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The Law of the Middle Class: Consumer Finance in the Law School Curriculum

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THE LAW OF THE MIDDLE CLASS: CONSUMER FINANCE IN THE LAW SCHOOL CURRICULUM

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America is defined by its broad middle class, but the middle class is virtually absent from the law school curriculum. Law school courses deal with general concerns (contracts, torts, property, and taxes), the concerns of the rich (trusts and estates), and occasionally the law of the poor, but there are no courses dedicated to the financial concerns of the middle class.

This Essay argues that the defining feature of the American middle class is its reliance on credit to finance its essential purchases: a home, a car, and an education. The law of the middle class is the law of consumer finance. Courses covering the markets and regulation of consumer financial products are not, however, to be found in standard law school course offerings.

It is time for this to change. The creation of the Consumer Financial Protection Bureau has centralized and rationalized the institutional structure of consumer financial regulation such that it is now possible to organize a coherent stand-alone course in consumer finance. This Essay argues that consumer finance regulation—the law of the middle class—should become a standard part of the upper-level law school curriculum and presents a vision of what such a course would look like.

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I. THE MISSING LAW OF THE MIDDLE CLASS

America is defined by its broad middle class—whatever that may be—or at least by its identification with its middle class. Yet the middle class is strangely absent from the law school curriculum. There are, of course, classes that deal with what might be thought of as middle-class concerns—property, contracts, and torts, for example—but the black letter law in those areas is the same law for the rich and poor and in-between, just as it is generally the same for consumers and businesses. The law of the rich is well ensconced in the curriculum—trusts and estates—although we would never call it that,[1] and poverty law occasionally shows up in the law school curriculum. But where is the law of the middle class?

To answer that question, it is necessary to hazard a definition of the middle class. Classic Marxian and Weberian constructs of class are a poor fit for American society. There have also been umpteen attempts to define the middle class mathematically in terms of income or wealth, none of which has been generally accepted.

A better definition, I suggest, looks to consumer behavior. What does the broad middle class in the United States—from blue-collar households to law professor-doctor households pulling in over $400,000 annually[2]—have in common?

The answer is debt-financed consumption. The American middle class relies on consumer credit to make essential purchases: a home, a car, higher education, and sometimes home repairs and furnishings. The rich might use credit, but they use it for convenience or rate arbitrage, not because it is the only way they can make a purchase. The poor do not use credit because they cannot generally obtain it. Many lack a bank account from which to make payments to a lender, and products like subprime mortgages or even payday loans are not typically available to the

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[1] That we do not reflects in part the degree to which we still deny the presence of class in American life.

[2] Todd Henderson, "We are the Super Rich," TRUTH ON THE MARKET (Sept. 15, 2010), *original post deleted, but Google cache version available at* https://bit.ly/2LXaai4.

truly poor.[3]

The need to borrow for key purchases shapes both the economic and social life of the middle class. On the one hand, indebtedness makes possible purchases that would otherwise be beyond the reach of most Americans based on their accumulated savings. Credit allows present consumption based on telescoping projected future earnings. The ability to consume on credit fosters social mobility by financing education. It also fosters social integration by financing housing and transportation mobility. Debt additionally enables a culture of property ownership that in turn affects political decisions as varied as zoning, taxation, and school funding.

Conversely, however, indebtedness can also restrict educational and career decisions and residency patterns. Discrimination in credit markets has heavily shaped American society, limiting certain communities' ability to build wealth and fully integrate in not only the economic life, but also the social fabric of the nation. And to the extent that debt levels are not sustainable, they threaten households' place in the middle class and America's promise of merit-based social mobility.

Put another way, debt is what defines the American middle class. That debt makes possible a pattern and level of consumption that in turn shapes an incredibly wide range of features of American life. At the same time, however, that indebtedness poses a threat to the very middle-class life it facilitates.

Reliance on credit is the core feature of the American middle class, but credit does not exist in a vacuum. Credit is provided primarily through the banking system, and the banking system combines provision of credit with the provision of deposits and payment services. Moreover, the entire consumer credit system relies on consumer financial data for credit-granting decisions, for fraud prevention in payments, and for marketing a range of services. Consumer financial data is the glue that holds together credit and payments. Thus, the law of the middle class is the law of consumer finance—credit, payments, deposits, and financial data.

