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Law School as a Consumer Product: Beat ‘em or Join ‘em?

By Debra Moss Vollweiler*

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I. Introduction

With rising costs, pressure on performance metrics, and competitive high-profile rankings, law schools are more than ever before being judged on a consumer satisfaction basis by both students and the public. While this perception has been growing over the past two decades, it has reached a crisis point in legal education.¹ Courts have been more readily viewing the

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1. See Robert M. Lloyd, *Consumerism in Legal Education*, 45 J. LEGAL EDUC. 551 (1995).

policies and practices of educational institutions as that of a customer-provider relationship and seeking ways to enforce solutions to the problems they see regarding the product sold.² The growing trend of treating education as a consumer product that is sold to students has forced courts to consider contract claims by students and has shaped the policies of educational institutions nationwide.³ The connection between consumerism and higher education scrutiny has been explored for quite some time.⁴ Some have theorized that law schools are leading the way in being scrutinized from this perspective and that universities as a whole can learn from their experiences.⁵

When students have their choice of educational institutions, they may act like consumers and choose to spend their money based on metrics that satisfy them as buyers. This consumer mindset does not only impact admissions, but also can affect the retention of students.⁶ The loss of students who transfer out can take a serious toll on a law school, including potential detriments to bar passage, productive classrooms, the loss of future high performing alumni, and the cost of replacing tuition generation.⁷ Schools are thus currently pressured to address the consumer issue.

Many of the conflicts that arise between students, as consumers, and their institutions are not necessarily based in the substance of rules. Instead, much of the complaints stem from the institutions' transparency and communication about various aspects of the educational experience, from the classroom to students' prospects on the job market. As such, institutions should consider the student perspective in formulating how they present their program of education and the various aspects within it.

While others have questioned outright whether college

2. Jordan J. Titus, *Pedagogy on Trial: When Academic Freedom and Education Consumerism Collide*, 38 J.C. & U.L. 107, 109 (2011).

3. *Id.* at 152.

4. See John L. Lahey & Janice C. Griffith, *Recent Trends in Higher Education: Accountability, Efficiency, Technology, and Governance*, 52 J. LEGAL EDUC. 528 (2002).

5. *Id.* at 530.

6. See generally Jeffrey L. Rensberger, *Tragedy of the Student Commons: Law Student Transfers and Legal Education*, 60 J. LEGAL EDUC. 616 (2011).

7. See *id.*

students are consumers,⁸ this article will not debate whether law students treat their institutions with a consumer mindset. It presumes they do and instead seeks to solve the problem for institutions. Part II of this article will summarize how this mindset arose in education—specifically how it arose in legal education—and will examine previous conflicts between students and institutions as a result. Part III will examine different areas of law school operations where traditional academic mindsets and student-consumer mindsets may clash, and offers solutions and strategies as to where and how the consumer pressure should be embraced to make institutional change, and where it should be resisted to ensure the consumer pressure does not result in changes that are not in students' best long-term interests. Part IV offers some conclusions on the approach.

II. Legal Education as a Consumer Product: How Did It Get There?

A. General Consumerism by Students

To determine how legal education became a consumer product, the idea of a consumer product must first be defined. Consumerism can mean different things in different contexts, but in relation to higher education, being a consumer “implies that students will want to see obvious, tangible benefits from their studies, whether in terms of an inherently-valuable qualification, or as route to a particular form of employment.”⁹ Students who are consumers want to put their efforts into aspects of their education that will return tangible results in the form of grades or jobs, and they are ready to challenge obstacles to that path.¹⁰

The idea that students are paying customers and that they will pursue remedies if their schools have not provided the

8. See Maura Dundon, *Students or Consumers? For-Profit Colleges and the Practical and Theoretical Role of Consumer Protection*, 9 HARV. L. & POL'Y REV. 375 (2015).

9. Timothy S. Kaye et al., *Criticizing the Image of the Student as Consumer: Examining Legal Trends and Administrative Responses in the US and UK*, 18 EDUC. & L. 1, 3 (2006).

10. *Id.* at 3–4.

appropriate value for money has been established for some time now.¹¹ In fact, education has always been something that money could buy, thus being “commodified” in long standing modern history. However, recent education trends and pressures have added to, and further shaped, this paradigm. Fees and costs have increased to the point where students, who are investing so much more, view the Dean as “the boss” of the law school for which they are paying.¹² Additional factors adding to this attitude include students’ ability to communicate more easily with more people in the law school and other cultural changes that make Deans, and other higher-level administrators, more accessible to students.¹³ Universities contribute to the idea that a student experience is something for which a customer should pay, rather than selling the idea “that higher education is about knowledge, growth, and development....”¹⁴ These universities use many tactics to compete effectively in the current higher education marketplace, such as the use of extensive marketing, outreach, and the leveraging of ranks.

There is no single transformative event responsible for the conversion of legal education into an institution with a consumer driven mindset.¹⁵ Some law faculty tend to blame the undergraduate institutions that their students come from for their own dissatisfaction on any issues they have with their current student body.¹⁶ Others attribute the roots of the student-consumer movement to the post-World War II GI Bill,¹⁷ which resulted in students being so career-oriented, without time to

11. *Id.* at 4.

12. Kevin R. Johnson, *The Forgotten Constituency? Law School Deans and Students*, 42 U. TOL. L. REV. 637, 641–42 (2011).

13. *Id.* at 642. See Frederic White, *The Trouble with Email: Suspect Every Negative Declaration*, 37 U. TOL. L. REV. 191 (2005).

14. Miguel Martinez-Saenz & Steven Schoonover, Jr., *Resisting the “Student-as-Consumer” Metaphor*, AM. ASS’N OF UNIV. PROFESSORS (Nov. 2014), <https://www.aaup.org/article/resisting-student-consumer-metaphor#.XZZJxY5KhPZ>.

15. Elizabeth Adamo Usman, *Nurturing the Law Student’s Soul: Why Law Schools Are Still Struggling to Teach Professionalism and How to Do Better in an Age of Consumerism*, 99 MARQ. L. REV. 1021, 1036 (2016).

16. Rebecca Flanagan, *The Kids Aren’t Alright: Rethinking the Law Student Skills Deficit*, 15 BYU EDUC. & L.J. 135, 148 (2015).

17. See generally Serviceman’s Readjustment Act of 1944, Pub. L. No. 346.

waste, that they treated education differently.¹⁸ Similarly, the students of the 1960's, leveraging their activist energy, may have continued to grow this attitude.¹⁹

More than one scholar has examined the 1980's and determined that the changes that arose during that time period were monumental to the movement. During this time period, tuitions increased, state support for education fell, and institutions began focusing more on efficiency and effectiveness, solidifying the student attitudes toward education as a product to be purchased.²⁰ Additionally, the creation of the "helicopter parenting"²¹ phenomenon brought more parents into the educational picture who were "footing the bill," which changed the dynamics, as the parent now led the way in treating their purchase of education as a product.²² Parents started explicitly demanding better customer service for their money, which further distorted the educational relationship into one (in the parents' minds) of a co-purchased consumer transaction rather than a development learning opportunity partnership between the university and its students.²³

One theory for this growing trend and its effect on legal education is the population of millennials who currently attend, or who have recently completed, law school. Some scholars blame the current generation of students being taught, calling those students "born consumers."²⁴ These students approach legal education institutions today seeking "a return on the time and money they invest in [their] endeavor[s]."²⁵ Millennials have

18. Flanagan, *supra* note 16, at 148.

19. Usman, *supra* note 15, at 1038.

20. Flanagan, *supra* note 16, at 154.

21. *Helicopter Parenting*, DICTIONARY.COM, <https://www.dictionary.com/browse/helicopter—parent> (last visited Nov. 4, 2019) (defining "helicopter parenting" as a style of child rearing in which an overprotective mother or father discourages a child's independence by being too involved in the child's life).

22. Flanagan, *supra* note 16, at 154.

23. David J. F. Lockard, *Never Refuse a Breath Mint: Change Implementation for Law Schools: An Insider's Correlation Between Change Management Tools and How to Tailor Them to Meet the "New Normal"*, 43 LINCOLN L. REV. 27, 39–40 (2015–16).

24. Jan M. Baker, *Teaching Legal Writing in the 17th Grade: Tips for Teaching Career Students Who Fly Nonstop from First Grade to First Year*, 16 PERSP: TEACHING LEGAL RES. & WRITING 19, 20 (2007).

25. Sarah Anjum, *Students as Consumers: Finding and Applying a Workable Standard When Institutions Fail to Give the "Benefit of the Bargain"*,

a “self-conception of themselves as consumers purchasing a product, and law schools increasingly see themselves as purveyors of a product.”²⁶ Some in academia have been critical of selling a product for purchase, insisting that law schools should be about training intellectual techniques and not about training practical skills—in essence declaring that legal education has no room for the consumer and is not so heavily focused on the training needed to practice.²⁷ Being that millennials have been described as born consumers,²⁸ successful legal education institutions must work to convert that potentially negative energy into a positive one where it is appropriate. These students have a demonstrated need for the teachers to sell the “product” in a way that lets them know they will use it before they buy it, so that it is packaged and marketed for them in a way to get them to believe in it and buy it.²⁹ Clearly, this represents a change for many experienced faculty who are used to students seeking them out and not expecting students to want the relationship to be the other way around.

