of attorneys who "drop out" of the profession altogether have been the subject of much concern and criticism for several years now.<sup>1</sup> Unhappy lawyers are less effective for their clients, discourage the best students from entering the profession, and diminish the profession generally. A second problem is the unmet legal needs of poor and disadvantaged members of society. Despite the efforts of many public and private attorneys, disadvantaged clients do not receive nearly enough legal representation as they need.<sup>2</sup>

These two problems are actually connected in an important way. Researchers have found that lawyers earning the highest salaries, typically in large law firms, are also the most dissatisfied with their profession, while lawyers working for government agencies, public interest organizations, and educational institutions are among the most satisfied.<sup>3</sup> In other words, encouraging more law students to enter public service law could address both the problem of unhappiness in the profession and the under-representation of disadvantaged people with legal needs. Indeed, by reconnecting the legal profession with the notion of service to society, a professional ethic that seems to have disappeared in recent decades, we

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1 See John Heinz et al., *Lawyers and their Discontents: Findings from a Survey of the Chicago Bar*, 74 IND. L.J. 735 (1999); Patrick Schiltz, *On Being Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession*, 52 VAND. L. REV. 871 (1999); Michael Goldhaber, *Is the Promised Land Heaven or Hell?*, NAT'L L.J., July 5, 1999, at A17.

2 *Legal Needs and Civil Justice: A Survey of Americans- Major Findings of the Comprehensive Legal Needs Study*, A.B.A. (1994) (study found that the combined efforts of the private bar, individual lawyers and publicly funded legal services programs can serve only a small portion- about 20 percent- of the civil legal needs reported by low-income households).

3 Ken Dau-Schmidt and Kaushik Mukhopadhaya, "The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Over the Legal Profession", 49 J. of Legal Edu. 342 (1999).

may be able to improve the profession more broadly for its own sake and for the positive impact it can and should have on society at large.

Nevertheless, law firms continue to be the dominant career choice and goal for law students. Indeed, many students who enter law school with public service ideals and goals end up turning their focus to large firms during their law school careers.

In this essay, I examine why and how so many law students who have no intention of working at a firm or are interested in public interest as they begin law school end up accepting offers from large firms upon graduation. The fact that most law students pursue these positions despite the fact that they know about the low job satisfaction and high turnover rates at these firms is particularly curious to me. Many students who are personally committed to public service and privately critical of the firms accept job offers from these firms anyway.

There appears to be a paradox: why would students seemingly act against their own values and self-interest in making post-graduation plans? To address this paradox, we must understand the logical processes law students use in making their career decisions, and how these process may be flawed or biased. Recent findings in behavioral economics, which show the limits of rationality, shed light on this question. In particular, behavioral economics shows us that people have bounded willpower, bounded rationality and bounded self-interest, which all serve to encourage behavior which is not strictly self-interest maximizing, as that concept is understood in traditional economics. In this article, I argue that law students have shown bounded willpower, bounded rationality and bounded self-interest in this context.

Law school students should be among the most rational people in the country. To

get into law school, they had to perform well on a test that focuses primarily on logical reasoning. Their time in law school is supposedly teaching them to “think like lawyers” -- that is, to analyze situations rationally and make good decisions based on calculations of costs and benefits. A lawyer is supposed to think coolly and logically, and not be distracted by sophistry or sentimentality. The fact that a group of people who are selected by their demonstrated logical skills and trained to refine these skills display such limitations on rationality, as it is defined in traditional economics, is a powerful demonstration of the human tendency to be less than fully rational.

In this essay, I want to explore the question of why so many law school students choose to work at firms upon graduation, as opposed to public interest, despite their initial tendencies to do otherwise and their knowledge of the high degree of job dissatisfaction of other people in these positions. I divide this essay into three parts. In the first part, I address this question by looking at the bounded willpower, bounded rationality, and bounded self-interest of law school students. In the second part, I look at the effectiveness, or lack thereof, of different ways law schools have responded to the limited rationality shown by students, in particular public interest requirements and loan forgiveness plans. In the final part, I make suggestions for ways of addressing this issue, in light of the lessons learned from the first two parts.

