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## City on a Hill: The Democratic Promise of Higher Education

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# City on a Hill: The Democratic Promise of Higher Education

Rachel F. Moran\*

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When we think about the democratic promise of higher education, we often think of public universities. Consider, for example, the civic-minded reflections of Gordon Davies, the former Chancellor of the University of Virginia, who concluded

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in 1997 that “[e]ducation is not a trivial business, a private good, or a discretionary expenditure. It is a deeply ethical undertaking at which we must succeed if we are to survive as a free people.”<sup>1</sup> This lofty vision has since been undermined by persistent cuts in funding for state universities across the nation. In 2007, James Duderstadt, the former president of the University of Michigan, described the transformation of public universities from “‘state-supported’ to ‘state-assisted’ to ‘state-related’ to what might only be characterized as ‘state-located.’”<sup>2</sup> Another colleague of Duderstadt’s went even further, describing them as “state-molested.”<sup>3</sup> It would be tempting to remark at what a difference a decade made but, in fact, pressures to privatize higher education have increasingly strained the mission and operations of public universities since the 1970s.<sup>4</sup> These changes may be among the most visible evidence of the impact of privatization, but the consequences have been much broader. The tendency to treat a college degree as a private good has diminished the salience of higher education as preparation for civic life, widened the divide in resources among colleges and universities, and placed a growing burden on students and their families to self-finance a degree. The shift to the rhetoric of the private marketplace is decidedly ironic, given that approximately three out of four students enroll in public colleges and universities, which have been heavily subsidized to promote high-quality education for all.<sup>5</sup>

The turn toward privatization reflects a significant departure from our historic commitment to higher education as an integral partner in the nation-building process and our collective aspiration to build a city on a hill.<sup>6</sup> Although higher

1. GORDON DAVIES, VA. STATE COUNCIL OF HIGHER EDUC., *TWENTY YEARS OF HIGHER EDUCATION IN VIRGINIA* 2 (1997).

2. JAMES DUDERSTADT, *THE VIEW FROM THE HELM: LEADING THE AMERICAN UNIVERSITY DURING AN ERA OF CHANGE* 101 (2007).

3. *Id.*

4. See Karin Fischer & Jack Stripling, *An Era of Neglect: How Public Colleges Were Crowded Out, Beaten Up, and Failed to Fight Back*, CHRON. OF HIGHER EDUC. (Mar. 2, 2014), <http://www.chronicle.com/article/An-Era-of-Neglect/145045> [<https://perma.cc/UQY5-T4CG>]; Sara Hebel, *From Public Good to Private Good: How Higher Education Got to a Tipping Point*, CHRON. OF HIGHER EDUC. (Mar. 2, 2014), <http://www.chronicle.com/article/From-Public-Good-to-Private/145061> [<https://perma.cc/56GQ-ZEFT>]; JOHN QUINTERNO, DEMOS, *THE GREAT COST SHIFT: HOW HIGHER EDUCATION CUTS UNDERMINE THE FUTURE MIDDLE CLASS* 1, 15–17 (2012), [http://www.demos.org/sites/default/files/publications/TheGreatCostShift\\_Demos\\_0.pdf](http://www.demos.org/sites/default/files/publications/TheGreatCostShift_Demos_0.pdf) [<https://perma.cc/SPV8-QZ2Y>]; Mark G. Yudof, President, University of California, Keynote Address at the American Law Institute Annual Meeting: *Whose University? The Decline of the Commonwealth, and its Meaning for Higher Education* (May 17, 2011) [http://www.ucop.edu/yudof/\\_files/law-institutue-keynote-speech.pdf](http://www.ucop.edu/yudof/_files/law-institutue-keynote-speech.pdf) [<https://perma.cc/4DM7-3BZD>].

5. THOMAS SNYDER ET AL., NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., *DIGEST OF EDUC. STATISTICS 2015*, at 59 tbl.105.20 (51st ed. Dec. 2016), <https://nces.ed.gov/pubs2016/2016014.pdf> [<https://perma.cc/JZ4F-QPC7>].

6. See CHRISTOPHER J. LUCAS, *AMERICAN HIGHER EDUCATION: A HISTORY* 103 (2006) (describing John Winthrop’s call to future leaders of the Massachusetts Bay Colony that “we must consider that we shall be as a city upon a hill,” a new order that would include institutions of higher education); see also Marilynne Robinson, *Save Our Public Universities: In Defense of America’s Best Idea*, HARPER’S MAG., Mar. 2016, at 29, 31–32, 37 (arguing that American public higher education was rooted in a sense of our collective possibilities and aspirations).

education has always promoted personal mobility, it has long been characterized as a hybrid good with both private- and public-regarding aspects.<sup>7</sup> Early on, when private institutions served a handful of elites, civic obligation in higher education had overtones of noblesse oblige.<sup>8</sup> With the rise of industrialization and urbanization, the role that colleges and universities play in promoting general economic prosperity became prominent. After World War II, the story of higher education epitomized democratization through expanded access, a transformation made possible by increased federal aid for students and the growth of state colleges and universities. In recent decades, the evolution of higher education as a public good has been stymied by the push for privatization.