Additional factors abound. There is no denying that the cost of education may be another contributing factor in the mindset of modern students. In 2012, law school tuition rose at a greater rate than that in undergraduate institutions: 317% increase in law school tuition versus 71% increase in undergraduate tuition.³⁰ Yet another factor is the U.S. News and World Report’s rankings, where universities are trying to earn the highest program and institutional rankings by using distinct resources that target those metrics measured.³¹

Some speculate that the consumer driven model in legal education, in particular, was accelerated by declining law school

43 U. TOL. L. REV. 151, 156 (2011).

26. Usman, *supra* note 15, at 1030.

27. See Leonard J. Long, *Resisting Anti-Intellectualism and Promoting Legal Literacy*, 34 S. ILL. U. L.J. 1 (2009).

28. Usman, *supra* note 15, at 1039.

29. See Baker, *supra* note 24.

30. Christopher Polchin, Comment, *Raising the “Bar” On Law School Data Reporting: Solutions to the Transparency Problem*, 117 PENN. ST. L. REV. 201, 203 (2012).

31. Barbara A. Lee & Mark R. Davies, *No More “Business as Usual” in Higher Education: Implications for U.S. and U.K. Faculty*, 40 J. C. & U. L. 499, 509 (2014).

admissions and the competition to attract and retain students.³² After a peak in 2010 from students fleeing the job market in a poor economy, law schools have experienced a decline in student applications and enrollment.³³ Reinforcing the consumer framework is the media warning that the viability for “mid-tier” schools offering a law degree is in jeopardy and becoming less attractive “unless they seek to create value for their graduates commensurate with the costs.”³⁴ The competition among schools requires them to devote energy, time, money, and resources into not only recruiting applicants but also retaining them.³⁵ The result is that law students see themselves as consumers that need to be satisfied, and law schools see their students as needing to be satisfied, protecting their greatest financial resource: the student body.³⁶

Some assert that the “consumer orientation of students ‘radically alters’ the fundamental nature of education” from one that frames the student as a partner in their growth dependent on their intrinsic motivation, to one where the customer relies on the provider for their satisfaction.³⁷ The student-consumer contributed to this through demands by students for more resources to be directed to their needs.³⁸

B. Legislation and Case Law Establish the Student Mindset Further

The notion of students as consumers has been established through legislation and the judicial system. In the United Kingdom (“U.K.”), the Consumer Rights Act of 2015 (“the Act”) spurred lengthy discussion about the obligations of universities with regard to students as consumers.³⁹ Under the Act, for the

32. Usman, *supra* note 15, at 1024.

33. Emily Grant, *Helicopter Professors*, 53 GONZ. L. REV. 1, 21–22 (2017).

34. Richard A. Matasar, *The Viability of the Law Degree: Cost, Value, and Intrinsic Worth*, 96 IOWA L. REV. 1579, 1580 (2011).

35. Grant, *supra* note 33, at 22.

36. *Id.*

37. Flanagan, *supra* note 16, at 154–55.

38. Lee & Davies, *supra* note 31.

39. See Consumer Rights Act 2015, c.15 (Eng.), <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>; Marianne Williams & Samantha Rose, *Students as Consumers: Consumer Law and the CMA*, UNIV. OF OXFORD (Sept. 23, 2015),

purposes of the consumer legislation, universities are actually classified as traders, while students are classified as consumers.⁴⁰ Some of the statutory rights to consumers under the Act include that “services will be provided with reasonable skill and care,” unfair terms will not be binding, and information provided to students is binding if relied upon.⁴¹ There are resources available for students in the U.K.—geared toward prospective and current undergraduate students—to focus on their rights under consumer protection law as it relates to the provision of their educational services.⁴² One guide focuses on three areas for students: (1) the provision of information; (2) terms and conditions; and (3) processes for handling complaints.⁴³ It is clear how aspects of this law could lead to responsible university practices, smoothing the administrative side of the educational process, while also being subject to abuse from consumers unhappy with aspects of their education.

In most consumer transactions, an unsatisfied customer can sue through a variety of actions, but when a student is unsatisfied with a college or university, the “patchwork” of rules leaves standards that are unclear for both students as consumers and their institutions.⁴⁴ Complaints by students as consumers challenging decisions of institutions have risen in recent years, along with the rate of success by students in recovering on those complaints.⁴⁵

Moreover, courts have explicitly recognized students as consumers.⁴⁶ What was first a constitutional theory of recovery by students against their institutions has given way to a

http://www.admin.ox.ac.uk/media/global/wwwadminoxacuk/localsites/uashomepages/uasconference/presentations/P46_Students_as_consumers.pdf.

40. Williams & Rose, *supra* note 39, at 2.

41. *Id.* at 3.

42. See *Higher Education: Undergraduate Students: Your Rights Under Consumer Law*, COMPETITION & MARKETS AUTHORITY (Mar. 12, 2015), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415732/Undergraduate_students_-_your_rights_under_consumer_law.pdf.

43. *Id.*

44. Anjum, *supra* note 25, at 152.

45. *Id.* at 155.

46. K.B. Melear, *The Contractual Relationship Between Student and Institution: Disciplinary, Academic and Consumer Contexts*, 30 J.C. & U.L. 175, 205 (2003) (citing *Finstad v. Washburn Univ. of Topeka*, 845 P.2d 685 (Kan. 1993)).

contractual theory of recovery.⁴⁷ The contractual relationship between students and universities, and the consumer relationship that gave students “expectations of institutional performance,” paved the way for students to seek judicial relief on that theory.⁴⁸ In 1961, a federal court held that “students at state-supported institutions had the right to notice and a hearing prior to any disciplinary action that might result in dismissal,” which birthed the concept of publicly funded higher education as an entitlement rather than a privilege.⁴⁹ This mindset led to the contract theory method of solving disputes between students and institutions.⁵⁰ This contract theory has been embraced by the courts with mixed results.⁵¹ While students are consumers of educational services, “there has been a limited application of consumer protection law to higher education in United States courts.”⁵² Despite the spotty successes by students in obtaining remedies, it is clear that these challenges by students on contract and consumer principles paved the way for the current student mindset of challenging institutional decision-making.⁵³

In Massachusetts, students led the way in suing their educational institutions on a variety of claims, including consumer protection claims where students asserted that they are consumers of those institutions.⁵⁴ Chapter 93A of the Massachusetts state law, considered one of the strongest consumer protection laws in the country, gives the Massachusetts Attorney General “broad authority to implement regulations, investigate potential violations, and file enforcement actions.”⁵⁵ The statute also established a cause of action for consumers subjected to unfair or deceptive acts or

47. *Id.*

48. *Id.* at 175.

49. *Id.* at 179 (citing *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961)).

50. *Id.* at 179.

51. *See id.* at 205.

52. Melear, *supra* note 46, at 208.

53. *Id.* at 206.

54. Robert E. Toone & Catherine C. Deneke, *Student-Consumers: The Application of Chapter 93A to Higher Education in Massachusetts*, 57 BOS. B.J. 16, 16 (2013).

55. *Id.*

practices.⁵⁶

Various Massachusetts lawsuits led courts to hold that even though a school may hold a not-for-profit tax designation, that school may not be shielded by the first requirement of being in “trade or commerce” that the code carries.⁵⁷ However, those same courts also held that educational institutions are less likely to be in “trade or commerce” with regard to activities “in furtherance of their core educational mission” rather than for ancillary activities.⁵⁸ In the law school setting, one school used this theory as a shield for a suit regarding the school’s refusal to allow a student to retake courses failed or readmit after expulsion.⁵⁹ As such, despite strong laws, students in Massachusetts face an uphill battle getting their claims past this first requirement.

Additionally, once it is established that a school is in “trade or commerce” under the statute, a student must also prove that the act complained about is “unfair” or “deceptive,” which is generally based on the circumstances of each matter and does not have an easily digestible definition.⁶⁰ Practices by educational institutions have rarely been found to be unfair, as evidenced in a law school when a student was academically dismissed based on failure to meet a necessary cumulative grade point average (“GPA”) even after a course was repeated and passed, and such grade was not included in the calculation to raise the GPA to passing level.

Years of litigation led to the conclusion that courts are far less likely to interfere in student complaints against universities in disputes involving their grades, discipline, or the curriculum, as opposed to marketing concerns.⁶¹ As the consumer perspective strengthens, claims may still come to universities.

In *Miller v. Loyola University of New Orleans*, although the court did not uphold a student suing Loyola of New Orleans over a legal profession course that was allegedly incomplete and poorly taught, a dissenting judge indicated that, given the rising

56. *Id.*

57. *Id.* at 17.

58. *Id.*

59. *Id.* (citing *Brodsky v. New Eng. Sch. of Law.*, 617 F. Supp. 2d 1, 7 (D. Mass. 2009)).