Although the defining feature of the middle class is its financial life, that financial life is largely absent from the law

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[3] A payday loan requires a bank account because the lender assures itself of repayment through a post-dated check or right to draw electronically on a bank account. Mortgages may not be made without verification of the borrower's ability to repay. 15 U.S.C § 1639c.

school curriculum. There is no standard law school course that covers regulation of consumer finance markets. The modern law school curriculum contains a number of standard business law courses: business associations, bank regulation, securities regulation, commercial law classes (secured transactions, payment systems, and sales), bankruptcy, and antitrust. These courses all largely deal with business-to-business transactions; to the extent consumer transactions appear, they are on the margins.

There are, of course, classes in "consumer law," but consumer law is not exactly consumer *finance* law. Consumer law covers an enormous range of topics from odometer fraud and lemon laws to sales warranties, telemarketing, and credit cost disclosure. This range of topics makes it impossible for a consumer law course to focus on the particular product markets or on the regulatory architecture. Instead, consumer law focuses on broad themes such as fairness, deception, disclosure, and dispute rights. Consumer law is also intensely focused on the experience of the consumer, and particularly the *protection* of the consumer. Consumer law is not particularly concerned with the substance of the transaction or about the risks incurred by other parties to the transaction. Thus, issues about the regulatory structure, public enforcement tools, and the effect of regulation on transactional design and business practices are generally absent from the consumer law course.

Likewise, consumer bankruptcy courses address consumers' financial lives, but they are not consumer finance courses. Consumer bankruptcy law has been an important lens into the financial life of the middle class.[4] But consumer bankruptcy law is about the technical workings of a detailed federal statutory system that deals with consumers once they are in financial distress, not about the consumers' financial transactions themselves.

Similarly, the standard bank regulation class is not a consumer finance regulation class. The bank regulation class is a class on prudential regulation—how to make sure that banks do not fail. Bank failure certainly affects consumers, but it is not a class focused on the interaction between banks and consumers. Instead, a bank regulation class will typically devote a session or two to consumer protection regulation, most likely pointing out that there is, since 2010, a dedicated consumer financial

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[4] *See, e.g.*, TERESA SULLIVAN ET AL., THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT (2000); TERESA SULLIVAN ET AL., AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA (1989).

protection regulator with broad powers. The class may mention the disclosure requirements of the Truth in Lending Act. But that's about it. Critically, the standard bank regulation class doesn't cover the myriad types of non-bank financial institutions, from PayPal to payday lenders, with whom consumers interact.

At most, one might find a consumer credit seminar being offered, but such courses hardly offer a systematic view of the consumer finance markets and their regulation.

The absence of a standard course on the law of consumer finance is particularly startling when one realizes the scope of consumer financial markets and their importance. Consumer spending accounts for almost three-fourths of the American gross domestic product,[5] so the business of consumers is big business. Although it is largely made of trillions small transactions: there were nearly 191 billion consumer payment transactions made in 2017, accounting for over $10 trillion in payments.[6] All of these consumer transactions involved consumer financial services, if only because they involve a payment made through a set of financial institution intermediaries (ACH, cash, check, credit card, or debit card) or were made with cash obtained from a financial institution.

Many of these consumer payment transactions are made on credit. As of the end of 2018, there was roughly $16 *trillion* in consumer liabilities.[7] Of this over $10 trillion was in the form of

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[5] *Gross Domestic Product (GDP)*, OECD STAT., https://stats.oecd.org/index.aspx?queryid=60702 (listing US GDP in 2016, the most recent year for which statistics are available, as $20.5 trillion, U.S. Bureau of Economic Analysis, Gross Domestic Product [GDP], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/GDP, April 18, 2019, and actual individual consumption as nearly $14 trillion. U.S. Bureau of Economic Analysis, Personal Consumption Expenditures [PCECA], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/PCECA, April 18, 2019.