After briefly tracing the history leading up to today's calls for privatization of colleges and universities, this Article will clarify what it means to describe higher education as a public or private good. The analysis begins by evaluating postsecondary education as a public good and ultimately focuses on its role in promoting democratic equality through preparation for civic leadership and preservation of a level educational playing field. The Article then unpacks the concept of privatization by identifying three manifestations of this trend: commodification, segmentation, and stratification. Commodification refers to the monetization of a college degree; segmentation describes differentiation among institutions of higher education that interferes with cooperation and collaboration; and stratification relates to the hierarchical ordering of colleges and universities. Each of these elements of privatization can undermine the public-regarding aspects of higher education. Next, the Article explores how the impetus to privatize impoverishes our political discourse about improving American colleges and universities. The paper closes with some thoughts about the reforms most urgently needed to protect those at greatest risk from a betrayal of the democratic promise of higher education.

#### I. FROM TOWNSHIP TO CITY ON A HILL: THE EVOLUTION OF THE PUBLIC AND PRIVATE ASPECTS OF AMERICAN HIGHER EDUCATION

During the earliest years of the republic, there was a decidedly private cast to higher education. American colleges and universities were few in number and mostly private, often had ecclesiastical ties, and were largely reserved for elites. At the time of the American Revolution, there were just nine colleges, seven of which eventually became elite Ivy League institutions.<sup>9</sup> Despite their private charters, these colleges often emphasized development of character and dedication to public

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7. David Labaree, *Public Goods, Private Goods: The American Struggle over Educational Goals*, 34 AM. EDUC. RES. J. 39, 42 (1997).

8. G. Edward White, *The Arrival of History in Constitutional Scholarship*, 88 VA. L. REV. 485, 600 (2002).

9. ANDREW DELBANCO, COLLEGE: WHAT IT WAS, IS, AND SHOULD BE 67–68 (2012); ROGER GEIGER, THE HISTORY OF AMERICAN HIGHER EDUCATION: LEARNING AND CULTURE FROM THE FOUNDING TO WORLD WAR II, at 109 (2015); LUCAS, *supra* note 6, at 104–05; JOHN R. THELIN, A HISTORY OF AMERICAN HIGHER EDUCATION 1 (2004).

service as well as acquisition of knowledge and pursuit of personal enrichment.<sup>10</sup> Indeed, Revolutionary leaders emphasized the role of “patriot colleges” in the inculcation of the civic virtues needed to build a fledgling nation.<sup>11</sup> This focus on training elites persisted for decades. In the 1820s, for example, fifty colleges served fewer than 4000 students in a nation of thirteen million people, less than one-thirtieth of 1% of the population.<sup>12</sup>

As the country began to grow in the 1820s and 1830s, policymakers recognized that colleges and universities could advance the nation’s economic ambitions.<sup>13</sup> Congress passed the Morrill Act in 1862 to create the land grant college system, even as the nation was locked in a deadly Civil War.<sup>14</sup> With a focus on agriculture and the mechanical arts, these colleges would develop the workforce needed to meet labor market demands.<sup>15</sup> Land grant colleges grew into today’s state university systems, some with flagship campuses that have come to rival elite private institutions.<sup>16</sup> This approach eventually influenced all institutions of higher education, which uniformly began to offer practical training as well as a traditional humanities curriculum.<sup>17</sup> Even so, captains of industry often were impatient with the pace of change. In the late 1890s, Andrew Carnegie complained that college students had “been learning a little about the barbarous and petty squabbles of a far-distant past, or trying to master languages which are dead, such knowledge as seems adapted for life upon another planet than this as far as business affairs are concerned . . . .”<sup>18</sup> Despite these criticisms, research universities with a far broader mission began to emerge in the latter half of the nineteenth century.<sup>19</sup>

By the twentieth century, American colleges and universities had evolved into formidable institutions that served as partners in generating the research and technical training necessary for economic expansion. Even so, until World War II, higher education remained the province of a select few. Only when veterans returned home after the war did the United States fully commit itself to a principle of broad access to post-secondary degrees. College enrollments had been steadily

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10. DELBANCO, *supra* note 9, at 41–45, 64–66; LUCAS, *supra* note 6, at 104–06.

11. GEIGER, *supra* note 9, at 92–109; *see also* FREDERICK RUDOLPH, *THE AMERICAN COLLEGE AND UNIVERSITY: A HISTORY* 6–7 (1962). *But cf.* LUCAS, *supra* note 6, at 112–13 (describing concerns among college leaders about “a populist swell of democracy”).

12. DELBANCO, *supra* note 9, at 69; GEIGER, *supra* note 9, at 203–06; LUCAS, *supra* note 6, at 114.

13. DELBANCO, *supra* note 9, at 71–74; GEIGER, *supra* note 9, at 173.

14. Morrill Act, Pub. L. No. 37-108, 12 Stat. 503 (1862); GEIGER, *supra* note 9, at 281; LUCAS, *supra* note 6, at 154; RUDOLPH, *supra* note 11, at 250; THELIN, *supra* note 9, at 75.