60. Toone & Deneke, *supra* note 54, at 18.

61. *Id.*

price of education and the marketing that universities conduct, students should have a remedy available to them.⁶²

The consumerism of law students led to a class action lawsuit complaint against the Thomas Jefferson School of Law in 2011, alleging deceptive employment reporting practices.⁶³ This lawsuit began a wave of actions asserting that “law schools engaged in a variety of manipulative practices that collectively created a misleading picture of their post-graduation employment outcomes.”⁶⁴ In short, these lawsuits emphasized students not receiving “the benefit of the bargain,” a contract term used to imply that employment outcomes were something students considered when “purchasing” their legal education.⁶⁵ The alleged reporting practices were driven in part by seeking rankings—a concept that loops back into the consumer mindset—as law schools try to lure student-consumers shopping for a good outcome in their education.⁶⁶

Plaintiffs from law schools reinforced the consumer mindset when they alleged that law schools should have taken a similar tactic in warning prospective students about employment possibilities—similar to that of a homebuyer—rather than a “caveat emptor view.”⁶⁷ Such an argument placed the concept of students purchasing legal education with expectations—as would a consumer—front and center. Several of the cases resulted in dismissal of causes of action against the schools, such as negligent misrepresentation, which indicates that students have the burden of discovering the information on the plaintiffs themselves.⁶⁸ In these suits, students also alleged that schools violated state consumer protection laws, which prohibit deceptive business practices.⁶⁹ Although such lawsuits were largely unsuccessful, they cemented the consumer mindset for both students and the law schools who enroll them, resulting in

62. See 829 So.2d 1057, 1063–66 (La. Ct. App. 2002) (Plotkin, J., dissenting); Titus, *supra* note 2, at 153.

63. Ogechi Achuko, *The Blame Game: Law Students Sue Their Law Schools for Deceptive Employment Reporting Practices*, 20 VA. J. SOC. POL’Y & L. 517, 518 (2013).

64. *Id.* at 519.

65. *Id.* at 521.

66. *Id.* at 522.

67. *Id.* at 531.

68. *Id.* at 546.

69. Achuko, *supra* note 63, at 546.

increased awareness and complicity with that attitude.

One area where the question of consumerism has been put under the microscope as to student-consumer status pertains to for-profit colleges and the problem of students being left in debt without help to their financial well-being that a college career should provide.⁷⁰ The question has been framed in multiple ways within this context: first, as a matter of statutory interpretation about consumer protection laws applying to higher education, as examined above; secondly, as a broad policy question.⁷¹ This larger question involves “the meaning and purpose of college and the role of those who fund college.”⁷² Such examination left many with the belief that, unlike other institutions, these schools are not only engaging directly in consumer services but are also not meeting the minimum standards to do so.

C. Specific Concerns in Legal Education

Although the legal question may leave little room for doubt that students can qualify as consumers, the broader question of how to institutionally handle that mindset has required more analysis.⁷³ While the metaphor of students as consumers has been used successfully by those seeking to protect students, professors and college administrators asserted that it negatively impacts: (1) professors’ academic freedom; (2) student-teacher relationships; and (3) the purpose of higher education itself.⁷⁴

Some point out that the student-consumer model does not make all that much sense as framed, for if law students are truly consumers, they would want to get the most for their money.⁷⁵ However, many students are, in fact, trying to get the least for their money, such as not taking extra classes available to them, or by taking as light a load in their third year as possible.⁷⁶ Additionally, schools treat students differently than do other

70. See Dundon, *supra* note 8.

71. *Id.* at 384.

72. *Id.*

73. *Id.* at 385 (explaining that a state attorney general can sue or investigate a for-profit college under that state’s Unfair and Deceptive Acts and Practices law).

74. *Id.* at 386.

75. See Lloyd, *supra* note 1.

76. See *id.*

providers of consumer transactions and do not rely on a free market economy to sell education. For example, car dealers do not determine if someone is a good driver before selling them a car; yet schools do not merely sell their degree to the highest bidder, recent scandals aside.⁷⁷ Moreover, the consumer model does not take into account that it is not only the students paying for education; in public institutions, the taxpayers have a stake in the education but are not treated as consumers in that paradigm.⁷⁸

For law schools who have embraced the consumer-student perspective, whether deliberately or reluctantly, various books about success in business through a customer focus, and the ways to connect to them, can be a useful resource.⁷⁹ Business is about finding ways to satisfy customers, ensuring your employees satisfy customers, and treating customers as friends.⁸⁰ According to successful executive Rick Case, customers making a purchase decision use three questions: (1) “[d]oes this really meet my needs?”; (2) “[w]hat will it cost me, in terms I can relate to?”; and (3) “[a]m I getting a good deal?”⁸¹ One could argue that the law students’ questions when deciding where to go to law school are not so different. First, they want to know if a law school will meet their needs in getting them to their desired result, which is almost always to become a lawyer.⁸² In evaluating that question as consumers, students may review bar passage rates and employment outcomes of the law school to see if, in fact, those needs will be met by the institution. Second, students want to know how much it will cost. Absolute tuition, as well as scholarships available, play heavily into students’ determinations and their answers to choices regarding law school. Lastly, students want to know if

77. See *id.* at 552; Natalie Wexler, *The College Admissions Scandal Is Just the Tip of an Iceberg of Educational Inequity*, FORBES (Mar. 15, 2019, 1:02 PM), <https://www.forbes.com/sites/nataliewexler/2019/03/15/the-college-admissions-scandal-is-just-the-tip-of-an-iceberg-of-educational-inequity/#2608eb7a9385>.

78. Lloyd, *supra* note 1, at 552.

79. *E.g.*, RICK CASE WITH BROOKE BATES, OUR CUSTOMER, OUR FRIENDS: WHAT 50 YEARS IN BUSINESS HAS TAUGHT RITA AND RICK CASE ABOUT SALES SUCCESS AND COMMUNITY SERVICE 69–71 (Dustin S. Klein ed., 2011).

80. *Id.*

81. *Id.* at 70.

82. Usman, *supra* note 15, at 1042.

they are getting a good deal; much has been said in the media in recent years as to whether going to law school is a good return on investment.⁸³ These questions have been handled—both by law schools and the media—as consumer decisions that need to “pay off.” As such, law schools reinforced the customer satisfaction model by explicitly answering the questions framed by it.

Law schools have not dissuaded the concept of framing their degrees in terms of consumer satisfaction with their product in other ways as well. National organizations survey students to see what they think about their law schools on a variety of metrics, such as the Princeton Review and the Law School Survey of Student Engagement.⁸⁴ The U.S. News Rankings appeal to students’ consumer instincts, much like Consumer Reports do for purchasing vacuums or cars; law schools (at least the ones happy with their rankings) encourage this measurement and often change their behaviors to manipulate the information measured.⁸⁵

The questions asked by these organizations range from ones focused on the academic experience, such as how much memorizing, analyzing, and synthesizing students have done, to questions about how satisfied students are with the services they receive at the law school.⁸⁶ In the Princeton Review, students are asked to rank how good their professors are and how the curriculum is set up to meet their needs, among others.⁸⁷

83. See, e.g., Brian Robson, *7 Ways to Figure if Going to Law School Is Worth It*, BANKRATE (Sept. 21, 2018), <https://www.bankrate.com/loans/student-loans/going-to-law-school-worth-it/>.

84. See, e.g., Law School Survey of Student Engagement, <http://lssse.indiana.edu/> (last visited Oct. 26, 2019); *Student Survey*, PRINCETON REV., <https://www.princetonreview.com/college-rankings/student-survey> (last visited Oct. 26, 2019).

85. Steven Chung, *Have Law Schools Lost All Credibility with the U.S. News Rankings?*, ABOVE THE LAW (Mar. 21, 2018), <https://abovethelaw.com/2018/03/have-law-schools-lost-all-credibility-with-the-u-s-news-rankings/?rf=1>.

86. See Law School Survey of Student Engagement (Aug. 28, 2019), <http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-US-Survey-2019.pdf>.

87. See *Our Law School Rankings Methodology*, PRINCETON REV., <https://www.princetonreview.com/law-school-rankings/ranking-methodology> (last visited Oct. 6, 2019).

Additionally, law schools are required by both the American Bar Association (“ABA”) and the Higher Education Opportunity Act of 2008 to disclose certain information to students and, generally, to prominently label the location of such on their websites.⁸⁸ This requirement is a positive change in communication, sharing information that a student-consumer might use in making the decision about which law school to attend, such as employment outcomes and bar passage rates.⁸⁹ A recommended approach of imposing a duty of “good faith and fair dealing” is one that can both protect students while simultaneously allowing institutions the freedom to ensure their programs are meeting students’ needs.⁹⁰ One example, from my home university of Nova Southeastern University, Shepard Broad College of Law, is the 2008 program that changed its graduation requirements after a student matriculated; the student was unable to pass a newly-required exam and was subsequently dismissed.⁹¹ The court held that the course handbook was a contract, but so long as the administration did not act “arbitrarily or capriciously,” there was discretion to modify it.⁹²

As a result, it is clear that law students are not “ignorant consumers” based on the amount of information regarding law schools and the legal job market available to them.⁹³ Consequently, the fear is that law schools have not actually improved education in the wake of the crisis in legal education; rather, they have only tried to improve their rankings to better attract these consumers, specifically those consumers who have a good chance at success in the employment market.⁹⁴

The question currently before law schools, however, should not only be what constitutes that discretion, but also what areas of the institutional rule-making should the discretion be used, and why. There are some areas of legal education where student

88. *Student Consumer Information / ABA Required Disclosures*, U. MIAMI SCH. L., <https://www.law.miami.edu/about/student-consumer-information> (last visited Oct. 6, 2019).

