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## Advice

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## ADVICE

Sean Hannon Williams\*

*This Article seeks to resurrect an ancient technology for enhancing the welfare of others: peer advice. For decisions as variable as whether to eat a marshmallow or which dialysis treatment to undergo, advice-giving is a powerful and as-yet-unrecognized debiasing tool. In fact, it is one of the most comprehensive and effective debiasing tools ever studied. People who succumb to motivated reasoning, hyperbolic discounting, and a host of other biases offer advice that is untainted by them. When advising others, we are more creative, process information and probability more rationally, and see the forest rather than the trees. Far from the blind leading the blind, our friends and family see us and our situation far more clearly than we do. Currently, peer advice is an entirely untapped resource. Promoting, incentivizing, or even sometimes mandating advice can help us improve our decision-making in numerous contexts such as consumer contracts, health care, education, and financial planning.*

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## I. INTRODUCTION

Legal scholarship is awash with novel proposals to promote welfare. The behavioral law and economics tradition has brought nudges and choice architecture into the mainstream.<sup>1</sup> Related work highlights the ways that corporations know us better than we know ourselves and could be forced to disclose useful information about us.<sup>2</sup> More recent scholarship focuses on the futuristic possibility of using big data and artificial intelligence (AI) to dynamically generate personalized legal

<sup>1</sup> See generally RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS 83 (2008).

<sup>2</sup> Oren Bar-Gill & Franco Ferrari, *Informing Consumers About Themselves*, 3 ERASMUS L. REV. 93, 95 (2010).

directives for each person in every situation.<sup>3</sup> As scholars explore these new strategies and new technologies, they should be careful not to lose sight of older and sometimes more effective ones. This Article seeks to resurrect an ancient technology for enhancing the welfare of others: advice from friends and family.

The first novel insight of this Article is that corporations are not the only ones who know us better than we know ourselves. Long before AI and big data, friends and family accomplished similar feats with HI (Human Intelligence). Across a number of domains, others can make more accurate predictions about our lives than we can. This is true even of the most intimate aspects of our lives. Other people are better than you at predicting your personality traits, who you'll be dating in a year, whether you'll be fired from your job, whether you'll die of a heart attack, what grade you'll get on the next exam, whether you'll donate to charity, and much more.<sup>4</sup> These epistemic advantages are especially surprising given that other people often judge based on far less information than we ourselves possess. Although they have less information, they process it far more effectively.

The second novel insight of this Article is that advice-giving is a powerful yet completely unexplored debiasing tool.<sup>5</sup> The psychological distance between advisors and advisees allows even non-expert advisors to process information free from the distorting influence of the fundamental attribution error, confirmation bias, and other forms of motivated reasoning.<sup>6</sup> Advisors also give advice that is untainted by ambiguity aversion, loss aversion, betrayal aversion, omission bias, and hyperbolic discounting.<sup>7</sup>

Marshmallows can help provide a concrete illustration. What happens when you put a marshmallow in front of a three-year-old? They eat it.<sup>8</sup> What if you tell

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<sup>3</sup> See *infra* Part IV.A.

<sup>4</sup> See *infra* Part II.

<sup>5</sup> Other legal scholarship asks whether, and under what circumstances, taking expert advice can help people make better decisions. See, e.g., THALER & SUNSTEIN, *supra* note 1, at 141 (discussing experts with conflicts of interest); Christopher Tarver Robertson, *Biased Advice*, 60 EMORY L.J. 653, 665–69 (2011); Justin Sevier & Kelli Alces Williams, *Consumers, Seller-Advisors, and the Psychology of Trust*, 59 B.C. L. REV. 931, 990 (2018) (discussing consumer trust in expert advisors with conflicts of interest). This work focuses on the incentives or biases of experts and is not necessarily about debiasing laypersons at all. Taking a financial planner's advice can lead to better outcomes (like more retirement savings) even if you are still biased when making your own decisions. This is the first piece of legal scholarship to argue that the process of giving advice has a debiasing effect, at least for non-experts without conflicts of interest. This is also the first piece of legal scholarship to explore the benefits of peer advice rather than expert advice.

<sup>6</sup> See *infra* Part II.A.1. These or other distortions may exist when advisors have conflicts of interest, such as when a professional advisor is paid more when you make a worse decision. These conflicts of interest are unlikely to significantly affect most peer advice. See *id.*

<sup>7</sup> See *infra* notes 82, 90 and accompanying text.

<sup>8</sup> See WALTER MISCHEL, *THE MARSHMALLOW TEST: MASTERING SELF-CONTROL* 47 (2014); see also The Telegraph, *The Marshmallow Test: Can Children Learn Self-Control?*,

them that, if they refrain from eating it, they will get two marshmallows later? The child's ability to wait correlates with various outcomes later in life, like SAT scores.<sup>9</sup> For our purposes, the most interesting finding of this research comes when researchers allow children to give each other advice. *Three-year-olds recommend that others delay gratification* to earn extra treats, even when they cannot overcome their own visceral desires to do so themselves.<sup>10</sup> To put the point in more technical terms, the same people who routinely succumb to hyperbolic discounting will give advice that is unaffected by this bias.

Third, even outside of the traditional set of heuristics and biases, advice has immense benefits. Even rational people might experience literacy or numeracy limits. Advice can help people overcome literacy and numeracy issues because advice harnesses the power of other people's experiences. Consider a thought experiment about Miranda warnings. Some scholars have wondered whether Miranda warnings should be simplified to make them easier to understand.<sup>11</sup> This might help overcome some literacy concerns. But experience might well be a better teacher. It might tell you not to talk to the police. Advice can harness that experience. Suppose the police could not question you until after they read you the Miranda warnings *and* you called two friends to receive advice. What might those friends say? Probably something like: "Keep your mouth shut." I'm not advocating this particular reform, but it begins to show that we might make much different (and perhaps much more rational) decisions if we tapped into peer advice.

Advice also mitigates overload effects. People just don't have time to read all of the relevant information about consumer products, retirement, or their health status. Trying to do so would be overwhelming. Peer advisors do better. They try harder, make more rational investments in searching for and processing information, and are less susceptible to overload effects and decision fatigue.<sup>12</sup> Relatedly, people who suffer from high anxiety make choices for others that are not hampered by this trait.<sup>13</sup>

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YOUTUBE (Sept. 24, 2014), [https://www.youtube.com/watch?v=d8M7Xzjy\\_m8](https://www.youtube.com/watch?v=d8M7Xzjy_m8) [<https://perma.cc/4VQX-BZGS>].

<sup>9</sup> Yuichi Shoda, Walter Mischel & Phillip K. Peake, *Predicting Adolescent Cognitive and Self-Regulatory Competencies from Preschool Delay of Gratification: Identifying Diagnostic Conditions*, 26 DEV. PSYCH. 978, 980–82 (1990); *see also* Tanya R. Schlam, Nicole L. Wilson, Yuichi Shoda, Walter Mischel & Ozlem Ayduk, *Preschoolers' Delay of Gratification Predicts Their Body Mass 30 Years Later*, 162 J. PEDIATRICS 90, 90 (2013).

<sup>10</sup> Angela Prencipe & Philip David Zelazo, *Development of Affective Decision Making for Self and Other: Evidence for the Integration of First- and Third-Person Perspectives*, 16 PSYCH. SCI. 501, 503 (2005) (testing children with various "treats" like candy, stickers, and pennies).

<sup>11</sup> *See* Andrew Guthrie Ferguson & Richard A. Leo, *The Miranda App: Metaphor and Machine*, 97 B.U. L. REV. 935, 938, 959–60 (2017).

<sup>12</sup> *See infra* Part II.A.4.

<sup>13</sup> Laura D. Wray & Eric R. Stone, *The Role of Self-Esteem and Anxiety in Decision Making for Self Versus Others in Relationships*, 18 J. BEHAV. DECISION MAKING 125, 129, 131–32 (2005).

Advice-giving even increases creativity. Consider the following riddle:

A prisoner was attempting to escape from a tower. He found a rope in his cell that was half as long enough to permit him to reach the ground safely. He divided the rope in half, tied the two parts together, and escaped. How could he have done this?<sup>14</sup>

People are more likely to solve riddles like this when they imagine that another person is in the tower, and that they are solving the riddle for them.<sup>15</sup> More generally, people tend to be more creative and more likely to see the big picture when they advise others, compared to when they make decisions for themselves.<sup>16</sup>

These diverse studies paint a single picture: even non-expert advisors will tend to point people in welfare-enhancing directions. A related body of research shows that advisees tend to respond by moving in that direction. Advisees routinely follow good advice, discount bad advice, and respond sensibly to many features of the advice context.<sup>17</sup> Although at first blush, readers may have thought that peer advice would just be the blind leading the blind, nothing could be further from the truth. Overall, people who take the perspective of the advisor are not blind, and they can offer valuable guidance to those of us who are. Peer advice could be a powerful tool and improve decision-making in a host of substantive areas, like small value loan markets, consumer contracts, retirement saving, student debt, health, and lay risk assessment.

If peer advice is a resource worth tapping into, the next question is how to do so. This Article explores several strategies. These could include providing incentives for people to seek advice, advising people to seek advice, or promoting norms that support advice. Interestingly, advising people just to *simulate* advice by asking them what their family might say, or what advice they would give a friend, carries many of the same benefits as receiving advice.<sup>18</sup> Just as the “what would Jesus do” movement uses this strategy to improve moral reasoning, policymakers could use it to improve decision-making in a host of other domains.

The Article then takes a futuristic turn. Everyday traditional advice has an important role to play even in a hypothetical future where AI can predict our goals and how best to achieve them. Recent scholarship on personalized law takes an extremely optimistic view of technological progress and envisions powerful AIs

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<sup>14</sup> Evan Polman & Kyle J. Emich, *Decisions for Others Are More Creative than Decisions for the Self*, 37 PERSONALITY & SOC. PSYCH. BULL. 492, 496 (2011).

<sup>15</sup> *Id.* at 496 (finding that less than half of the subjects solved the above riddle when they imagined themselves in the tower, but two-thirds of people solved the riddle when they imagined another person was in the tower). The answer to the riddle is in footnote 95.

<sup>16</sup> *Id.* at 494–95.

<sup>17</sup> See *infra* Part II.B.

<sup>18</sup> See *infra* Part III.B.

sifting through massive amounts of real-time data about each and every one of us.<sup>19</sup> These AIs may have access to your bank records, web searches, texts, real-time data on your heart rate and sleep patterns, etc. They may be able to predict your personality traits, fleeting moods, goals, and dreams. As this literature has noticed, an AI this knowledgeable may be able to offer exceedingly accurate advice.<sup>20</sup> But our traditional practices of advice-giving maintain several important benefits, even in this future world. People are more likely to listen to advice or credit factual assertions when they trust the speaker. For high stakes decisions, trust is more a function of emotional connection and less about expertise.<sup>21</sup> Even holding trust constant, emotional connections allow others to influence us. Friends and family can influence us in ways that strangers cannot, regardless of how much we believe the stranger is an expert in whatever field is most relevant to the decision at hand. Accordingly, AI advice and peer advice have complementary strengths. The former has exceedingly accurate content. The latter can bundle content in emotionally cognizant packaging that makes people more likely to hear and heed the advice. Hybrid approaches can capture the best of each.

This Article proceeds in three Parts. Part II canvases the psychological literature on non-expert peer advice. It argues that advice-giving has powerful debiasing effects and that people tend to use advice to improve their decisions. Part III explores ways to tap into advice and use it as a regulatory resource. Part IV provides several illustrations of hybrid systems where peer advice and AI each have important roles to play, even in a hypothetical future where AI advice is personalized and exceedingly accurate. Part V concludes.

## II. THE POWER OF ADVICE

We have all given advice; we have all received advice. We probably have a fairly good common sense feel for what advice is. Nonetheless, a more formal account will be useful. Perhaps most quintessentially, advice is a “specific recommendation concerning what the decision-maker ought to do.”<sup>22</sup> Advice also

<sup>19</sup> See, e.g., Anthony J. Casey & Anthony Niblett, *The Death of Rules and Standards*, 92 IND. L.J. 1401, 1402, 1409 (2017) (“Imagine a world where lawmakers enact a catalog of precisely tailored laws, specifying the exact behavior that is permitted in every situation. The lawmakers have enough information to anticipate virtually all contingencies, such that laws are perfectly calibrated to their purpose—they are neither over- nor underinclusive.”); Christoph Busch, *Implementing Personalized Law: Personalized Disclosures in Consumer Law and Data Privacy Law*, 86 U. CHI. L. REV. 309, 312 (2019) (“With the help of big data, it could be possible to provide consumers with information that is tailored to their situations, personalities, demographic characteristics, and cognitive capabilities.”).

<sup>20</sup> Sean Hannon Williams, *AI Advice*, FLA. ST. L. REV. (forthcoming 2021) (manuscript on file with author).

<sup>21</sup> See *infra* note 283.

<sup>22</sup> Reeshad S. Dalal & Silvia Bonaccio, *What Types of Advice Do Decision-Makers Prefer?*, 112 ORG. BEHAV. & HUM. DECISION PROCESSES 11, 11–12 (2010).

includes recommendations against certain actions.<sup>23</sup> Accordingly, we would all recognize statements like the following as advice: “Apply to a safety school,” “Don’t go to Florida during hurricane season,” and “Dump him, now!”<sup>24</sup> Advice can also be about the process of decision-making rather than the final decision.<sup>25</sup> For example, “Make sure to consider Y and Z when deciding what to do” is a form of advice.

Readers are unlikely to question the value of *expert* advice. Doctors, lawyers, and financial advisors all provide advice about decisions or decisional processes. Doctors might advise you to stop smoking. Lawyers might recommend that you consider the cost and length of litigation before filing suit. Financial advisors might suggest that you save more for retirement. At least when these advisors do not have conflicts of interest, their specialized knowledge allows them to offer useful advice.

This Article explores the benefits of *peer* advice rather than expert advice. Peer advice includes everyday advice from friends, family, acquaintances, and even strangers.<sup>26</sup> These people have no special training. To align the discussion with the available research, this Part will focus on personalized advice offered by one individual to another where the advisor does not have any significant conflicts of interest. This fairly describes a great deal of advice between friends and family. Unlike professional advisors, friends and family members will not normally have conflicts of interest; they want us to do well and will not have any other direct stake in the relevant decision.<sup>27</sup> Much advice is also personalized for the advisee rather than meant to be heard by a large group of others.<sup>28</sup> The discussion will also set aside group decision-making dynamics, which might be relevant when a group of people deliberate about what advice to give.<sup>29</sup> Peer advice includes a great deal of everyday

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* Most people are not lawyers, and so most people don’t try to parse language as precisely as lawyers commonly do. “I would not do that if I were you,” is not a recommendation, at least grammatically speaking. It is a disclosure. But the context in which those words were spoken might well make it clear that it is a form of advice.

<sup>25</sup> *Id.*

<sup>26</sup> In the economics literature, this is sometimes called “naive advice” to clarify its contrast to expert advice. Julia Sprenger, *Naïve Advice in Financial Decision Making: Hidden Costs of a Free Offer*, RUHR ECON. PAPERS, No. 656 (2016); Andrew Schotter, *Decision Making with Naïve Advice*, 93 AM. ECON. REV. 196, 196 (2003). But as this Article will illustrate, peer advice is anything but naive.

<sup>27</sup> Of course, this is not always the case. A greedy daughter may advise her elderly parents in ways that maximize her future inheritance rather than her parents’ welfare.

<sup>28</sup> A blog post might include generalized advice of the latter sort.

<sup>29</sup> For an overview of group decision-making dynamics and how they are subject to different distortions than individual decision-making, see generally CASS R. SUNSTEIN & REID HASTIE, *WISER: GETTING BEYOND GROUPTHINK TO MAKE GROUPS SMARTER* (2015). For an overview of advice-taking by groups, see Lyn M. Van Swol & Andrew Pahl, *Giving and Receiving Advice in Groups, Networks, and Organizations*, in *THE OXFORD HANDBOOK OF ADVICE* 111, 112–17 (Erina L. MacGeorge & Lyn M. Van Swol eds., 2018). Group dynamics are unlikely to be relevant to most everyday advice, with the possible exception of



advice between friends and family members, where for example, one friend talks with another friend over coffee about what they should do.

Peer advice can be a potent force for enhancing the welfare of both advisee and advisor. Advice is often surprisingly good, and people often listen to good advice.<sup>30</sup> Research shows that advisors largely avoid the heuristics and biases that bog us down when we make decisions for ourselves. When giving advice, people process information more rationally, are more motivated to find the best solution, and are more creative problem solvers. Advisees seem to appreciate these advantages, at least implicitly. They listen to advice. More specifically, good advice tends to influence people's choices in positive ways, while bad advice is more quickly discounted. Peer advice may not always recommend the optimal solution, but it does seem to do a fairly good job of moving people in welfare-enhancing directions. This Part explores the benefits of advice from two perspectives: giving advice and getting advice.<sup>31</sup>

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spouses. Spouses might deliberate about what advice to give their adult child or whether to take the advice of their financial planner. But even here, research on group decision-making seems like a poor fit. Spouses are a very unique "group" that merit their own specialized research. For an overview of research that focuses specifically on spousal communication and decision-making, see Tara L. Queen, Cynthia A. Berg & William Lowrance, *A Framework for Decision Making in Couples Across Adulthood*, in *AGING AND DECISION MAKING: EMPIRICAL AND APPLIED PERSPECTIVES* 371, 372 (Thomas Hess, JoNell Strough & Corinna E. Löckenhoff eds., 2015) ("The existing work on decision making in couples is in its infancy and only scratches the surface of the potential for our understanding of the phenomenon.").

<sup>30</sup> This Article defines "good" in welfarist terms. A rough definition of good advice would therefore be advice that, if followed, would lead the advisee to make a decision that is more welfare-enhancing than the decision she would have made absent the advice. This is only a rough definition. For example, it does not address the potentially thorny issue of advisors who rely on reverse psychology and offer facially welfare-reducing recommendations in the hopes that the advisee will do the opposite. A fuller definition might also grapple with the proper definition of the underlying concept of welfare, the magnitudes of the relevant welfare gains, and variations in the probability of heeding a particular piece of advice. Nonetheless, the rough definition is sufficient for the purposes of this Article.

<sup>31</sup> Other legal scholars mention advice, but do not discuss everyday peer advice. Omri Ben-Shahar and Carl Schneider claim that people "want advice," not mandated disclosure. OMRI BEN-SHAHAR & CARL E. SCHNEIDER, *MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE* 185 (2014). Their brief discussion does not mention personalized peer advice. Rather, they offer examples of non-personalized expert advice (US News, Consumer Reports), personalized expert advice from professional advisors (brokers, doctors), and aggregated non-personalized peer opinions (star ratings on Amazon or eBay). *Id.* at 185–86; see also Florencia Marotta-Wurgler, *Even More than You Wanted to Know About the Failures of Disclosure*, 11 *JERUSALEM REV. LEGAL STUD.* 63, 64, 71 (2015) (noting that Ben-Shahar and Schneider's definition of advice, when applied to star ratings, is more aptly called "opinion data as disclosure").

### A. Giving Advice: The Blind Leading the Blind?

At first blush, one might think that peer advice does not have much to offer. On the standard law and economics account, we are all rational and will optimally invest in information.<sup>32</sup> Here, either people will already seek advice or advice is not necessary. Under the standard behavioral law and economics account, we all suffer from various biases that impede decision-making.<sup>33</sup> But if the advisor also suffers from biases, how is she supposed to provide competent advice? This brings to mind the following parable: “[I]f the blind lead the blind, both shall fall into the ditch.”<sup>34</sup> This section confronts the many ways in which this parable does not apply to advice.

#### 1. Motivated Reasoning and the Benefits of Perspective

Just as corporations might know us better than we know ourselves,<sup>35</sup> other people can know us better than we know ourselves. Across a number of domains, others can make more accurate predictions about our lives than we can. This is true even of the most intimate aspects of our lives. Suppose you are dating someone and you want to know whether you will still be dating them in a year. What should you do? Ask your mom. Or your roommate. Both make more accurate predictions than you would.<sup>36</sup> Even more telling, once you have the predictions of your mom and your roommate, how much new information can you yourself provide? None.<sup>37</sup> Your

<sup>32</sup> See THALER & SUNSTEIN, *supra* note 1, at 6, 134.

<sup>33</sup> *Id.* at 23.

<sup>34</sup> Matthew 15:14 (King James); see also Marotta-Wurgler, *supra* note 31, at 71 (noting that consumer-created star ratings are unlikely to help consumers avoid harmful boilerplate when no one reads it, not even the consumers creating the star ratings).