15. GEIGER, *supra* note 9, at 281–83; LUCAS, *supra* note 6, at 154–59; RUDOLPH, *supra* note 11, at 249–52; THELIN, *supra* note 9, at 76.

16. DELBANCO, *supra* note 9, at 76–77; RUDOLPH, *supra* note 11, at 253. *But cf.* THELIN, *supra* note 9, at 76 (contending that the belief that “the Morrill Act was responsible for creating flourishing state colleges in the mid-nineteenth century” is a misconception).

17. DELBANCO, *supra* note 9, at 77–78; LUCAS, *supra* note 6, at 135; RUDOLPH, *supra* note 11, at 243–44.

18. LUCAS, *supra* note 6, at 150–51.

19. DELBANCO, *supra* note 9, at 78–80; RUDOLPH, *supra* note 11, at 438–39.

growing before the conflict,<sup>20</sup> but they exploded in the 1940s and 1950s. To get a sense of the magnitude of the change, consider the fact that in 1900, fewer than 250,000 Americans, or about 2% of the population between the ages of eighteen and twenty-four, had attended college. By the end of the war, that figure had grown eightfold to over two million, and by 1975, it had increased fortyfold to nearly ten million, or one-third of the young adult population.<sup>21</sup>

This astonishing transformation began in 1944 when Congress passed the GI Bill, which made it possible for returning servicemen to attend college.<sup>22</sup> Though designed to avoid the kind of labor unrest among jobless veterans that followed World War I, the bill also democratized higher education by linking it to military service to one's country rather than a privileged class position.<sup>23</sup> California embraced "massification" in 1960 by adopting an ambitious Master Plan that promised a spot at a state college or university to every academically qualified resident.<sup>24</sup> Other states followed suit and expanded their capacity to deliver post-secondary education.<sup>25</sup> Massification led to other forms of democratic inclusion. During and after World War II, the Jewish quotas that had barred qualified students from selective colleges and universities finally broke down.<sup>26</sup> Later, the civil rights and feminist movements of the 1960s and 1970s opened up opportunities in higher education to people of color and women.<sup>27</sup>

Despite its democratizing features, massification resulted in hierarchical tiers of education, as California's Master Plan illustrates. Under the Plan, the top 12.5%

20. DELBANCO, *supra* note 9, at 87; GEIGER, *supra* note 9, at 428–29; LUCAS, *supra* note 6, at 247–48.

21. DELBANCO, *supra* note 9, at 108; GEIGER, *supra* note 9, at 428; LUCAS, *supra* note 6, at 247–48; THELIN, *supra* note 9, at 261.

22. Servicemen's Readjustment Act of 1944 (G.I. Bill), Pub. L. No. 78-346, 58 Stat. 284, 287–90 (1944).

23. EDWARD HUMES, *OVER HERE: HOW THE G.I. BILL TRANSFORMED THE AMERICAN DREAM* 5–6, 9–18, 21–23 (2006); CHRISTOPHER P. LOSS, *BETWEEN CITIZENS AND THE STATE: THE POLITICS OF AMERICAN HIGHER EDUCATION IN THE 20TH CENTURY* 114–19 (2012).

24. ARTHUR G. COONS ET AL., *A MASTER PLAN FOR HIGHER EDUCATION IN CALIFORNIA: 1960–1975* (1960) [hereinafter *MASTER PLAN*], [http://www.lib.berkeley.edu/uchistory/archives\\_exhibits/masterplan/MasterPlan1960.pdf](http://www.lib.berkeley.edu/uchistory/archives_exhibits/masterplan/MasterPlan1960.pdf) [<https://perma.cc/KG6L-3D38>]. *But cf.* Saul Geiser & Richard C. Atkinson, *Beyond the Master Plan: The Case for Restructuring Baccalaureate Education in California*, CTR. FOR STUD. IN HIGHER EDUC., Nov. 2010, at 1, 4–5, <http://www.cshe.berkeley.edu/beyond-master-plan-case-restructuring-baccalaureate-education-california> [<https://perma.cc/55F9-VZX9>] (arguing that the Master Plan was focused more on cost containment than access).

25. JOHN AUBREY DOUGLASS, *THE CALIFORNIA IDEA AND AMERICAN HIGHER EDUCATION: 1860 TO THE 1960 MASTER PLAN*, at 15 (2000); John Aubrey Douglass, *From Chaos to Order and Back? A Revisionist Reflection on the California Master Plan for Higher Education@50 and Thoughts About its Future*, CTR. FOR STUD. IN HIGHER EDUC., May 2010, at 1, 10, <http://www.cshe.berkeley.edu/sites/default/files/shared/publications/docs/ROPS.JAD.CalChaosOrder.5.11.09.pdf> [<https://perma.cc/DHY6-29JK>].