89. Usman, *supra* note 15, at 1045.

90. Anjum, *supra* note 25, at 163.

91. *Id.*

92. *Id.* (citing *Raethz v. Aurora University*, 805 N.E.2d. 696, 699 (Ill. App. Ct. 2004)).

93. Matasar, *supra* note 34, at 1586.

94. *Id.*

wishes from the consumer perspective are paramount, some areas where institutional integrity demands objective action, and some areas where it may be necessary to determine how far an institution can go in meeting student demands.

Harnessing the student-consumer has been tried before by law schools, and this mindset can be a boon for the institutions.⁹⁵ But such action requires adjustment by the legal institution regarding its goals and how to reach them. However, law schools are traditionally divided on whether to embrace that mindset. Law schools have traditionally worked to separate themselves from vocational schools by including professionalism and “learning to think” as their primary goals.⁹⁶ However, it is clear that students come to law school because they want to be lawyers.⁹⁷ Schools today are responsible for both getting students through the bar exam and making them practice-ready through experiential learning,⁹⁸ despite the fact that it is becoming clear that those two goals are getting further apart in many jurisdictions and not closer together. In other words, the goals of students in acting like consumers and demanding to be taught by their professors are more easily swallowed in legal education than perhaps in other kinds of degrees.⁹⁹ Two big concerns for schools handling this mindset are the “customer is always right” mentality and the monetization of higher education to the detriment of other purposes.¹⁰⁰ This article refuses to embrace the all or nothing approach of consumerism in legal education, putting forth that there are aspects of the students’ relationship with law schools where the customer is always right, and, in fact, that the consumerism perspective can enhance learning, while there remains aspects of the experience where a consumer mindset should not be the driving force.

There are a variety of negative consequences to the educational relationship when students change their mindset to one of a consumer. This can include a focus on grades rather

95. Usman, *supra* note 15, at 1026.

96. *Id.* at 1042.

97. *Id.*

98. See generally ABA, STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2019–2020 (Erin Ruehrwein ed., 2019), https://www.americanbar.org/groups/legal_education/resources/standards/.

99. Usman, *supra* note 15, at 1042.

100. Dundon, *supra* note 8, at 387.

than learning, resulting in the loss of internal motivation to learn, and a reliance on external validations rather than developing necessary skills to ensure lifelong success.¹⁰¹ Research has found that when there are extrinsic motives, internal intrinsic motivation is weakened, leaving students pursuing their education without that desire to learn and understand as the driving force.¹⁰² Consumer driven students are less likely to pursue and succeed at education that increases thinking skills, a necessary law school task.¹⁰³ This focus on the “end product” of their “transaction”—a grade—replaces the focus on the process—the learning.¹⁰⁴

Due to outside pressures, law schools cannot ignore students as consumers, despite knowing that this attitude could be harmful to them. As a result, law schools need to focus on managing this mindset, rather than combating or ignoring it, to ensure the education experience accomplishes its true goals.

III. How to Handle the Consumer Mindset by Students: When to Hold and When to Fold?

It is important to note that a student-consumer model is not *entirely* a negative one, despite the risk of it creating obstacles to good learning. There are much needed legal education reforms that have come about from this mindset.¹⁰⁵ When you overlay these responsibilities against some academics’ traditional notions of a legal education and the students’ employment mindset, it creates quite a disparate picture. This can easily lead to the belief that there is an irresolvable conflict between the consumer mindset of students and that of the institution.

However, it is possible to *use* the student-consumer mindset to increase student learning and improve educational relationships by considering student needs and questioning educational practice in a well-reasoned way.¹⁰⁶

101. Flanagan, *supra* note 16, at 154–55.

102. Lockard, *supra* note 23, at 40.

103. *Id.*

104. *Id.*

105. Grant, *supra* note 33, at 22.

106. Lockard, *supra* note 23, at 40.

A. Admissions

ABA Standard 501 sets forth the accreditation requirements of a law school regarding admissions practices as follows: “A law school shall adopt, publish, and adhere to sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.”¹⁰⁷ In short, the Standards (as mentioned above) demand the consumer “protection transparency” that desiring law students seek from prospective schools and their admissions practices.

Decisions as to which, and how many, students are admitted each year by a law school may be influenced by many factors, including budget, bar passage expectancy, and other university influences. However, how admissions offices operate to meet these goals have certainly been influenced by the consumer mindset of students. Admissions offices today are a far cry from the stately, quiet, and reverent places of many years ago. Other than college fairs, personal visits to these quiet, serious places, or a standard tour by a high achieving and enthusiastic student, admissions offices of the past focused their energies on processing applications from students and providing answers. Today, however, admissions offices are marvels at marketing.¹⁰⁸ Bright, multimedia, interactive spaces are becoming the norm in many institutions—which are trying to attract students through fun social media presences, mock classes, personal contact from professors and staff, and other events designed to sell a school—and have set the stage for students seeing their law school.¹⁰⁹ All of these tactics clearly frame the school as a product.

Should admissions offices take a consumer approach to

107. ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2019–2020, ABA 29 (Erin Ruehrwein ed., 2019), https://www.americanbar.org/content/dam/ABA/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-ABA-standards-chapter5.pdf.

108. Lyle Moran, *Law Schools Try New- and Old-School Marketing Approaches*, KERN COUNTY C.L. (Dec. 19, 2016), <https://kerncountylaw.org/los-angeles-daily-journal-law-schools-try-new-old-school-marketing-approaches/>.

109. *Admissions Offices Turn to Social Media to Connect with Prospective Students*, STUDY.COM (Mar. 25, 2010), https://study.com/articles/Admissions_Offices_Turn_to_Social_Media_to_Connect_with_Prospective_Students.html.

marketing legal education? Are they setting up a law school for conflict as students matriculate and enter their legal careers as a consumer? The answer to both questions is, most certainly, yes! Students treat education as a consumer product for many years before attending law school; for law schools to try to step out of that world and market their school through another means is probably fruitless and potentially counterproductive for their success.

However, since the consumer mindset is reinforced through the process, admissions offices need to help minimize consumer-based conflict between students and their institutions by partnering with the administration and faculty to provide information to students about the serious academic endeavor upon which students are embarking. By ensuring that the office that “sells” them the product of the school also provides all the “terms and conditions” of actually being a student, students can get a baseline understanding of the institution’s rules, regulations, curriculum, faculty, and service offices so they understand what will be expected of them. Knowing the rules and regulations, the academic culture, the rigor of the program, and the learning outcomes can help students re-frame their enrollment from one in which they are entitled to certain things because they “bought” a “product” to one where students understand that they have chosen an academic endeavor and must treat it as such.

B. Academic Integrity

Academic integrity is the “moral code that governs academic institutions. In other words, it is the standard of ethics by which academia operates—the standards by which concerned organizations ensure that grades, publications, research, teaching, and other academic efforts are conducted in an above-board, honest fashion.”¹¹⁰ Students cannot “buy” academic integrity, nor do they have the right to have a say in shaping it simply because they paid tuition. A responsible institution has an obligation to all students to have a sound, fair, enforced

110. *Academic Integrity: Definition, Policy & Overview*, STUDY.COM, <https://study.com/academy/lesson/academic-integrity-definition-policy-overview.html> (last visited Oct. 7, 2019).

academic integrity policy, free of influence from any stakeholders with personal agendas of any type.

One issue that can arise regarding students who seek to have academic integrity bent or shaped to their needs has been deemed the rise of the “helicopter professor.”¹¹¹ Like a helicopter parent who has exerted influence over a relationship, a helicopter professor is defined as “one who micromanages or coddles students in a variety of ways.”¹¹² There are a variety of ways in which “helicopter professoring” and students as consumers are connected, including the professor’s availability at all hours without boundaries, helping students personally keep track of deadlines, or ensuring students cannot possibly make a misstep in their work—to an extreme degree.¹¹³ While it is clear the helicoptering of students (by parents or professors) can stunt students’ learning and self-development of skills, the rise of the role of faculty may be in response to the student-consumer mindset, to ensure schools keep their revenue-producing and bar-passing students happy by meeting their every wish, regardless of what might be in their best interest.

A consumeristic approach is “a mind-set of rights and privileges, not responsibilities and duties.”¹¹⁴ The concern regarding academic integrity is to ensure that students know that grades cannot be bought and that a course does not come with a money-back guarantee. But law schools can use the consumer mindset to enhance the educational experience, even in the classroom, rather than detracting from it.¹¹⁵ By asking students to define their expectations, their currency in what they are “buying” by taking a class, and their expectations as to what they are getting from their educational experience, faculty can actually shape the consumer mindset into a useful and productive one by channeling that consumerism into energy toward their learning rather than through passive expectations framed by outside society as to what they “should” have.¹¹⁶

111. See Grant, *supra* note 33.

112. *Id.* at 4.

113. *Id.*

114. Usman, *supra* note 15, at 1046.

115. Debra Miller Fox, *Education and Consumerism: Using Students’ Assumptions to Challenge Their Thinking*, FACULTY FOCUS (May 19, 2014), <https://www.facultyfocus.com/articles/effective-teaching-strategies/education-consumerism-using-students-assumptions-challenge-thinking/>.