<sup>35</sup> Gerhard Wagner & Horst Eidenmüller, *Down by Algorithms? Siphoning Rents, Exploiting Biases, and Shaping Preferences: Regulating the Dark Side of Personalized Transactions*, 86 U. CHI. L. REV. 581, 582 (2019) (“[B]usinesses know at least as much about consumers as consumers know about themselves, and sometimes even more.”).

<sup>36</sup> Tara MacDonald & Michael Ross, *Assessing the Accuracy of Predictions About Dating Relationships: How and Why Do Lovers’ Predictions Differ from Those Made by Observers?*, 25 PERSONALITY & SOC. PSYCH. BULL. 1417, 1423–24 (1999). Anyone who is familiar with the literature on overoptimism might think some of these results are unsurprising. But the students’ self-predictions were not wrong merely because they were too optimistic. In fact, the students in this study were surprisingly realistic. On average, they predicted that there was only a 70% chance that they would be together in a year. *Id.* at 1422. Parents and roommates were less optimistic, but not overwhelmingly so. Parents predicted a 50% chance that the relationship would survive, and roommates gave the couple 60-40 odds. *Id.* So your inability to assess your own fate is not merely the result of being crazy in love. It implicates a much larger range of biases related to processing information. That is, couples may have all the information they need to accurately predict relationship outcomes, but they don’t use that information. Other studies show similar results. See, e.g., Timothy Loving, *Predicting Dating Relationship Fate with Insiders’ and Outsiders’ Perspectives: Who and What Is Asked Matters*, 12 PERS. RELATIONSHIPS 349, 359 (2006).

<sup>37</sup> MacDonald & Ross, *supra* note 36, at 1422.

predictions—based on the vast amount of extra information that you have—are basically useless. Others’ epistemic benefits are not limited to the romantic domain. Surgical residents, like most other people, are overly optimistic about many things.<sup>38</sup> Their self-predictions fail to correlate with their scores on standardized tests or qualitative evaluations from their supervising doctors.<sup>39</sup> But the predictions of their peers are highly correlated with both measures of success.<sup>40</sup> Studies of undergraduate grades show similar results. Peers can predict your grade on the next exam as accurately as you can, and they can achieve this accuracy with far less information than you possess.<sup>41</sup> Particularly relevant to many financial matters, advisors are also more accurate than you at predicting whether you will experience changes in income. When naval officers rated their own leadership skills, the resulting scores were uncorrelated with later promotions.<sup>42</sup> But those officers’ subordinates were not so blind. Their ratings of the officers’ leadership skills correlated with future success.<sup>43</sup> Will your narcissism or paranoia get you fired? Ask your peers. Peer ratings of these and other personality disorders, but not self-ratings, correlated with early discharge from the Air Force.<sup>44</sup> Others can even be better at predicting your likelihood of dying from heart disease.<sup>45</sup>

How can others make better predictions than we make for ourselves? This is especially puzzling given that those others normally have far less information than we do. Others outperform us not because they have more information, but because they process information in a less biased way.

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<sup>38</sup> Sean Hannon Williams, *Sticky Expectations: Responses to Persistent Over-Optimism in Marriage, Employment Contracts, and Credit Card Use*, 84 NOTRE DAME L. REV. 733, 742–43 (2009) (“Compared to others, people overwhelmingly think that they are smarter, better drivers, better leaders, better managers, better workers, healthier, more socially skilled, more sensitive, more ethical, more charitable, more likely to vote, more productive, and (ironically) less susceptible to optimistic biases.”).

<sup>39</sup> D. A. Risucci, A. J. Tortolani & R. J. Ward, *Ratings of Surgical Residents by Self, Supervisors and Peers*, 169 SURGERY, GYNECOLOGY & OBSTETRICS 519, 519–21 (1989).

<sup>40</sup> *Id.*

<sup>41</sup> Erik G. Helzer & David Dunning, *Why and When Peer Prediction Is Superior to Self-Prediction: The Weight Given to Future Aspiration Versus Past Achievement*, 103 J. PERSONALITY & SOC. PSYCH. 38, 41–43 (2012).

<sup>42</sup> Bernard M. Bass & Francis J. Yammarino, *Congruence of Self and Others’ Leadership Ratings of Naval Officers for Understanding Successful Performance*, 40 APPLIED PSYCH. 437, 450 (1991).

<sup>43</sup> *Id.*

<sup>44</sup> Edna R. Fiedler, Thomas F. Oltmanns & Eric Turkheimer, *Traits Associated with Personality Disorders and Adjustment to Military Life: Predictive Validity of Self and Peer Reports*, 169 MIL. MED. 207, 207 (2004).

<sup>45</sup> Timothy W. Smith, Bert N. Uchino, Cynthia A. Berg, Paul Florsheim, Gale Pearce, Melissa Hawkins, Nancy J. M. Henry, Ryan M. Beveridge, Michelle A. Skinner, Paul N. Hopkins & Hyo-Chun Yoon, *Associations of Self-Reports Versus Spouse Ratings of Negative Affectivity, Dominance, and Affiliation with Coronary Artery Disease: Where Should We Look and Who Should We Ask When Studying Personality and Health?*, 27 HEALTH PSYCH. 676, 676 (2008).

Self-predictions are plagued by motivated reasoning.<sup>46</sup> “How good a student are you?” “Will you donate to charity?” When people answer these questions, they rely too heavily on their aspirations and goals. But when they answer similar questions about others, they rely on past behavior and verifiable data. Others are what they have done; I am what I hope to be.<sup>47</sup>

Put another way, people are incredibly accurate social psychologists but abysmal self-psychologists.<sup>48</sup> People are anywhere between roughly and shockingly accurate at predicting others’ behavior. They can predict how many of their peers will donate to charity,<sup>49</sup> how many of their peers will allow their current fleeting mood to affect their donation,<sup>50</sup> how many of their peers will cooperate in a

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<sup>46</sup> Avani Mehta Sood, *Motivated Cognition in Legal Judgments—An Analytic Review*, 9 ANN. REV. L. & SOC. SCI. 307, 309 (2013) (“The modern day psychological theory of motivated reasoning holds that when decision makers have a preference regarding the outcome of an evaluative task, they are more likely to arrive at that desired conclusion by engaging in inadvertently biased processes for accessing, constructing, and evaluating beliefs.” (internal quotes omitted)); Nicholas Epley & Thomas Gilovich, *The Mechanics of Motivated Reasoning*, 30 J. ECON. PERSP. 133, 136 (2016) (“Most people do not reason like impartial judges, but instead recruit evidence like attorneys, looking for evidence that supports a desired belief while trying to steer clear of evidence that refutes it.”); see, e.g., Elanor F. Williams & Thomas Gilovich, *The Better-Than-My-Average Effect: The Relative Impact of Peak and Average Performances in Assessments of the Self and Others*, 48 J. EXPERIMENTAL SOC. PSYCH. 556, 556–61 (2012) (finding that most people pick their most attractive photo as the most representative one, but they choose a more average photo when making this same choice for others).

<sup>47</sup> Elanor F. Williams & Thomas Gilovich, *Conceptions of the Self and Others Across Time*, 34 PERSONALITY & SOC. PSYCH. BULL. 1037, 1040 (2008). In the most thorough examination of this dynamic, students were asked to predict another person’s grade and asked to help another student predict theirs. They were given monetary incentives for accuracy. That is, they were paid if they accurately predicted the other student’s grade, and they were paid again if the other student accurately predicted theirs. When they were asked what information they wanted from the other student, they asked for past exam scores. But when they were asked what information they wanted to give to the other student, they mostly chose to pass along the score that they hoped to get. *Id.* at 1038–40; see also Helzer & Dunning, *supra* note 41, at 42–43.

<sup>48</sup> See generally Emily Balctetis & David Dunning, *Considering the Situation: Why People Are Better Social Psychologists than Self-Psychologists*, 12 SELF & IDENTITY 1 (2013) [hereinafter Balctetis & Dunning, *Considering the Situation*].

<sup>49</sup> Emily Balctetis & David A. Dunning, *A Mile in Moccasins: How Situational Experience Diminishes Dispositionism in Social Inference*, 34 PERSONALITY & SOC. PSYCH. BULL. 102, 107 (2008) [hereinafter Balctetis & Dunning, *A Mile in Moccasins*] (finding that subjects predicted 44% of people would buy a flower, and 29% did).

<sup>50</sup> Balctetis & Dunning, *Considering the Situation*, *supra* note 48, at 8–11.

prisoner's dilemma,<sup>51</sup> and how many will help another person.<sup>52</sup> They also understand that base rates are an important source of information when predicting another's behavior.<sup>53</sup> But these insights falter when people make predictions about themselves.<sup>54</sup>

Perhaps most surprisingly, others are better at identifying your personality traits than you are.<sup>55</sup> Overall, other-ratings of the big five personality traits—agreeableness, conscientiousness, emotional stability, extraversion, and openness—are much more predictive of outcomes like GPA than self-rated personality traits.<sup>56</sup>

One of the big five—conscientiousness—is particularly relevant to financial decisions.<sup>57</sup> Conscientiousness reflects the tendency to be organized, responsible,

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<sup>51</sup> Nicholas Epley & David Dunning, *Feeling "Holier Than Thou": Are Self-Serving Assessments Produced by Errors in Self- or Social Prediction?*, 79 J. PERSONALITY & SOC. PSYCH. 861, 864 (2000) (finding that subjects predicted that 64% of their peers would cooperate during a prisoner's dilemma game, and 61% actually cooperated).

<sup>52</sup> Balcetis & Dunning, *Considering the Situation*, *supra* note 48, at 6–8 (finding that subjects predicted that others would be 22 percentage points more likely to help a person who spilled a 300 piece puzzle on the floor if they were alone and when researchers actually spilled puzzle pieces in front of other students, subjects turned out to be 27 percentage points more likely to help if they were alone).

<sup>53</sup> Emily Balcetis, *Claiming a Moral Minority, Saccades Help Create a Biased Majority: Tracking Eye Movements to Base Rates in Social Predictions*, 45 J. EXPERIMENTAL SOC. PSYCH. 970, 971 (2009) (finding that subjects consulted base-rate information about twice as often when making predictions about others than when making self-predictions).

<sup>54</sup> *Id.*; Balcetis & Dunning, *A Mile in Moccasins*, *supra* note 49, at 107 (finding that 83% of subjects predicted that they would buy a flower, but only 29% did); Epley & Dunning, *supra* note 51, at 864 (finding that 84% of subjects predicted they would cooperate in a prisoner's dilemma game, while only 61% actually cooperated); Balcetis & Dunning, *Considering the Situation*, *supra* note 48, at 6–11. Consider also the following questions: Will making a task harder reduce your performance? Will reminders help increase the likelihood that you will participate in a study? As a social psychologist, the obvious and correct answer to these is: Yes. But people think they will be awesome regardless of the difficulty of the task, and they think they are so on top of their schedule that they don't need reminders. See Helzer & Dunning, *supra* note 41, at 48.

<sup>55</sup> This is not true across the board. Some traits are harder for others to see and some traits are more linked to self-image and hence more likely to be distorted in self-reports. Overall, for traits that are both more internal and more neutral, self-reports outperform other-reports. Samine Vazire & Erika N. Carlson, *Others Sometimes Know Us Better than We Know Ourselves*, 20 CURRENT DIRECTIONS PSYCH. SCI. 104, 104 (2011).

<sup>56</sup> Arthur E. Poropat, *Other-Rated Personality and Academic Performance: Evidence and Implications*, 34 LEARNING & INDIVIDUAL DIFFERENCES 24, 29 (2014).

<sup>57</sup> Yilan Xu, Andrea H. Beller, Brent W. Roberts & Jeffrey R. Brown, *Personality and Young Adult Financial Distress*, 51 J. ECON. PSYCH. 90, 92 (2015) (noting that conscientiousness has the strongest link to financial outcomes among the big five personality traits); S. Brown & K. Taylor, *Household Finances and the "Big Five" Personality Traits*, 45 J. ECON. PSYCH. 197, 204 (2014) (finding that individuals high in conscientiousness have less unsecured debt and manage debt better). It also has a large impact on academic success.

dutiful, and self-disciplined.<sup>58</sup> People who are high in conscientiousness are less likely to experience financial distress, and they accumulate more wealth over their lifetime.<sup>59</sup> They are also less likely to miss a payment.<sup>60</sup> This is particularly relevant to financial products because late fees are an important source of profits.<sup>61</sup>

Who is the best judge of your conscientiousness? Others. Other-reports show twice the correlation with relevant outcomes compared to self-reports.<sup>62</sup> Given the link between conscientiousness and financial outcomes, one researcher recently called for “financial planning tools that help make consumers aware of their lack of conscientiousness . . . and . . . behavioral interventions to help them overcome them.”<sup>63</sup> Peer advice is a good candidate for such a reform. Others have argued that in the era of big data, companies might have better information about us than we have about ourselves.<sup>64</sup> A loan company, for example, sees us with clearer eyes. But so too do our friends and family.<sup>65</sup> They can point out times when we joined a gym and never went, the time when we forgot to register for classes, the times when we broke our diet, etc.<sup>66</sup>

Even if others can make accurate predictions about us, we might worry that the process of transferring that knowledge through advice might introduce new biases or errors. That is, others may accurately predict your GPA or job performance when reporting it to a neutral third party, but the dynamic might change if they are trying to tell you what they predict or offering you advice rooted in that prediction. Luckily,

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Seth A. Wagerman & David C. Funder, *Acquaintance Reports of Personality and Academic Achievement: A Case for Conscientiousness*, 41 J. RSCH. PERSONALITY 221, 221–22 (2007).

<sup>58</sup> Jodi C. Letkiewicz & Jonathan J. Fox, *Conscientiousness, Financial Literacy, and Asset Accumulation of Young Adults*, 48 J. CONSUMER AFFAIRS 274, 275 (2014).

<sup>59</sup> Xu et al., *supra* note 57, at 91.

<sup>60</sup> *Id.* at 95.

<sup>61</sup> Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373, 1393 n.105 (2004).

<sup>62</sup> Wagerman & Funder, *supra* note 57, at 225; *see also* Denis Bratko, Tomas Chamorro-Premuzic & Zrnka Saks, *Personality and School Performance: Incremental Validity of Self-and Peer-Ratings over Intelligence*, 41 PERSONALITY & INDIVIDUAL DIFFERENCES 131, 131 (2006) (“[P]ersonality accounted for unique variance in school grades: 18% by self- and 25% by peer-ratings. Self-ratings had only marginal incremental validity over peer-ratings in predicting school grades (3%).”). Others are also better at rating your intelligence, another trait with obvious implications for debt management. Vazire & Carlson, *supra* note 55, at 106; Yoav Ganzach & Moty Amar, *Intelligence and the Repayment of High-and Low-Consequences Debt*, 110 PERSONALITY & INDIVIDUAL DIFFERENCES 102, 102 (2017).

<sup>63</sup> Xu et al., *supra* note 57, at 98.

<sup>64</sup> *See* Bar-Gill & Ferrari, *supra* note 2, at 95.

<sup>65</sup> For example, they might encourage us to set up payment reminders. You might think that people would do this on their own, but again, people are better social psychologists than self-psychologists. They accurately predict that others would benefit from reminders, but don’t spontaneously think they will need them. Derek J. Koehler & Connie S.K. Poon, *Self-Predictions Overweight Strength of Current Intentions*, 42 J. EXPERIMENTAL SOC. PSYCH. 517, 520 (2006).

<sup>66</sup> They can also point out when we are suffering from confirmation bias.

we need not speculate. Research on advice shows that advice-giving mitigates, rather than introduces, various biases.

When people advise others, they are able to filter and prioritize information in a way that they have trouble doing when they make decisions for themselves. In one study, people donated more to charities that had a physically attractive representative.<sup>67</sup> But when people instead advised others on which charity to donate to, this beauty premium disappeared.<sup>68</sup> Doctors report that patients often choose treatments based on such shallow factors as which one avoids large needles.<sup>69</sup> When doctors advise patients, they appropriately discount the importance of these visceral factors, even though they often succumb to similar myopic overreactions when deciding for themselves.<sup>70</sup>

Consider also the confirmation bias, which describes the tendency for individuals to seek out information that supports their preferred outcome.<sup>71</sup> An early study of advice-giving found that advisors do not suffer from confirmation bias.<sup>72</sup> Subjects were sorted into deciders and advisors, and each subject was offered an opportunity to conduct research related to an everyday decision: where to go on vacation.<sup>73</sup> Deciders succumbed to confirmation bias.<sup>74</sup> They selectively ignored information that conflicted with their preliminary choice.<sup>75</sup> Advisors, in contrast,

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<sup>67</sup> Jason Dana & Daylian M. Cain, *Advice Versus Choice*, 6 CURRENT OP. PSYCH. 173, 174 (2015).

<sup>68</sup> *Id.* This more accurate filtering of information is consistent with the academic studies mentioned above. There, students could not ignore their aspirational test score when making their self-predictions, but rightly discounted such information when predicting another person's score. Helzer & Dunning, *supra* note 41, at 49.

<sup>69</sup> BEN-SHAHAR & SCHNEIDER, *supra* note 31, at 66.

<sup>70</sup> In one study, doctors were asked to choose between two treatments for colon cancer. Peter A. Ubel, Andrea M. Angott & Brian J. Zikmund-Fisher, *Physicians Recommend Different Treatments for Patients than They Would Choose for Themselves*, 171 ARCHIVES INTERNAL MED. 630, 631–32 (2011). Both offered the patient an 80% chance of a complete cure, but they had different side effects. *Id.* The first treatment created a 20% chance of death. *Id.* The second treatment created a 16% chance of death and a 4% chance of other complications like chronic diarrhea. *Id.* The side effects were pretested to ensure that they were all overwhelmingly preferred to death. *Id.* The second treatment is clearly better, again, as long as those side effects are better than death. *Id.* Yet many more doctors choose the first treatment for themselves, while fewer choose the first treatment for their patient. *Id.* When deciding for others, these doctors were able to put their visceral feeling about things like intermittent bowel obstructions aside and focus on the most important feature: mortality. *Id.*

<sup>71</sup> Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. GEN. PSYCH. 175, 175 (1998).

<sup>72</sup> Eva Jonas & Dieter Frey, *Information Search and Presentation in Advisor—Client Interactions*, 91 ORG. BEHAV. & HUM. DECISION PROCESSES 154, 161 (2003).

<sup>73</sup> *Id.* at 159.

<sup>74</sup> *Id.* at 160.

<sup>75</sup> *Id.*

conducted a balanced information search.<sup>76</sup> This study also highlights the benefits of peer advice compared to expert advice. Although all advisors avoided confirmation bias when *selecting* information, subjects who played the role of a travel agent ignored negative information when *presenting* the decider with their recommendation.<sup>77</sup> Friends, in contrast, presented the decider with balanced information that included both good and bad aspects of their recommendations.<sup>78</sup>

A body of research adjacent to advice also supports the claim that taking on the role of advisor will have a debiasing effect.<sup>79</sup> This research asks people to make decisions for others. This is certainly different than merely giving advice. But many of these studies ask people to make decisions that they simply could not make for others in our current social and legal climate. Should your peer get a vaccination?<sup>80</sup> Should they move in with their significant other?<sup>81</sup> In these studies, it seems likely that subjects read this question more as: “What would I advise them to do, given that they will really trust my advice?” rather than, “In a dystopian world where we are not in control over our own most personal decisions, what would you decide for another person?” This body of research consistently finds that, when making decisions for others (as compared to deciding for oneself), people more accurately take probability information into account and are less likely to be affected by betrayal aversion, loss aversion, and omission bias.<sup>82</sup> Further, people who have low

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<sup>76</sup> *Id.*; see also Eva Jonas, Stefan Schulz-Hardt & Dieter Frey, *Giving Advice or Making Decisions in Someone Else’s Place: The Influence of Impression, Defense, and Accuracy Motivation on the Search for New Information*, 31 PERSONALITY & SOC. PSYCH. BULL. 977, 981 (2005) (finding that advisors show less confirmation bias than those who decide for themselves).

<sup>77</sup> Jonas & Frey, *supra* note 72, at 161.

<sup>78</sup> *Id.*

<sup>79</sup> See, e.g., Maria Pollai & Erich Kirchler, *Differences in Risk-Defusing Behavior in Deciding for Oneself Versus Deciding for Other People*, 139 ACTA PSYCHOLOGICA 239 (2012).

<sup>80</sup> *Id.* at 239.

<sup>81</sup> Amy H. Beisswanger, Eric R. Stone, Julie M. Hupp & Liz Allgaier, *Risk Taking in Relationships: Differences in Deciding for Oneself Versus for a Friend*, 25 BASIC & APPLIED SOC. PSYCH. 121, 134–35 (2003).