[6] *Nilson Report #1144*, NILSON REPORT, Dec. 2018, at 8. The difference between the $13.867 trillion in individual consumption as part of GDP and the $9.9 trillion in payments is primarily based on payments made on behalf of consumers, such as payments made by insurers under insurance policies.

[7] Federal Reserve Statistical Release, *Financial Accounts of the United States*, Z.1, Table B.101 (line 30) (Mar. 7, 2019) *available at* https://www.federalreserve.gov/releases/z1/20190307/z1.pdf. This data covers both households and non-profit organizations, but non-profits account for only perhaps 5-7% of the totals.

mortgages and home equity lines of credit.[8] By comparison, corporate debt (commercial paper, bonds, loans) of nonfinancial firms totaled less than $10 trillion.[9] Against these liabilities, consumers held $120 trillion in assets, with $85 trillion in financial assets and $35 in in nonfinancial assets, primarily real estate (almost $26 trillion).[10]

Economic realities mean that for many American households, major purchases—a house, a car, an education, uninsured medical and dental expenses, and major home repairs or appliances and furnishings—can only be financed with credit. In 2017, the median American household had an income of $61,372[11] and is only able to save a few percent of that income in any given year. As of the start of 2019, the personal savings rate in the United States (income minus taxes and personal outlays) was just 7.5%.[12] At that rate, the median income family would be saving $4,600 per year. That level of savings is plainly inadequate to fund major purchases like a home or new car, yet many households will save even less. Instead, households must borrow against future income to make their current big-ticket purchases.

But it is not just a matter of transactions like car and home purchases that cost tens or hundreds of thousands of dollars. It is often a matter of transactions that cost thousands or even hundreds of dollars. By definition, many families earn less than the median family, and those families are likely to save less. Moreover, a family that is median in one year may not be so in the next if income and expenses are volatile. This means that many households do not have the liquidity to cover the repair bill when the car or the furnace breaks or the cost of an uninsured

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[8] Federal Reserve Statistical Release, *Financial Accounts of the United States*, Z.1, Table B.101 (line 33) (Mar. 7, 2019) *available at* https://www.federalreserve.gov/releases/z1/20190307/z1.pdf.

[9] Federal Reserve Statistical Release, *Financial Accounts of the United States*, Z.1, Table B.103 (sum of lines 27 and 31) (Mar. 7, 2019) *available at* https://www.federalreserve.gov/releases/z1/20190307/z1.pdf.

[10] Federal Reserve Statistical Release, *Financial Accounts of the United States*, Z.1, Table B.101 (lines 1, 2, 4, 9) (Mar. 7, 2019) *available at* https://www.federalreserve.gov/releases/z1/20190307/z1.pdf.

[11] *Income, Poverty, and Health Insurance Coverage in the United States: 2017*, Release No. CB18-144, U.S. CENSUS BUREAU (Sept. 12, 2018), https://www.census.gov/newsroom/press-releases/2018/income-povery.html.

[12] *Personal Income and Outlays, January 2019*, Release No. BEA 19-13, BUREAU OF ECONOMIC ANALYSIS (Mar. 29, 2019), https://www.bea.gov/news/2019/personal-income-february-2019-personal-outlays-january-2019.

emergency root canal. Consumer credit provides a private safety net of sort for unexpected expenses.

Consumers' financial transactions are an enormous slice of the American economy. Yet this segment of American economic life—and the social class it defines—is absent from the traditional law school curriculum.

It shouldn't be. One of the goals of legal education should be to uphold and improve American democracy. If American democracy is defined by its middle class and the belief in social mobility, then the law of the middle class should be of particular focus in legal education, and we ignore it to the peril of the health of the middle class and our democracy.

To make this concrete, in the years following the 2008 financial crisis I frequently heard colleagues whose scholarship lies in other areas bemoaning the sad plight of distressed or foreclosed homeowners. They couldn't understand why lenders might foreclose on properties with depressed values or why consumer foreclosure litigation was so rarely successful. At the same time, those colleagues were attempting to digest economist Thomas Pikkety's celebrated insights about wealth inequality.[13] They understood the importance of Pikkety's work about growing income inequality, but they largely lacked a framework to understand it other than falling back on the Marx and Weber they studied decades before as undergraduates. While these colleagues were deeply learned in American law, their knowledge of the vast body of consumer finance markets and regulation was virtually non-existent.