## I. THE CHOICE OF LAW FIRMS FOR PERMANENT EMPLOYMENT

In this section, I will examine the behaviors that influence so many students to choose

positions at law firms as their first jobs after graduation. I divide it into three parts: bounded willpower, bounded rationality, and bounded self-interest.

### A. Bounded Willpower

Bounded willpower refers to the idea that people sometimes take actions that they know to be in conflict with their own long-term interests. The paradigm model is that of smoking, an activity that many people engage in despite their knowledge of the long-term health risks. Of course smoking is physiologically addictive, but bounded willpower can manifest itself in other situations. A person starting a diet may throw out all of the junk food in her house. To a traditional economist, this behavior is irrational. If she does not want the food, she does not have to eat it, but there is no reason to foreclose options but throwing the food out. But, the dieter understands that she has bounded willpower, that is, she can be tempted to do something she knows is not in her best interests. She throws out the food to prevent future temptation.<sup>4</sup>

Many law students choose to work at firms even though they know or suspect that they will not be happy there. This is not a result of addiction, as in the case of smoking. Rather, I believe this is a result of a more complex and subtle interaction of different factors. First, many students enter law school without a strong idea at all of what they want to do after graduation. As a result, their job preferences are particularly unstable and open to external influence. Second, law firms try early and often to persuade students to work for

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4 Christine Jolls, Cass R. Sunstein, & Richard Thaler, *A Behavioral Approach to Behavioral Economics*, 50 STAN. L. REV. 1471 (1998).

them, by offering high initial salaries, fun summer experiences, and other temptations.

Finally, peer pressure and the norms of law school and the legal profession pull students towards the firm track.

Many students enter law school without a clear idea of how or even if they want to practice law. In fact, law students often had impractical majors in college, and were convinced to go to law school by the breadth of subject matter and the argument that it was a good general degree that could be used in many different ways. Unlike students in business or public policy schools, many, if not most, law students have little or no full-time, non-summer professional experience, and often go to law school directly from college. Unlike medical school students, law students do not see themselves as entering a program of study and training that will last several years and require a concomitant long-term commitment. Law school is perhaps the most susceptible of the major professional schools to attract students with unclear professional goals and thus open to outside influence.

Because their preferences are unstable, law students are especially vulnerable to external influences on their preferences. Law firms take advantage of this situation by trying to tempt students from early on to work in their offices. During recruiting season at major law schools, many firms hold parties or cocktails open to all students, including 1Ls. They send representatives to speak on panels, stuff fliers in student boxes, and give away free gifts. On callbacks, they wine and dine their prospects. Summer programs are notoriously unrepresentative experiences, where associates do little work and spend much time at ballgames, parties, concerts, clubs, and restaurants. Of course, every industry tries to recruit promising students. But, law firms are noteworthy for the lengths they go to in their recruiting efforts, the degree to which they misrepresent their workplaces, their focus on

even first-year students, and their early extension of offers, sometimes even to students in the fall of their second year. Law firms realize that law students have unstable preferences and are open to influence, and they try to fill this gap in student preference through early, frequent, and aggressive recruiting.

A more subtle influence on student choice is the norms of their classmates and the legal professional in general. Studies have shown that social norms have a significant influence on human behavior. In one famous study, parents who sent their children to a child-care center in Israel were first told it was important to pick their children up on time. They were later told that if they did not pick their children up on time, they would have to pay a fine. Paradoxically, more parents arrived late after the policy change than before. The reason behind this surprising result is that the fine made showing up late more socially acceptable as long as the fine was paid. It was the "price" for being late that some parents were willing to pay, whereas before, arriving late was simply socially unacceptable. In strictly financial terms, the cost-benefit calculation of arriving late was actually inferior after the policy change, yet many more parents arrived late. In other words, people are influenced in their decision-making by how they will be perceived by others or even by themselves in the light of prevailing social norms.<sup>5</sup>

In the context of our study, there is heavy social pressure on law students to work at firms because so many of their friends and classmates are doing so or trying to do so. It is also expected of them by many of their outside friends and family members who want "successful" children or would not understand a decision to forgo the salary and prestige of a firm job. This social pressure is increased by denigrating the work of legal aid

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5 Uri Gneezy & Aldo Rustichini, *A Fine is a Price*, XXIX J. LEGAL STUD., 1 (2000).



organizations. Among lawyers at firms, it is not uncommon to present legal aid work as simplistic or do-gooding, as providing inadequate training, challenge or support, of not being "real" legal work, or for lawyers who can not "cut it" at a firm. All of these influences prevail on students to accept the conceit that firm work is the norm for those entering the legal profession and that public interest work is an aberration from this norm. Firm jobs have become seen as the safer choice, the default option, and the expected for law students by the successful imposition of this social norm in the law school world and legal profession generally.