<sup>82</sup> See Pollai & Kirchler, *supra* note 79, at 243 (examining the influence of the probability of getting sick and vaccination decisions); Evan Polman, *Self–Other Decision Making and Loss Aversion*, 119 ORG. BEHAV. & HUM. DECISION PROCESSES 141 (2012) (addressing loss aversion and omission bias); Brian J. Zikmund-Fisher, Brianna Sarr, Angela Fagerlin & Peter A. Ubel, *A Matter of Perspective: Choosing for Others Differs from Choosing for Yourself in Making Treatment Decisions*, 21 J. GEN. INTERNAL MED. 618, 619–20 (2006) (addressing betrayal aversion and finding that more people chose a vaccination for others than for themselves when it eliminated a 10% chance of death but added a 5% chance of death); cf. Christian König-Kersting & Stefan T. Trautmann, *Ambiguity Attitudes in Decisions for Others*, 146 ECON. LETTERS 126, 128 (2016) (finding no differences in ambiguity aversion between self and other decisions); Eva Jonas, Stefan Schulz-Hardt & Dieter Frey, *Giving Advice or Making Decisions in Someone Else’s Place: The Influence of*



self-esteem or high anxiety make choices for others that are not hampered by these traits.<sup>83</sup> Overall, this provides further support for the powerful debiasing potential of giving advice.

## 2. *Dread, Desire, and Psychological Distance*

Making decisions about money implicates a host of strong emotions. Wealth is often seen as a reflection of character. The decisions you make about money are not merely instrumental, they implicate your identity and self-concept. Although people are more motivated to make better decisions when the stakes are high (both financially and as a matter of self-worth), that heightened motivation often backfires.<sup>84</sup>

Heightening the emotional stakes of a decision causes significant probability distortions. While people accurately assess probability information when confronting the possibility of a \$20 loss or gain, they all but ignore probability when reacting to the possibility of an electric shock or the opportunity to kiss their favorite movie star.<sup>85</sup> For those vivid outcomes, people make decisions as if there were only three states of the world: it won't happen, it might happen, and it will happen.<sup>86</sup> Similarly, even people who routinely take probability into account when faced with potential monetary losses are significantly less sensitive to probability when faced with negative side effects from a medication.<sup>87</sup> This selective use of probability can occur because negative medical and health effects trigger significantly more dread and anticipated regret.<sup>88</sup>

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*Impression, Defense, and Accuracy Motivation on the Search for New Information*, 31 PERSONALITY & SOC. PSYCH. BULL. 977, 984 (2005) (finding a complex pattern for confirmation bias, where deciding for others can create a stronger confirmation bias than advising when subjects were told that they would have to justify their choice).

<sup>83</sup> Wray & Stone, *supra* note 13, at 125, 129–32.

<sup>84</sup> Lauren E. Willis, *Against Financial-Literacy Education*, 94 IOWA L. REV. 197, 231 (2008).

<sup>85</sup> Yuval Rottenstreich & Christopher K. Hsee, *Money, Kisses, and Electric Shocks: On the Affective Psychology of Risk*, 12 PSYCH. SCI. 185, 186–87, 189 (2001).

<sup>86</sup> *See id.* at 186; Sean Hannon Williams, *Probability Errors*, in THE OXFORD HANDBOOK OF BEHAVIORAL ECONOMICS AND LAW 335, 346–47 (Eyal Zamir & Doron Teichman eds., 2014).

<sup>87</sup> Nathalie F. Popovic, Thorsten Pachur & Wolfgang Gaissmaier, *The Gap Between Medical and Monetary Choices Under Risk Persists in Decisions for Others*, 32 J. BEHAV. DECISION MAKING 388, 389 (2019) (“[I]n the medical domain compared with the monetary domain, people focus more on avoiding the worst outcome, largely disregarding the probability of the outcomes.”); Thorsten Pachur, Ralph Hertwig & Roland Wolkewitz, *The Affect Gap in Risky Choice: Affect-Rich Outcomes Attenuate Attention to Probability Information*, 1 DECISION 64, 64 (2014).

<sup>88</sup> *See* Popovic et al., *supra* note 87, at 389 (“One explanation provided for the discrepancy between medical and monetary decisions is the affective content of the different prospects: Compared with monetary outcomes, medical side effects are often associated with a stronger affective response.”).

Advisors are likely to do better. Recall that, when making decisions for others, people more accurately take probability into account.<sup>89</sup> Relatedly, advisors also more accurately use base rates and respond more rationally to ambiguous statistical data.<sup>90</sup> Advisors maintain the ability to think more clearly in part because they have some critical distance from the relevant outcome.

The visceral-emotion-dampening effect of giving advice is consistent with a larger body of research about psychological distance.<sup>91</sup> The phrase psychological distance is meant to encompass the way that people use the same set of mental tools to represent different types of distance, including spatial distance, temporal distance, and social distance.<sup>92</sup> The general finding from this research is that people tend to think more abstractly about psychologically distant things and more concretely about psychologically near things.<sup>93</sup> Put differently, for psychologically distant things, they are more likely to see the forest rather than the trees. For example, people are more likely to see the hidden picture within abstract art when they think the images are samples of a task that they will complete in the future.<sup>94</sup> Consider again the following riddle:

A prisoner was attempting to escape from a tower. He found a rope in his cell that was half as long enough to permit him to reach the ground safely. He divided the rope in half, tied the two parts together, and escaped. How could he have done this?

People are substantially more likely to solve riddles like this when they imagine that another person is in the tower, and that they are solving the riddle for them.<sup>95</sup> The increased psychological distance between subjects and the hypothetical other person

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<sup>89</sup> See Pollai & Kirchler, *supra* note 82; but see Popovic et al., *supra* note 87, at 387 (finding similar choices for selves and others, but noting: “In contrast to our findings, most published studies on self-other decision making have found differences between the two decision perspectives.”).

<sup>90</sup> Spiros Bougheas, Jeroen Nieboer & Martin Sefton, *Risk-Taking in Social Settings: Group and Peer Effects*, 92 J. ECON. BEHAV. & ORG. 273, 275 (2013) (advice and ambiguity aversion); see *supra* note 47 (discussing the evidence that people seek when making predictions about others).

<sup>91</sup> See generally Nira Liberman & Yaacov Trope, *The Psychology of Transcending the Here and Now*, 322 SCIENCE 1201 (2008).

<sup>92</sup> *Id.* at 1201–03.

<sup>93</sup> *Id.* at 1203.

<sup>94</sup> *Id.*

<sup>95</sup> Polman & Emich, *supra* note 14, at 496 (finding that less than half of subjects solved the above riddle when they imagined themselves in the tower, but two-thirds of people solved the riddle when they imagined another person was in the tower; *the answer is that the prisoner splits the rope lengthwise*).

helped them think more about the big picture aspects of the decision problem, and helped them think more creatively.<sup>96</sup> Consider another riddle:

A dealer in antique coins got an offer to buy a beautiful bronze coin. The coin had an emperor's head on one side and the date 544 B.C. stamped on the other. The dealer examined the coin but instead of buying it, he called the police. Why?<sup>97</sup>

Here too, increasing the psychological distance between the study's subjects and the hypothetical dealer helped them think more creatively, and hence almost doubled the likelihood that they would solve the riddle.<sup>98</sup>

The enhanced creativity of advisors, and their ability to see the bigger picture, are both likely to be quite useful. For example, thinking more creatively could be particularly helpful if the decider thinks they have no choice but to get a high-interest loan. Seeing the big picture could help deciders avoid mistakes like choosing a dialysis regime based solely on the size of the needles involved. Similarly, we might not pause long in considering whether your fear of offending your dentist should stop you from getting a second opinion about a root canal.<sup>99</sup> The answer is "no." Advisors rightly discount the importance of these momentary discomforts and are twice as likely to recommend a second opinion as they are to get one themselves.<sup>100</sup> Apparently, when deciding for themselves people are swayed by the awkwardness of getting the second opinion and the possibility that it would disrupt their relationship with their dentist.<sup>101</sup> But when advising others they (rightly) thought it would be silly to get an unnecessary root canal just to avoid an awkward conversation.

### 3. Impatience and Self-Control

A famous set of studies about marshmallows shows how even extremely young children can and do offer good advice. In those studies, researchers place a marshmallow in front of a child.<sup>102</sup> Then they tell the child that if they wait and don't

<sup>96</sup> *Id.* at 496–97 (finding that increasing psychological distance increases the number of creative solutions people spontaneously generate in the face of common challenges); *id.* at 494 (finding that people draw more creative aliens when they are drawing them for someone else).

<sup>97</sup> Lile Jia, Edward R. Hirt & Samuel C. Karpen, *Lessons from a Faraway Land: The Effect of Spatial Distance on Creative Cognition*, 45 J. EXPERIMENTAL SOC. PSYCH. 1127, 1130 (2009) (providing the answer that 544 years before the birth of Christ, they did not use B.C. to indicate the date).

<sup>98</sup> *Id.* at 1129.

<sup>99</sup> Janet Schwartz, Mary Francis Luce & Dan Ariely, *Are Consumers Too Trusting? The Effects of Relationships with Expert Advisers*, 48 J. MKTG. RSCH. 163, 168–69 (2011).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> MISCHEL, *supra* note 8, at 3–5.

eat the first marshmallow, they will earn a second one.<sup>103</sup> Three-year-olds generally have not developed the capacity to resist; they just immediately eat the first marshmallow.<sup>104</sup> For older children, the amount of time that they are able to resist the temptation correlates with various outcomes later in life, like SAT scores.<sup>105</sup> For our purposes, the most interesting finding of this research comes when they allow children to give each other advice. Three-year-olds recommend that other kids delay gratification to earn extra treats, even when they cannot overcome their own visceral desires to do so themselves.<sup>106</sup>

Marshmallows and money have a lot in common. Across a host of domains, people are impatient. They are especially impatient in the near term. The prospect of immediate gratification exerts a strong force that causes people to exhibit steep discount rates in the near term and more stable discount rates in the mid and long term.<sup>107</sup> In a classic example, people are perfectly happy to get \$60 in 13 months as opposed to \$50 in 12 months. That is, they are perfectly happy to “invest” their \$50 for one month and get \$10 in interest—except when they can get that \$50 right now. In that case, people take the \$50. That is, they are more patient for future decisions than for present decisions.<sup>108</sup> This pattern is sometimes labeled present-bias or hyperbolic discounting.<sup>109</sup> The concept of psychological distance described in the previous section suggests that people would be more patient for both future decisions, and decisions for other people. This is precisely what the research finds. Present-bias is substantially weaker when making decisions for others.<sup>110</sup> Like the three-year-olds, adult advisors will probably recommend patience.<sup>111</sup>

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 47.

<sup>105</sup> *Id.* at 5.

<sup>106</sup> *Id.* at 49; Prencipe & Zelazo, *supra* note 10, at 503.

<sup>107</sup> Lawrence M. Spizman, *The Inverted Nudge: An Application of Behavioral Economic Concepts to Settlement Outcomes*, 24 J. LEGAL ECON. 95, 98 (2018).

<sup>108</sup> *See id.* at 98–99.

<sup>109</sup> *See* Ted O’Donoghue & Matthew Rabin, *Present Bias: Lessons Learned and to Be Learned*, 105 AM. ECON. REV. 273, 273 (2015).

<sup>110</sup> Fenja V. Ziegler & Richard J. Tunney, *Decisions for Others Become Less Impulsive the Further Away They Are on the Family Tree*, 7 PUB. LIBR. SCI. ONE 49479, 49481 (2012); *see also* Jeremy Shapiro, *Discounting for You Me and We: Time Preference in Groups and Pairs 2, 4–5* (Oct. 2010) (unpublished manuscript) (on file with MIT Economics Department), <http://econ-www.mit.edu/grad/jplaces/papers> [<https://perma.cc/A7QL-HBW6>] (finding that women in India were less impatient when making investment decisions for others than for themselves).

<sup>111</sup> Or, more precisely, they will recommend actions that adhere to a more consistent discount rate rather than actions that show a significantly steeper discount rate for near-future payouts. Discount rates that are both steep and consistent are not necessarily errors or the result of bias. But when the person’s own preferences are inconsistent across time, one of the person’s preferences is erroneous in her own estimation. I want to watch Netflix now, but later I will wish that I had studied. We might say that it would be better to study. We could do so in part because we think that the later judgment is better informed and more

#### 4. Information Overload

We just don't have the time or bandwidth to read all of the disclosures in our world, including the iTunes terms of service, our new credit card's terms, our old credit card's updated terms, and the warning label on our new toaster.<sup>112</sup> Relatedly, firms may seek to cause overload problems in order to sneak terms into a contract or bury relevant disclosures in irrelevant ones.<sup>113</sup>

Aggregated advice can reduce overload problems by radically condensing the relevant information. Listing the percentage of people who would "recommend this product to a friend" is one example.<sup>114</sup> Star ratings are a closely related example. They collapse an entire experience with a product and the business behind it into one 5 star satisfaction rating.<sup>115</sup>

Less obviously, even non-aggregated advice is likely to offer benefits. People are more motivated to understand a topic when they are advising others.<sup>116</sup> This yields a number of more specific advantages. Advisors spontaneously think of more relevant questions,<sup>117</sup> they seek out more information,<sup>118</sup> they seek out more balanced information,<sup>119</sup> and they remember just as many details from what they

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consistent with the person's overall set of preferences. See MATTHEW ADLER & ERIC POSNER, *NEW FOUNDATIONS OF COST-BENEFIT ANALYSIS* 37 (2004) (discussing the "thorny problem of conflicting preferences").

<sup>112</sup> For a discussion of information overload, see BEN-SHAHAR & SCHNEIDER, *supra* note 31, at 94–106.

<sup>113</sup> See *id.* at 23, 164, 192.

<sup>114</sup> For one such example, see reviews on BestBuy.com.

<sup>115</sup> Star ratings are more akin to disclosures than advice, but they illustrate the power of aggregation. See *supra* note 31.

<sup>116</sup> Jonas & Frey, *supra* note 72, at 161–63 (finding that advisor-friends were more motivated to make good decisions than even the decider herself, regardless of whether or not the friend was offered a monetary incentive to match the choice made by the decider); Jonas et al., *supra* note 76, at 982 (same); Silvia Bonaccio & Reeshad S. Dalal, *Advice Taking and Decision-Making: An Integrative Literature Review, and Implications for the Organizational Sciences*, 101 *ORG. BEHAV. & HUM. DECISION PROCESSES* 127, 134 (2006) [hereinafter Bonaccio & Dalal, *Advice Taking and Decision-Making*] ("[R]elative to personal decision-makers, advisors exhibit greater concern about the accuracy of their recommendations and exert more task related effort."). This may partially explain why advice is better at improving decisions than direct observation of the relevant facts by the decision maker. Martin Kocher, Matthias Sutter & Florian Wakolbinger, *Social Learning in Beauty-Contest Games*, 80 *S. ECON. J.* 586, 603 (2014) (finding that pieces of advice "support higher depths of reasoning as they force a subject to digest the different suggestions and build their own opinion").

<sup>117</sup> Laura J. Kray, *Contingent Weighting in Self-Other Decision Making*, 83 *ORG. BEHAV. & HUM. DECISION PROCESSES* 82, 91, 98, 103 (2000).

<sup>118</sup> *Id.* at 103; Vered Halamish & Nira Liberman, *How Much Information to Sample Before Making a Decision? It's a Matter of Psychological Distance*, 71 *J. EXPERIMENTAL SOC. PSYCHOL.* 111, 113–14 (2017) (finding that people seek out about twice as much information when making decisions for others); Jonas & Frey, *supra* note 72, at 161.

<sup>119</sup> See *supra* note 72 and accompanying text.

read.<sup>120</sup> Consider a credit card balance-transfer offer. Advisors will be more likely to read the small print, more likely to do additional research, and more likely to spontaneously come up with relevant questions like: “Would the promotional rate still apply if I miss a payment?” This mitigates overload problems and decreases the effectiveness of hiding unwanted terms in less salient parts of the contract.

Other research provides further support for this. Choice overload describes the tendency for people to be paralyzed by large numbers of choices.<sup>121</sup> Advisors don’t suffer from choice overload. Increasing the number of options tends to increase rather than decrease their engagement.<sup>122</sup> Advisors also suffer less decision fatigue.<sup>123</sup> Recall finally that people who suffer from high anxiety offer advice that is not tainted by that anxiety.<sup>124</sup> This suggests that advisors might be able to navigate high stakes and numerous options better than deciders.<sup>125</sup>

Peer advice can be useful even if firms are successful in triggering overload problems. Here, advice can alter our reactions to overload even if it cannot prevent overload in the first place. Consider an investment advisor trying to sell you a portfolio with high fees. They might present you with pages and pages of graphs and forecasts as a way to overwhelm you. Even if your friend—despite engaging in more thorough and accurate information processing—is equally overwhelmed, they might still say: “Wow, I didn’t understand any of that!” This is likely to alter reactions to overload by alleviating social pressure to go ahead with the transaction anyway.

<sup>120</sup> Jonas & Frey, *supra* note 72, at 164–66; see Kray, *supra* note 117, at 98.

<sup>121</sup> Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647, 687–89 (2011). In the financial context, increasing the number of investment options in a retirement plan generally suppresses enrollment. When there are too many choices, people prefer not to invest the time they think is necessary to make the choice, and hence don’t make any decision at all. Sheena Sethi-Iyengar, Gur Huberman & Wei Jiang, *How Much Choice Is Too Much?: Contributions to 401 (K) Retirement Plans*, in PENSION DESIGN AND STRUCTURE: NEW LESSONS FROM BEHAV. FIN. 83, 88–91 (Olivia S. Mitchell & Stephen P. Utkus eds., 2004).

<sup>122</sup> Evan Polman, *Effects of Self–Other Decision Making on Regulatory Focus and Choice Overload*, 102 J. PERSONALITY & SOC. PSYCH. 980, 983 (2012) [hereinafter Polman, *Effects of Self*] (supporting this conclusion when deciding for others). Similarly, offering advisors more choices should increase their satisfaction with their advice, even though expanding the choice set tends to decrease the decider’s satisfaction with their choice. See *id.*

<sup>123</sup> See Evan Polman & Kathleen D. Vohs, *Decision Fatigue, Choosing for Others, and Self-Construal*, 7 SOC. PSYCH. & PERSONALITY SCI. 471, 476 (2016) (finding that, when deciding for others, people who see themselves as relatively independent suffered less decision fatigue).

<sup>124</sup> Wray & Stone, *supra* note 13, at 125, 129–32.

<sup>125</sup> This does not mean advisors will always avoid overload problems. Some studies suggest that these problems will reappear when the advisor is told that they must justify their advice to a third party. See Polman, *Effects of Self*, *supra* note 122, at 987–88 (finding that, when deciding for others, choice overload only occurred when a third party would read their reported justifications for the choice).

Having a friend say this will make you more willing to admit that you, too, need more time to consider the investment.

### 5. Literacy, Numeracy, and Experience

Although advisors will often try harder to understand and process relevant information, they may run into the limits of their own literacy or numeracy.<sup>126</sup> Recall the parable that began this section: “[I]f the blind lead the blind, both shall fall into the ditch.”<sup>127</sup> If we take this parable literally, rather than in the metaphorical sense it was intended, we might picture a line of people falling into a ditch one after the other, like dominos.<sup>128</sup> The reality is likely to be much different.<sup>129</sup> At the very least, the first blind person to fall in the ditch is likely to shout “There’s a ditch here, watch out!” at which point the others may well avoid falling. The leader may also be familiar with the terrain, in which case she can easily sidestep the ditch and guide others to do the same. Each case highlights the role of experience in helping overcome one’s inability to see certain hazards.

Similarly, people can learn from experience regardless of their literacy or numeracy. Experience concretizes lessons and allows us to synthesize a huge quantity of information. Many scholars have wondered whether Miranda warnings should be simplified to make them easier to understand.<sup>130</sup> This might help. But experience might well be a better teacher. It might tell you not to talk to the police. Advice can harness that experience. Suppose the police could not question you until after they read you the Miranda warnings *and* you called two friends to receive advice. What might those friends say? Probably something like: “Keep your mouth shut.” This suggests that we might make more rational decisions if mandatory disclosures were coupled with advice.

Experience also captures unique information. The overwhelming majority of payday borrowers report that the relevant loan terms are fairly clear.<sup>131</sup> But those terms are only the starting point to understanding the effects of the loan. People with experience may have specific information that borrowers could not glean from the contract terms, no matter how literate and numerate they were. Borrowers report that

<sup>126</sup> For a discussion of literacy and numeracy, see Ben-Shahar & Schneider, *supra* note 121, at 711–16 and BEN-SHAHAR & SCHNEIDER, *supra* note 31, at 80–91.