116. *Id.*

Administratively, students should be well educated in the academic policies of their institutions. As consumers, they are entitled to know the rules—exactly—and should have both easy access and a process that enforces them. One area where universities may run short is in the publishing of policies of academic integrity because those universities assume students know that copying the work of others is unacceptable or that students are expected to work alone on exams. While these sound like self-evident boundaries, we can no longer assume that students are well versed in them. Spelling out boundaries clearly in codes, publishing the codes in easily accessible locations, and making the boundaries of assignments and academic expectations clear in syllabi are ways that law schools can meet the needs of consumers to understand the situation without caving to demands that those rules be changed. In short, in addition to making sure students know about the guidelines of academic integrity in ways that enhance their learning, the consumer aspect of purchasing education is met by making sure all language to the student is conspicuous and understood from the start.

C. Curriculum: Offerings and Schedule

Students, as purchasers of legal education, often want to drive the curriculum by deciding what courses should be offered, who should teach them, how many credits should be involved, how they should be graded, and when they should be offered. From an institutional point of view, students are entitled to have a curriculum that is properly aligned with the learning outcomes of the degree, which should be connected to success for any future endeavors—including passing a bar exam and being prepared for the legal profession. But the truth is, students are not always in a position to “make an informed judgment about the quality of an educational experience until well after he or she has digested a quality education.”¹¹⁷

Students make certain curricular demands for a variety of reasons. For example, there are an enormous amount of resources available online which give advice on how to succeed

117. Martinez-Saenz & Schoonover, Jr., *supra* note 14.

in law school and what courses to take.¹¹⁸ Some of the advice indicates that students should simply take only those courses they like, in true consumer fashion.¹¹⁹ However, there are several problems with a consumer-driven viewpoint driving curricular offerings.

First, different students want different courses for different reasons, and one law school curriculum cannot possibly make everyone happy; in fact, trying to do so will likely make everyone unhappy. Some students may focus on core bar preparation classes while others focus on deep electives in narrow, specific areas of law; while yet others may want to be able to take an elective in every area of law to be exposed to as many practice areas as possible. With law school enrollment across the country near the lowest levels in over thirty years,¹²⁰ schools simply do not have the resources to be all things to all students. In allowing a student-consumer mindset to drive those offerings, law schools run the risk of presenting a disjointed, ineffective curriculum that satisfies no needs of students—neither bar exam preparation nor practice ready skills. On the other hand, law schools must be mindful of student needs and wants; offering courses no one wants or narrowing a curriculum so drastically as to focus on only one goal will impact a school negatively in several ways, from admissions to student retention, to bar pass rates to successful employment outcomes.

The task then becomes how to meet students' "wants" while also ensuring institutionally that a school is meeting students' "needs." One area where students' consumer expectations has been explored extensively is in the area of teaching professionalism as part of a curriculum and changing that consumerism pursuit of self-interest to one of that as part of the

118. *E.g.*, Nicholas Alexiou, *What Classes Should I Take?*, ABOVE THE LAW (Nov. 29, 2018, 4:29 PM), <https://abovethelaw.com/2018/11/what-classes-should-i-take/>.

119. *See id.* ("At the end of the day, it is their money—or really, all of our tax dollars doled out to students via a student loan system that is overwhelmingly federal . . . at least for now—so why sit through classes focusing on areas of the law which hold little interest to you, especially in a world where bar preparation courses exist?").

120. *Law School Enrollment*, LAW SCHOOL TRANSPARENCY, <https://data.lawschooltransparency.com/enrollment/all/> (last visited Oct. 8, 2019).

profession.¹²¹ It is clear that law schools have started to make professionalism a topic of focus, but more could be done to foster the development of skills in this area.¹²² Professionalism education, professional identity education, ethics education, and stress and time management education will give students the skills they need to properly engage with their education without expectations tied to the “purchase of it,” and in the future, as legal professionals, those same skills to handle the stresses of the profession.¹²³

The first step towards accomplishing this task is to plan expansive learning outcomes for the institution which set out the desired goals for the legal education program. Narrow learning outcomes—that students will learn only to critically read, think, write, and do legal analysis—are both too broad to offer guidance to students in what a curriculum will accomplish, and too narrow to truly prepare students for the practice of law and all the skills they will need. Having a broad enough set of learning outcomes—and demonstrating, through mapping, that the curriculum is planned around them—accomplishes the goal of a thoughtful, planned curriculum that can be explained to students as having purpose and direction; at the same time, it encompasses a broad enough range of courses to meet their needs and make it a place where students—even in a consumer mindset of what they are purchasing—want to learn.

At my law school, we established 10 institutional learning outcomes; they are:

1. Demonstrate a knowledge of substantive legal doctrine fundamental to this course (e.g., case law, legal concepts, legal principles, regulations and statutes).
2. Identify legal issues and apply legal reasoning and analysis to solve problems in a logical and structured manner to issues covered in this course.
3. Communicate orally or in writing, or both, the

121. Usman, *supra* note 15, at 1047.

122. See Debra Moss Curtis, “No Shots, No School, No Kidding”: *The Legal Profession Needs a Vaccine to Ensure Professionalism*, 28 U. FLA. J.L. & PUB. POL’Y 1 (2017).

123. *Id.* at 33.

legal reasoning and analysis regarding issues covered in this course.

4. Research legal issues thoroughly and efficiently.

5. Demonstrate a proficiency in reading critically the materials assigned for this course.

6. Understand the obligation to adhere to the values of the legal profession (e.g., (1) providing of competent representation, (2) striving to promote justice, fairness, and morality, (3) striving to improve the profession, and (4) engaging in professional self-development).

7. Demonstrate ethical and practical judgment and active listening skills in communications (e.g. with clients, attorneys, and related parties).

8. Use technology to meet ethical duties of the legal profession (e.g. to address duties of confidentiality for all communications, to fulfill filing and other judicial obligations, and to keep abreast of technologies that affect accuracy of information provided to clients).

9. Anticipate, recognize and resolve obligations ethically.

10. Demonstrate self-directed learning practices for life-long learning.¹²⁴

We have guaranteed that each student will be informed of these outcomes when they enter, and they will be available to them throughout their legal education through various resources. These outcomes were carefully crafted by the faculty and administration to encompass the law school's goals: fundamental competency in basic skills needed for success on the bar exam and in practice, and exposure to different kinds of courses, material, and thinking to be able to tackle the legal profession thoughtfully. When determining if the curriculum is aligned with such outcomes, we engage in curriculum mapping to determine if there is a wide array of first level, second level,

124. *Adopted Learning Outcomes*, NOVA SE. U. SHEPARD BROAD C.L. 1, 1 (May 2016), <https://www.law.nova.edu/jd-program/documents/learning-outcomes.pdf>.

and capstone offerings to ensure students' exposure to these outcomes before graduation. For example, a map for learning outcome ten (above) in the current curriculum looks like this:

Learning Outcome #10 <i>Students completing this instructional offering are expected to:</i> Demonstrate self-directed learning practices for life-long learning				
	Required Courses	Elective Courses	Seminars (Satisfy Writing Requirement)	Experiential Opportunities (Workshops, Clinics, Field Placements) (Satisfy Experiential Learning Requirement)
First Level Exposure	Legal Skills and Professionalism I and II			
Second Level Exposure		Adanced Legal Research Techniques; Copyright Law; Elements of Legal Analysis I and II; Legal Reasoning and Analysis	Current Constitutional Issues Seminar	Bankruptcy Workshop; Criminal Pre-Trial Practice; Negotiating Workshop
Third Level/ Capstone Exposure	Florida Bar Exam Lab; Multistate Bar Exam Lab			Civil Field Placement Clinic; Dispute Resolution Clinic

Through this careful consideration of the curriculum, we are able to communicate with students why certain courses are in our curriculum and how the faculty resources are allocated to accomplish the goals that have been clearly laid out.

However, this thoughtfulness, planning, and communication, does not alleviate all complaints or concerns by students operating from a consumer point of view. Therefore, it is reasonable and appropriate to consider, within the resources available, what additional needs and wants students have with regard to a planned curriculum, and to be flexible enough to adjust where possible.

One area that law schools can meet student needs, within resources, while not disturbing any thoughtful planned curriculum, is to consider when certain classes are offered. Lately, discussions about Friday class offerings have abounded among Associate Deans about how neither students nor faculty seem engaged in wanting them. Whether students are using the

day to gain practical experience by working or that schedule is simply the new norm in academia, outside of ABA Standards, there seems no need to run against student wishes and force required classes on Friday afternoon. Additionally, blocking a schedule for full-time or part-time students that allows them to choose their professors in required classes, and to choose electives spread over a variety of time blocks without conflict, can go a long way to satisfying the student-consumer mindset without compromising on curricular integrity.

Additionally, listening to students' feedback on the curriculum—whether through enrollment trends or evaluations—is an invaluable way to satisfy students while meeting institutional needs. A school may have had a professional reputation for many years for offering a certain path of courses that ran deep—such as bankruptcy or environmental courses—and which became a building block of their curriculum. If, however, after several semesters of low enrollment, regardless of times scheduled or of professors teaching, schools should take this as a sign that their curricular goals should be fulfilled through different means. In this instance, not listening to the student input as to how the curriculum should be presented goes beyond not letting consumerism drive a curriculum, to a school out of touch with its students and their needs for the future.

As a result, the conclusion is that there are places to enhance student satisfaction in their law school through curricular means, as long as the unbridled tack of letting consumers decide how they “receive” their education is reshaped completely.