## B. Bounded Rationality

### 1. Undervaluing Opportunity Cost

One striking instance of human departure from economic rationality, traditionally defined, is the differing treatment of actual income or cost and opportunity income or cost. Mark Kelman points out a number of examples of this behavior. A man refuses to sell an expensive bottle of wine he received as a gift for \$100 though he would never buy one at that price. A consumer refuses to sell his black-and-white television set that he has had for many years for \$50, although he would never buy it at that price. Business students at the University of Chicago were willing to pay much more not to be exposed to a disease than they were willing to pay for an antidote from a disease they may already have. Major league baseball teams will not match competing offers for a free agent though they would not have traded him at an equivalent price. A consistent feature of these and other real-

world examples is the human tendency to undervalue opportunity cost in relation to actual cost.<sup>6</sup>

This behavior is exhibited by law students in their evaluation of firm offers in relation to public interest opportunities. Firms offer very high salaries, often \$140,000 for first-year associates at large firms in major cities.<sup>7</sup> They also offer year-end bonuses, moving costs or other starting bonuses, and generous benefits. Government positions pay less than half of that, and legal aid position pay less than one-third of that, with many paying first-year attorneys less than \$40,000. In terms of "actual" salary, firms seem to offer much more income for the work expended.

However, this calculus overlooks many important costs of working at a large law firm that may be less apparent and harder to value than the salary offer, which is explicit and quantifiable. First, taxes will be much higher for an individual at that salary, and he will not benefit from his school's loan forgiveness program (I talk more about loan forgiveness programs in section II.2). These two factors alone narrow the pay gap. Second, the firm associate will be working much longer hours. It is not uncommon for new associates at firms to work 60, 70, or even 80 hours a week -- 20% to 100% more than a government or legal aid attorney (assuming he or she works 40-50 hours a week). An associate at a prestigious firm often lives in New York, Washington, or other cities where the cost of living, particularly housing, is much more expensive than in the rest of the country. Firm associates have less autonomy and freedom in their work than a legal aid attorney. They have to keep track of their work for billing purposes, and often are given tedious

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6 Mark Kelman, *Law and Behavioral Science: Conceptual Overviews*, NW. U. L. REV. (2003).

7 Current salaries at major law firms can be found at: <[http://www.studyworld.com/law\\_firm\\_salaries.htm](http://www.studyworld.com/law_firm_salaries.htm)>

assignments. They do not interact with clients nearly as much, and their clients are less sympathetic. Many find the work environment to be competitive and non-supportive.

To be sure, there are advantages to firm work over legal aid work. There is more secretarial and administrative support. The offices are more comfortable and modern. There is more formal training, and the work, at higher levels, may be more sophisticated. And, of course, everybody values these various factors differently. However, on balance, when the opportunity cost of law firm work, as opposed to public interest, is taken into account -- the hours, the clients, the work environment, etc. -- the calculation of the relative worth of each position is much closer than a pure salary comparison would indicate.