<sup>127</sup> *Matthew* 15:14 (King James).

<sup>128</sup> This seems to be the case in Pieter Bruegel’s 1568 painting entitled *The Blind Leading the Blind*.

<sup>129</sup> Emily Underwood, *How Blind People Use Batlike Sonar*, SCIENCE (Nov. 11, 2014), at <http://www.sciencemag.org/news/2014/11/how-blind-people-use-batlike-sonar> [<https://perma.cc/48KL-FWFG>].

<sup>130</sup> See Ferguson & Leo, *supra* note 11, at 938, 959–60.

<sup>131</sup> THE PEW CHARITABLE TRUSTS, PAYDAY LENDING IN AMERICA, REPORT 2: HOW BORROWERS CHOOSE AND REPAY PAYDAY LOANS 17 (2013), [https://www.pewtrusts.org/-/media/assets/2013/02/20/pew\\_choosing\\_borrowing\\_payday\\_feb2013-\(1\).pdf](https://www.pewtrusts.org/-/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf) [<https://perma.cc/8KKC-PBPG>] (reporting that 75–88% of borrowers thought the terms and conditions of payday loans were clear versus very or somewhat confusing).

different lenders are differentially likely to renegotiate terms once the borrower falls behind on payments.<sup>132</sup> Some auto title borrowers may believe that lenders will not exercise their full repossession rights. In some cases, they may be right, but in others, lenders might repossess a car even if you only miss one payment. Local norms, or even tendencies personal to individual lenders, might be as important as the formal contract terms.

More generally, borrowers develop rough affective responses to these loans. Fifty-two percent of auto title borrowers think that lenders took advantage of them, and thirty-three percent think that auto title loans hurt people more than they help them.<sup>133</sup> Even if they cannot precisely say why, and even if they cannot precisely report how much money they have spent to service the loan, their overall sense of the loan product condenses a near-infinite set of product attributes into a gut reaction that can communicate important information about the borrower's experience.

Advice that is rooted in experience also has benefits when we turn our attention to advice-taking. Advice from someone who lost their car after taking out an auto title loan not only communicates risk information, it does so in a particularly effective way: through stories of real people. Studies of risk communication consistently show that narratives are far more effective than statistics.<sup>134</sup> A disclosure might warn you that the lender has the right to repossess your car, and that warning may do some good. But people will be significantly more likely to pay attention to personal stories from the "nearly 1 in 5" borrowers who actually had their car repossessed.<sup>135</sup>

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<sup>132</sup> STEPHEN NUÑEZ, KELSEY SCHABERG, RICHARD HENDRA, LISA SERVON, MINA ADDO & ANDREA MAPILLERO-COLOMINA, ONLINE PAYDAY AND INSTALLMENT LOANS: WHO USES THEM AND WHY? 52 (MDRC 2016), [https://www.mdrc.org/sites/default/files/online\\_payday\\_2016\\_FR.pdf](https://www.mdrc.org/sites/default/files/online_payday_2016_FR.pdf) [<https://perma.cc/P7T4-S27U>].

<sup>133</sup> THE PEW CHARITABLE TRUSTS, AUTO TITLE LOANS: MARKET PRACTICES AND BORROWERS' EXPERIENCES 15 (2015), <https://www.pewtrusts.org/-/media/assets/2015/03/autotitleloansreport.pdf> [<https://perma.cc/2T5K-Z6YN>].

<sup>134</sup> John B.F. De Wit, Enny Das & Raymond Vet, *What Works Best: Objective Statistics or a Personal Testimonial? An Assessment of the Persuasive Effects of Different Types of Message Evidence on Risk Perception*, 27 HEALTH PSYCH. 110, 110, 113 (2008) (finding that narratives are more impactful than statistics at increasing risk perception); Victoria A. Shaffer & Brian J. Zikmund-Fisher, *All Stories Are Not Alike: A Purpose-, Content-, and Valence-Based Taxonomy of Patient Narratives in Decision Aids*, 33 MED. DECISION MAKING 4, 4 (2013) (noting that narrative approaches to health-education are controversial precisely because they are thought to be too influential compared to statistics).

<sup>135</sup> ANN BADDOUR, JAMIE TEGELER-SAUER & DEBORAH FOWLER, TEX. APPLESEED, PAYDAY AND AUTO TITLE LENDING IN TEXAS 3 (2016), [https://www.texasappleseed.org/sites/default/files/Payday-Auto-Title-Lending-Tx\\_MktOv-Trends2012-2015Rev.pdf](https://www.texasappleseed.org/sites/default/files/Payday-Auto-Title-Lending-Tx_MktOv-Trends2012-2015Rev.pdf) [<https://perma.cc/4C3B-YYYY>]. Borrowers may also want to know the identity of those lenders who try to use the threat of criminal charges to extract payments. *Vine v. PLS Fin. Servs., Inc.*, 689 F. App'x 800, 802 (5th Cir. 2017) (describing the practice of some payday lenders who report borrowers to the local district attorney for writing bad checks if they default).



Of course, not all people will have friends with relevant experience. But there is a convenient relationship between how dangerous a course of action is and how useful advice might be. As a consumer loan product becomes more dangerous in the sense that it ensnares more people, for example, it is more likely that there will be someone who can help point out its negative potential. A similar result is likely to occur even if the product harms very few people, if it does a great deal of harm to this small group. As the magnitude of the negative effect increases, more people who were not directly affected are likely to take notice. Because people will seek advice from those who are likely to be most helpful, they will be looking for advisors who have direct or indirect experience.<sup>136</sup> This makes it more likely that those seeking advice about a predatory loan product, a bank's overdraft fees, a credit card's late fees, or any other hidden feature of a contract will hear a relevant cautionary tale.<sup>137</sup>

### B. Getting Advice: Will People Listen?

There are several lines of research that explore advice-taking. Much of this research focuses on how to design more effective advice messages.<sup>138</sup> Communications scholars have developed Advice Response Theory, which teases out various aspects of advice that make it more effective.<sup>139</sup> For example, they might examine the effect of politeness or padding advice with statements of emotional support.<sup>140</sup> These scholars also examine dynamics related to gender or perceived trustworthiness.<sup>141</sup> Scholars of linguistics dissect actual advice-producing conversations in an effort to help counselors and doctors advise their patients more

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<sup>136</sup> Erina L. MacGeorge, Bo Feng & Lisa M. Guntzviller, *Advice: Expanding the Communication Paradigm*, in COMMUNICATION YEARBOOK 40 213, 223 (Elisia L. Cohen ed., 2016) (noting that “recipients tend to select advisors they perceive to have relevant expertise”); Lyn M. Van Swol, Jihyun Esther Paik & Andrew Prah, *Advice Recipients: The Psychology of Advice Utilization*, in THE OXFORD HANDBOOK OF ADVICE 21, 27 (Erina L. MacGeorge & Lyn M. Van Swol eds., 2018) (noting that advisees “are more likely to seek out advice from advisors who offer [advisees] information they do not know than information to which they have already been exposed”). Although advisees are often unable to identify experts, they can often identify people who are more knowledgeable than themselves. Albert E. Mannes, Jack B. Soll & Richard P. Larrick, *The Wisdom of Select Crowds*, 107 J. PERSONALITY & SOC. PSYCH. 276, 286 (2014).

<sup>137</sup> Of course, it is harder to find experienced advisors in some contexts. Retirement may be one. Many people may not realize their mistakes until decades later. Further, some social barriers exist to forming the necessary intergenerational friendships that might promote good retirement advice. Even if a younger person is friends with people with this relevant experience, they may discount the advice. After all, the advisor grew up in a different era, with different economic conditions, etc.

<sup>138</sup> MacGeorge et al., *supra* note 136, at 214.

<sup>139</sup> *Id.* at 216.

<sup>140</sup> *Id.* at 215–16.

<sup>141</sup> *Id.* at 216.

effectively.<sup>142</sup> These nuanced issues are interesting and important.<sup>143</sup> But this Part is concerned with the big-picture question of whether people listen to advice at all, not how to tweak advice at the margins. Research within psychology offers the most direct assessment of this question. The bulk of this literature seeks to measure the extent to which people follow advice. The punchline is twofold. First, people incorporate advice and improve their decisions. Second, people could do better; they hew too much toward their initial opinion and don't give advice the full weight that it deserves.

Advice works. Numerous lab studies find that advice improves decision-making.<sup>144</sup> In order to show this, researchers need a way to measure how much influence advice has. This impacts how the studies are designed. In a common research design, subjects are asked to answer a set of questions with correct numerical answers like the dates that historical events occurred, the number of calories in certain foods, or the distance between two cities.<sup>145</sup> After giving an initial answer, they are provided with advice about the correct answer, ostensibly from a peer.<sup>146</sup> Researchers can then measure whether and how much subjects alter their initial responses.<sup>147</sup> The consistent finding of numerous studies is that people take advice into account and use it to improve their answers.<sup>148</sup>

Related work in economics also finds that advice is helpful. “[A]dvice is a very powerful force in shaping the decisions that people make and tends to push those decisions in the direction of the predictions of rational theory.”<sup>149</sup> For example, in a study where participants had to make choices about entering a tournament, advice significantly improved self-sorting.<sup>150</sup> About twice the number of strong-performing women entered the tournament after receiving advice, and about half as many weak-performing men entered after they received advice.<sup>151</sup> Advice has also been shown

<sup>142</sup> *Id.* at 218, 221, 227–28.

<sup>143</sup> For example, it is important to know whether emotional support helps people follow advice, and if so whether those emotional supports should come before or after. *Id.* at 216 (“[A]dvice offered following emotional support and problem analysis messages is perceived as higher in quality, more facilitative of the recipient’s coping, and leads to stronger implementation intention than advice that does not follow this sequential pattern.”).

<sup>144</sup> Bonaccio & Dalal, *Advice Taking and Decision-Making*, *supra* note 116, at 129–30, 133.

<sup>145</sup> *See id.* at 138; *see also* Robertson, *supra* note 5, at 701 (using estimation of how much money is in a jar).

<sup>146</sup> Bonaccio & Dalal, *Advice Taking and Decision-Making*, *supra* note 116, at 138.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Schotter, *supra* note 26, at 196 (collecting studies).

<sup>150</sup> Jordi Brandts, Valeska Groenert & Christina Rott, *The Impact of Advice on Women’s and Men’s Selection into Competition*, 61 *MGMT. SCI.* 1018, 1018 (2015).

<sup>151</sup> *Id.* at 1030–31 (using advice from another subject, but one who had gone through one tournament already).

to improve performance over and above the learning that advisees gain from observing what others have done.<sup>152</sup>

If anything, these studies understate the power of advice. Three factors support this. First, they often use relatively low-salience outcomes like small cash payouts.<sup>153</sup> Second, they use anonymous advice from strangers.<sup>154</sup> Third, and relatedly, they use simple written advice rather than advice that is embedded in more complex conversations.<sup>155</sup>

What if the stakes were higher, either because subjects could earn more money or because the advice concerned courses of action that were more emotionally salient? In both cases, the advisee might be under a great deal more stress. Other psychological research shows that this will increase advice-taking. People tend to give greater weight to advice when the task at hand is difficult and when they are experiencing heightened anxiety.<sup>156</sup> Further suggestive evidence comes from medical decision-making, an area where people are likely to be under a great deal of stress while dealing with important issues. There, patients crave advice and many even want their doctor to make the relevant decision for them.<sup>157</sup> This suggests that people will readily take advice about important real-world decisions. The limited field research supports this claim. Research into corporate decision-making suggests that advice improves corporate performance.<sup>158</sup> Seeking advice from those inside the firm helps, but seeking advice from outsiders is even more helpful.<sup>159</sup> Advice is valuable for a number of reasons. Here, the researchers identified one particularly

<sup>152</sup> See Boğaçhan Çelen, Shachar Kariv & Andrew Schotter, *An Experimental Test of Advice and Social Learning*, 56 MGMT. SCI. 1687, 1700 (2010).

<sup>153</sup> See, e.g., Brandts, *supra* note 150, at 1023 (using undergraduates who earned an average of roughly 18 euros each).

<sup>154</sup> Bonaccio & Dalal, *Advice Taking and Decision-Making*, *supra* note 116, at 138–39.

<sup>155</sup> *Id.* at 138; see, e.g., Brandts, *supra* note 150, at 1020–21.

<sup>156</sup> Francesca Gino & Don A. Moore, *Effects of Task Difficulty on Use of Advice*, 20 J. BEHAV. DECISION MAKING 21, 21 (2007); Francesca Gino, Alison Wood Brooks & Maurice E. Schweitzer, *Anxiety, Advice, and the Ability to Discern: Feeling Anxious Motivates Individuals to Seek and Use Advice*, 102 J. PERSONALITY & SOC. PSYCH. 497, 497 (2012).

<sup>157</sup> Neeraj K. Arora & Colleen A. McHorney, *Patient Preferences for Medical Decision Making: Who Really Wants to Participate?*, 38 MED. CARE 335, 335–36 (2000) (reporting that 69% of patients wanted to leave the final decision to their doctor); John D. Lantos, *Do Patients Want to Participate in Decisions About Their Own Medical Care?*, 15 AM. J. BIOETHICS 1, 1 (2015) (reporting a 1984 survey that found “[e]ighty percent of the patients preferred to have their clinicians make the therapeutic decisions”); Mellina da Silva Terres, Cristiane Pizzutti dos Santos & Kenny Basso, *Antecedents of the Client’s Trust in Low-Versus High-Consequence Decisions*, 29 J. SERVS. MKTG. 26, 27 (2015) (finding that, as the decision becomes more impactful, people’s desire for autonomy and responsibility is reduced and they start experiencing the negative emotions stemming from having to choose).

<sup>158</sup> Philip Meissner & Torsten Wulf, *Debiasing Illusion of Control in Individual Judgment: The Role of Internal and External Advice Seeking*, 10 REV. MANAGERIAL SCI. 245, 248 (2016).

<sup>159</sup> *Id.* at 250–51.

important aspect: advice can mitigate over-optimism and a manager's tendency to think that they can control outcomes.<sup>160</sup>

People are also likely to give more weight to advice from friends and family, compared to unsolicited advice from anonymous strangers. We might (rightly) think that ignoring advice from friends and family could do some damage to those social relationships. If so, then we might be more likely to seriously consider advice. People are more likely to solicit advice from friends and family than strangers, and people tend to follow solicited advice more than unsolicited advice.<sup>161</sup>

Finally, friends and family can and do present advice in ways that can bolster its effectiveness. They do not merely write a recommendation on a post-it note and stick it on your car. They pair advice with emotional support (“I know this must be hard for you . . .”), encouragement (“You got this!”), new questions (“Have you thought about . . .”), follow-ups (“What did you decide?”), and much more. They may also provide reasons and arguments in favor of their advice. Research has found that many of these features of natural advice enhance its impact.<sup>162</sup>

The studies above show that advice works. But we might worry about whether there will be a lot of noise in real-world advice. Some of it might be bad, after all,

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<sup>160</sup> *Id.*

<sup>161</sup> See Lyn M. Van Swol, Jihyun Esther Paik & Andrew Prah, *Linguistic Influences on the Outcomes of Imposed Advice*, 39 J. LANGUAGE & SOC. PSYCH. 318, 319 (2020) (“[R]ecipients often react most negatively to imposed advice, probably because it threatens their sense of autonomy and competence. Unsolicited and unwanted advice is less likely to be utilized and is perceived as lower quality than solicited and wanted advice.”). Note that advice does not fit the neat binary of solicited or not, but rather falls on a spectrum. For example, telling someone about a problem might be an implicit request for advice.

<sup>162</sup> Kasey A. Foley, Erina L. MacGeorge, David L. Brinker, Yuwei Li & Yanmengqian Zhou, *Health Providers' Advising on Symptom Management for Upper Respiratory Tract Infections: Does Elaboration of Reasoning Influence Outcomes Relevant to Antibiotic Stewardship?*, 39 J. LANGUAGE & SOC. PSYCH. 349, 349 (2020) (reason-giving); Erina MacGeorge, Lisa M. Guntzville, Kellie S. Brisini, Loren C. Bailey, Sara K. Salmon, Kaytiann Severen, Sara E. Branch, Helen M. Lillie, Cynthia K. Lindley, Rebekah G. Pastor & Ryan D. Cummings, *The Influence of Emotional Support Quality on Advice Evaluation and Outcomes*, 65 COMM'N Q. 80, 80 (2017) (emotional support); Dalal & Bonaccio, *supra* note 22, at 17 (finding that statements of social support were just as important as recommendations in predicting whether advice was perceived as helpful); *see id.* at 21 (“[D]ecision-makers appeared to want their advisors to provide information about the alternatives.”); Geoffrey L. Cohen & David K. Sherman, *The Psychology of Change: Self-Affirmation and Social Psychological Intervention*, 65 ANN. REV. PSYCH. 333, 340 (2014) (affirmations of self-worth); Steffen Altmann & Christian Traxler, *Nudges at the Dentist*, 72 EUR. ECON. REV. 19, 20 (2014) (finding that reminders double the number of people who make dental appointments); Antonis Hatzigeorgiadis, Nikos Zourbanos, Evangelos Galanis & Yiannis Theodorakis, *Self-Talk and Sports Performance: A Meta-Analysis*, 6 PERSPS. PSYCH. SCI. 348, 349 (2011) (encouragement). This may be why peer advice can be just as useful as expert advice in some settings. Hans-Martin Von Gaudecker, *How Does Household Portfolio Diversification Vary with Financial Literacy and Financial Advice?*, 70 J. FIN. 489, 498–99 (2015) (finding that advice from friends was just as good as expert advice at leading people to diversify their holdings, even for people with low numeracy).

and when bad advice “works” it makes matters worse. Luckily, people seem to have a decently good feel for separating bad advice from good advice.

People respond sensibly to various features of the advice context. They discount advice based solely on a “gut feeling” unless the person is particularly experienced.<sup>163</sup> Although people can and do follow bad advice,<sup>164</sup> they also tend to be suspicious of it. They discount bad advice more than good advice and are quick to discount advice from sources that have proven to be unreliable in the past.<sup>165</sup> Even three- to six-year-olds can distinguish bad advice from good.<sup>166</sup> In a recent study of peer financial advice, both advice to be impatient and advice to be patient had an effect, but advice to be patient had a far more powerful impact.<sup>167</sup> This again suggests that advisees can sensibly filter advice. Advisees also sensibly respond to aggregating advice. If accuracy is your goal, one of the main benefits of advice is that it can be aggregated. Why seek advice from one person when you can ask two (or three or five)? People intuitively understand that aggregating multiple pieces of advice can lead to better guidance.<sup>168</sup> They don’t give multiple pieces of advice the full extra weight they deserve,<sup>169</sup> but they are generally on the right track in thinking

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<sup>163</sup> Stefanie C. Tzioti, Berend Wierenga & Stijn M. J. Van Osselaer, *The Effect of Intuitive Advice Justification on Advice Taking*, 27 J. BEHAV. DECISION MAKING 66, 70–72 (2014).

<sup>164</sup> Thomas Schultze, Andreas Mojzisch & Stefan Schulz-Hardt, *On the Inability to Ignore Useless Advice: A Case for Anchoring in the Judge-Advisor-System*, 64 EXPERIMENTAL PSYCH. 170, 171 (2017) (noting that other studies have found people tend to put about a 20% weight on advice from people who performed very badly on previous trials).

<sup>165</sup> Sunita Sah, Don A. Moore & Robert J. MacCoun, *Cheap Talk and Credibility: The Consequences of Confidence and Accuracy on Advisor Credibility and Persuasiveness*, 121 ORG. BEHAV. & HUM. DECISION PROCESSES 246, 246 (2013).

<sup>166</sup> Hannes Rakoczy, Christoph Ehrling, Paul L. Harris & Thomas Schultze, *Young Children Heed Advice Selectively*, 138 J. EXPERIMENTAL CHILD PSYCH. 71, 74–78 (2015) (finding that these children revised their answers about how much food an animal needs to eat after receiving adult advice, and weighed that advice differently depending on whether the adult named the animal correctly or said in the past “I don’t know what that animal is called”).

<sup>167</sup> Nicole Senecal, Teresa Wang, Elizabeth Thompson & Joseph W. Kable, *Normative Arguments from Experts and Peers Reduce Delay Discounting*, 7 JUDGMENT & DECISION MAKING 566, 580 (2012).