26. JEROME KARABEL, *THE CHOSEN: THE HIDDEN HISTORY OF ADMISSION AND EXCLUSION AT HARVARD, YALE, AND PRINCETON 172–73* (2005). Yale was the most reluctant to change its admissions policies and had low enrollment rates for Jews into the 1960s. *Id.*

27. DELBANCO, *supra* note 9, at 108.

of California's high school students were guaranteed a spot at the University of California, a system of elite research universities, while the top 33.3% were eligible to attend California State University campuses, four-year colleges focused primarily on teaching.<sup>28</sup> The remaining students could go to California community colleges, two-year programs that offered the opportunity to transfer to a four-year school.<sup>29</sup> In California and around the nation, most students began their post-secondary education at less selective community colleges, and these institutions grew rapidly to form the bottom of a new higher education pyramid.<sup>30</sup> As college-going became relatively commonplace, a hierarchy among campuses evolved to signal the widely divergent value of degrees from different institutions.

Although public higher education succeeded in absorbing post-war enrollment growth and generated unprecedented opportunities for the American people, there was growing disenchantment with all forms of big government in the 1970s. In 1978, California voters approved a popular initiative, Proposition 13, which severely limited property taxes.<sup>31</sup> Other states enacted similar legislation, greatly reducing the revenue available to preserve the integrity of public services.<sup>32</sup> Discretionary spending was squeezed as states faced burgeoning demands on their increasingly scarce resources.<sup>33</sup> Growing health care costs for low-income families, increased elementary and secondary education funding, and rising incarceration rates crowded out support for higher education.<sup>34</sup> With each fiscal downturn, state appropriations for public colleges and universities fell and seldom rebounded fully during periods of prosperity.<sup>35</sup> Both per-capita student funding and higher education's share of the state budget dropped dramatically.<sup>36</sup> Still, policymakers did not worry about erosion in the quality of instruction because they believed that tuition increases could offset

28. MASTER PLAN, *supra* note 24, at 72–73.

29. *Id.* at 71–73.

30. STEVEN BRINT AND JEROME KARABEL, THE DIVERTED DREAM: COMMUNITY COLLEGES AND THE PROMISE OF EDUCATIONAL OPPORTUNITY IN AMERICA, 1900–1985, at 67–73 (1989); DELBANCO, *supra* note 9, at 110; GEIGER, *supra* note 9, at 430–35; RUDOLPH, *supra* note 11, at 487; THELIN, *supra* note 9, at 299–300.

31. CAL. CONST. art. XIII A.

32. BRIAN D. BURNETT, REDUCTION IN PUBLIC FUNDING FOR POSTSECONDARY EDUCATION IN COLORADO FROM 1970 TO 2010, at 68 (2010); Robert B. Archibald and David H. Feldman, *State Higher Education Spending and the Tax Revolt*, 77 J. HIGHER EDUC. 618, 618, 641 (2006).

33. D. BRUCE JOHNSTONE & PAMELA N. MARCUCCI, FINANCING HIGHER EDUCATION WORLDWIDE: WHO PAYS? WHO SHOULD PAY? 18 (2010).

34. BURNETT, *supra* note 32, at 69–70; HAROLD A. HOVEY, STATE SPENDING FOR HIGHER EDUCATION IN THE NEXT DECADE: THE BATTLE TO SUSTAIN CURRENT SUPPORT 20 (1999), <http://www.highereducation.org/reports/hovey/hovey.shtml> [<https://perma.cc/E5EQ-F5L9>]; JOHNSTONE & MARCUCCI, *supra* note 33, at 18; QUINTERNO, *supra* note 4, at 18–19; Thomas J. Kane et al., *State Fiscal Constraints and Higher Education Spending: The Role of Medicaid and the Business Cycle*, 11 URBAN-BROOKINGS TAX POL'Y CTR. DISCUSSION PAPER, May 2003, at 23–26, [http://webarchive.urban.org/UploadedPDF/310787\\_TPC\\_DP11.pdf](http://webarchive.urban.org/UploadedPDF/310787_TPC_DP11.pdf) [<https://perma.cc/X7RD-FMV5>].

35. QUINTERNO, *supra* note 4, at 17–18.

36. *Id.* at 14, 16.

any financial shortfalls.<sup>37</sup> Decreasing state support coincided with growing calls for privatization of higher education. Under a market-oriented approach, higher education would be treated as simply another commodity for sale with students deriving most, if not all, of the benefits of a degree.<sup>38</sup> A pure market model justified the withdrawal of generous government subsidies that, among other things, kept tuition at public colleges and universities low.<sup>39</sup> If a diploma was just another commodity, then the students should pay for it.<sup>40</sup>

As this brief history shows, the public-oriented mission of American colleges and universities has changed over the years. Initially, the focus was on inculcating an ethic of civic responsibility that would prepare students at elite private schools for leadership. Then, colleges and universities became engines of growth that enhanced the nation's economic power. Most recently, massification of college enrollments—particularly at public institutions—has held out the promise of broad access to higher education, though it has also created new forms of hierarchy among