## 2. The "Sunk Cost" Error

There is a famous experiment in economics called the ultimatum game. In this game, player A is told he has \$100, which he can split in any way he sees fit with player B. Player B can either reject the offer, in which case neither player makes any money, or can accept the offer. Under classical economic assumptions, player B should accept whatever is offered to him, even if it is one cent. Based on cost-benefit analysis, his choice under that scenario is between one cent and nothing, and the former is better. Player A understands this, and therefore he will only offer one cent. However, when economists tried this experiment with actual people, they discovered that most people rejected extremely low offers, even though this was not strictly "rational". The researchers found that people were willing to sacrifice a certain amount of self-interest if they felt they were being cheated or mistreated. In other words, people are willing to damage their own self-interest in order to

spite an unfair player or to uphold their sense of fairness and propriety. This can be seen as a quasi-rational aberration from the economic expectation that people will or should ignore sunk costs.<sup>8</sup>

However, sometimes people factor in sunk costs simply out of logical error. We all know the theater season-ticket holder who will go to a play he does not want to see because he has already paid for it. My mother will eat food she has ordered even if she does not like it because she has already paid for it, no matter how many times I try to explain the illogic of this behavior. In theory, we should only factor in future benefits and future costs in our decision-making, but the reality is that people frequently do otherwise. For some reason, humans will factor in sunk costs in their decision-making even when it defies logical reasoning.

The student who chooses a public interest job will inevitably encounter someone who says something to the effect of, "Do you feel the expense of law school was a waste since you are going to work in public interest?" or "Since you paid so much to get to this point, aren't you entitled to a high-paying position?" Of course, this question ignores the intrinsic value of a good education, the difficulty of getting public interest jobs, and changing priorities a student may have over time as her career develops. But, even assuming that these other things do not matter, the rationale underlying this question is logically incorrect. Regardless of the costs, financial and otherwise, associated with law school, the question is which job is relatively most beneficial going forward. Even if those costs were "too" high, the problem would only be exacerbated by using those spent costs to

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8 Richard Thaler, QUASI RATIONAL ECONOMICS, Chapter 10 ("Fairness as a Constraint on Profit Seeking: Entitlements in the Market"), pp. 199-219.

justify a sub-optimal course of action. The amount of money paid for law school, therefore, should be irrelevant to post-graduation job decisions.

Nevertheless, this mistaken desire not to "waste" their expensive education may be a factor behind many students' decision to go to law firms. Because firm jobs are seen as more exclusive and prestigious, students feel they have earned, through their hard work and sacrifice, the privilege to work in these offices. Firms do a good job of heightening this sense of winning a competition or prize among their hirees, through rhetoric, perks, and self-congratulatory celebrations. Many students feel that they would be giving up an honor and wasting the hard work that achieved that honor by rejecting firm offers. They fail to ignore these past efforts as sunk costs, and simply evaluate what they want to do in the future. This error of factoring in sunk costs leads many of them to dig the hole deeper by taking a position that they will not find satisfying. Students should ignore the conceit that they have "earned" a firm job or that to reject one would be a "waste" of their education, and think about job plans purely in terms of the costs and benefits going forward.

### 3. Judgment Heuristics

#### *a. The availability heuristic*

The availability heuristic occurs because people associate the frequency of a class by the ease with which they can recall specific instances of that class occurring. Logical errors result when people are over- or under-exposed to certain phenomena. For example, people overestimate the number of deaths in their society caused by highly-publicized events like

homicides and airplane crashes and underestimate the frequencies of quieter fatalities like diabetes. Because airplane crashes are always major news events, people are highly exposed to them and liable to overestimate their actual rate of occurrence. Conversely, people do not believe diabetes is a major cause of death, though it kills far more people than airline crashes, because it is relatively underexposed in the media.<sup>9</sup>

Law students are sometimes surprised to learn how most lawyers practice their profession. A student could easily go through three years of a major American law school without realizing that the vast majority of lawyers in the United States do not work at large corporate law firms. The vast majority of firms that recruit and interview on campus are large firms in large cities that work primarily for large corporate clients. Students' summer experiences are either at these kinds of firms, federal government agencies, or non-governmental organizations, but rarely at the kinds of places and with the kind of work that most lawyers experience. The class work at most law schools emphasizes high-end appellate litigation that actually occupies a tiny percentage of the legal bar, even among graduates of elite schools. As a result of these experiences, students often have a skewed view of the legal profession, seeing large firm work as the norm, and anything else as a deviation, whereas the opposite is closer to the truth.