<sup>168</sup> Albert E. Mannes, Jack B. Soll & Richard P. Larrick, *The Wisdom of Select Crowds*, 107 J. PERSONALITY & SOC. PSYCH. 276, 287, 288 (2014) (choosing to take the average of 5 predictions); Mandy Hütter & Fabian Ache, *Seeking Advice: A Sampling Approach to Advice Taking*, 11 J. JUDGMENT & DECISION MAKING 401, 408 (2016) (finding that people choose to look at 10 pieces of advice before making their decision).

<sup>169</sup> See, e.g., Ilan Yaniv & Maxim Milyavsky, *Using Advice from Multiple Sources to Revise and Improve Judgments*, 103 ORG. BEHAV. & HUM. DECISION PROCESSES 104, 109 (2007) (finding that there is not much difference between providing 2 pieces of advice and 8—the former increased accuracy by 27% while the latter did so only by 33%); Thomas Schultze, Andreas Mojzisch & Stefan Schulz-Hardt, *Groups Weight Outside Information Less than Individuals Do Because They Should: Response to Minson and Mueller* (2012), 24

that multiple pieces of advice are more helpful than one.<sup>170</sup> Again, this certainly does not mean people will never get or follow bad advice. They will.<sup>171</sup> But it does suggest that advisees will be more impacted by good advice than bad.

The main problem with advice is that we often miss opportunities to use it to its fullest potential. Most research that seeks to quantify the influence of advice finds that the best strategy is to weigh your initial opinion and the advisory one equally by averaging them.<sup>172</sup> But only about 20 percent of people do that.<sup>173</sup> Approximately 40 percent of people ignore advice entirely.<sup>174</sup> About 10 percent of people adopt the advice completely and ignore their opinion entirely.<sup>175</sup> The other 30 percent tend to weigh both opinions, but give too much weight to their own.<sup>176</sup>

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PSYCH. SCI. 1371, 1371 (2013) (finding that both individuals and dyads ignore the extra weight that a single piece of advice from a dyad should get over and above advice generated by an individual).

<sup>170</sup> Yaniv & Milyavsky, *supra* note 169, at 109.

<sup>171</sup> Lyn M. Van Swol, *Forecasting Another's Enjoyment Versus Giving the Right Answer: Trust, Shared Values, Task Effects, and Confidence in Improving the Acceptance of Advice*, 27 INT'L J. FORECASTING 103, 109, 115 (2011) ("Although decision-makers were more likely to accept advice from high expertise advisors, they still" accepted advice on a cognitively demanding math task even when they knew the advisor was from the lowest performing quartile during the previous round).

<sup>172</sup> Jack B. Soll & Richard P. Larrick, *Strategies for Revising Judgment: How (and How Well) People Use Others' Opinions*, 35 J. EXP. PSYCH: LEARNING, MEMORY & COGNITION 780, 786 (2009).

<sup>173</sup> *Id.* at 786–87.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*; see also Rakoczy et al., *supra* note 166, at 81–82 and Mannes et al., *supra* note 168, at 287. Overall, this pattern is called "egocentric advice discounting." Bonaccio & Dalal, *Advice Taking and Decision-Making*, *supra* note 116, at 129. Of course, this label obscures not only the pattern in the text, but others. Not all people use advice to the same degree. Narcissists tend to think that advice is low quality, but they still respond to accurate advice. People who feel powerful discount advice, but they still give it some weight. People who are socially ostracized discount advice from others. Edgar E. Kausel, Satoris S. Culbertson, Pedro I. Leiva, Jerel E. Slaughter & Alexander T. Jackson, *Too Arrogant for Their Own Good? Why and When Narcissists Dismiss Advice*, 131 ORG. BEHAV. & HUM. DECISION PROCESSES 33, 38 (2015); Leigh Plunkett Tost, Francesca Gino & Richard P. Larrick, *Power, Competitiveness, and Advice Taking: Why the Powerful Don't Listen*, 117 ORG. BEHAV. & HUM. DECISION PROCESSES 53, 57 (2012); Kelly E. See, Elizabeth W. Morrison, Naomi B. Rothman & Jack B. Soll, *The Detrimental Effects of Power on Confidence, Advice Taking, and Accuracy*, 116 ORG. BEHAV. & HUM. DECISION PROCESSES 272, 272 (2011); Kaileigh A. Byrne, Thomas P. Tibbett, Lauren N. Laserna, Adrienne R. Carter-Sowell & Darrell A. Worthy, *Ostracism Reduces Reliance on Poor Advice from Others During Decision Making*, 29 J. BEHAV. DECISION MAKING 409, 409 (2016); see also Bradford L. Barham, Jean-Paul Chavas, Dylan Fitz & Laura Schechter, *Receptiveness to Advice, Cognitive Ability, and Technology Adoption*, 149 J. ECON. BEHAV. & ORG. 239, 256–57 (2018) (finding that advice-taking propensity can differ depending on the cognitive ability of the advisee).

Of course, there are other imperfections in advice-taking. Advisees give more weight to advice that aligns with their preferred course of action.<sup>177</sup> They also sometimes mistake confidence for competence,<sup>178</sup> overly discount outlier advice,<sup>179</sup> and can get overloaded when presented with too much information.<sup>180</sup> This literature is relatively young.<sup>181</sup> Accordingly, there is more work to be done exploring advice-taking in more nuanced ways. For example, studying advice between spouses or advice within online forums may reveal unique patterns,<sup>182</sup> the timing of advice may alter its effect,<sup>183</sup> and other situational or dispositional factors may affect advice-taking.<sup>184</sup>

Despite these shortfalls, the literature reveals that peer advice is highly useful, and that it could be even more useful if people didn't put special weight on their own opinions.<sup>185</sup>

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<sup>177</sup> See Tomasz Zaleskiewicz, Agata Gasiorowska, Katarzyna Stasiuk, Renata Maksymiuk & Yoram Bar-Tal, *Lay Evaluation of Financial Experts: The Action Advice Effect and Confirmation Bias*, 7 FRONTIERS PSYCH. 1476, 1476 (2016); Tomasz Zaleskiewicz & Agata Gasiorowska, *Evaluating Experts May Serve Psychological Needs: Self-Esteem, Bias Blind Spot, and Processing Fluency Explain Confirmation Effect in Assessing Financial Advisors' Authority*, J. EXPERIMENTAL PSYCH.: APPLIED 2 (2020), Advance online publication, <http://dx.doi.org/10.1037/xap0000308> [<https://perma.cc/Q5CL-3W3P>] (“[D]ecision-makers, when evaluating the financial expertise of prospective advisors, are vulnerable to preferring advice that is consistent, as opposed to inconsistent, with their own beliefs.”).

<sup>178</sup> Bonaccio & Dalal, *Advice Taking and Decision-Making*, *supra* note 116, at 132.

<sup>179</sup> *Id.* at 131.

<sup>180</sup> Foley et al., *supra* note 162, at 367.

<sup>181</sup> Erina L. MacGeorge, *Communicating Advice: Introduction to the Special Issue*, 39 J. LANGUAGE & SOC. PSYCH. 287, 288 (2020) (noting that much of the literature is only twenty years old); see Bonaccio & Dalal, *Advice Taking and Decision-Making*, *supra* note 116, at 128 (noting that this paper, in 2006, was the first to survey the field).

<sup>182</sup> MacGeorge, *supra* note 181, at 289 (identifying these as promising areas of future research).

<sup>183</sup> See generally Christina A. Rader, Jack B. Soll & Richard P. Larrick, *Pushing Away from Representative Advice: Advice Taking, Anchoring, and Adjustment*, 130 ORG. BEHAV. & HUM. DECISION PROCESSES 26 (2015) (comparing the effects of opinion formation before receiving advice with receiving advice before opinion formation).

<sup>184</sup> See Soll & Larrick, *supra* note 172.

<sup>185</sup> How could you ensure that you use advice to its fullest potential? Put on a blindfold. Suppose you have to estimate the number of calories in a particular meal. You'll be much more accurate if you put on a blindfold and ask others to give you estimates. Then you'll have no choice but to average the guesses. If you peek, you'll make your own estimate, and you're likely to give it far too much weight. See, e.g., Ilan Yaniv & Shoham Choshen-Hillel, *Exploiting the Wisdom of Others to Make Better Decisions: Suspending Judgment Reduces Egocentrism and Increases Accuracy*, 25 J. BEHAV. DECISION MAKING 427, 428–31 (2012).

### C. Summary

Advice works. The literature on advice-taking consistently finds that advice improves decision-making, even in situations where advice should be at its weakest: anonymous advice from a stranger whose credibility you cannot assess. Peer advice in the real world is likely to be more impactful.

This impact is likely to be highly positive. Advisors are likely to recommend significantly better decisions than they or the advisee would otherwise make. “Better” is often relatively easy to define. Normatively, it is better to take probability into account in risky decisions than to ignore it. It is better to take relevant information into account rather than systematically ignore it when it conflicts with your intuitive choice.<sup>186</sup> Taking on the role of an advisor may also affect decision-making in ways that have more ambiguous welfare effects,<sup>187</sup> and of course, more

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<sup>186</sup> Of course, it is possible to construct a hypothetical person who is so haunted by anticipated regret and doubt in the face of options that it would be better for them to take the first mortgage offer they receive even if it means spending hundreds of thousands of dollars more over the term of the loan. For an overview of the much milder real-world version of this, see generally Arne Roets, Barry Schwartz & Yanjun Guan, *The Tyranny of Choice: A Cross-Cultural Investigation of Maximizing-Satisficing Effects on Well-Being*, 7 JUDGMENT & DECISION MAKING 689 (2012).

<sup>187</sup> There are some situations where it is harder, but still possible, to say that the advisor’s recommendation is better than the choice the decider is likely to make without advice. Consider preferences surrounding risk. It is perfectly rational to have low or high risk aversion. It’s just a matter of taste. Although there is no research on how risk preferences change when people offer advice, there is research on risk preferences when people make decisions for others. It turns out that decisions for others and decisions for oneself treat risk differently. When deciding for others, people tend to be more risk averse when the decision implicates physical safety, more risk-seeking for romantic decisions, and more risk neutral for monetary decisions. See Sujoy Chakravarty, Glenn W. Harrison, Ernan E. Haruvy & E. Elisabet Rutström, *Are You Risk Averse over Other People’s Money?*, 77 S. ECON. J. 901, 911 (2011) (money); Evan Polman & Kaiyang Wu, *Decision Making for Others Involving Risk: A Review and Meta-Analysis*, 77 J. ECON. PSYCH. 102184, 3 (2020) (collecting studies on romantic choices and safety choices). There are three interpretations for this pattern that offer reasons to think that decisions for others are better. The first is that visceral emotions distort risk preferences, and decisions for others involve fewer of such distortions. *Id.* at 3 (describing the “risk as feeling” explanation). The second interpretation of these findings is that, when deciding for others, people make choices that are more influenced by social norms. *Id.* Social norms might dictate that it is better to take a chance and ask someone out on a date, even though you might get rejected. Social norms might say that risking death is rarely if ever worth it, and that risk neutrality is the best way to build wealth. Decisions for others (and perhaps advice) will be better only when the relevant social norms align with one’s normative judgment about which decisions are better. A third interpretation of this pattern in risk preferences is that, when deciding for others, people use their own ideal self as a guide. See Jennifer L. Howell, Kate Sweeny & James A. Shepperd, *Psychological Distance and the Discrepancy Between Recommendations and Actions*, 36 BASIC & APP. SOC. PSYCH. 502, 503 (2014) (finding that “people lean toward recommendations for others



research is needed. This future research might reveal more nuanced patterns,<sup>188</sup> and should test advice in more real-world settings. Regardless, the overall picture, although necessarily preliminary, is incredibly promising.

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that match their perception of ideal behavior”) (citations omitted). There is an interesting convergence in the research. Decisions for others, decisions for your future self, and statements about what your ideal self would do all appear to align. Eric R. Stone & Liz Allgaier, *A Social Values Analysis of Self-Other Differences in Decision Making Involving Risk*, 30 BASIC & APPLIED SOC. PSYCH. 114, 119 (2008); Emily Pronin, Christopher Y. Olivola & Kathleen A. Kennedy, *Doing unto Future Selves as You Would Do unto Others: Psychological Distance and Decision Making*, 34 PERSONALITY & SOC. PSYCH. BULL. 224, 224 (2008); Polman & Emich, *supra* note 14, at 493; Eric R. Stone, YoonSun Choi, Wändi Bruine de Bruin & David R. Mandel, *I Can Take the Risk, but You Should Be Safe: Self-Other Differences in Situations Involving Physical Safety*, 8 JUDGMENT & DECISION MAKING 250, 252–55 (2013). This suggests that advisors are recommending actions that they themselves judge to be better. This is not a guarantee that they are better by whatever yardstick the policymaker prefers, but it is at least suggestive. It aligns with the view that welfare should be measured by the satisfaction of ideal preferences rather than actual (and often fleeting) ones. ADLER & POSNER, *supra* note 111, at 38.

There are some situations where it is very difficult to say which decision is better. Consider non-risky choices: People weigh aspects of a decision differently depending on whether they are deciding for themselves or for others. For example, when deciding on which restaurant to go to, you might consider both the quality of the food and how far away it is. When deciding for others, people might place extra weight on food quality, and less weight on distance. Jingyi Lu, Xiaofei Xie & Jingzhe Xu, *Desirability or Feasibility: Self-Other Decision-Making Differences*, 39 PERSONALITY & SOC. PSYCH. BULL. 144, 146–48 (2013). It’s not clear which weighting is better. Here, I only make a weak claim: that advice in this context will not be welfare reducing precisely because we cannot say with confidence that one decision is better than the other. If advice is harmless in some areas, and highly useful in others, it is still quite useful overall. It may also be possible to tailor interventions such that policymakers promote advice only in situations where its welfare effects are clearest (and large and positive), and not when they are more ambiguous.

<sup>188</sup> For example, more work could be done to tease out how and whether a potential advisor’s personality traits affect their advice. For some examples of this type of research in the adjacent field of deciding for others, see Polman & Vohs, *supra* note 123, at 475 (finding that people who differ on a scale of independence/interdependence feel differently about making decisions for others); Polman & Wu, *supra* note 187, at 13, 16 (noting that different groups of people use different strategies when deciding for others). Future research should also explore more dynamic advice situations, where people give and get advice from one another multiple times. Fabian Ache, Christina Rader & Mandy Hütter, *Advisors Want Their Advice to Be Used—But Not Too Much: An Interpersonal Perspective on Advice Taking*, 89 J. EXPERIMENTAL SOC. PSYCHOL. 1, 13 (2020) (finding that, for difficult tasks where advisors lack confidence in the accuracy of their advice, advisors don’t want their opinions weighed heavily and are less willing to give advice in the future when they are); Hayley Blunden & Francesca Gino, *How the Other Half Thinks: The Psychology of Advising*, in THE OXFORD HANDBOOK OF ADVICE 43, 52 (Erina L. MacGeorge & Lyn M. Van Swol eds., 2018) (“When individuals are asked for advice, it causes them to feel powerful, and when individuals feel powerful, they are likely to enact scripts related to having power.”); Queen et al., *supra* note

Advice-giving is a powerful and as-yet-unrecognized debiasing tool. The psychological distance between advisors and advisees allows advisors to see the big picture, avoid distorting emotions, and give advice that is untainted by hyperbolic discounting, betrayal aversion, omission bias, and attribution errors. Advisors try harder, more -rationally invest in searching for and processing information, and are less susceptible to overload effects. Even advisors without the necessary literacy or numeracy to understand contracts or government disclosures will often have something more valuable: concrete experience. Overall, people who take the perspective of the advisor are not blind, and they can offer valuable guidance to those of us who are.

### III. PROMOTING ADVICE

At this point, a skeptic may ask: “If advice is so useful, why do you think that people are currently underutilizing it?” There are reasons to doubt that people seek advice as often as they should. First, people don’t have as many friends as they used to. Second, people seem especially disinclined to talk about money. These barriers have to be overcome in order for advice to fulfill its full promise.

We just don’t have as many close friends today as we used to. Thirty-five years ago, only about 10 percent of the population indicated that they had no one that they talked to about important matters.<sup>189</sup> As of 2004, that number had gone up to 25 percent.<sup>190</sup> These numbers are even starker when we exclude family. More than half of Americans have no non-family members to talk to about important matters: no coworkers; no neighbors; no friends.<sup>191</sup> Others have identified those with no confidants or only one confidant as having “inadequate counseling support.”<sup>192</sup> Almost half of Americans fell into this category in 2004.<sup>193</sup> A more recent study in 2009 found similar results.<sup>194</sup>

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29, at 386 (“[M]ost everyday and more consequential decisions occur over weeks and months, and understanding how couples move in and out of dyadic processes would help to address when intimate partners can be most helpful.”). Age may also be relevant to advice-giving or advice-taking. Fabio Del Missier, Timo Mäntylä & Lars-Göran Nilsson, *Aging, Memory, and Decision-Making*, in *AGING AND DECISION MAKING: EMPIRICAL AND APPLIED PERSPECTIVES* 127, 141 (Thomas Hess, JoNell Strough & Corinna E. Löckenhoff eds., 2015) (noting that “aging is associated with many changes in memory processes, which can influence judgment and decision making in complex ways”).

<sup>189</sup> Miller McPherson, Lynn Smith-Lovin & Matthew E. Brashears, *Social Isolation in America: Changes in Core Discussion Networks over Two Decades*, 71 *AM. SOCIO. REV.* 353, 358 (2006).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 371.

<sup>193</sup> *Id.*

<sup>194</sup> Keith N. Hampton, Lauren F. Sessions, Eun Ja Her & Lee Rainie, *Social Isolation and New Technology: How the Internet and Mobile Phones Impact Americans’ Social Networks*, PEW INTERNET & AMERICAN LIFE PROJECT 19–21 (2009) (finding that although

Even among people with plenty of available friends and family, some topics are hard to talk about. Money often tops the list of difficult things to talk about, beating out death, religion, and politics.<sup>195</sup> Pause a moment and ask yourself the following questions: How much money does your best friend make? How much was his or her house? How much have they saved for retirement? I doubt many of us know the answers to these questions. (Unless of course, you are a law student, in which case the answers are likely to be zero, not applicable, and zero. But other information is sensitive. Do you know your best friend's GPA, student loan amount, or her loan's interest rate?) Because money is often seen as a proxy for power, happiness, and personal efficacy, talking about money can bring up all sorts of insecurities and jealousies, and may threaten the implied equality in friendships.<sup>196</sup> Although millennials might be more willing to discuss money compared to previous generations, it's a sensitive subject for everyone.<sup>197</sup>

Given these barriers to advice-seeking,<sup>198</sup> actively promoting advice might substantially increase its use. A full cost benefit analysis of when and how to promote advice is beyond the scope of this Article, in part because more research would be needed to do so. The advice literature itself is still growing, and will benefit from studies that examine its general patterns in more nuanced ways.<sup>199</sup> More importantly, now that the potential of peer advice is clear, researchers should turn to examining how advice might interact with other tools for promoting welfare, such as mandated disclosures and nudges. Advice alone is no panacea. In some circumstances, advisors might need mandated disclosure in order to generate good advice.<sup>200</sup> It is possible that mandated disclosures should be designed differently if they are targeting both a decider and an advice-giver. Advice may also interact with

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just 12% of the population had no confidant in 2008, 47% had one or fewer confidants, consistent with the 2004 study). Of course, this does not mean that people are hermits. Only about 5% of people have no friends that they talk to weekly. Hu Wang & Barry Wellman, *Social Connectivity in America: Changes in Adult Friendship Network Size from 2002 to 2007*, 53 AM. BEHAV. SCIENTIST 1148, 1155 (2010). But when it comes to getting advice about life's big decisions, data on closer friendships is probably more relevant.

<sup>195</sup> Chris Taylor, *The Last Taboo: Why Nobody Talks About Money*, REUTERS (Mar. 27, 2014), <https://www.reuters.com/article/us-money-conversation/the-last-taboo-why-nobody-talks-about-money-idUSBREA2Q1UN20140327> [<https://perma.cc/M6LS-22T9>].

<sup>196</sup> See Ethan J. Leib, *Friendship & the Law*, 54 UCLA L. REV. 633, 646 (2007) (discussing equality norms among friends).

<sup>197</sup> Dan Kadlec, *Is It Rude to Talk About Money? Millennials Don't Think So*, MONEY (Jan. 21, 2016), <https://money.com/millennials-money-manners/> [<https://perma.cc/NL4B-SAWS>].

<sup>198</sup> There may also be barriers to advice-giving and ways to promote it, but this Part focuses predominately on advice-seeking. It does so in part because unsolicited advice is often less effective than solicited advice. See Van Swol et al., *supra* note 161, at 319.

<sup>199</sup> See *supra* notes 137–87 and accompanying text.