37. BURNETT, *supra* note 32, at 69–70; KATHARINE C. LYALL & KATHLEEN R. SELL, THE TRUE GENIUS OF AMERICA AT RISK: ARE WE LOSING PUBLIC UNIVERSITIES TO DE FACTO PRIVATIZATION? 36 (2006); Donald E. Heller, *State Support of Higher Education: Past, Present, and Future*, in PRIVATIZATION AND PUBLIC UNIVERSITIES 11, 11 (Douglas M. Priest & Edward P. St. John eds., 2006); William Zumeta, *State Higher Education Financing: Demand Imperatives Meet Structural, Cyclical, and Political Constraints*, in PUBLIC FUNDING FOR HIGHER EDUCATION 79, 85, 87, 89 (Edward P. St. John & Michael D. Parsons eds., 2004). In fact, the decline has been so steep that federal spending on higher education now outstrips state appropriations. THE PEW CHARITABLE TRUSTS, FEDERAL AND STATE FUNDING OF HIGHER EDUCATION: A CHANGING LANDSCAPE 4–5 (2015), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/06/federal-and-state-funding-of-higher-education> [<https://perma.cc/KJZ5-KZKH>].

38. DAVID L. KIRP, SHAKESPEARE, EINSTEIN, AND THE BOTTOM LINE: THE MARKETING OF HIGHER EDUCATION 131–32 (2003); MATTHEW T. LAMBERT, PRIVATIZATION AND THE PUBLIC GOOD 16–17 (2014); CHRISTOPHER NEWFIELD, UNMAKING THE PUBLIC UNIVERSITY: THE FORTY-YEAR ASSAULT ON THE MIDDLE CLASS 9–11 (2008); David E. Bloom et al., *Beyond Private Gain: The Public Benefits of Higher Education*, in INTERNATIONAL HANDBOOK OF HIGHER EDUCATION 293, 293, 295–96 (James J.F. Forest & Philip G. Altbach eds., 2007); Henry A. Giroux, *Neoliberalism, Corporate Culture, and the Promise of Higher Education: The University as a Democratic Public Sphere*, 72 HARV. EDUC. REV. 425, 433, 435 (2002); Simon Marginson, *Higher Education and Public Good*, 65 HIGHER EDUC. Q. 411, 421 (2011); Brian Pusser, *Higher Education, the Emerging Market, and the Public Good*, in THE KNOWLEDGE ECONOMY AND POSTSECONDARY EDUCATION: REPORT OF A WORKSHOP 105, 105 (Albjerg Graham & Nevzer G. Stacey eds., 2002). Some critics have protested that a college degree yields not only tangible but also intangible benefits, such as personal intellectual enrichment, which are not easily quantified but nonetheless should be counted. DELBANCO, *supra* note 9, at 31–35. These objections raise questions about proper accounting practices, but they do not unsettle the basic assumption that individual students are the primary, if not exclusive, beneficiaries of a diploma.

39. LAMBERT, *supra* note 38, at 42–44; NEWFIELD, *supra* note 38, at 173–74; David E. Bloom et al., *supra* note 38, at 297; George M. Dennison, *Privatization: An Unheralded Trend in Public Higher Education*, 28 INNOVATIVE HIGHER EDUC. 7, 8–9 (2003); Brad Hensley et al., *What Is the Greater Good? The Discourse on Public and Private Roles of Higher Education in the New Economy*, 35 J. HIGHER EDUC. & POL'Y MGMT. 553, 556 (2013); Pusser, *supra* note 38, at 109–10.

40. LAMBERT, *supra* note 38, at 44–48; Dennison, *supra* note 39, at 9–13; Hensley et al., *supra* note 39, at 556; Sandy Baum & Michael McPherson, *Is Education a Public Good or a Private Good?*, CHRON. OF HIGHER EDUC. (Jan. 18, 2011), <http://chronicle.com/blogs/innovations/is-education-a-public-good-or-a-private-good/28329> [<https://perma.cc/UC8X-UNSS>].



colleges and universities. These historical developments have laid the foundation for our current understanding of higher education as a public good. In recent years, that understanding has come under increasing attack. Ongoing dissatisfaction with sprawling government bureaucracies and high taxes has prompted calls for privatization that are redefining the role of higher education in America.

## II. THE FOUNDATIONS OF THE CITY ON A HILL: THE CONTESTED MEANING OF HIGHER EDUCATION AS A PUBLIC GOOD

Definitions of higher education as a public good do not always capture the complex and changing set of purposes that colleges and universities have come to serve. Instead, these definitions are often rooted in economic theory that presumes a market model. For example, some economists posit that post-secondary education is a pure public good only if it is both nonrivalrous and nonexcludable.<sup>41</sup> Nonrivalrous goods can be consumed without interfering with the capacity of others to do so, while nonexcludable goods cannot be rationed by restricting consumer access. Under these criteria, national defense qualifies as a pure public good: every member of society can benefit because one person's security does not diminish another's, and no one can be excluded from the value of this collective protection.<sup>42</sup> Higher education, by contrast, does not satisfy the definition. At some point, getting a college diploma becomes rivalrous when overenrollment diminishes the quality of each student's experience. In addition, colleges and universities can and do exclude students from attending the institution of their choice.<sup>43</sup> Under an approach that privileges a microeconomic perspective focused on consumption and market exchange, higher education is at most an imperfect public good.