Similarly, the availability heuristic may lead students to overestimate their chance of enjoying their work at firms or of becoming partner. Through their interviews, recruiting cocktails and other campus programs, they often meet with partners or seemingly happy associates. They are not equally exposed to disgruntled associates, those who have left the

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<sup>9</sup> Amos Tversky & Daniel Kahneman, *Availability: A Heuristic for Judging Frequency and Probability*, 5 COGNITIVE PSYCHOL., 207 (1973).

firm out of dissatisfaction or failure to make partner, or those who are less able to demonstrate happiness and enthusiasm. Once more, this skewed exposure may lead to skewed judgments about the job satisfaction and partnership prospects of such organizations. In this instance, the availability heuristic may interact with human over-optimism, which I discuss below, to lead students to seriously overestimate their prospects in this work setting.

*b. The representativeness heuristic*

People use mental models to judge the likelihood of an event occurring. Connected to this, people are more likely to predict a future event if they can conceive of a convincing scenario in which that event occurs.<sup>10</sup> This heuristic may subtly influence students' decision to work at firms. Based on movies, books, television programs and the law school experience itself, the model of a law student going to work at a major corporate law firm is much easier to conceive of than that same student working at, let us say, a state attorney general's office. Therefore, he is more likely to envision that scenario as a possible future outcome for himself. As a result, he is more likely to investigate and pursue this possibility.

As he develops a conception of himself and his place in the world, this model works on his mind until he sees himself as the lawyer he envisions he will become. The firm job, because it seems so representative of the model career path of people in his class or that he associates himself with, subtly becomes the probable choice or default option. Perhaps even without noticing it, he finds himself heading down this path, not even knowing why or how

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<sup>10</sup> Amos Tversky & Daniel Kahneman, *On the Psychology of Prediction*, 80 PSYCHOL. REV., 237 (1973).

it happened. It is striking to talk to law students during their 1L, 2L, and 3L years and see how slowly but surely their self-conception of who they are and who they will become evolves from idealism to pragmatism, from rejecting law firms to embracing them. The model of the high-powered, well-compensated attorney that they are constantly exposed to over a three-year period affects students' expectations of their own futures.

#### 4. Unrealistic Optimism

A famous economics study a few years ago found that low-level gang members get paid very little for the amount of risk they take, in terms of exposure to violence and criminal liability. The explanation for this behavior was that street gangs use economic models similar to those used by large firms -- that is, many people toil at the bottom rungs for the chance, however small, of rising to the top, where the compensation is very high. Both organizations rely on people's optimism that they are the ones who will defy the odds.<sup>11</sup> As other studies have demonstrated, people are overly optimistic and overly positive about themselves. Most people think they are smarter than average. Their risk is below average for getting a disease or having a car accident, and above average for winning the lottery or being professionally successful.<sup>12</sup>

Law students are no exception to the tendency to think highly of their intelligence or abilities. People who are accustomed to success, to performing above average, and to

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11 Steven D. Levitt and Sudhir Alladi Venkatesh. "An Economic Analysis Of A Drug-Selling Gang's Finances," *Quarterly Journal of Economics*, v. 115 (3, Aug.), 755-789 (2000).

12 Neil D. Weinstein, *Unrealistic Optimism About Future Life Events*, 39 *J. PERSONALITY & SOC. PSYCHOL.*, 806 (1980).



beating the odds are even more likely to be overly optimistic about their future prospects. Major law firms know that a tiny percentage of new associates will rise to become equity partners, but they also know that most new associates will think that they are the ones who will do it. Doing long hours of tedious work seems more worthwhile if there is a big payoff at the end. This overly optimistic assessment of one's chances of becoming partner, and reaping all the rewards associated with that position and status, probably also affects students' decision to work at firms.

### 5. Loss Aversion

According to prospect theory, people evaluate outcomes based on the change those outcomes represent from an initial reference point, rather than objectively evaluating the outcome itself. Furthermore, losses from this reference point are weighted far more heavily than gains from that same point. In one experiment, participants were told that a deadly bird flu was going around and they had a choice of definitely saving 200 people or a 1/3 chance of saving 600 people. In this test, people preferred, by a 3:1 ratio, the option of saving 200 people than a 1/3 chance of saving 600 people. But, when the exact same choice was presented as either killing 400 people or a 1/3 chance of saving 600 people, the outcome was reversed. By changing the reference point from living to dying, and therefore saving people to killing them, the experimenters' changed people's preferences. This study shows the importance of how choices are framed -- in particular, whether they are framed as negative