<sup>200</sup> For a discussion of why *sophisticated* intermediators might not need mandated disclosure, see BEN-SHAHAR & SCHNEIDER, *supra* note 31, at 185–88.

classic nudges.<sup>201</sup> Advice is likely to strengthen the impact of social norms nudges.<sup>202</sup> But it may work against the power of default rules.<sup>203</sup> Advice may also interact with other biases or psychological tendencies.<sup>204</sup> Again, more research is needed before designing specific policies. Nonetheless, the power of advice highlights the productive potential of this research and the desirability of offering at least a preliminary sketch of how policymakers could tap into peer advice.

This Part sketches several broad ways of promoting advice: (a) advising people to seek advice; (b) advising them to simulate advice by, for example, asking them to ask themselves what their spouse might say about the relevant decision; (c) mandating that consumers have the opportunity to seek advice; (d) incentivizing advice; (e) mandating advice; and (f) facilitating norms conducive to advice. This Part also examines ways that advice, or the opportunity to receive it, could serve as an input, rather than an output, of law.<sup>205</sup>

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<sup>201</sup> Under Thaler and Sunstein's capacious definition of a nudge, advice is a nudge. THALER & SUNSTEIN, *supra* note 1, at 6 ("A nudge, as we will use the term, is any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives."). As this Article suggests, it is useful to analyze advice on its own, and it is useful to ask how it might interact with well-known nudges like setting welfare-enhancing default rules and informing people about how other people behave.

<sup>202</sup> See *supra* note 187 (discussing the ways that advice can reflect social norms). For examples of social norms nudges, see THALER & SUNSTEIN, *supra* note 1, at 66–70.

<sup>203</sup> Recall that advisors appear to be less susceptible to overload and decision fatigue. See Polman & Vohs, *supra* note 123, at 475–76. Accordingly, advisors might be less influenced by default rules. It is possible that the advisor's degree of effort will land in an ironic sweet spot: it will be sufficient for them to resist the pull of the default rule, but not sufficient to make an informed decision. No clear prediction can be made given the state of the current research. For examples of default rules as nudges, see THALER & SUNSTEIN, *supra* note 1, at 110–17, 179–81.

<sup>204</sup> For example, a large literature on peer effects examines when and how your choices are influenced by the choices of others. Conversations that include advice may also include information about the advisor's choices and this may interact with the advice given. See, e.g., Leonardo Bursztyn, Florian Ederer, Bruno Ferman & Noam Yuchtman, *Understanding Mechanisms Underlying Peer Effects: Evidence from a Field Experiment on Financial Decisions*, 82 *ECONOMETRICA* 1273, 1273 (2014) (finding evidence of learning from others' choices, and evidence of a desire to "keep up with the Joneses"); see also Daniel A. Effron & Dale T. Miller, *Do as I Say, Not as I've Done: Suffering for a Misdeed Reduces the Hypocrisy of Advising Others Against It*, 131 *ORG. BEHAV. & HUM. DECISION PROCESSES* 16, 16–17 (2015) (finding that people don't listen to advice from those who don't practice what they preach, unless those advisors have suffered for their misdeeds). This is again a fertile area for further research.

<sup>205</sup> Each of the discussions in this Part largely brackets dynamic effects. Consider three examples. First, advising people to seek advice in situations X and Y might make people less likely to do so in situation Z, after all the government did not see fit to tell them that advice would be useful in situation Z. Second, giving incentives to seek advice might create something like a crowding-out effect, where people stop seeking unincentivised advice.

### A. Advice to Seek Advice

Certain financial products, contracts, or informed consent forms in the medical context could carry a mandated disclosure that read: “Research suggests that seeking advice from friends and family about these decisions can be helpful. We encourage you to seek advice.” Various laws already embrace similar disclosures. While most of these laws advise people to seek *expert* advice,<sup>206</sup> some also recommend peer advice. For example, Washington State recommends that people considering a payday loan first “[t]alk to a friend or family member about borrowing money.”<sup>207</sup>

Personalizing the timing, phrasing, and format of these messages might increase the likelihood that someone will actually read them. Adjusting those features—perhaps especially the way the advice is phrased—could also adjust the strength of the nudge toward seeking advice. People are likely to react more strongly to messages that say “Only an idiot would do this without seeking advice first!” than to a more emotionless promotion of advice.

Advice to seek advice could do some good even if consumers won’t read it. A disclosure that advises someone to seek advice provides a signal to sophisticated intermediaries that peer advice might be useful.<sup>208</sup> Those intermediaries, who

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Third, if people embrace advice enthusiastically, they might begin to make many decisions as part of a group. That is, they might conduct conference calls to decide whether to buy a house, and when and where to do so. If this occurs, group decision-making dynamics will come into play and potentially alter the patterns described in Part II. These and other dynamic effects will be important to study. This Part, however, is intended only as a preliminary catalog of possibilities. More research would be needed to evaluate the benefits of each within any given situation.

<sup>206</sup> 29 U.S.C. § 626(f)(1)(E) (requiring people waiving rights under the Age Discrimination in Employment Act to be advised to seek an attorney before doing so); *United States v. McDowell*, 814 F.2d 245, 251 (6th Cir. 1987) (requiring judges to say something substantially similar to the following: “I must advise you that in my opinion you would be far better defended by a trained lawyer than you can be by yourself. I think it is unwise of you to try to represent yourself . . . I would strongly urge you not to try to represent yourself.”); CAL. FAM. CODE § 1615 (2020) (stating that prenups are not enforceable unless the fiancés have been advised to consult an attorney); Voluntary Acknowledgement of Paternity Form, MASS., <http://www.mass.gov/dor/docs/cse/parents/voluntary-ack-of-parentage-form.pdf> [<https://perma.cc/VPE6-PHFR>] (“If you have any questions about the legal consequences of signing the form, consult an attorney before signing.”); MODEL RULES OF PRO. CONDUCT r. 1.8(a)(2) (AM. BAR ASS’N 2019) (“A lawyer shall not enter into a business transaction with a client . . . unless . . . the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction . . .”).

<sup>207</sup> *Consumers Guide to Payday Loans in Washington State*, WASH. DEP’T FIN. INSTS., <https://dfi.wa.gov/financial-education/information/payday-loans> [<https://perma.cc/N5TU-PCLN>] (last visited Nov. 16, 2020). Of course, advice may have been a secondary concern here. Washington might instead have focused on the possibility that friends or family members could loan you the money at less cost.

<sup>208</sup> For a discussion of the role of intermediaries, see BEN-SHAHAR & SCHNEIDER, *supra* note 31, at 190.

consumers may turn to before they make the relevant decisions, might then reinforce the usefulness of advice. For example, if such advice were included in mortgage documents, it might make its way onto Zillow.com. Once there, consumers are far more likely to read it.

Advice to seek advice also has a self-advertising feature. Suppose one person in one hundred reads any particular disclosure and pays attention to it. For many mandated disclosures, this might mean that one person in one hundred will benefit. But in the case of advice to seek advice, that one person may contact at least one other person to seek their advice. That act itself becomes a tool to make advice-seeking more common and to strengthen advice-seeking norms.

Regardless of whether consumers learn of the advice to seek advice directly or indirectly, it can do some good. Most obviously, if they read it, they might seek advice. And if they do, they will seek out people who have experience with the relevant product or other relevant knowledge.<sup>209</sup> Perhaps surprisingly, even short discussions with equally inexpert peers can improve decision-making by giving people more opportunities to process information and evaluate various arguments.<sup>210</sup>

#### B. Advice to Simulate Advice: WWJD

Policymakers could harness some of the power of advice simply by asking people to consider how another person might advise them. Simply asking “What would your spouse say about this?” or even “What would your best friend do?” alters the way people think about the decision at hand.<sup>211</sup> To take a particularly cute example, children are better at avoiding tempting distractions and show greater executive control when they think about what Batman would do,<sup>212</sup> or even when

<sup>209</sup> MacGeorge et al., *supra* note 136, at 223.

<sup>210</sup> Sandro Ambuehl, B. Douglas Bernheim, Fulya Ersoy & Donna Harris, *Peer Advice on Financial Decisions: A Case of the Blind Leading the Blind?* 3 (Nat'l Bureau Econ. Rsch., Working Paper No. W25034, 2018) (“After communicating with a peer, subjects make private decisions involving both the interest bearing [financial] assets they discussed, as well as assets they have not previously encountered. We find that peer-communication improves the quality of subjects’ decisions in both cases . . . .”); *id.* at 4 (finding that “people in the bottom half of the financial competence distribution experience greater improvements when interacting with others in the bottom half than when interacting with others in the top half”).

<sup>211</sup> Note, the benefits of simulating advice are not dependent on accurate simulations. The consumer may wrongly predict what their friend would say. Regardless, simulating advice changes the way people think about their problems, and this is the benefit that simulating advice provides. Tal Eyal, Mary Steffel & Nicolas Epley, *Perspective Mistaking: Accurately Understanding the Mind of Another Requires Getting Perspective, Not Taking Perspective*, 114 J. PERSONALITY & SOC. PSYCH. 547, 547 (2018) (noting that taking another’s perspective does not make one an accurate judge of their perspective).

<sup>212</sup> Rachel E. White, Emily O. Prager, Catherine Schaefer, Ethan Kross & Angela L. Duckworth, *The “Batman Effect”: Improving Perseverance in Young Children*, 88 CHILD DEV. 1563, 1564 (2017). The effect also works with other characters like Dora, Rapunzel, or Bob the Builder. *Id.* at 1566.

they just wear a Superman cape.<sup>213</sup> Taking the perspective of another person also improves reasoning skills by making people more objective,<sup>214</sup> more creative problem solvers,<sup>215</sup> and better able to exercise self-control.<sup>216</sup> Once you have a picture in your head of what your spouse might say, or what your best friend would do, it likely operates as a form of simulated advice. If someone believes that their best friend would not get the extended service warranty and would advise against it, they are probably less likely to get it themselves.<sup>217</sup> Similar insights may be behind the “What would Jesus do?” (WWJD) movement and its goal of improving moral reasoning and self-control.<sup>218</sup>

Priming people to think about what advice they might receive will also prime them to feel watched, which in turn increases the salience of social norms.<sup>219</sup> As applied to the choice of whether to see a doctor, asking “What would Jane do?” would likely amplify the effect of norms like “better safe than sorry.” For example, people might think that Jane would set aside her embarrassment at her potential medical condition and work through the annoyance of finding an in-network doctor. These thoughts could increase the pressure on the potential patient to comply with relevant norms, which would likely improve decision-making.<sup>220</sup>

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<sup>213</sup> *Id.* Rachel Karnoid, Lior Galili, Dafna Shtilerman, Reut Naim, Karin Stern, Hadar Manjoch & Rotem Silverman, *Why Superman Can Wait: Cognitive Self-Transformation in the Delay of Gratification Paradigm*, 40 J. CLINICAL CHILD & ADOLESCENT PSYCH. 307, 310 (2011) (finding that children delayed gratification more when wearing the cape).

<sup>214</sup> See Ethan Kross & Igor Grossmann, *Boosting Wisdom: Distance from the Self Enhances Wise Reasoning, Attitudes, and Behavior*, 141 J. EXPERIMENTAL PSYCH. 43, 45 (2012).

<sup>215</sup> Polman & Emich, *supra* note 14, at 494–95.

<sup>216</sup> White et al., *supra* note 212, at 1563.

<sup>217</sup> Tao Chen, Ajay Karla & Baohong Sun, *Why Do Consumers Buy Extended Service Contracts?*, 36 J. CONSUMER RSCH. 611, 611 (2009) (noting the extended warranties are of little value to consumers, but represent about 50% of Best Buy’s profit); THALER & SUNSTEIN, *supra* note 1, at 80–82 (using extended warranties as a quintessential example of a useless product that is only successful because of consumer biases).

<sup>218</sup> Karl Smallwood, *The Fascinating Story of How the “What Would Jesus Do?” Slogan Came About*, TODAY I FOUND OUT (June 6, 2014), <http://www.todayifoundout.com/index.php/2014/06/origin-jesus-slogan/> [<https://perma.cc/RZA4-SAKW>].

<sup>219</sup> Universities can increase handwashing by approximately 15% just by adding a cartoon picture of eyes above a sign that, in text, promotes hand washing. Stefan Pfattheicher, Christoph Strauch, Svenja Diefenbacher & Robert Schnuerch, *A Field Study on Watching Eyes and Hand Hygiene Compliance in a Public Restroom*, 48 J. APPLIED SOC. PSYCH. 188, 190 (2018). Political parties can increase turnout by about 1% by adding eyes to postcards that otherwise ask people to vote. Richard E. Matland & Gregg R. Murray, *I Only Have Eyes for You: Does Implicit Social Pressure Increase Voter Turnout?*, 37 POL. PSYCH. 533, 533–36 (2016) (noting mixed results overall for this strategy). More generally, watchful eyes tend to increase compliance with norms. Ryo Oda, Yuta Kato & Kai Hiraishi, *The Watching-Eye Effect on Prosocial Lying*, 13 EVOLUTIONARY PSYCH. 1, 1 (2015).

<sup>220</sup> Of course, in some social situations, the norms may promote poor decisions. If this is the case, then asking “What would Jane do?” will likely encourage worse decisions.

Simulating the act of *giving* advice will likely have some of the same benefits as simulating the act of *receiving* advice. If you want people to get a flu shot, you might ask them to ask themselves “Should I get a flu shot?” That might help. But you could also ask them: “Should *your friend* get the flu shot?” or “What would you advise *your friend* to do?”<sup>221</sup> As discussed above, being put into the role of advice giver carries a host of debiasing benefits.<sup>222</sup> Once people decide that their friend should get a flu shot, it will be more likely that they will follow their own advice.<sup>223</sup>

### C. Mandating Opportunities to Seek Advice

Certain financial products could require that consumers have the opportunity to seek advice before entering the transaction. Some laws already adopt this strategy.<sup>224</sup> Other areas of law embrace waiting periods or cooling off periods. Ten states mandate cooling off periods between payday loans.<sup>225</sup> Under these laws, borrowers who have just gotten out from under one payday loan must wait between 2 and 45 days to obtain another.<sup>226</sup> The shorter periods offer a chance to reflect; the longer periods force potential borrowers to figure out alternate ways of dealing with their monetary shortfall. Waiting periods and cooling off periods can also facilitate advice, and this is another reason to support them. For example, pawnshops might be required to undo the transaction if the customer returns the loaned money within some time limit. The idea here might be that, once the customer goes home and tells his spouse about the transaction, that spouse may advise (perhaps strongly) that he undo it. This is precisely what Washington State does in the context of payday loans. Borrowers have one day to undo the loan.<sup>227</sup> This type of cooling off period can facilitate reflection and also advice.

<sup>221</sup> Frederick Chen & Ryan Stevens, *Applying Lessons from Behavioral Economics to Increase Flu Vaccination Rates*, 32 HEALTH PROMOTION INT’L 1067, 1070 (2017) (suggesting that this could increase flu vaccination rates). Other researchers have suggested that people could improve their understanding of their own personality traits if they judged them while taking another’s perspective. Vazire & Carlson, *supra* note 55, at 107.

<sup>222</sup> See *supra* Part II.A.

<sup>223</sup> In this way, advice-giving may benefit both the advisee and the advisor.

<sup>224</sup> Many states consider when the pre-nup was presented to determine whether to enforce it. See, e.g., *In re Estate of Hollett*, 834 A.2d 348, 352 (N.H. 2003). This is relevant in part because courts want fiancés to have the opportunity to seek independent advice. *Id.*

<sup>225</sup> Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54,472, 54,478 (Nov. 17, 2017).

<sup>226</sup> Virginia has a 45 day cooling off period after an extended time of indebtedness. *Id.* at 54,485. Virginia also requires a 1 day cooling off period before getting a subsequent pay day loan. Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans, and Deposit Advance Products, CFPB No. 2016-CFPB-0025 (June 16, 2016). Illinois requires cooling off periods between payday loans of at least 7 days, depending on the circumstances. 815 ILL. COMP. STAT. 122/2-5 (2020).

<sup>227</sup> Payday Lending—Borrower Rights and Responsibilities, WASH. DEPT. OF FIN. INST. (Dec. 28, 2009) <https://dfi.wa.gov/documents/consumer/payday-brochure.pdf>



Even micro-waiting periods have the potential to assist borrowers. For example, payday loans might be required to insert a five-minute wait before beginning the paperwork, during which they must disclose that the relevant government entity recommends that they call a friend and seek advice. This micro-waiting period could have two effects. First, it creates a pause that makes it more likely that consumers will read or hear a relevant disclosure and actually think about it for a moment. Second, because seeking advice could be as easy and quick as a phone call or text, even a short pause could create sufficient space.

These micro-waiting periods would be particularly easy to implement in the increasingly common online sector of the small loan industry. Online lending emerged in the 2000s and is the “fastest growing component” of the small-dollar subprime market.<sup>228</sup> While physical store revenue has been declining, online revenue has been increasing, with \$11 billion in loan volume as of 2012.<sup>229</sup> In the process of applying online, it would be easy to mandate and monitor compliance with a micro-waiting period. The relevant sites could be required to show a screen with the standardized warnings along with advice to seek advice. That screen could also have a countdown to move on with the transaction, much like you can skip ads on YouTube, but only after a certain amount of time has passed.

The emerging market for app-based loans provides additional opportunities to implement creative micro-waiting periods. App-based loans provide unique opportunities because those apps could be integrated with other apps on a smartphone. The micro-waiting period could specifically recommend, or even open by default, a messaging or texting app. One might even imagine Facebook integrations where the app predicts the identity of your closest friend and suggests that you message them.

In some cases, firms might have sufficient control over the transaction that they can effectively minimize the opportunity or prevent the consumer from seeking advice.<sup>230</sup> In these circumstances, incentivizing or mandating advice might be more productive.

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[<https://perma.cc/WPG6-9P67>]; see also MASS. GEN. LAWS ch. 167E, § 7(d)(2) (2020) (“[A]n applicant for the [reverse mortgage] loan shall not be bound for 7 days after his acceptance, in writing, of the lender’s written commitment to make the loan.”).

<sup>228</sup> NUÑEZ ET AL., *supra* note 132, at 4.

<sup>229</sup> *Id.* Lenders may have shifted to online loans in part to avoid potential regulation of traditional payday loans.

<sup>230</sup> See Lauren E. Willis, *When Nudges Fail: Slippery Defaults*, 80 U. CHI. L. REV. 1155, 1174 (2013); Ryan Bubb & Richard H. Pildes, *How Behavioral Economics Trims Its Sails and Why*, 127 HARV. L. REV. 1593, 1638 (2014) (“Mandating new forms of disclosure is unlikely to significantly improve outcomes when . . . firms have strong incentives to undermine choice in response to the required disclosures.”); Jacob Hale Russell, *The Separation of Intelligence and Control: Retirement Savings and the Limits of Soft Paternalism*, 6 WM. & MARY BUS. L. REV. 35, 36 (2015) (noting that proponents of “nudges rarely consider the ability of third parties to counter-nudge or to weaken nudge outcomes”).

#### D. Incentivizing Advice

Just as governments use tax breaks, subsidies, and various penalties to shape behavior, they could also create incentives to promote advice-seeking.<sup>231</sup> In the financial context, one could imagine a required nominal charge on payday loans that is waived if you make a phone call while you wait. Some people may just pretend to call someone to ask about advice. So be it. But others might actually do so. A much stronger regulation might allow fee waivers only if the advisor signed the relevant loan contract.<sup>232</sup> Regardless, the nominal fee provides the borrower with an incentive to seek advice. Larger loans, like mortgages, might justify larger incentives and more stringent requirements for waiving the relevant fee.<sup>233</sup>

Similar incentives might work in the medical and educational contexts as well. If potential law students are overly optimistic about their future 1L performance and employment prospects, then incentivizing them to seek advice from current students or alum might be helpful. Elective medical procedures like Lasik, teeth whitening, and cosmetic surgery could include fees that are waived if you seek advice. This could help people better understand the everyday hedonic impact (or lack thereof) of those procedures.<sup>234</sup>

Incentivizing advice could be particularly useful for people who associate a stigma with advice-seeking. Some people want to ask for advice, but may fear that

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<sup>231</sup> Those incentives could be framed as avoiding losses or realizing gains. Because lenders might have the capacity to reframe any proposed governmental frame, this section will not make much of the potential differences between these frames.

<sup>232</sup> One could imagine that consumers would get annoyed every time they take out this payday loan, because they are never able to get someone else to sign it or to answer their phone at the particular time that they were seeking the loan. But that annoyance might make the government message—you should seek advice—all the more memorable even if it's not always achievable in practice.