I submit that these are not unrelated phenomenon: it is impossible to understand the growth of wealth inequality in America without understanding how the consumer finance system works for some and not for others. The American middle class sits atop the edifice of the consumer finance system and cannot be understood without an understanding of that system.

II. WHY CONSUMER FINANCE HAS BEEN MISSING FROM THE CURRICULUM

There are two key reasons why the law of the middle class has been absent from the law school curriculum. First is that until recently there was no cohesive body of law or legal institution geared to the middle class. Prior to 2010, consumer finance regulation involved over eighteen separate federal

[13] THOMAS PIKKETY, CAPITAL IN THE TWENTY-FIRST CENTURY (2014).

statutes, not to mention numerous state laws and various regulations thereunder.[14] Responsibility for these regulations was spread out among over a dozen federal agencies, as well as state financial regulators and attorneys general.[15] There was no single agency with authority over anything close to the entire consumer finance marketplace.[16]

The authorities that federal agencies had were often quite discrete and limited to particular products and to the enforcement of specific bright line statutory rules.[17] States had broader enforcement tools such as Unfair and Deceptive Acts and Practices statutes, but they often lacked rulemaking authority under such statutes, and what authority they had was often preempted as applied to depositories.[18] Meanwhile, the Federal Trade Commission, which is armed with a broad power to proscribe unfair or deceptive acts and practices ("UDAP"), lacked authority over depositories and credit unions, and faced a cumbersome, non-APA rulemaking process for its UDAP power.[19]

The net effect was a dysfunctional spider web of mismatched regulatory tools and jurisdiction.[20] The lack of a coherent regulatory framework meant that there was no obvious organizational structure to a course on the law of the middle class.

The second reason that consumer finance is missing from the law school curriculum was that it was a largely moribund area both in terms of regulatory action and scholarship. Until less than a decade ago, if one wanted to study consumer finance from a legal perspective there was one clear place to go: bankruptcy court. From the 1980s until 2010, consumer bankruptcy scholarship was the primary lens for examining consumer finance. The pioneering empirical work of professors Teresa Sullivan, Elizabeth Warren, and Jay Westbrook on consumer bankruptcy was so powerful, not because it was bankruptcy scholarship, but because it was a lens into the realities facing American consumers.[21] Bankruptcy cases generated the data for examining consumer finances at a time when other data sources

[14] *See* Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 REV. BANKING & FIN. L. 321, 344 (2013).

[15] *Id.* at 327-28.

[16] *Id.* at 329.

[17] *Id.* at 327.

[18] *Id.* at 328.

[19] *Id.* at 326.

[20] *See id.* at 329.

[21] *See* TERESA SULLIVAN ET AL., *supra* note 4.

were quite limited.

Consumer finance markets completely changed during this period. First, there was the rise of credit cards in the 1980s, then the invention of payday loans and increased use of debit cards in the 1990s, and then the explosive growth of subprime mortgage lending and the movement on-line of financial services in the 2000s. The whole while the credit reporting system expanded, both in terms of the number of people covered and the types of information collected.

Yet despite the sea of changes in consumer finance markets, regulation was largely moribund. Yes, states had to come up with new regulatory regimes to deal with payday lending and the problems of identity theft raised by the increasingly electronic nature of commerce, but otherwise the regulatory regime remained relatively static after the 1970s, other than a race to the bottom in usury regulation set off by the Supreme Court's 1978 *Marquette* decision.[22]

III. WHY CONSUMER FINANCE SHOULD NOW BE PART OF THE LAW SCHOOL CURRICULUM

All of that changed in 2010. The financial crisis of 2009 paved the way for the passage of the CARD Act in 2009[23] and then the Dodd-Frank Wall Street Reform and Consumer Protection Act.[24] The Dodd-Frank Act fundamentally changed the dynamics of consumer finance regulation by creating the Consumer Financial Protection Bureau ("CFPB").