or positive movement from the status quo.<sup>13</sup>

As I've mentioned before, firms do a good job of establishing themselves as the norm for graduates of elite law schools. The vast majority of such students go to work at such firms, they dominate on-campus recruiting, and they use gifts, cocktails, and presentations to maintain a constant presence in law students' lives. They are particularly effective at using summer experiences to re-enforce the primacy of the firm in the legal profession and establish it as the norm for post-graduation employment from the top law schools, as I explain below. In so doing, the firm job, and its high starting salary, becomes the norm and expectation for graduates of these schools.

For a typical person in his mid- to late-twenties, a job paying \$40,000, a typical starting salary in a legal aid society, would seem average or even a little above average. But, when law students use the large firm as a reference point, where salaries are typically \$140,000 for first-year associates, such a job seems like an annual loss of \$100,000. This is a large sum of money by almost any standard, particularly when it is conceived of as a loss.

As Mark Kelman has discovered, a loss in income matters more to people than a gain in income. Thus, Las Vegas gamblers are more willing to lose their "winnings" than their other money, despite their equivalent values, because the former seems like a non-gain while the latter seems like a loss.<sup>14</sup> Likewise, students who are content to live in small apartments or dormitories with little income or spending money during law school are not satisfied with a \$40,000 job because they see it as a loss of money rather than a gain. Rather than using

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13 Amos Tversky & Daniel Kahneman, *Prospect Theory: An Analysis of Decision Under Risk*, XVII *ECONOMETRICA*, 263 (1979).

14 Mark Kelman, *Consumption Theory, Production Theory, and Ideology in the Coase Theorem*, 52 *S. CAL. L. REV.* 669 (1979).

their present circumstances or those of other people their age as reference points, they use the first-year associate position at major law firms as their reference point. This framing of the post-law school professional choice is one of the big successes of law firms in recruiting talent.

## 6. The Endowment Effect

Related to the concept of loss aversion is the endowment effect, which says that an individual more highly values something once he owns it. Therefore, in one experiment, students given initial ownership of a mug demanded significantly higher prices to sell it than they would have paid to buy it.<sup>15</sup> This concept goes a long way toward explaining the importance of summer associateships and early offers. By actually employing their recruit for a period of time, the firm makes the student feel as though he has already begun working at the firm. Undoubtedly, the work is on hold until he finishes law school, but the fact that the work has already begun, in a sense, gives the student a certain ownership over the position.

This effect is especially true for an accepted offer. A firm may make an offer to a student as early as the fall of his second year. The student is allowed to accept the offer but change his mind later. However, by accepting that offer, he attains a feeling of ownership over it. To accept a later offer from a public interest organization (they recruit later than firms, often waiting until spring of 3L year to make an offer), he would perceive it as giving up a position he already has, as opposed to deciding between two competing offers.

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<sup>15</sup> Richard Thaler, *Towards a Positive Theory of Consumer Choice*, 1 J. ECON. BEHAV. & ORG., 39 (1980).

Because of the endowment effect, he would place a higher value on the position that he already "owns" than on the position he is being offered, just as the individual prefers the mug he owns over the one he is being offered. These early offers endow the student with a sense of ownership over the firm position, making him value it higher and be less likely to give it up for an alternative.

### C. Bounded Self-Interest

It seems strange to a lot of people that some students of elite law schools, albeit not many, choose to work in legal settings where they will be paid far less than in other legal positions that are available to them. One explanation for this is that people are not always self-interest maximizing; that is, they care about other people, and are willing to sacrifice a portion of their self-interest in order to help others. This could be seen as pure altruism, a decision to do good for others without benefit to oneself. But, in fact, there is more to it than that. Behavioral economists have discovered that, during bargaining situations, people are willing to treat their counterpart fairly, even if that means retaining fewer benefits, as long as that person is behaving fairly. Conversely, they will try to punish, even at cost to themselves, negotiating partners who seem to behave unfairly. In a sense, they are willing to sacrifice personal self-interest maximization in order to uphold a system that benefits all based on honor, trust and fairness.<sup>16</sup>

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16 Amartya Sen, *Maximization and the Act of Choice*, 65 *ECONOMETRICA*, 745 (1997).