D. Faculty-Student Issues

1. Academic Freedom

The issue of academic freedom for faculty and students' consumerism colliding has been seen as a major issue in the world of education.¹²⁵ The American Association of University Professors defines academic freedom as follows:

125. See Titus, *supra* note 2.

Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; and that Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter that has no relation to their subject.¹²⁶

Such subjects have extended to several areas, including speech in the classroom, pedagogy, assessment, and the effect of student reviews in higher education.¹²⁷ Because courts inconsistently applied the law in weighing the balance between the rights of universities and professors, it is difficult to gauge the potential damage that consumerism by students pressuring universities may have caused to academic freedom.¹²⁸ The balancing test that has been used to solve these problems considers the relative importance of the professors' speech in the educational objectives against the administrators' concerns of controlling the means to achieve that purpose.¹²⁹ One large concern is that student complaints that invoke defenses of academic freedom arise from the consumer mindset, and that the administrators' response to them may be driven not by principles of academic freedom or even a belief that there is a problem in the classroom, but by pandering to student satisfaction.

One fear is that the consumer model comes with the power of student-consumers evaluating faculty, and with that, the pressure for faculty to become "hired guns" undertaking the wishes of the student client."¹³⁰ Such pressure interferes with the academic freedom of professors to teach what they deem important rather than what students want to hear—or *do not*

126. Donna R. Euben, *Academic Freedom of Individual Professors and Higher Education Institutions: The Current Legal Landscape*, AM. ASS'N U. PROFESSORS 1, 2 (2002), <https://www.aaup.org/issues/academic-freedom/professors-and-institutions> (quoting *1940 Statement of Principles on Academic Freedom and Tenure*, AM. ASS'N U. PROFESSORS 13, 14 (1940), <https://www.aaup.org/file/1940%20Statement.pdf>).

127. *Id.* at 2.

128. *Id.* at 9.

129. *Id.* at 12.

130. Lee & Davies, *supra* note 31, at 514.

want to hear. It is clear that a professor's goals in teaching a course and a student's expectations of that course, or how it should be taught, can be so far apart so as to give students the impression of teaching incompetence.¹³¹ However, law schools continue to evaluate courses and professors, and use those evaluations in ways that have been proven not to be sound.¹³²

Further compounding the problem are popular independent ratings, which are "consumer-oriented indicators of customer satisfaction rather than academic measures of teaching effectiveness."¹³³ These types of ratings may be ill considered by universities; as the ratings may drive teachers' attempts to satisfy students—rather than solid pedagogy—the consumer model may impact how professors run their courses, fearing negative feedback or consequences towards their compensation, retention, promotion, and prospects in lateral hiring.¹³⁴ It is clear that with all that is at stake personally for faculty members, there can be pressure on them to censor unpopular views and ensure popularity in other ways.¹³⁵

Different law school classes certainly may run into different levels of difficulty regarding this problem. Although it is not impossible, a professor teaching a course, such as Secured Transactions, is probably less likely to have potential conflicts over academic freedom as to statements in the classroom than, perhaps, one teaching Constitutional Law, or a seminar on Bioethics, would have. But rather than reacting to student demands by curtailing academic freedom or ignoring student concerns expressed therein, faculty can choose to manage the expectations of law students as to: (1) their expected or allowed input; and (2) the potential for them to try to shape a course's direction through their demands.

First, good communication through syllabi can manage expectations and prevent students from making consumer complaints about courses. Institutions may make some course

131. Titus, *supra* note 2, at 129.

132. See Colleen Flaherty, *Teaching Evals: Bias and Tenure*, INSIDE HIGHER ED (May 20, 2019), <https://www.insidehighered.com/news/2019/05/20/fighting-gender-bias-student-evaluations-teaching-and-tenures-effect-instruction>.

133. Titus, *supra* note 2, at 137.

134. *Id.* at 138.

135. *Id.* at 140.

titles and descriptions deliberately vague so as to allow them to grow and change with current issues and the different faculty teaching them, such as a “Current Constitutional Issues Seminar.” While the actual subject matter, or its treatment of it, may not be the cause for a student complaint about a professor’s course, a mismatch between a student’s expectation and the reality of what the professor does in class can often trigger consumer-like complaints. If the course has been taught on one topic for several semesters, and subsequently there is a switch in subject, simply communicating that information in a syllabus posted before registration concludes can ensure students’ expectations are met. These kinds of complaints are entirely consumer-based, stemming from the “bait and switch” theory, and could be distinguishable from those that might be concerned about the actual substance of statements, although that is outside the scope of consideration here.

All syllabi should be posted before registration concludes; students are entitled to know what is expected of them in a course, including the books to buy, the topics covered, and the assessments given. While faculty may balk at the pre-planning that this requires, it is simply a time shifting of academic responsibilities, not an infringement on academic freedom. Managing student expectations and allowing them to make their choices among electives, for example, based on all information regarding the course, is a type of consumer service—but not one that fundamentally changes the nature of the educational experience in a detrimental way—and, in fact, can improve it.

Academic freedom is an important concept to preserve for faculty and should not be yielded at a whim based on students dissatisfied with their institutions’ communication with them on the curriculum. It is the responsibility of the institution to manage students’ expectations to preserve true academic freedom.

2. Grades

A 2016 survey of 608 students from thirty-five English universities found that “higher consumer orientation [of students] was associated with lower academic performance.”¹³⁶

136. John Morgan, *Students with Consumer Mindset ‘Get Lower Grades’*,

To measure their consumer orientation, participants: (1) rated statements such as, “I think of my university degree as a product I am purchasing”; and (2) provided their most recent assessed grade to surveyors.¹³⁷ The authors of the study indicated “a lower learner identity,” and, as such, lower academic performance was shown to be “associated with a higher consumer orientation.”¹³⁸

Despite often-heard complaints, students are not entitled to a grade simply because they met some administrative requirements for a course. Once again, complaints about grades from the student-consumer position should not be driving the fair grading process, but those complaints can be managed with proper information. Students may think they are entitled to certain grades for a variety of reasons, including their efforts, their own interpretation or formulation of a grading scale, and their beliefs as to their own performance. Some examples of misunderstanding, or misinterpretations, by students that I have encountered through years of grading include: wrongly attributing a raw score to a scaled letter score; believing faculty must give every letter grade available to them (if not required by the school); interpreting various marks, such as checks or positive comments on written exams as “point earning”; and the failure of faculty to publish information regarding assignment-relative weight, among others. Law schools should not be creating grading policies in response to student demands or interpretations, but should consider those policies as part of an overall fair grading scheme that clearly communicates expectations to allow students to attain the best grades possible on every assessment.

One area where student concerns have impacted grades is on grade normalizations, or curves. While many may lament grade inflation at law schools, the simple fact remains that a law school with a curve below that of its peer institutions is hurting its own students and encouraging applicants to choose another law school as an option to meet their needs. Grade curves that place high achieving students at lower GPAs than their similarly

TIMES HIGHER EDUC. (Feb. 16, 2016), <https://www.timeshighereducation.com/news/students-consumer-mindset-get-lower-grades>.

137. *Id.*

138. *Id.*

ranked peers at similar institutions geographically put those students' prospects for good job placements in jeopardy—all because of an internal belief of some faculty members that may not be connected to the employment needs of a modern world. Competency-based grading solves the faculty issue of being in control of the grades and assessing students fairly, while a curve or normalization may be scaled in response to student and market needs to ensure satisfied students are able to compete in the job market.

One way to minimize student-consumer complaints about grades through the use of good pedagogy is by using detailed rubrics to demystify the grading process and make students' expectations and accomplishments clear and documented.¹³⁹ A rubric is a “grading guide that makes explicit the criteria for judging students' work” and “enables one to grade efficiently and fairly by referencing back to a common standard.”¹⁴⁰ A well-used rubric sets the expectations for benchmarks that students are supposed to reach and helps give feedback when they have not done so.¹⁴¹ Rubrics are sound pedagogy and a way to meet student-consumer needs, but they are also a way of diverting potential complaints that often come up simply because expectations are misunderstood.

Grading is an area of concern for students that will always be ripe for complaints due to the personal and documented nature of the feedback. In law school, much is at stake with the awarding of grades, and, until fairly recently, the norm in legal education was few assessments with little clues about what was expected.¹⁴² As such, law schools are no strangers to dealing with complaints, but when students also bring the attitude of consumerism to their grade concerns, the complaints can escalate. While it is important that schools respond to grading concerns with clear, explicit explanations of grades—from the perceptions of both individual faculty and the institution—it is

139. Larry Cunningham, “*May I See the Rubric, Professor?*”, L. SCH. ASSESSMENT (Mar. 27, 2019), <https://lawschoolassessment.org/2019/03/27/may-i-see-the-rubric-professor>.

140. *Id.*

141. *Id.*

142. Ilana Kowarski, *Choose a Law School Based on Teaching Style*, U.S. NEWS (Oct. 6, 2016, 9:30 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2016-10-06/choose-a-law-school-based-on-teaching-style>.

important that schools do not succumb to pressure to raise or change grades merely because of consumerism itself.