The CFPB's creation meant three critical things for consumer finance regulation from an academic's perspective. First, it meant that consumer finance regulation would be done on the federal level through a single agency, rather than through a dozen different agencies (although the Departments of Defense, Education, Housing and Urban Development, and Justice still play roles in some parts of the market even today).[25] This has made it easier to focus a course because the course could be

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[22] Marquette Nat'l Bank of Minnea. v. First of Omaha Serv. Corp., 439 U.S. 299 (1978); Adam J. Levitin, *Hydraulic Regulation: Regulating Credit Markets Upstream*, 26 YALE J. REG. 143, 158 (2009).

[23] Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111–24, 123 Stat. 1734 (May 22, 2009).

[24] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (July 21, 2010).

[25] *See* Levitin, *supra* note 14, at 327-28.

structured largely around the jurisdiction of the CFPB. In particular, the CFPB has jurisdiction over most consumer payments, credit, and financial data products. It does not have jurisdiction over securities or most insurance products.

Second, the creation of the CFPB meant that consumer finance would be regulated on the front-end through the regulatory process of rulemaking, supervision, and enforcement, rather than on the back-end in the (primarily bankruptcy) courts. As a result, the action in consumer finance has shifted from the study of consumer bankruptcy to the study of the CFPB.[26]

And third, the CFPB meant that there would be a lot more and better-quality data about the consumer finance industry available. It has not disappointed. Although the CFPB does not collect or publish general statistical information other than Home Mortgage Disclosure Act data, CFPB publications have nevertheless substantially increased the data available about a range of consumer financial product markets.

These three factors have made it possible for the creation of a new course that should be a standard offering in the law school curriculum. The moment is analogous to that in the 1934 after the creation of the Securities and Exchange Commission. Securities law was not yet a part of the law school curriculum, but by the 1940s it was a standard offering. Today, there is a major and powerful federal agency that regulates consumer finance, which affects an enormous part of the US economy. It only makes sense that it should receive coverage in the law school curriculum.

Consumer finance is also an intensely practical course for law students in two ways. First, it helps students understand transactions to which they themselves are parties. While most students do not anticipate being involved in a tort or contract dispute, they do have credit cards and student loans, and anticipate taking out a mortgage or car loan. Accordingly, students are often interested in consumer finance on a personal level.

Second, consumer finance offers students an edge in a competitive job market by providing a background that is useful not only for traditional civil regulatory enforcement and private plaintiff's and defense counsel, but also for the fast-growing field of regulatory compliance. The sheer volume of consumer finance

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[26] This change has been amplified by the 2005 amendments to the Bankruptcy Code, which have substantially complicated teaching consumer bankruptcy.

regulations ensures that there is substantial employment for regulatory compliance attorneys both in-house and with outside counsel. Simply put, there are (good) jobs in consumer finance where a legal background is needed or preferred, and law schools should be preparing their students to compete for these jobs. Consumer finance is a course that can open up the field of regulatory compliance work for students.

The value added to a job candidate from having a course in consumer finance regulation can be seen in an enforcement action brought by the CFPB against Citibank. The CFPB entered into a consent order with Citibank that required Citi to reimburse its customers some $335 million for violating the Truth in Lending Act by failing over seven years to reset the interest rates on consumers' credit card accounts as required by law, and by failing to have reasonable policies and procedures about such mandatory rate resets.[27] This is the sort of problem that a law school graduate armed with a basic knowledge of consumer finance law would have readily spotted because the mandatory rate resets are a key feature of the regulation of credit cards. A little background in consumer finance regulation could have saved Citibank millions.

IV. WHAT A CONSUMER FINANCE COURSE WOULD LOOK LIKE

At this point I hope I have convinced you that consumer finance should be a standard part of the upper level curriculum at law schools. If so, what would a consumer finance course look like?