The legal system, as a codification of the social contract, is just such a system. We all agree to put constraints on ourselves, and make ourselves liable to rules and courts, in order to create a system that will benefit everybody on balance. However, this system only works if it is available to everybody. If an individual is constrained by the legal system, but is not able to derive benefits from it by constraining others because he does not have access to it, the system begins to break down. Attorneys at legal aids and other public interest organizations make sure that people who might otherwise be unable to access the system due to lack of money, education, or sophistication, are able to receive legal counsel and the protections due them from the legal system. Those attorneys who sacrifice personal benefit from practicing law in order to ensure access to those who might otherwise be left out of the system are helping to maintain a system that benefits all. This kind of bounded self-interest is a strong motivation for many attorneys who reject the firm route.

## II. LAW SCHOOLS' RESPONSE TO STUDENTS' BOUNDED RATIONALITY

### A. The Public Interest Requirement

According to traditional economic assumptions, people know what they want and what is in their best interest. Therefore, a person's end cannot be questioned, only the rationality of the means he uses to achieve that end. One joke has it that if a man said he wanted to cut off his finger, a classical economist could only advise him to use a sharp knife. As advances in behavioral science demonstrate, though, people do not always know what

they want or what is in their best interest. A behavioral economist, therefore, would be more willing than a traditional economist to have the government or other third party try to influence human behavior in order to achieve desired social ends -- to counteract the harm caused to individuals by their bounded rationality and willpower. For example, whereas a traditional economist would support citizen informational campaigns in areas like health and safety, a behavioral economist would favor consciously framing the information in particular ways or using personal anecdotes in presenting the information in order to counteract human limits on rationality and willpower.

With regard to career advising at law school, this same issue emerges. Assuming a law school wants its graduates to go into public interest law, should it simply provide information to students about such opportunities, along with information about private sector opportunities, or should it consciously make efforts to influence its students to enter public service careers? If what I argue in Part I is true -- that most students end up at law firms despite the best interests of themselves and society due to bounded rationality and willpower -- law schools should take steps to counteract these trends. This appears to be the position many law school have taken in recent years. The public interest requirement is one such step.

Some law schools, with the encouragement of the Association of American Law Schools (AALS), make it mandatory for students to perform a certain amount of public interest legal service as a condition of graduation.<sup>17</sup> Critics of this policy argue against it on

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<sup>17</sup> *Learning to Serve: The Findings and Proposals of the AALS Commission on Pro Bono and Public Service Opportunities*, (1999) (the AALS Commission on Pro Bono and Public Service Opportunities recommended "that law schools make available to all law students at least once during their law school careers a well-supervised law-related pro bono opportunity and either require the students' participation or

the grounds that it is paternalistic. They argue that a law school has no business telling students how they should spend their free time or what kind of law they should practice. A law school should simply train its students to be good lawyers, and let them make decisions of personal morality or conscience on their own, in light of their personal religious and ethical beliefs. This argument closely mirrors the neoclassical economic argument against state intervention in decisions of personal morality.

Nevertheless, these requirements are increasingly popular at law schools across the nation. It is an attempt to counteract some of the manifestations of bounded rationality I mentioned above. For example, by forcing every student to have at least some exposure to public interest law, it helps mitigate the availability heuristic -- the prominence of the large firm in students' law school experience. It may also work against the tendency to see the law firm as the norm of legal practice, which make the loss aversion and endowment effects such strong factors in student post-graduation plans.

### B. Loan Forgiveness

Some students complain that they want to do public interest, but are unable to do so due to the large debt they have accumulated paying for college and law school. Loan forgiveness programs are an attempt to address this problem by making it financially possible for students to accept public service positions and meet their loan obligations.<sup>18</sup>

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find ways to attract the great majority of students to volunteer").find ways to attract the great majority of students to volunteer."

18 See, American Bar Association, "Lifting the Burden: Law Student Debt as a Barrier to Public Service, The Final Report of the ABA Commission on Loan Repayment and Forgiveness", 2003, for an analysis of the

However, such programs have not been terribly successful. Law schools that have implemented such programs have not seen significant increases in the number of graduates going into public service.