This approach largely ignores the possibility that policymakers might subsidize higher education, regardless of whether it can be rationed, because it generates macro-level benefits that transcend particular market exchanges. A focus on the positive externalities of higher education addresses this possibility by emphasizing aggregate social welfare, rather than an individual consumer perspective. Efforts to measure externalities can be difficult at times because of disputes about what counts as a collective benefit.<sup>44</sup> To avoid these controversies, some analysts have sought to estimate the magnitude of gains that are universally recognized as desirable. Walter McMahon's analysis in *Higher Learning, Greater Good: The Private and Social Benefits of Higher Education*<sup>45</sup> exemplifies this kind of empirical effort. He measures widely

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41. LAMBERT, *supra* note 38, at 79; Baum & McPherson, *supra* note 40; Marginson, *supra* note 38, at 417–18.

42. LAMBERT, *supra* note 38, at 79; Baum & McPherson, *supra* note 40.

43. LAMBERT, *supra* note 38, at 79; Baum & McPherson, *supra* note 40.

44. Hensley et al., *supra* note 39, at 555; Marginson, *supra* note 38, at 418–19; Pusser, *supra* note 38, at 107–08.

45. WALTER W. MCMAHON, HIGHER LEARNING, GREATER GOOD: THE PRIVATE AND SOCIAL BENEFITS OF HIGHER EDUCATION (2009); *see also* SANDY BAUM ET AL., EDUCATION PAYS: THE BENEFITS OF HIGHER EDUCATION FOR INDIVIDUALS AND SOCIETY (2013), <http://>

acknowledged benefits like improved health, longevity, happiness, family flourishing, and reduced crime rates as well as the strengthening of civic and political institutions through volunteer work, voter participation, and civic engagement.<sup>46</sup> McMahon's analysis usefully demonstrates that some collective goods derive fairly directly from individual benefits while others do not. For instance, society as a whole may achieve significant savings when the population is healthier, but good health is also a highly valued personal asset. By contrast, democratic participation is not always directly tied to individual advantage. A person who regularly votes can promote a healthy democracy without ever reaping much in the way of a discrete, demonstrable personal benefit. Indeed, economists acknowledge that from a purely selfish standpoint, taking the time to vote can be an irrational act.<sup>47</sup>

David Labaree offers a helpful framework for further developing this distinction between a public good in higher education that simultaneously advances personal advantage and one that does not.<sup>48</sup> He first focuses on the public good of democratic equality, which reflects the need for society to "prepare[] all of its young with equal care to take on the full responsibilities of citizenship in a competent manner."<sup>49</sup> As we have seen, this kind of leadership training originally targeted elites, but massification has made it relevant to a far broader swath of the population. The inculcation of civic virtue on a broad scale does not neatly coincide with narrow self-interest. There is, for example, no reason to think that training for good citizenship will lead to a job. In fact, Labaree believes that with a growing emphasis on the college degree as a private good, the importance attached to democratic equality has declined, though it remains a prominent feature of rhetorical accounts of the purpose of education.<sup>50</sup>

According to Labaree, democratic equality also demands that the educational system embody two key principles of fairness. One is equal treatment, which requires that students have a meaningful educational experience that is not undermined by significant disparities in faculty, curricula, facilities, and other resources.<sup>51</sup> The other is equal access, which affords "every American . . . an equal opportunity to acquire an education at any educational level."<sup>52</sup> These foundations

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trends.collegeboard.org/sites/default/files/education-pays-2013-full-report.pdf [https://perma.cc/L2HW-GSXX].

46. MCMAHON, *supra* note 45, at 201–52; *see also* SANDY BAUM ET AL., *supra* note 45, at 14–15, 24–32.

47. *See* Aaron Edlin et al., *Voting as a Rational Choice: The Effect of Preferences Regarding the Well-being of Others* 3 (Nat'l Bureau of Econ. Research, Working Paper No. 13562, 2007) ("It is well known that voting in large elections cannot be explained in terms of the selfish benefits of voting to the individual: the probability that a vote is decisive is too low for voting to be 'worth it' in an expected utility sense. . . .").

48. David Labaree, *Public Goods, Private Goods: The American Struggle over Educational Goals*, 34 AM. EDUC. RES. J. 39, 42–43 (1997).

49. *Id.* at 42.

50. *Id.* at 43.

51. *Id.* at 45–46.

52. *Id.* at 46.

of democratic equality do not always work in tandem. For instance, massification of higher education after World War II embodied the promise of access but also eroded equal treatment by generating a tiered system of colleges and universities with markedly different resources for instruction.<sup>53</sup>

A commitment to equal treatment and equal access will not necessarily advance a student's interest in personal mobility. Indeed, students may be less concerned with upholding principles of fairness than with maximizing their own comparative advantages. So, in the battle for seats at selective colleges and universities, the most privileged students will want schools to consider not just academic credentials but also social connections and wealth when making admissions decisions.<sup>54</sup> Those who score the highest on academic measures like grades and standardized test scores will call for heavy reliance on these credentials.<sup>55</sup> Students from disadvantaged backgrounds will argue that overcoming adversity should be weighed in the admissions process.<sup>56</sup> Each position will be motivated as much by self-interest as by universal principles of distributive justice.