E. Regulations and Requirements

The consumer-driven mindset has changed requirements for legal education both substantively and procedurally (through the process of sharing those requirements). In 2011, the ABA reaffirmed Standard 509, requiring that schools must “publish basic consumer information.”¹⁴³ “The information shall be published in a fair and accurate manner reflective of actual practice” with the school’s accreditation on the line based on such compliance.¹⁴⁴

Complaints regarding that same information, now publicized, have been brought against a law school, claiming fraud and negligent misrepresentation regarding its employment statistics.¹⁴⁵ Despite the requirement to publish that information, and any potential discrepancies in the information that may or may not have existed, the school argued that the pursuit of a law degree does not fall under the Michigan Consumer Protection Act as “providing goods, property, or service primarily for personal, family, or household purposes.”¹⁴⁶ Courts have frequently held that “students seeking professional degrees are not ‘consumers’ under consumer protection statutes,”¹⁴⁷ but the fact that students view their degrees this way impacts the law school’s operations.

In the past, students had access to basic information about rules, such as how many credits were needed to graduate or a list of required courses. But requirements for law students have continued to grow as bar exam pressure and ABA accreditation has placed many law schools in the position of requiring more in order to graduate, making the communication of this (now, often intricate) information to students vital.

The problem with student complaints about law school requirements and regulations are not always focused on the

143. Polchin, *supra* note 30, at 210.

144. *Id.*

145. *Id.* at 214 (explaining that students sued Cooley Law, in part, under the Michigan Consumer Protection Act).

146. *Id.*

147. *Id.* at 215.

substance of the requirement, or the poor communication of such, but are more focused on poor communication of the source and reasons for these requirements, which students as consumers will often assume are arbitrary or punitive. As Associate Dean for Academic Affairs, I frequently get petitions from students asking me to waive certain requirements or regulations for their graduation. These requests can include: seeking waivers of the number of credits taken in a semester; required courses, both specifically and by type (such as experiential or upper level writing); the length of time for their studies; and the transfer of credits from other institutions (both law school and others). But of course, many of the rules to which students are bound derive either from ABA Standards, which are un-waivable, or from decisions of the faculty, enacted with institutional history or data supporting them.¹⁴⁸

Students are entitled to know the sources for rules to which they are bound. They are entitled to know whether a rule comes from an external source, or if a rule is not required by external sources, the reasons why the faculty has chosen to make that rule and why it is inappropriate to waive. Sharing the reasoning behind rules requires a thoughtful comprehensive approach to decision-making within a college of law rather than an ad hoc approach based on history, personal experiences, or chance. Student input should be collected on rules to be passed through representation on faculty committees, and representation at faculty meetings, to allow their voices to be heard. Some student concerns, even if coming from a consumer mindset, may be valid input in formulating rules; other concerns may be contrary to what a faculty considers good academic policy, but students are entitled to a process that hears them and makes them participants in it. Such explanations and dialogue can go a long way to satisfying students in their consumer attitudes while holding firm to the appropriate institutional needs.

F. Student Services

One of the most student-facing offices in any law school is the student services office. This office is tasked with a variety of

148. See, e.g., ABA, STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018–2019 (2019).

functions, including registration for courses, enforcing rules and regulations regarding graduation, and other important student related tasks. Standard 508 of the ABA Accreditation Standards requires that:

A law school shall provide all its students, regardless of enrollment or scheduling option, with basic student services, including maintenance of accurate student records, academic advising and counseling, financial aid and debt counseling, and career counseling to assist students in making sound career choices and obtaining employment. If a law school does not provide these student services directly, it shall demonstrate that its students have reasonable access to such services from the university of which it is a part or from other sources.¹⁴⁹

My law school's office describes its function to students as follows:

The Office of Student Services offers NSU Law Students support to enhance their educational experience. The Office of Student Services acts as a liaison among students, faculty and administrators. The Office of Student Services also acts as a liaison between students and additional university support services such as Financial Aid, The Office for Students with Disabilities, and Technology Services.

Our services include:

Academic and personal advising and guidance
Graduation Reviews
Record Verification
Scheduling and administering exams
Scheduling and administering registration

149. ABA, *supra* note 98.

Assistance with bar application, eligibility, and admission requirements

Advising for the Student Bar Association Council and other student organizations

The Office of Student Services also coordinates and plans law school events such as Orientation, Honors Banquets, student receptions, assists with Commencement and informational, time management and mindfulness workshops and events.¹⁵⁰

As such, this is one department that *should be* created and managed with the concept of students as consumers in mind. While the policies and procedures that the office may enforce and the schedules they administer are not driven by the mindset, how students are informed and interacted with regarding these policies should be built on a successful business model. The customer is not always right, but the customer should always be served.

Law schools should be thinking not just about how to meet ABA Standards regarding students' needs, but how they can efficiently exceed the students' needs for communication and service. Even students who may readily defer to faculty or academic administration regarding academic substantive matters can easily find themselves frustrated by the labyrinth of steps universities may make them take to accomplish administrative tasks, or the availability of information, hours, and personnel to speak to in order to gain further information or ask questions. Law schools who make it more difficult or restrictive than necessary for students to gain access to this required and desired information, or law schools who do not go the extra mile to help students in need, are setting themselves up to be treated as a business by a consumer constituency; one with bad reviews, bad word of mouth, and a bad reputation.

How can these offices meet student-consumer needs in an ethical and practical way? First, the office must present a united

150. *The Office of Student Services*, NOVA. SE. U. SHEPARD BROAD C.L., <https://www.law.nova.edu/current-students/student-services.html> (last visited Oct. 8, 2019).

front with the faculty and remainder of the administration regarding the policies they promulgate. There is no quicker way to fan the flames of student dissatisfaction than to allow a student to see those who are charged with enforcing rules express their own dissatisfaction with them. It is possible that those in student services may disagree with a faculty-enacted rule regarding, for example, a graduation requirement or with a decision of the Associate Dean not to raise the cap on a class; still, it is imperative that the disagreement not be part of the customer service equation and instead be handled privately. We are all human, and an offhand remark or facial expression to a student is unfortunately a common misstep that can continue that student's dissatisfaction instead of firmly resolving a problem.

Second, the student services office must be aggressively proactive in having good communications with the faculty about all rules and regulations which they are meant to communicate and enforce. If there is not a representative from that office at faculty meetings, the office must be sure to have a formalized communication flow about any new policies in order to ensure that the office is firmly up to date on them, ensuring no miscommunications between active rules and the discussion of them from the office. Likewise, if administrative processes for students have changed—such as the way to register, administrative requirements for graduation, or other potentially frustrating issues for students—the office must be proactive in communicating those changes to faculty so that advisors are not giving out misinformation themselves. When students receive different information from different offices in the college, their dissatisfaction grows—as would any consumer in a like situation with any provider. However, because the student services office is that front line of communication, the burden is properly on it to manage internal communications to ensure the message given to students is consistent and accurate.

Lastly, student services offices are often where students go for all kinds of help—from checking graduation requirements to handling emergencies, including mental health problems. Law schools need to encourage students to want to come in to that office, to feel that they have a place to go with any problems; accordingly, those offices have a particular charge on them: to be nice. Without sacrificing the integrity of the rules that they are

enforcing, they want to have the reputation for being, and actually be, friendly, open places where students can have (most) problems solved. Without that reputation in the building, students will attempt to find a work-around, ignore serious issues—which could lead to further problems—or, in the bigger picture, decide that they need to find a different institution. All are terrible outcomes for the law schools and their respective student body. By taking a customer service approach while simultaneously maintaining the academic integrity of the institution, student services offices can well serve their institutions on the front lines of the student-consumer battle.

G. Career Development

Sometime in the past two decades, a nomenclature change began creeping through law schools nationwide. Offices formerly dubbed “Career Placement,” a passive name implicating institutional responsibility for careers, started to change to a variety of monikers intended to imply a shared responsibility among students and the institution, such as: “Career Services and Professional Development”; “Career Services”; and “Career Advising.”¹⁵¹ Such a name change is both important and, most likely, a reaction to the increasing student expectations that they were “owed” something and that upon working with the office, they would be “placed” in a career—something that, if it was ever true, is certainly not now at most law schools. Career Services offices, as another front-line soldier in the student-consumer relationship, are thus ahead of the curve in managing student expectations.

The modern law school career office of today handles a host of tasks for students, such as listing jobs, reviewing resumes, and training students for interviews and networking events. At some law schools, the career office is even responsible for teaching students how to properly handle a business meal.¹⁵² As

151. *E.g.*, *Career Services*, COLUM. L. SCH., <https://www.law.columbia.edu/office-career-services> (last visited Oct. 9, 2019); *Career Advising*, LOY. C.L., <http://law.loyno.edu/lawcareers/career-advising> (last visited Oct. 9, 2019).

152. Becky Beaupre Gillespie, *Dinner Event Teaches Law School Students the Art of Etiquette*, U. CHICAGO L. SCH. (Dec. 22, 2015), <https://www.law.uchicago.edu/news/dinner-event-teaches-law-school->

a student-facing office that is required to meet the needs of students by assisting them “in making sound career choices and obtaining employment,”¹⁵³ career offices are also a benchmark by which students measure the service they have received from an institution. Students can easily feel they are buying this service and have expansive consumer driven expectations. While there may be some students who still expect to be handed a job, the modern student-consumer mostly has different expectations of a career office—and they are generally reasonable from the viewpoint of the cost of tuition and the return on investment that students can reasonably expect from enrolling in a professional school. Among these expectations includes: an available staff; hours that meet students’ needs around their course schedules; quick turnarounds for review of letters and documents; a well-stocked online job listing platform which includes jobs of varying types in varying locations; information about networking opportunities in their areas; and interviewing opportunities brought to their campuses. Career offices generally want to provide all these opportunities to students, but those needs are not always met.