This failure of loan forgiveness programs to significantly influence student behavior may result from the fact that it does not seriously address the bounded rationality issues that influence their decision to work at large firms. These programs do increase somewhat the compensation received by a public interest attorney, so that he may earn the equivalent of \$50,000 to \$60,000 instead of \$40,000. In that regard, it may alter the cost-benefit analysis a student undertakes in choosing a job after graduation. However, this compensation still pales in comparison with the \$140,000 that the same graduate can expect at a law firm. And, by focusing on salary, it may actually encourage the focus on actual income, thus subtly re-enforcing the bias against opportunity cost I mention in section I.B.1. It certainly does nothing to counteract the tendency to undervalue opportunity cost, nor does it counteract any of the other manifestations of bounded rationality and willpower I mention above.

Loan forgiveness programs are still worthwhile. For students who do decide to go into public service, such programs can be helpful and, in some cases, even necessary, in helping them manage their finances after graduation. However, while it they are beneficial to those who independently decide to enter public service, they do little to encourage others to make that decision.

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problem and an overview of law schools' approaches to addressing it.



### III. PRESCRIPTIONS

The focus of this article is on the way bounded rationality, willpower, and self-interest effect post-graduation career plans of students from law schools, particularly by channeling them toward associateships in large firms. A number of prescriptions could be imagined to counter some of these biases. In this section, I present three suggestions to provide examples of the kind of steps law schools could take to de-bias their students.

*1. Pay for public interest organizations to participate in on-campus interviewing.*

Currently, on-campus interviewing -- the primary way students find their summer and post-graduation jobs -- is heavily dominated by firms. Many public interest organizations would love to recruit at law schools, but they can not afford to participate in on-campus interviewing. This situation re-enforces the perception that large firms are the norm in the legal profession. As a result, students use the inflated firm salaries as the reference point for evaluating other offers, seeing public interest employment as demanding a "loss" of income. By presenting such organizations as equally valid practice settings and employment options, law schools could help change the framework students use in evaluating job offers and salaries. By countering the view of the law firm as the norm, this policy would also help mitigate the availability and representativeness heuristics, as well as students' bounded willpower. Students will be able to recall more examples of public interest attorneys they can identify with and that they can model themselves after. Finally, the public interest recruiters that come to campus will surely emphasize the advantages of their work setting --

the hours, atmosphere, autonomy, etc. -- thus counteracting the tendency to undervalue opportunity cost.

*2. Encourage students to work before entering law school.*

Because students often enter law school with unstable preferences, they are vulnerable to external influences, which the firms are happy to provide. If students have more concrete preferences before entering law school, they would be less vulnerable to such outside pressures. Anecdotally, I've noticed that students who have taken time off between college and law school, typically working, have more realistic understandings of the professional world and clearer ideas of their interests and preferences than students who come straight from college. I believe law schools should encourage more of their students to spend time working before beginning law school, which is the norm for business and public policy schools. One way to do this is to favor applicants with work experience during the admission process. By advertising and implementing this policy, the effect will be to encourage more law school aspirants to work for a few years before applying to law school, and to form a student body that has more professional and life experience, and therefore more stable preferences.

*3. Invite dissatisfied former firm lawyers to campus*

It may seem strange or even perverse to invite unhappy lawyers to speak to law students. However, this may help counteract the over-optimism bias. It may also help counter the

judgment heuristics students demonstrate by providing alternative models to the happy talk they are likely to encounter from the many law firm recruiters that come to campus.

This article has used findings in behavioral economics to explain why law students continue to pursue jobs at large firms despite the widespread knowledge that such position often lead to professional unhappiness. They display bounded rationality, willpower, and self-interest, in ways that are damaging to themselves, the legal profession, and poor people who do not have access to the legal advocacy they need. By first understanding the nature of the problem and its underlying cause in the mental processes of law students, we can begin to address these issues in a systematic and effective way. By reconnecting future lawyers to the ethic of service, of achieving personal fulfillment through the employment of professional skills to help those in need, we may be able to improve not only our profession, but our society as well.