<sup>233</sup> Incentives could also influence the lender's behavior. States that regulate lending could loosen those regulations if the lender promotes advice-seeking. For example, a city that requires a "Predatory Lender" warning sign might waive that requirement if the lender has certain procedures that promote advice-seeking. Christopher L. Peterson, *Warning: Predatory Lender—A Proposal for Candid Predatory Small Loan Ordinances*, 69 WASH. & LEE L. REV. 893, 893 (2012) (proposing a similar warning). Alternatively, lenders might be subject to different usury laws depending on their general advice-promoting policies or whether an advice-giver signed off on a particular loan. Of course, these could be personalized to apply differently to different lenders, different consumers, or different combinations of lender and consumer.

<sup>234</sup> Claire E. Ashton-James & Axel Chemke-Dreyfus, *Can Orthognathic Surgery Be Expected to Improve Patients' Psychological Well-Being? The Challenge of Hedonic Adaptation*, 127 EUR. J. ORAL SCI. 189, 190 (2019) ("[S]ystematic reviews conclude that the effects of elective cosmetic surgery are not enduring."); Kaoru Tounaka-Fujii, Kenya Yuki, Kazuno Negishi, Ikuko Toda, Takayuki Abe, Keisuke Kouyama & Kazuo Tsubota, *Effects of Laser in Situ Keratomileusis on Mental Health-Related Quality of Life*, 10 CLINICAL OPHTHALMOLOGY 1859, 1862 (2016) ("Surprisingly, no significant improvement was observed in [health-related quality of life] after 6 months of LASIK.").

there is some stigma attached to doing so.<sup>235</sup> Monetary incentives might help these people save face. They might be able to say “I’m getting \$10 for asking you this!” and this might help them avoid embarrassment and make them feel like savvy consumers. Stronger incentives could potentially overcome stronger resistance to advice-seeking. Even someone whose self-concept is rooted in their independence may seek advice if doing so produces a significant benefit.

### *E. Mandating Advice*

Although some welfarist policymakers might wish to mandate advice, there are several problems with such a proposal. Expert medical and legal advice leaves a paper trail. Peer advice does not.<sup>236</sup> Without an official means to record peer advice, mandating advice would be difficult. Perhaps all policymakers could really mandate is that people attest to the fact that advice was sought or received.<sup>237</sup> This is not completely toothless because people don’t like lying.<sup>238</sup> But there are reasons to question whether mandating advice will work.

Mandating advice also comes with increased paternalism and privacy concerns. Requiring advice is significantly more paternalistic than merely requiring a micro-waiting period. It interferes not just in people’s financial lives, but also their personal lives and self-concept. People may value the idea that they don’t have to rely on others. People may want to insulate their friends from worry, or to keep their situation a secret from others for more selfish reasons. This would be difficult to do if you had to seek advice about a reverse mortgage or a potential prostate cancer treatment.

These concerns are weighty, but not necessarily insurmountable.<sup>239</sup> The law does mandate advice, at least in some circumstances. Massachusetts requires mortgage counseling for those seeking to enter a reverse mortgage.<sup>240</sup> Some states require criminal defendants to have the advice of counsel before they plead guilty to a capital offense.<sup>241</sup> In some states, you cannot waive alimony in a prenup unless

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<sup>235</sup> Daena J. Goldsmith, *Soliciting Advice: The Role of Sequential Placement in Mitigating Face Threat*, 67 COMM’N MONOGRAPHS 1, 5 (2000).

<sup>236</sup> Of course, it would be possible to design a set of forms or other mechanisms to verify that peer advice was sought, given, or both.

<sup>237</sup> One could also mandate that the advice-giver sign the relevant contract or provide other documentation.

<sup>238</sup> Rachel Barkan, Shahar Ayal & Dan Ariely, *Ethical Dissonance, Justifications, and Moral Behavior*, 6 CURRENT OP. PSYCH. 157, 157 (2015) (describing the phenomenon of ethical dissonance).

<sup>239</sup> Robertson, *supra* note 5, at 690 (discussing mandatory second opinions, and finding evidence that they work).

<sup>240</sup> MASS. GEN. LAWS ch. 167E, § 7(e) (2020) (“A bank shall not make a reverse mortgage [until] the prospective borrower has completed a reverse mortgage counseling program.”).

<sup>241</sup> *See, e.g.*, CAL. PENAL CODE § 1018 (2020).

you were represented by counsel.<sup>242</sup> You cannot reaffirm debt that was discharged in bankruptcy without the approval of your attorney.<sup>243</sup> Although none of these laws implicate advice from friends or family, they nonetheless highlight the possibility that, in at least some situations, policymakers might overcome barriers to mandating advice.

#### *F. Promoting Conditions that Facilitate Advice*

Various laws could create circumstances or background conditions that make spontaneous advice-seeking more likely. Here, the positive potential of advice could be an additional reason to support a set of reforms that, on their face, have little to do with advice.

Ethan Leib has argued that the law should do more to support friendships. Because friends are a probable source of valuable advice, promoting friendships might also promote advice. He offers numerous ways for the law to foster stronger norms of friendships:<sup>244</sup>

We could offer tax breaks or deductions for “friendship expenditures”; we could allow “loss of society” damages to friends of those who die from tortious conduct; we could establish a “Friends Medical Leave Act” to allow friends to leave work to take care of one another during sickness; we could allow friends to sue on one another’s behalf and furnish them with standing; we could give prisoners rights to see their friends (as we do); we could presume to give friends the legal right to make medical decisions on our behalf (without a contract giving them that right); and we could establish legal rituals to solidify friendships just as we solemnize the status of marriage and citizenship—our other associative duties—through public oaths and legal documents.<sup>245</sup>

Some of his suggestions are more closely aligned with advice-seeking than others. For example, he argues that friends should have fiduciary duties toward one another, perhaps including a duty to keep certain information private.<sup>246</sup> This might provide a safer space for people to open up about their financial missteps and medical conditions.<sup>247</sup>

<sup>242</sup> See, e.g., CAL. FAM. CODE § 1612 (2020).

<sup>243</sup> 11 U.S.C. § 524(k)(5)(A).

<sup>244</sup> Leib, *supra* note 196, at 692 (discussing the effects of fiduciary duties on extralegal norms).

<sup>245</sup> *Id.* at 682–83 (footnotes omitted).

<sup>246</sup> *Id.* at 692–94.

<sup>247</sup> See also Lindsay F. Wiley, *Shame, Blame, and the Emerging Law of Obesity Control*, 47 U.C. DAVIS L. REV. 121, 186 (2013) (recommending privacy laws and confidentiality rules as one way to reduce stigma rooted in the revealing one’s BMI and other medical facts surrounding obesity); Jennifer A. Neuhouser, *Lives of Quiet Desperation: The*

Reducing the stigma and social discomfort about monetary discussions could also help promote financial advice-seeking. Many advocates have proposed mandatory disclosure of private salaries as a way to discourage and identify gender discrimination.<sup>248</sup> Doing so might affect the social norms surrounding salary privacy. Although salaries are only one part of a much larger set of money-related topics, they strongly implicate the associations between money and self-worth. To the extent that salary disclosure laws reduce the stigma of discussing salary, they might at least partially help to reduce the stigma of talking about money more generally. This in turn, could reduce the barriers to seeking advice on financial matters. Understanding this potential link between salary privacy and advice-seeking provides another potential reason to support salary disclosure regimes.

### G. Advice as Input

In the sections above, advice was the output that the policymaker sought to produce. This section shifts focus. It asks whether courts should take notice of advice as an input into determinations like undue influence or unconscionability, and whether legal directives might be sensitive to whether people have or could have received advice.

The law already recognizes that advice, or access to it, matters. Sometimes, the law only recognizes the impact of expert advice. For example, some states mandate that fiancés have a meaningful opportunity to seek counsel before signing a prenu.<sup>249</sup> Other states preclude certain contract terms if the parties were not represented by counsel.<sup>250</sup> The law also recognizes the power of non-expert advice, in at least a few places. Consider the doctrine of undue influence, which creates an affirmative defense to the enforceability of instruments that are grounded in consent, like contracts, deeds, and gifts.<sup>251</sup> This doctrine recognizes the power of non-expert advice in at least two ways.

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*Conflict Between Military Necessity and Confidentiality*, 44 CREIGHTON L. REV. 1003, 1037 (2011) (“Encouraging soldiers to seek help for psychological issues means the military must protect therapist-patient confidentiality as rigorously as that between a chaplain and a soldier or an attorney and a client.”).

<sup>248</sup> Marianne DelPo Kulow, *Beyond the Paycheck Fairness Act: Mandatory Wage Disclosure Laws—A Necessary Tool for Closing the Residual Gender Wage Gap*, 50 HARV. J. ON LEGIS. 385, 427 (2013); Sarah Lyons, *Why the Law Should Intervene to Disrupt Pay-Secrecy Norms: Analyzing the Lilly Ledbetter Fair Pay Act Through the Lens of Social Norms*, 46 COLUM. J.L. & SOC. PROBS. 361, 390–91 (2013); Deborah Thompson Eisenberg, *Money, Sex, and Sunshine: A Market-Based Approach to Pay Discrimination*, 43 ARIZ. ST. L.J. 951, 1020 (2011).

<sup>249</sup> See, e.g., CONN. GEN. STAT. § 46b–36g (a)(4) (2020).

<sup>250</sup> See, e.g., CAL. FAM. CODE § 1612(c) (2020).

<sup>251</sup> *Undue Influence*, BLACK’S LAW DICTIONARY (11th ed. 2019).

First, courts will look to whether the victim was isolated from friends and family.<sup>252</sup> This is part of a larger inquiry into whether one party was under the domination of the other.<sup>253</sup> Victims who are isolated are more susceptible to the subtle forms of coercion that undue influence seeks to police.<sup>254</sup> Victims who still maintain relationships with others, and can discuss the relevant contract or deed with those other people, are less likely to be susceptible to undue influence.<sup>255</sup> In a case that sought to set aside gifts to a cult, the First Circuit differentiated between two different gifts.<sup>256</sup> The court refused to set aside a \$1 million gift in part because the donor had sought advice from her husband before making it.<sup>257</sup> In contrast, the same court set aside a \$5 million gift in part because the church leader encouraged the victim to keep it a secret from her husband.<sup>258</sup>

Second, even if there is a clear element of domination in the relationship between the parties, some types of advice can negate an undue influence claim. Most of the relevant caselaw discusses advice from an independent attorney. So, for example, a presumption of undue influence might arise based on the dominant position that one person held over another, but receiving independent legal advice can “remove[] the cloud of undue influence.”<sup>259</sup> Although most cases deal with legal advice, they do not *require* that the advice comes from an attorney. Courts have held that independent advice from family members like sisters and mothers can remove the cloud of undue influence at least under some circumstances.<sup>260</sup>

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<sup>252</sup> See, e.g., *Mueller v. Wells*, 367 P.3d 580, 585 (Wash. 2016) (en banc) (discussing efforts to isolate victim from family and friends as relevant to whether presumption of undue influence arose).

<sup>253</sup> CAL. WELF. & INST. CODE § 15610.70(a) (2020).

<sup>254</sup> Mary Joy Quinn, *Undoing Undue Influence*, 24 GENERATIONS 65, 65 (2000) (noting that undue influence usually begins by isolating the victim from their family and friends); C. Peisah, S. Finkel, K. Shulman, P. Melding, J. Luxenberg, J. Heinik, R. Jacoby, B. Reisberg, G. Stoppe, A. Barker, H. Firmino & H. Bennett, *The Wills of Older People: Risk Factors for Undue Influence*, 21 INT’L PSYCHOGERIATRICS 7, 10 (2009) (noting that isolation is what allows subtle distortions in the truth to take hold).

<sup>255</sup> *In re Love*, 182 B.R. 161, 174 (Bankr. W.D. Ky. 1995) (“The final factor this Court will consider is an attempt by the spiritual leader to isolate the follower from his or her friends and family. . . . This factor additionally weighs heavily in support of a finding of undue influence, as the concern *and advice* of Plaintiff’s family and friends would have helped to somewhat diffuse the dominance and control Defendant exercised over Plaintiff.” (emphasis added)).

<sup>256</sup> *In re The Bible Speaks*, 869 F.2d 628, 642–45 (1st Cir. 1989).

<sup>257</sup> *Id.* at 643.

<sup>258</sup> *Id.* at 643–44.

<sup>259</sup> *Gaeth v. Newman*, 199 N.W.2d 396, 402 (Neb. 1972).

<sup>260</sup> *Weil v. Weil*, 236 P.2d 159, 169–70 (Cal. 1951) (overcoming a presumption of undue influence when signatory’s sister advised her and was with her when she signed the deed); see also *Barham v. Cooper*, No. 02A01-9608-CH-00200, 1997 WL 542922, at \*5 (Tenn. Ct. App. Sept. 5, 1997) (finding that advice from mother was not relevant because she had a conflict of interest); but see *Giacobbi v. Anselmi*, 87 A.2d 748, 756–57 (N.J. Super.

Other areas of law could also consider the impact of advice. The unconscionability doctrine generally requires an “absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.”<sup>261</sup> The inquiry into “meaningful choice” could productively include an inquiry into advice. Sometimes people who received advice about the contract will have a greater degree of choice. Recall that advisors generally come up with more creative alternatives and advice generally points people in positive directions. Of course, the particular facts drive decisions on unconscionability, and advice will not necessarily defeat an unconscionability claim. But the welfare-enhancing nature of peer advice suggests that courts should add advice to the list of potential important factors to consider in unconscionability claims. Similarly, courts could more explicitly consider advice when determining whether people entered prenuptial and postnuptial agreements voluntarily.<sup>262</sup> Advice is also relevant to whether differentials in bargaining power existed, which tends to heighten the burden faced by the person attempting to enforce the prenup or postnup.<sup>263</sup>

The above examples show how advice might be relevant as an input into an ex post determination made by a court. It could also be relevant, at least in a rough way, to ex ante regulation. For decisions where the probability of receiving advice is low—perhaps this is true for intensely personal decisions or those relating to stigmatized actions—the law could require greater consumer protections. These could include longer cooling off periods, longer waiting periods, restrictions on particular contract terms, etc. For decisions where advice-seeking is more common, lesser protections might be sufficient. The next Part will discuss more-nuanced ways to incorporate advice into ex ante regulations. It does so by discussing the futuristic potential for personalizing law.

#### IV. HYBRID ADVICE: COMBINING PEER ADVICE AND AI ADVICE

A growing literature explores the impact of big data and AI for legal regulation. This Part highlights one facet of this body of scholarship: the possibility that AI will

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Ct. Ch. Div. 1952) (rejecting the idea that a realtor’s advice was sufficient in part because he was not a lawyer).

<sup>261</sup> 8 WILLISTON ON CONTRACTS § 18:9 (4th ed. 2020).

<sup>262</sup> *See, e.g., Owen v. Owen*, 759 S.E.2d 468, 472 (W. Va. 2014) (“The validity of a prenuptial agreement is dependent upon its valid procurement, which requires its having been executed voluntarily, with knowledge of its content and legal effect, under circumstances free of fraud, duress, or misrepresentation; however, although advice of independent counsel at the time parties enter into a prenuptial agreement helps demonstrate that there has been no fraud, duress or misrepresentation, and that the agreement was entered into knowledgeably and voluntarily, such independent advice of counsel is not a prerequisite to enforceability . . .”).

<sup>263</sup> *See, e.g., In re Estate of Hollett*, 834 A.2d 348, 353 (N.H. 2003) (“Prenuptial agreements that result from such a vast disparity in bargaining power must meet a high standard of procedural fairness.”).

become sophisticated enough to provide accurate personalized advice. Even in a world where this “AI advice” is a reality, peer advice maintains several advantages.<sup>264</sup> Accordingly, this Part illustrates several hybrid approaches that take advantage of the unique benefits of both AI advice and peer advice.

### A. Imagining Personalized Law and AI Advice

Over the last decade, there has been an explosion of legal scholarship exploring the possibility of personalized law.<sup>265</sup> This literature generally takes an optimistic view of technological progress and envisions a world in which AI sorts through massive amounts of data about each and every person to generate legal directives that are personalized for each person and every situation.<sup>266</sup> This marriage of big data and AI is a potent combination. Anthony J. Casey and Anthony Niblett coined the term “micro-directive” to describe the potential ability of a future AI to generate different rules for different people, all in real time.<sup>267</sup> For example, everyone’s now-always-connected car might receive speed limits that apply only to the particular driver at the particular time.<sup>268</sup> That speed limit could change if the weather changes, or if the AI detects erratic driving, or even if the AI learns that you forgot to drink coffee that morning.<sup>269</sup> Mandatory disclosures could also be personalized in useful ways. For example, warnings could be tailored to each person’s literacy and numeracy, and medical disclosures could highlight the side effects that are relevant

<sup>264</sup> See generally Williams, *supra* note 20.

<sup>265</sup> Cass R. Sunstein, *Deciding by Default*, 162 U. PA. L. REV. 1, 10 (2013) (“[P]ersonalized default rules are the wave of the future . . . .”); Ariel Porat & Lior Jacob Strahilevitz, *Personalizing Default Rules and Disclosure with Big Data*, 112 MICH. L. REV. 1417, 1418–19 (2014) (personalized default rules and disclosures); Omri Ben-Shahar & Ariel Porat, *Personalizing Negligence Law*, 91 N.Y.U. L. REV. 627, 628, 636–46 (2016) (negligence standards); Casey & Niblett, *supra* note 19, at 1412 (speed limits and medical malpractice rules); Philipp Hacker, *Personalizing EU Private Law: From Disclosures to Nudges and Mandates*, 25 EUR. REV. PRIV. L. 651, 669 (2017) (disclosures); Omri Ben-Shahar & Ariel Porat, *Personalizing Mandatory Rules in Contract Law*, 86 U. CHI. L. REV. 255, 255 (2019) (mandatory contract rules); Busch, *supra* note 19, at 309–13 (disclosures and privacy defaults); Adi Libson & Gideon Parchomovsky, *Toward the Personalization of Copyright Law*, 86 U. CHI. L. REV. 527, 528 (2019) (copyright penalties); Anthony J. Casey & Anthony Niblett, *A Framework for the New Personalization of Law*, 86 U. CHI. L. REV. 333, 338, 347 (2019) (smart traffic lights); Matthew B. Kugler & Lior Jacob Strahilevitz, *Assessing the Empirical Upside of Personalized Criminal Procedure*, 86 U. CHI. L. REV. 489, 490–91 (2019) (Miranda warnings); see also Andrew Verstein, *Privatizing Personalized Law*, 86 U. CHI. L. REV. 551, 558 (2019) (“[T]rends in data gathering and analysis suggest that well-resourced lawmakers may soon have the technical ability to link directives to highly particular individual traits.”).

<sup>266</sup> See *supra* note 19.

<sup>267</sup> Casey & Niblett, *supra* note 19, at 1404.

<sup>268</sup> See *id.*

<sup>269</sup> See *id.*



to specific patients.<sup>270</sup> People with certain personality traits might be assigned different mandatory contract terms to reflect their differential susceptibility to aggressive sales tactics.<sup>271</sup> Nudges and default rules could also be personalized. In an only-partially-tongue-and-cheek example, Ariel Porat and Lior Strahilevitz suggest that if AI combs through data and finds that most heterosexual vegan men with Ph.D.s in philosophy take their wife's last name, then this could be the default legal regime that governs those people.<sup>272</sup>

This future may be closer than we think. AI can detect skin cancers as well as dermatologists.<sup>273</sup> AI can predict divorce as well as trained therapists, and the AI can do it based solely on subtle inflections of the spouses' voices.<sup>274</sup> In many other areas AI can do things humans never dreamed possible. AI can tell your sex and age just by analyzing the electrical patterns in your heart.<sup>275</sup> A Google AI can look at just your retina and determine your sex, whether you smoke, and your risk of a heart attack.<sup>276</sup> AI can already beat the best human masters in the world at games like chess, Go, and Jeopardy.<sup>277</sup> Given this impressive list of accomplishments, it is not unreasonable to predict that AI will one day be a powerful tool for policymakers to tap into.

In a companion piece, I explored personalized advice as a novel addition to the landscape of personalized law.<sup>278</sup> An AI may know better than you the probability that you will miss a credit card payment. Accordingly, it might advise against credit cards with high late payment penalties. Scraping cell phone and social media data will allow that AI to predict even your basic personality traits,<sup>279</sup> which themselves

<sup>270</sup> See Porat & Strahilevitz, *supra* note 265, at 1444–45.

<sup>271</sup> See *id.* at 1471.

<sup>272</sup> *Id.* at 1465.

<sup>273</sup> Andre Esteva, Brett Kuprel, Roberto A. Novoa, Justin Ko, Susan M. Swetter, Helen M. Blau & Sebastian Thrun, *Dermatologist-Level Classification of Skin Cancer with Deep Neural Networks*, 542 NATURE 115, 115 (2017).