An initial challenge for a consumer finance course is defining its scope of coverage. Consumer finance as a field broadly is functionally defined to include moving funds between parties in the present (payments), moving funds from the future to the present (credit), from the present to the future (deposits and investment), contingent movements of funds to manage risk (insurance), and also advice and information services related to movements of funds (financial advisers and data intermediaries).[28] While conceptually one might wish for a course that covered all of these areas, it would be unwieldy. Instead, the

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[27] Consent Order, *In the Matter of Citibank, N.A.*, Administrative Proceeding, No. 2018-BCFP-0003, June 29, 2018.

[28] *See* Peter Tufano, *Consumer Finance*, 1 ANN. REV. FIN. ECON. 227 (2009).

regulatory ambit of the CFPB—deposits, payments, credit, and data—provides a sensible scope for the course.

Investments and insurance and associated ancillary services are in the bailiwick of other regulators, such as the SEC, CFTC, and state insurance regulators, that administer detailed and complex regulatory regimes. Moreover, these other regulatory regimes—securities, commodities, and insurance—are not consumer-specific regimes, but regimes that cover both consumers and businesses. In contrast, there is relatively little regulation of credit and payments other than for consumers; business credit is largely unregulated, and business payments are much more thinly regulated than consumer payments. Likewise, the major federal privacy laws—the Fair Credit Reporting Act, the Gramm-Leach Bliley Act, and the Right to Financial Privacy Act are all consumer laws.[29] Thus, the scope of a consumer finance class is sensibly limited to deposits, payments, credit, and data.

For these topics, there are two components that a consumer finance course must address. The first component deals with the questions of who regulates consumer finance and how. Is regulation to be done by private law (contract and tort) or by public law? If by public law, should it be done on the state or federal level? If on the federal level, by which regulator? And if public law, what tools should be used? Disclosure requirements? Licensing requirements? Bright line rules prohibiting or requiring particular practices or product terms? Standards prohibiting unfair, deceptive or abusive acts and practices? Consumer finance is an exceptionally rich field in this regard, featuring private, state, and federal regulation, but with substantial differences between products in the balance among these regulatory channels.

The second component deals with particular consumer financial products and their regulation. Students need to understand consumer financial products markets—what are the products, what are they used for and by whom, what are the institutions and market structures involved, what are the risks posed to consumers and financial service providers, what policy issues exists, what is the specific regulatory response, and how well does it address the policy concerns?

Take, for example, payday loans. A consumer finance

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[29] Technically, the Right to Financial Privacy Act also covers small partnerships. 12 U.S.C. § 3401(4) (defining "person" to include partnerships of five or fewer individuals).

course would cover what a payday loan is, who uses them and why, and how they compare with other short-term, small-dollar credit products like auto title loans, pawn loans, and installment loans. It would also cover the institutional structure of the lending market, both storefront and on-line, the regulatory regime (a broad variety of state laws affecting licensure, interest rates, loan terms, rollovers among other things, but also a pending federal regulation). It would cover the policy controversies about payday loans—are they a predatory financial product or are they helpful to consumers or some combination thereof? And it would ask what problems is regulation responding to: a concern about the cost of payday loans (meaning it's fine if they're cheaper) or about financially distressed borrowers' lacking the ability to repay on any terms?

A consumer finance course, then, might be organized around the markets and regulation for consumer deposits, payments, credit, and financial data products. This is the vision I have implemented in a consumer finance courses that I have taught at Georgetown and Harvard since 2011, and which has also been successfully taught by a colleague at the University of Illinois, with some materials also being used in courses at Florida, Fordham, and Howard.

The first part of the course covers the regulatory architecture, that is who regulates whom and how. It first covers private law regulation (the bedrock of consumer finance because most relationships are contractual) and state regulation (particularly licensing and UDAP statutes). It then turns to federal regulation and takes a deep dive into the scope of the CFPB's regulatory authority for its different powers—rulemaking, supervision, and enforcement—and a close look at the CFPB's broad organic power to prohibit unfair, deceptive, or abusive acts and practices. The first part also addresses disclosure mandates and behavioral economics, as general tools in the regulatory toolkit.

