How Does Law School Matter in the Pursuit of Public Interest Careers?

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John Bliss, *From Idealists to Hired Guns? An Empirical Analysis of "Public Interest Drift" in Law School*, 51 **U.C. Davis L. Rev.** 1973 (2018).

The conventional wisdom has long been that law school, especially at the elite level, is a hostile place for students aspiring to pursue public interest careers—those whose professional goal is to serve a larger social cause, not just individual clients. The concept of public interest "drift," coined by Robert Granfield in his seminal study of Harvard Law School students in the early 1990s, held that students who started on the public interest path dropped off in substantial numbers due to a range of law school factors. Key among them was the ideological transformation that occurred during the 1L year: when students were subtly taught to abandon their moral commitments in favor of a hired-gun professional ethos. Duncan Kennedy's classic polemic, *Legal Education and the Reproduction of Hierarchy*, provided a nonempirical vision of this same phenomenon, identifying the pedagogical mechanisms through which 1Ls were asked to submit to a "double surrender" to the infantilizing 1L classroom experience of deference to the professor and to a more profound nihilism: that there is no right or wrong, only arguments to be made.

In a powerful new empirical analysis, *From Idealists to Hired Guns? An Empirical Analysis of "Public Interest Drift" in Law School*, John Bliss upends this conventional wisdom by showing how 1L public interest identity is more ill-defined and pliable than often thought and by placing more emphasis on the 2L hiring cycle than the 1L classroom experience as the crucible of assimilation. Methodologically, Bliss selects a different empirical design than previous "drift" research. Instead of using surveys to assess attitudinal change, he followed over 50 elite law school students during the first two years of law school: using interviews, ethnographic observations, and identity mapping (a technique in which he asked students to graphically depict the centrality of different identities to their sense of professional self). (P. 1990.) In addition to deploying a different methodology, Bliss also looked at the law school timeline through a different lens, assessing attitudinal change during the first two years of law school and focusing particular attention on the 2L summer hiring process. Four facets of his analysis stand out.

First, Bliss problematizes the very concept of public interest "commitment" by presenting a more nuanced account of the actual "uncertainty" that many students professing a public interest commitment experience. Although he confirms the existence of a 1L public interest "subcultural community" that feels marginalized from the law school mainstream, he paints a more complicated picture. (Pp. 1995-96.) Specifically, by focusing on "drifting" students—those who move from a 1L public interest aspiration to a 2L summer law firm job, Bliss uncovers how the ambiguity of public interest commitment interacts with background factors and law school culture. With respect to demographic factors like race and class disadvantage, Bliss finds that "social identities can cut both ways with respect to job-path preferences—as sources of commitment to working with underserved communities and as motivation for working in elite firms where minorities, women, and people from working class backgrounds are underrepresented."(P. 2001.) The most interesting finding, however, relates to the professional uncertainty expressed by drifting students overall. One subject captured this sentiment: "[W]e don't know what we are doing, as much as we like to say we do." For drifting students, Bliss concludes that "the 1L experience appears to generally produce only a slight alteration from an initial

unspecific preference for public-interest careers in the first year to an exploratory and risk-averse decision to apply to large firms at the end of the 1L summer."(P. 2003.) Thus, contrary to the picture of strongly held views being dislodged by 1L pedagogy and firm-oriented culture, Bliss suggests, at least for drifting students, those views are much less solidified at the outset.

Second, Bliss reconceives the salient timeline for understanding when and how drift occurs. At the school he studied, big law firm interviewing started at end of 1L summer, while the application process for post-graduate public interest jobs occurred much later, generally in 3L year. Bliss found that drifting students were particularly worried about career prospects, felt like they lacked information about public interest options, and believed that, because public interest jobs were more competitive, applying to firms was a strategy for hedging career risk. Not wanting to "close any doors," the "sum of these risk factors made the decision to upload their resumes for [summer law firm jobs] feel necessary and even overdetermined."(P. 2006.) Once the students entered the interviewing process, their ambivalence translated into moderated views about firm lawyers, who were surprisingly "nice" and "chill."(P. 2008.) Although many students cared about pro bono opportunities, they found themselves "re-narrating" their public interest background to emphasize law firm commitment, not pro bono interest, in order to secure offers.

However, and this is the third point, students did not completely reconcile themselves to law firm life. Although they tended to tell themselves stories "obscuring doubts" and making them "open to other things," these internal stories did not produce complete professional acceptance, but instead led to greater ideological fragmentation in which professional identity became less core to one's sense of self: the law firm gig was just a job. (P. 2015.) Interestingly, instead of fully embracing the law firm mission, drifting students continued to harbor moral reservations, expressing hope of returning to public interest law after paying down debt. Thus, although cognitive dissonance permitted students to justify the choice to accept the firm job, their resolution of moral qualms was never complete.

Finally, Bliss offers a set of innovative recommendations on how law schools might think differently about supporting public interest-minded students, particularly as they navigate the challenges posed by the law firm hiring process. Focusing on the fact that ambivalence and risk aversion are key factors producing drift, Bliss recommends interventions, like public interest specializations, that reinforce public interest subculture and provide more robust 1L education on career paths and professional identity. Relying on choice architecture theory, he also suggests other changes to nudge students forward on the public interest path: including things like pushing back the law firm recruiting process to spring of 2L year, and providing more opportunities for skills and professional formation in 1L year, which he believes could "lend understanding and unity across the corporate/public-interest student divide, mitigating competing accounts of deviance among first-year students." (P. 2030.)

These are important ideas that law schools should take seriously. They also raise a number of unanswered questions and further puzzles. It would be interesting to know more about the race and gender dimensions of drift and how programs that strengthen subcultures interact at an intersectional level. Bliss suggests that more information earlier about the profession could promote better informed choices and reduce risk aversion. Yet courses on the legal profession and professional responsibility are notoriously disfavored by students, no matter where they are located in the curriculum. Very few schools have ventured to introduce the study of professionalism and the profession into the first-year curriculum, and the results have not been systematically studied. Moreover, the type of risk aversion that Bliss describes—opting into big law firm hiring—is a peculiarly elite institutional strategy. Students at lower ranked schools have to hedge risk in other ways and many opt for jobs in the public sector precisely because the law firm track is not available.

There are also large-scale trends and constraints: The economic model of elite law schools, driven by

well-documented limits imposed by U.S. News rankings, is oriented around rising tuition nourished by a pipeline of large-firm jobs, which must be normatively sanctioned, even as schools must simultaneously promote commitment to supporting public interest careers as a recruitment strategy. Another constraint is the public interest job market itself. Because the number of public interest jobs, defined as those in the nonprofit and governmental sectors, are relatively fixed as a proportion of the overall profession, some have suggested that what ultimately limits entry is less the supply of aspirants than the demand for their talents. Bliss acknowledges this problem, but he suggests that increasing supply could help legal aid and other public interest groups by increasing the number of strong applicants, which would enhance the system overall. Bliss also suggests that strong support for public interest students could lead to lawyers entering private practice with a greater commitment to altruism—although this is complicated since the very subcultures necessary to sustain public interest commitment may be less accepting of broader public service conceptions of professional identity upon which the noblesse oblige model of the private lawyer rests. However, at a time when lawyers at the apex of power seem to have embraced the worst aspects of partisan advocacy, conceiving of strategies of professional integration and value-promotion that produce more public-minded lawyers, not just in legal aid but throughout the profession, might be the most important implication of Bliss's significant study.

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