<sup>274</sup> Md Nasir, Brian Robert Baucom, Panayiotis Georgious & Shrikanth Narayanan, *Predicting Couple Therapy Outcomes Based on Speech Acoustic Features*, 12 PLOS ONE e0185123, 1, 17 (2017).

<sup>275</sup> Zachi I. Attia, Paul A. Friedman, Peter A. Noseworthy, Francisco Lopez-Jimenez, Dorothy J. Ladewig, Gaurav Satam, Patricia A. Pellikka, Thomas M. Munger, Samuel J. Asirvatham, Christopher G. Scott, Ricket E. Carter & Suraj Kapa, *Age and Sex Estimation Using Artificial Intelligence from Standard 12-Lead ECGs*, 12 CIRCULATION: ARRHYTHMIA & ELECTROPHYSIOLOGY 1, 1 (2019).

<sup>276</sup> Anthony Lydgate, *To an AI, Every Eye Tells a Story*, WIRED (Sept. 18, 2018), <https://www.wired.com/story/wired25-sundar-pichai-r-kim-artificial-intelligence-vision/> [<https://perma.cc/U2R2-48XV>].

<sup>277</sup> Casey & Niblett, *supra* note 19, at 1424.

<sup>278</sup> See generally Williams, *supra* note 20.

<sup>279</sup> Gokul Chittaranjan, Jan Bloom & Daniel Gatica-Perez, *Mining Large-Scale Smartphone Data for Personality Studies*, 17 PERS. & UBIQUITOUS COMPUTING (2011) (prepublication manuscript); see also Jacopo Staiano, Fabio Pianesi, Bruno Lepri, Nicu Sebe, Nadav Aharoni & Alex Pentland, *Friends Don't Lie: Inferring Personality Traits from*

correlate with a number of outcomes that we have trouble predicting for ourselves. Taking an optimistic view of technological progress, AI will someday generate more accurate advice than even one's friends and family could. I called this AI advice, and argued that AI advice has significant advantages over disclosures or default rules.<sup>280</sup>

This Part maintains the optimistic view on technological progress that is common in the literature on personalized law. The reader may then wonder: What good is peer advice if, as assumed, accurate personalized AI advice is available? The next section answers that question.

### *B. Enduring Benefits of Peer Advice*

Even in a future of accurate, personalized, AI advice, peer advice is a resource that policymakers should tap into. Sometimes the identity of the messenger yields important benefits that an AI may not be able to capture. Further, peer advice avoids concerns about overly-centralized influence and governmental influence.

The messenger matters. The allure of AI advice is that it will have exceedingly accurate content. The advice will recommend the right path.<sup>281</sup> But regardless of the accuracy of its content, advice can be packaged in ways that make people more or less likely to heed it. Peer advice has an advantage here. People are more likely to listen to advice or credit factual assertions when they trust the speaker.<sup>282</sup> For high stake decisions, trust is more a function of emotional connection, and less about expertise.<sup>283</sup> Even holding trust constant, emotional connections allow others to influence us. Friends and family can influence us in ways that strangers cannot, regardless of how much we believe the stranger is an expert in whatever field is most relevant to the decision at hand. I may ignore a trusted expert who insists that I put more money into my retirement account, but I may not feel as free to ignore my spouse or parents when they make similar demands. Until we develop emotional attachments to AI, such that we feel bad for disappointing it and want to make it

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*Social Network Structure, Proceedings of the 2012 ACM Conference on Ubiquitous Computing—UbiComp* (Sept. 5–8, 2013), [https://dspace.mit.edu/bitstream/handle/1721.1/92394/Pentland\\_Friends%20don%27t.pdf?sequence=1&isAllowed=y](https://dspace.mit.edu/bitstream/handle/1721.1/92394/Pentland_Friends%20don%27t.pdf?sequence=1&isAllowed=y) [<https://perma.cc/9GK5-V-RXUB>] (internal citation omitted).

<sup>280</sup> See generally Williams, *supra* note 20.

<sup>281</sup> Of course, this assumes some consensus about which decisions are better. See *supra* note 187 and accompanying text. An AI could be limited to offering advice only in areas where we have such a consensus. See John Beshears, James J. Choi, David Laibson & Brigitte C. Madrian, *How Are Preferences Revealed?*, 92 J. PUB. ECON. 1787, 1793 (2008) (“Governments could play a constructive advisory role if (1) their advice is only given in circumstances when the many different measures of normative preferences discussed above tend to coincide, and (2) their advice is offered without any obligation to obey . . .”).

<sup>282</sup> Van Swol et al., *supra* note 136, at 28.

<sup>283</sup> See Mellina da Silva Terres, Cristiane Pizzutti dos Santos & Kenny Basso, *Antecedents of the Client's Trust in Low Versus High-Consequence Decisions*, 29 J. SERVS. MKTG. 26, 34 (2015).

proud, it will not be able to fully capture the packaging benefits of peer advice. Further, the emotional supports that friends and family provide may not translate well into the context of AI advice. Friends commonly add encouragements and affirmations to advice to make it more palatable. A friend who says “You can do it!” is showing their support. If an AI said this, it might feel empty or condescending. A friend might point out all the good things you do for others in order to bolster your self-esteem, enhance your self-control, and reduce your potential defensiveness.<sup>284</sup> A friend who notices all of those things you did is attentive and caring. An AI that notices them is creepy and invasive.<sup>285</sup> We want to “be seen” by our friends but perhaps not by an AI.

This leads to a tradeoff. To simplify greatly, one might have to choose between incredibly accurate advice that only some people will listen to and decent (but not optimal) advice that most people will listen to. There is no way to make this choice in the abstract. But there are two preliminary reasons to consider peer advice rather than relying solely on AI advice. First, peer advice is decentralized. Second, peer advice is generated without government influence.

Centralized influence is potentially dangerous. If one AI or one set of algorithms determines the advice that people receive, then sophisticated parties might attempt to influence that advice. These concerns exist both in and outside of the government context. In the corporate context, we might fear that Amazon or Google might steer people to its own products rather than the products of its rivals. In the government context, we might fear something akin to agency capture. Sophisticated interests might try to influence the advice that the AI generates either by altering some of its basic programming or influencing the inputs that it uses to generate advice.

Decentralized advice largely avoids these dangers. If Google or Amazon want to influence peer advice about their products—namely, word of mouth endorsements or recommendations<sup>286</sup>—they cannot just tweak their own recommendation algorithms. They would have to convince massive numbers of consumers to spread a particular recommendation to their friends and family. This is not easy. It is also not necessarily objectionable. If Amazon convinces people to sing the praises of their Fire Tablet, it most likely does so by making people who own those tablets very happy. That is, by creating a good product that gets people excited. This is a good thing. Decentralized advice, therefore, makes manipulation harder and channels attempted influence into productive pursuits.<sup>287</sup>

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<sup>284</sup> Cohen & Sherman, *supra* note 162, at 339–40.

<sup>285</sup> See Alexander Bleier & Maik Eisenbeiss, *The Importance of Trust for Personalized Online Advertising*, 91 J. RETAILING 390, 395, 402–03 (2015) (finding that consumers embrace ads with personalized content when they originate from a company they trust, but respond negatively to similarly personalized ads from companies that they do not trust).

<sup>286</sup> For a discussion of the spread of information through the word of mouth, see generally, JONAH BERGER, *CONTAGIOUS: WHY THINGS CATCH ON* (2013).

<sup>287</sup> Of course, manipulation is still possible. For example, Amazon may give free products to the first 1,000 people who give those products a 5-star rating.

Regardless of whether advice is more or less centralized, some may object to governmental attempts to influence choice. For example, they may object to policies that interfere with the market regardless of whether they are pursued by cities, states, or the federal government. This objection does not apply to peer advice. No government body can control the content or packaging of peer advice. Of course, the government can try to influence peer advice. Local governments may conduct information campaigns encouraging childhood vaccination. But influencing public opinion is tricky. Again, the decentralized aspects of peer advice make it difficult for any entity to control the content.

The discussion above suggests that peer advice maintains some advantages over AI advice. This Part now turns to how AI advice and peer advice could productively coexist.

### *C. Two Simple Integrations*

#### *1. Either/Or*

At the most basic level, an AI could determine when to rely on AI advice, and when to facilitate peer advice. Some people may be particularly unlikely to follow AI advice, or particularly in need of the unique emotional support that peer advice can offer. Similarly, in some situations social support may be more important than accuracy. These dispositional and situational factors interact in complex ways. But an AI sophisticated enough to offer accurate personalized advice may also be sophisticated enough to predict when natural advisors might have more impact. One could imagine the AI running countless experiments and testing which retirement-savings-oriented interventions lead people to save most. It might learn that, for some subset of the population,<sup>288</sup> advising people to seek advice from a friend works better than providing specific personalized advice, and perhaps even works better than the combination of the two. Of course, more customizations are possible. The AI may mine your email, Facebook profile, and location data and conclude that you have no close friends. If so, advice to seek advice may not be helpful. In contrast, if the AI predicts that you have numerous friends who have experience with the relevant decision, advice to seek advice is likely to be quite useful.

#### *2. Further Personalization*

In addition to broadly deciding when to use peer advice and when to use AI advice, an AI could customize each of the various ways of promoting peer advice. For example, asking “What would your spouse say about this?” is not useful if you

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<sup>288</sup> For research attempting to identify subgroups more or less likely to take advice, see Byrne et al., *supra* note 176, at 409 (finding that social ostracism makes people devalue advice from others, but overvalue objective computer generated advice); see See et al., *supra* note 176, at 272 (finding “a negative relationship between power and advice taking” caused by power’s effect on increasing one’s confidence); Kausel et al., *supra* note 176, at 33 (finding that narcissism reduces advice-taking).

are not married, but could be very useful if you are. Asking “What would your friends recommend?” may produce different results depending on who your friends are. Sometimes it might be better to ask “What advice would you give your friends, if they were faced with this decision?” A sophisticated AI may someday be able to predict which types of interventions lead to better decisions.

An AI could also personalize who receives incentives to seek advice and what those incentives are. For some people, paying a no-advice penalty may be motivating; for others, an advice-bonus might work better.<sup>289</sup> For still others, non-monetary incentives might work best.<sup>290</sup> For example, Jim might be offered a coupon for a beer at his favorite bar if he seeks advice. This might be especially motivating for Jim, and it might also indirectly harness some power of social connections. When Jim redeems his coupon, he may well tell people that he got it by asking for advice. Here, again, we see the possibility to design systems that are likely to be self-advertising.

Personalizing mandates is also promising because it reduces the strength of various objections to them. Mandating opportunities to seek advice imposes small delay costs. Mandating advice itself imposes large privacy costs. Personalization could greatly reduce the number of people subjected to these mandates. The more that these mandates are used only for people and situations where less invasive regulations either have failed or would fail, the more likely that they offer a defensible balance of welfare and autonomy.

Finally, personalization can affect when advice is used as an input to law. When judges take access to advice into account in undue influence claims, they do so in the context of an ex post trial with discovery and witnesses. This allows judges to make an informed judgment about the nature and degree of advice that a person received. Personalization offers the potential to apply these nuanced judgments to ex ante regulation. These personalizations could, for example, apply to a common feature of consumer finance law: cooling off periods.<sup>291</sup> In their non-personalized form, all people might have to wait ten days before obtaining a second payday loan, or they might have three days to cancel a contract formed during an encounter with a door-to-door salesman.<sup>292</sup> In their personalized form, each person might have different cooling off periods for different products, and those might even change depending on the other features of the decision environment. For example, cooling off periods might be longer for people with smaller or less tight-knit social networks. One could even imagine different rules depending on whether you have sought

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<sup>289</sup> For a general discussion of loss aversion, see Jeffrey J. Rachlinski & Andrew J. Wistrich, *Gains, Losses, and Judges: Framing and the Judiciary*, 94 NOTRE DAME L. REV. 521, 524–25 (2018).

<sup>290</sup> For a discussion of monetary versus non-monetary incentives, see Uri Gneezy, Stephan Meier & Pedro Rey-Biel, *When and Why Incentives (Don't) Work to Modify Behavior*, 25 J. ECON. PERSP. 191 (2011).

<sup>291</sup> For a discussion of cooling off periods, see Jeff Sovern, *Written Notice of Cooling-Off Periods: A Forty-Year Natural Experiment in Illusory Consumer Protection and the Relative Effectiveness of Oral and Written Disclosures*, 75 U. PITT. L. REV. 333, 337 (2014).

<sup>292</sup> See *id.* at 334–36.

advice that big data could capture and verify. People who solicited advice on Facebook about payday loans, for example, might have shorter cooling off periods. Payday lenders could then offer those people cash more quickly or at a reduced rate to account for the lesser burden they face when loaning to those customers.

#### *D. Two Complex Integrations*

In addition to the integrations described above, there are many more nuanced combinations. For the sake of illustration, this section will discuss two of the near-infinite possibilities. First, an AI could influence the content of peer advice by steering you to particular advisors. Second, an AI could try to launder its content by speaking through a peer advisor.

##### *1. Peer Advice from AI-Selected Advisors*

For several of the strategies outlined in the last Part, it would be theoretically possible to select a particular person to act as an advisor. Instead of generically advising you to seek advice from “friends or family”<sup>293</sup> an AI might advise you to seek advice from “your friend Jane.” Similarly, an AI might advise you to simulate advice from a particular person, provide incentives to seek advice from particular people, or mandate that you receive advice from particular people. For example, an AI might select advisors with particular experience. Alternatively, an AI might mandate that you seek advice from people with similar personality traits and preferences to you. An AI could strategically select the source of simulated advice as well. We might predict that asking people, “What would Satan do?” might lead them down a different path than asking them, “What would Jesus do?” Similarly, asking them, “What would Jane do?” might lead them to different results than asking them, “What would Stan do?” If Jane is especially conscientious and risk averse, then asking people to simulate her advice will probably result in more conscientious and less risky choices. If Stan has a higher risk tolerance, then asking what he would do might lead people toward riskier choices.

These strategic selections create two main concerns. First, this practice might create externalities by burdening certain people. Just because Jane gives good advice does not necessarily mean we should be asking her to field 100 texts a day asking for that advice. Second, privacy concerns emerge. Jane may not want the AI advising others to “Ask Jane, because she lost her house by accidentally signing an adjustable rate mortgage.” Even if the AI does not provide this reason or explanation of why it selected Jane, people might eventually pick up on the AI’s pattern of advising people

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<sup>293</sup> This is already a form of strategic selection because it points you to a set of people who are likely to want to give good advice. But the possibility of strategic selection only really blossoms with an AI that knows enough about your friends, family, and other contacts that it can further customize the advisor.

to seek advice from people with relevant experience. So just saying “Ask Stan” in the context of vasectomies might tip people off that Stan got one recently.<sup>294</sup>

These privacy concerns do not apply to all contexts. Implying that someone got a vasectomy may be far more invasive than implying that they spent a lot of time thinking about how to diversify their retirement funds. Similarly, implying that Stan is great at understanding probability and risk is hardly an offensive invasion of his privacy. Policymakers or the AI itself can distinguish between instances where privacy concerns are relatively high and those where privacy concerns are lower.

Further, neither privacy nor externality concerns apply as strongly to *simulated* advice. Suppose an AI asks you to “Imagine what Jane would say about this.” It is unlikely that this would reveal any private information about Jane. It would be hard to infer that Jane was selected because she had some particular experience in the past. If the advisee does not know that Jane had the relevant experience, it will not affect the simulated advice, and hence would be irrelevant to the AI’s choice.<sup>295</sup> Selecting Jane as the subject of simulated advice is also less likely to burden Jane. Of course, it is possible that people will follow-up their imagined advice with an actual phone call to Jane to seek her actual advice. But given how much even small transaction costs affect behavior, this seems unlikely. It is also possible that people will come to resent Jane, like they might resent a teacher’s pet. But again, this seems speculative.

Regardless, both privacy concerns and externalities can be mitigated by giving people some measure of control over how the AI operates. Some people may not want others to know that they lost their house by signing a mortgage agreement with hidden terms, but others might want the chance to save others from that fate. Accordingly, there could be some system for people to set customized limits around the AI’s use of them as advisors. Personalization can also mitigate externalities, and in the same way. We could allow people to add or remove themselves from the list of persons that the AI could recommend as an advisor, or set other customized limits.

## 2. *AI-Influenced Peer Advice*

The previous subsections addressed the demand side for advice. AI advice could also seek to alter supply. Imagine an AI issuing you some piece of AI advice

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<sup>294</sup> A third concern also exists. Strategically selecting advisors centralizes control over advice, at least to some degree. For those who objected to AI advice on centralization grounds, strategic selection may be objectionable as well. This objection is weak. The weight of this concern is proportional to how much control the government has over the ultimate advice that people receive. If the benefits of packaging only occur when it selects a friend or family member, then the government will be quite constrained in its ability to control the content of the message. This is especially true today, when friendship networks are much smaller than they were in the past, and much more homogeneous.

<sup>295</sup> It is possible that this will create some privacy concerns because the AI might recommend people with relevant experience in the hopes that the target knows about this experience and can incorporate it into their simulated advice. If people predict that the AI does this, then they may again infer experience from recommendations.

*and* simultaneously informing a friend or family member that you have received this advice. This might trigger two effects. First, the friend or family member might think that the advice is sound. Second, they might call you to tell you that. An example may help. An AI provides you with personalized advice to contribute the maximum amount to your retirement account, or to get a flu shot, or to avoid adjustable rate mortgages. It also notifies your mother that it gave you this advice. What might your mom do? She might call you to make sure you follow the advice. Of course, she might disagree with the advice. This is not necessarily bad. It presents a check on centralized government influence. Regardless, it stimulates thought and discussion about the issue, which themselves can lead to better decision-making.

Looking at the above example from a different angle, the AI could launder its advice. That is, the AI could send messages that try to convince your mother to give you advice that matches what the AI would have recommended. The ultimate goal would be to have the AI's advice content get delivered through her. Here, unlike the discussion above, the AI is not only trying to trigger advice, but also trying to exercise direct influence over its content. The first target of behavioral change is your mother. The AI would test various ways of convincing her that it is offering good advice, and convincing her to pass along that advice to you. The second target would be you, responding to the advice she provided.

Of course, these hybrid systems lead to several objections. Privacy and externality concerns are particularly powerful. It may be hard to justify both revealing personal information about you to your friends and inducing them to worry about you just to improve your ultimate decision. But an opt-in regime might be defensible. People could sign up to participate in this type of system, as the advisee, advisor, or both. It's not hard to believe that at least some people would opt in. Some spouses share their real-time cell phone location information with one another, others don't. Some spouses share all of their passwords, others don't. People who might want more advice, but know that they will often fail to seek it because of time constraints or embarrassment, might well precommit to the laundered advice described in this subsection, at least in some decision domains.

### *E. Summary*

Comparing AI advice to everyday peer advice reveals new advantages of the latter. Not only is advice-giving a powerful debiasing tool, but everyday advisors are likely to package advice in ways that make advisees more likely to hear and heed it. Even in a futuristic world with accurate AI advice, peer advice is a useful resource for policymakers to tap into, and AI increases the number of options for doing so.

## V. CONCLUSION

This Article has sought to resurrect an ancient technology for improving the welfare of others: advice from friends and family. This longstanding and simple idea now has a burgeoning psychological literature to support it. Advice-giving promises to be one of the most powerful debiasing strategies ever discovered. Advisors



routinely offer advice that is unaffected by the fundamental attribution error, confirmation bias, omission bias, betrayal aversion, loss aversion, probability neglect, and hyperbolic discounting. That is, people who routinely succumb to biases when making decisions for themselves think far more clearly when generating advice for others. Advisors also find more creative solutions and see the forest rather than the trees. These newly-confirmed benefits suggest that peer advice could be a powerful resource for improving decision-making. In a world with frayed social connections and increasingly small friend networks, the benefits of advice are harder for many people to capture. Accordingly, policymakers should seriously consider whether and how to promote advice-seeking and advice-giving. They could do so with softer and harder forms of intervention—everything from merely advising people to seek advice to mandating that people seek it. The prospect of personalizing law in general, and personalizing advice in particular through big data and AI, offers the possibility of tailoring these interventions to account for each individual's personality type, decision environment, and the unique resources that their particular friend network offers. These personalizations mitigate various objections to harder forms of intervention, and make softer ones more effective. Until this level of personalization is possible, and even after it is, policymakers can do a great deal of good by simply promoting everyday advice from friends and family. Sometimes, the old ways are the best ways, or at the very least, the old ways continue to offer unique opportunities that should be embraced rather than squandered.