The first part of the consumer finance course thus provides a rare applied look at how regulatory agencies work. The standard administrative law course deals in abstract administrative law doctrines: delegation, *Chevron*, etc. A consumer finance course offers students a practical, on-the-ground look at how statutes and regulations interact and how a regulatory agency enforces them. This is a world informed by the Administrative Procedures Act, but it is not a world in which results in much litigation under the Administrative Procedures Act, which is the bread and butter of a traditional administrative law class

The second part of the course turns to different consumer financial product markets, going through deposits and payments, credit products, and financial data products in turn. Deposit accounts are the lynchpin of most modern payment systems, and coverage of deposits also enables an exploration of bank account overdraft, the unbanked, prepaid cards, and anti-money laundering regulations. While the course gives due coverage to the statutes and regulations governing deposit accounts, its primary concern is that students understand the different types of products involved, the institutional framework for those products, and the economics of the products—particularly the costs and risks involved for their users and providers.

The course's coverage of payment systems differs materially from a traditional payment systems course. The intricate state law rules of UCC Articles 3, 4, and 4A are the bread-and-butter of payment systems courses, but are largely irrelevant to consumers. Instead, the course focuses on debit, credit, and ACH payments (and emerging payments technology), with emphasis on the rules for liability for unauthorized transactions and dispute resolution. The law here is federal law with substantial private law overlays in the form of payment system network rules. As with the deposit account section, a particular focus is ensuring that students understand the institutional structure and economics of payment systems.

The coverage of consumer credit systems begins with some chapters on topics of general applicability to credit: the basics of credit terminology (*e.g.*, amortization, compounding, points, collateral), calculation of the finance charge and the annual percentage rate, fair lending regulations, usury laws, and secondary markets. It then turns to specific credit markets: auto loans, credit cards, mortgages, small dollar loans, and student loans. Also included in the coverage of credit is the debt collection system. Again, as with deposits and payments, the treatment of credit products focuses on the market structure, risks, and costs as well as on the regulation of the products.

The final part of the course covers the regulation of consumer financial data. This means credit reporting, but also consumer financial privacy and data security regulations, including data breach notification laws.

V. TEACHING CONSUMER FINANCE

A major obstacle for anyone attempting to teach a consumer finance course is the lack of a textbook. Consumer finance covers a huge number of disparate topics; there is no one who is deeply expert in all of them, and this presents a challenge for anyone trying to assemble course materials on his or her own. Fortunately, the lack of a textbook needs no longer stand as an obstacle to teaching consumer finance. I have written a textbook, *Consumer Finance: Markets and Regulation* (Wolters Kluwer 2018) that implements my vision for a consumer finance course. The book is structured to match the course structure described above.

The book is not a "casebook," in that there are rather few (only twenty) cases in the entire book. Instead, there is a great deal of expository material (including numerous graphs), as well as a range of administrative agency materials, such as complaints, consent orders, speeches, guidance, supervisory highlights, and studies, that provide insight into regulatory agency interpretations of statutes and the toolkit agencies use for communicating and effectuating policies.

Each chapter of the book concludes with a problem set. The book is designed so that the problem sets can constitute all or the majority of class discussion. They are not the only way to teach the book—one can skip the problem sets entirely and teach the book as a lecture course or as a Socratic dialogue—but the problems are meant to reinforce what I think are the important pieces of the business issues and the regulatory regimes for various products. The problem sets are also meant to provide realistic issues that consumer finance lawyers must address and to underscore the interaction between legal regimes (and their uncertainty) and business concerns; many of the problems are based on situations I have encountered professionally or on actual cases. Most chapters' problem sets also contain a question that sets the stage for a more open-ended discussion on consumer finance policy.

The book provides an easy pedagogical shift for faculty who currently teach consumer law, bankruptcy law, commercial law, or bank regulation, and provides up-to-date approaches to consumer finance that integrate law and social science learning in the text. There are also frequent opportunities if one wants in teaching the course to bring in discussions of current hot policy issues and, given the political controversy that has surrounded the CFPB from its inception, the politics of consumer finance regulation.