Student-consumer type complaints can arise with regard to the career office when those expectations are not met as to what the office can provide. In the case of a career office, there may be a few reasons why a student perceives a mismatch. First, students may believe that the office is a placement one, akin to a clinical or field placement office, which helps them into their position. Second, students may not have good information about the services that the office provides—for example, editing, rather than writing letters of interest or resumes. Third, students may not have gotten a full understanding of the types of jobs that the office may process and post; perhaps due to majority student request, alumni connections, or availability, the office may post small firm rather than large firm opportunities, or those confined to a narrower geographic area than the students’ wishes. Fourth, students may not like the reality that they hear when they meet with a staff member about their job prospects—for example, that a certain GPA disqualifies them for a particular clerkship or makes it unlikely that they

students-art-etiquette.

153. ABA, *supra* note 98.

will be selected to interview in an on-campus interview environment of firms seeking a certain class standing.

Because students' ultimate goal of having a career as a lawyer is at stake, and involves personal feedback to students, the career office is another of the places in the law school where there is likely to be high conflict from the student-consumer point of view. Even with good communication starting in the first-year of law school and good services that are individualized and cover a broad range of needs, when students cannot or do not get the job that they want, the career office may often be the scapegoat and the focus of their dissatisfaction with an institution.

Aggressively managing student dissatisfaction and ensuring that students understand their personal responsibility—in their career search, the law job market for graduates of their school, and in their desired geographic area, as well as the services provided by the office—is the best way to handle a consumer student attitude toward an office they view as their purchased product.

First, according to new guidelines by the National Association of Law Placement as to the timing of outreach to first-year law students by employers, the first year is an ideal time to lay the groundwork for law students to understand their path to becoming a lawyer with assistance from that office.¹⁵⁴ Second, using a personalized approach with students and creating the opportunity for students to develop relationships with personnel in that office can help take the sting out of any potential criticism or bad news the career office may have to deliver, and help foster a relationship in which constructive feedback is taken seriously. When students can reach out to one point of contact, they may feel more comfortable, and so these personal relationships can also encourage students to use the office more aggressively on their part, becoming active partners in the process, rather than stepping back and expecting customer service. Last, the career office should develop a good working relationship to partner with faculty to keep them apprised of opportunities that may arise in areas in which they

154. Karen Sloan, *NALP Loosens the Reins on Summer Associate Recruiting*, LAW.COM (Dec. 13, 2018, 12:24 PM), <https://www.law.com/2018/12/13/nalp-loosens-the-reins-on-summer-associate-recruiting/>.

teach that they may be able to identify appropriate students. For example, a professor who teaches a Bioethics seminar may get to know a small group of students and be able to help the Career Services office reach appropriate candidates for a position and help prepare them for the interview process. This type of personal outreach, which displays cooperation across the building, can help students feel that the office and the law school are truly doing their best to meet their needs.

H. Bar Preparation

The idea that at least three-quarters of graduated law students should pass a bar exam within two years of graduation is not driven by student expectations, but it is now an accreditation standard for ABA Accredited law school.¹⁵⁵ The managing director of accreditation and legal education has indicated that these measures “are more appropriate for today’s environment.”¹⁵⁶ The changes have been described by Law School Transparency, a non-profit organization devoted to consumer advocacy and public education about the legal profession,¹⁵⁷ as a “baseline consumer protection.”¹⁵⁸

From a consumer transparency viewpoint, the ABA has also required a standardized survey that produces a report of student bar passage statistics, identifying when students pass the bar for the first time, whether it be right away, one year out, or more.¹⁵⁹ There is no question that this newly required reporting is a direct response to consumer concerns about legal education and whether a particular school is, as described by business

155. Stephanie Francis Ward, *ABA Legal Ed Section’s Council Adopts Tighter Bar Pass Standard; Clock for Compliance Starts Now*, ABA J. (May 17, 2019, 4:29 PM), <http://www.abajournal.com/news/article/council-of-legal-ed-adopts-tighter-bar-pass-standard-and-clock-for-compliance-starts-now>.

156. *Id.*

157. See generally LAW SCHOOL TRANSPARENCY, <https://www.lawschooltransparency.com/> (last visited Oct. 9, 2019).

158. Ward, *supra* note 155.

159. Anne Ryman, *Law Schools Will Face Tougher Sanctions if Too Many Graduates Fail Bar Exam*, AZ CENTRAL (May 21, 2019, 4:44 PM), <https://www.azcentral.com/story/news/local/arizona-education/2019/05/21/law-schools-tougher-american-bar-association-sanctions-graduates-fail-bar-exam-asu-school-law/3745028002/> (stating that the ABA requires 75% bar passage rate within two years of graduation to maintain ABA accreditation).

terms, really meeting consumer needs of allowing them to move forward toward their career.

Students admitted to law school should have a reasonable expectation of passing a bar exam, and certainly law schools want their graduates to do so. However, due to a variety of factors, students—in their consumer mindset—are now judging law schools based in part on bar passage rates. A few factors go into that shift of perspective. First, accreditation of law schools is at risk if their bar passage falls below the standards set. Such a threat for students enrolled in schools is not idle, as recent years have seen several law schools close and their students scrambling to finish their education or be part of a teach-out plan.¹⁶⁰ Second, in recent years, the media has focused an enormous amount of attention on law schools, calling out for-profit schools' approaches and questioning whether the investment in tuition will pay off over the course of a career, both of which have been tied to the possibility of passing the bar.¹⁶¹ Third, U.S. News and World Report ranks law schools and aggressively markets those rankings which are based in part on bar passage data.¹⁶² As a result of the various pressures, law schools have responded by making bar passage part of their curriculum and culture at their institutions, from creating special classes to prepare for bar exams, to providing curricular guidance as to courses that can help prepare students in subjects tested on the bar exam, to mapping their bar subject related courses more closely to the bar exam itself.¹⁶³

Law schools have, for the most part, already responded to

160. Steven Chung, *Prospective Law Students Now Have to Think About Whether a Law School Is In Danger of Closing Before They Graduate*, ABOVE THE LAW (Mar. 13, 2019, 11:48 AM), <https://abovethelaw.com/2019/03/prospective-law-students-now-have-to-think-about-whether-a-law-school-is-in-danger-of-closing-before-they-graduate/>.

161. E.g., Paul Campos, *The Law-School Scam*, THE ATLANTIC, (Sept. 2014), <https://www.theatlantic.com/magazine/archive/2014/09/the-law-school-scam/375069/>; Jordan Weissmann, *Is Law School a Good Deal After All?*, THE ATLANTIC, (July 19, 2013), <https://www.theatlantic.com/business/archive/2013/07/is-law-school-a-good-deal-after-all/277927/>.

162. *Best Law Schools*, U.S. NEWS & WORLD REPORT (2019), <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings>.

163. See Debra Moss Curtis, *"They're Digging in the Wrong Place:" How Learning Outcomes Can Improve Bar Exams and Ensure Practice Ready Attorneys*, 10 ELON L. REV. 239 (2018).

student-consumer pressure to help provide students with everything needed to pass the bar exam. Any further student concerns are likely micro-focused, such as what happens within the courses presented, who is teaching the courses presented, and other general curriculum related consumer concerns.

While law schools continue to do more to support the bar passing endeavor by students, both in the curriculum and through extra-curricular formats, there is a limit as to what can be done. Substantive curricular decisions are constantly being reevaluated to ensure they are most closely in alignment with student needs. Additionally, schools are going beyond the classroom to support students in other ways, including: negotiating deals with bar-prep companies incorporated into tuition; providing meals for students, both while studying and at the exam; extending student campus privileges to students past graduation and through the study period (even if more than one); providing mental health services to students preparing for the bar; and offering one on one student coaching to ensure students are taking a thorough, but healthy, approach to studying. As such, the bar passage issue is one that has been firmly shaped by a consumer mindset of legal education.

IV. Conclusions

The paradigm of students as consumers has often set institutions and students at odds in the provision of a legal education experience that both consider to be in the best interests of students. While others have argued for a “good faith standard of performance” in striking the balance between students’ rights, from a consumer mindset, and institutional policies, that debate only speaks to part of the picture.¹⁶⁴ Before that balance can occur, legal education must reimagine the student-institution relationship and consider where and when student-voiced concerns are paramount, how to structure those rules, and where institutional policies should not be driven by the consumer mindset but can be appropriately managed by good communication. In between may fall appropriate areas where that balance then can be struck, considering student population, institutional process, and the concept of good

164. Anjum, *supra* 25.

faith.¹⁶⁵

Pretending students are not consumers of education is not a battle worthy of law schools' time. Knowing how to manage that mindset while maintaining the integrity of the institutional program is critical. As such, the best weapon that law schools have in leveraging student-consumer attitudes, and minimizing distracting complaints that make otherwise satisfied students turn into unhappy purchasers, is good planning, transparency, and communication. All schools should be using their strategic planning to do so.

165. *Id.* at 172.