53. *Id.*

54. DANIEL GOLDEN, *THE PRICE OF ADMISSION: HOW AMERICA'S RULING CLASS BUYS ITS WAY INTO ELITE COLLEGES—AND WHO GETS LEFT OUTSIDE THE GATES* 5–6, 25–26, 28, 54–58, 60–61 (2006).

55. *See, e.g., Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll. (Harvard Corp.)*, 308 F.R.D. 39, 44 (D. Mass. 2015) (Asian-American students challenged Harvard's admissions process on the ground that it did not attach sufficient weight to their high grades and test scores); Julia Glum, *Harvard Affirmative Action Lawsuit 2014: Schools Sued Over 'Discriminatory' College Admissions*, INT'L BUS. TIMES (Nov. 17, 2014, 4:16 PM), <http://www.ibtimes.com/harvard-affirmative-action-lawsuit-2014-schools-sued-over-discriminatory-college-1725064>; Douglas Belkin, *Harvard Asian-American Bias Complaint Dismissed*, WALL ST. J. (July 7, 2015, 7:57 PM), <http://www.wsj.com/articles/complaint-alleging-discrimination-by-harvard-dismissed-1436305777> [<https://perma.cc/5J64-2K7R>] (describing dismissal of similar complaint filed with the Office for Civil Rights). Concerns about Asian-American quotas at Ivy League colleges and universities are longstanding. *See, e.g.,* Conor Freidersdorf, *Is the Ivy League Fair to Asian Americans?*, THE ATLANTIC (Dec. 21, 2012), <http://www.theatlantic.com/politics/archive/2012/12/is-the-ivy-league-fair-to-asian-americans/266538/> [<https://perma.cc/FWX2-ABMP>] (questioning claims that Asian Americans' superior grade point averages and standardized test scores should be discounted because of subjective claims that they are not as well-rounded as other applicants); Michael Winerip, *Asian-Americans Question Ivy League's Entry Policies*, N.Y. TIMES (May 30, 1985), <http://www.nytimes.com/1985/05/30/nyregion/asian-americans-question-ivy-league-s-entry-policies.html> [<https://web.archive.org/web/20150524173254/http://www.nytimes.com/1985/05/30/nyregion/asian-americans-question-ivy-league-s-entry-policies.html>] (alleging quotas on Asian-American admissions; Princeton reportedly defended its record by noting that, "If special preferences for alumni children, athletes and blacks are discounted, . . . Asian Americans are actually admitted at a higher rate than that of the remaining Whites in the applicant pool."). *See generally* LANI GUINIER, *THE TYRANNY OF THE MERITOCRACY: DEMOCRATIZING HIGHER EDUCATION IN AMERICA*, at xiii, 20–21 (2015) [hereinafter GUINIER, *TYRANNY OF THE MERITOCRACY*] (arguing that heavy reliance on standardized test scores in college admissions is a way to replicate privilege for children of the wealthy); Lani Guinier, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARV. L. REV. 113, 143–51 (2003) [hereinafter Guinier, *Admissions Rituals*].

56. *See* Guinier, *Admissions Rituals*, *supra* note 55, at 164 (describing the Texas plan to promote racial, ethnic, and geographic diversity by admitting the top 10% of the graduating class in each high school in the state as driven by political appeals to "a combination of local pride and populism").

Democratic equality looks very different from social efficiency, the other public good that Labaree identifies. Social efficiency uses schooling as “a mechanism for adapting students to the requirements of a hierarchical social structure and the demands of the occupational marketplace.”<sup>57</sup> Calls to support higher education on this ground are likely to “strike a chord with [taxpayers] by pointedly asserting that their jobs, their pensions, and their family’s economic well-being depend[] on the ability of schools to turn out productive workers.”<sup>58</sup> Appealing because of its “immense practicality,”<sup>59</sup> this goal reflects historical demands that colleges and universities serve as engines of the economy. Unlike democratic equality, social efficiency often is in sync with an individual student’s desire for personal mobility. For example, applicants, students, and graduates alike value market signals generated by a stratified system of higher education because they permit ready monetization of a degree’s worth. Social efficiency is similarly advanced because students can be readily sorted and slotted into the right jobs.<sup>60</sup> Practical training appeals to students who are focused on getting a job, and it serves social efficiency’s goal of aligning the educational curriculum with the needs of future employers.<sup>61</sup> There is undoubtedly some slippage between social efficiency and personal mobility. Mismatches can arise when students are imperfectly informed about the costs and benefits of a degree or suffer from an excess of optimism about their prospects for rising to the top of a stratified system.<sup>62</sup> Even so, social efficiency is more likely to operate in tandem with personal mobility than democratic equality is.

Labaree’s analysis helps to explain why democratic equality is at greater risk of becoming a casualty of privatization than social efficiency is. The push to treat a diploma like any other consumer good focuses on the economic gains that characterize both social efficiency and personal mobility. This emphasis on tangible returns is likely to crowd out democratic equality’s commitment to training for citizenship.<sup>63</sup> Stratification in pricing and prestige, both of which operate as market

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57. Labaree, *supra* note 48, at 46.