Obviously, some topics will be more familiar to some faculty than others—anti-money laundering regulations don't really fall in anyone's scholarly bailiwick, even if they are important for payment systems—and not everyone will agree on the precise scope or inclusion of every topic. Not everyone is likely to agree with me, for example, about the importance of teaching usury laws or financial data security. The book's design provides enough separate topics that there will be some room for faculty to choose the precise scope of their coverage—perhaps student loans this year and auto lending the next. Indeed, the book's design is flexible enough that it could also be used for a more discrete course on consumer credit or consumer payments.

VI. HOW TEACHING CONSUMER FINANCE WILL IMPROVE CONSUMER FINANCIAL REGULATION

Establishing Consumer Finance in the law school curriculum will not only serve students well, but it will also advance consumer financial regulation itself. Teaching and scholarship are intertwined, iterative endeavors. Teaching a topic sows the seeds for future scholarly inquiries. The more faculty who teach consumer finance, the more who are likely to write in the area.

It is not simply a matter of quantity of scholarship. The qualitative nature of that writing will be different too. The current state of consumer finance scholarship still follows the pattern of the pre-CFPB regulatory architecture. It is often narrowly focused on particular products or solely on consumers or solely on financial institutions. At best it can be described as a pastiche: some scholars focus on particular consumer financial products, such as mortgages or payday loans or payments. Other scholars focus on problems in consumer contracting generally. Others focus on broader issues of financial inclusion. Yet there is virtually no literature that ties these disparate threads of scholarship together.

A systematic study of consumer finance markets and regulations will inevitably result in scholars seeing connections, parallels, and disconnects in product design and regulation that they would not otherwise see. To give but one example, there are obvious parallels in the movement in consumer finance regulation from hoary old usury laws to what might be called the "new usury"—ability to repay requirements that are drafted as broad standards, but with bright-line safe harbors that function much like usury laws. Already, such ability to repay requirements appear for credit cards,[30] mortgages (both as federal law[31] and in some cases as state law as well[32]), payday loans,[33] and in some states for auto loans,[34] or loans generally.[35] There is much to be said about this phenomenon, which might not be apparent to one who only studies mortgages or payday loans in isolation.

Better scholarship on consumer finance will in turn advance consumer finance regulation itself. When the CFPB looks to do a rulemaking (or a regulated entity or trade group seeks to challenge a rulemaking), scholarship is foundational to the policy argument; administrative law's prohibition on capricious regulation makes it essential to tether regulation to evidence that is adduced from scholarship. Likewise, when there is consumer finance litigation, pleadings and expert reports rely on scholarship. The systematic and cross-product thinking about consumer financial markets and regulation that a consumer finance course fosters will ultimately bear fruit in terms of better consumer finance regulation and better markets for the middle class.

CONCLUSION

It's time to add Consumer Finance to the law school curriculum. Faculty that care about the health of American democracy should be concerned with the health of the American middle class, and the health of the middle class depends first and foremost on its financial position. While the financial life of the middle class is affected by a range of legal areas—tax, employment, labor law among others—the law that is specific to the middle class is the law that governs the middle class's defining feature—its reliance on credit to finance key purchases. Understanding consumer financial product markets and their regulation is key for understanding the middle class, and has immediate practical benefits for law students as consumers and

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30 15 U.S.C. § 1665; 12 C.F.R. § 1026.51.

31 15 U.S.C. § 1693c; 12 C.F.R. § 1026.43(e) (safe harbor for Qualified Mortgages).

32 *E.g.*, 205 ILCS 635/5-6; Md. Code Ann., Comm. Law § 12-127.

33 12 C.F.R. § 1041.

34 Cease and Desist by Agreement, *In re Santander Consumer USA Holdings Inc.*, No. 17-17-17001637 (Del. Cons. Protection Director, Mar. 29, 2017); Assurance of Discontinuance Pursuant to M.G.L. Chapter 93A, § 5, *In the Matter of Santander Consumer USA Holdings, Inc.*, No. 17-0946E (Mass. Super. Ct., Suffolk Co. Mar. 28, 2017).

35 *E.g.,* 10 Cal. Code Reg. § 1452.

for their employment potential, and will ultimately improve consumer financial regulation itself. Courses in consumer finance should be a standard part of the law school curriculum.