58. *Id.* at 48.

59. *Id.* at 47.

60. *Id.* at 50, 52–53.

61. *Id.* at 46–47.

62. TAL SHALOT, THE OPTIMISM BIAS: A TOUR OF THE IRRATIONALLY POSITIVE BRAIN 21–22, 118–20, 203 (2011); Jay Mathews, *Caveat Lector: Unexamined Assumptions About Quality in Higher Education*, in DECLINING BY DEGREES: HIGHER EDUCATION AT RISK 47, 49–50 (Richard H. Hersh and John Merrow eds., 2005) (describing the lack of systematic data on the quality of instruction at colleges and universities for students or policymakers); Tali Shalot, *Major Delusions*, N.Y. TIMES (May 14, 2011), <http://www.nytimes.com/2011/05/15/opinion/15Sharot.html> [<https://web.archive.org/web/20160310134014/http://www.nytimes.com/2011/05/15/opinion/15Sharot.html>].

63. See MCMAHON, *supra* note 45, at 252–54 (acknowledging that “[i]ndirect effects, which are externalities, overlap the market returns” but noting that those who have expressed skepticism about positive externalities have largely ignored nonmarket social benefits); Jane S. Shaw, *Education—A Bad Public Good?*, 15 INDEP. REV. 241, 247–48, 250–51 (2010) (noting that “the rewards for the able student are large enough that the private-good aspect of higher education swamps the public-good

signals for social efficiency and personal mobility, can come into conflict with norms of equal treatment and equal access. So, in evaluating the impact of privatization on higher education as a public good, it is most useful to focus on harms to democratic equality rather than to social efficiency.

### III. SUBDIVIDING THE CITY ON A HILL: COMMODIFICATION, SEGMENTATION, AND STRATIFICATION IN AMERICAN COLLEGES AND UNIVERSITIES

To understand how privatization conflicts with norms of democratic equality, we need to analyze in greater detail what it means to say that a college degree is a consumer good like any other. There are three key manifestations of privatization: commodification, segmentation, and stratification. Commodification describes the monetization of a degree based on purely financial considerations. Segmentation arises when sectors of higher education differentiate and brand themselves in ways that obstruct collaboration and cooperation. Stratification reflects the hierarchical ordering of different institutions and degrees. Far from being a monolithic phenomenon, then, privatization is a complex set of trends, each of which deserves separate consideration.

#### *A. Commodification*

Historically, a college education has been characterized as a hybrid good that advances both personal gain and the public interest.<sup>64</sup> In fact, a pure market model does not currently operate in higher education at either public or non-profit private institutions. Today, most colleges and universities invest more in a student's education than the amount paid in tuition. For example, the most selective colleges and universities spend as much as \$92,000 per student, and students contribute only about 20% of that cost.<sup>65</sup> The least selective schools spend about \$12,000 per student, and students pay approximately 78% of that expense.<sup>66</sup> Only for-profit colleges, reflecting a privatization paradigm, spend substantially less on instruction than they charge in tuition.<sup>67</sup> As these statistics make plain, colleges and universities with the wherewithal to subsidize students' education reject a model that says "you get what you pay for" and no more. Only the least selective campuses with the most

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aspect" but that privatization may lead to an underinvestment in preparing graduates to take responsibility for preserving civil society).

64. Yudof, *supra* note 4, at 3–4.

65. *Apply to Selective Colleges & Universities*, JACK KENT COOKE FOUNDATION, <http://www.jkcf.org/scholarship-programs/college-scholarship/why-apply-to-selective-colleges-and-universities/> [https://perma.cc/M65G-FZV8] (last visited July 28, 2016).

66. SUZANNE METTLER, DEGREES OF INEQUALITY: HOW THE POLITICS OF HIGHER EDUCATION SABOTAGED THE AMERICAN DREAM 30–31 (2014); Caroline Hoxby, *The Changing Selectivity of American Colleges*, 23 J. ECON. PERSP. 95, 108 (2009) [hereinafter Hoxby, *Changing Selectivity*].

67. METTLER, *supra* note 66, at 2, 35.

modest resources as well as those in the for-profit sector approximate a world in which higher education is treated like other pure consumer goods.<sup>68</sup>

The real question is whether commodification is eroding this traditional understanding. The monetization of a college degree requires students to weigh the financial costs and benefits, pay the full price of attendance, and bear the risk of a bad bargain.<sup>69</sup> Some evidence shows that students increasingly are evaluating the worth of a degree in terms of dollars and cents. For instance, more students today report that they are going to college for economic reasons than was true in the past. In 2012, 87.9% of students reported that being able to get a better job was a very important reason for going to college, up from 67.8% in 1976.<sup>70</sup> In addition, 74.6% of students said that being able to make more money was very important to them compared to fewer than 50% in 1979.<sup>71</sup> The trend toward commodification is far from complete, however. In 2012, 72.8% of students thought that gaining a general education and appreciation of ideas was a very significant consideration, a slightly higher figure than in 1976.<sup>72</sup> So, even if economic reasons have become more salient, an overwhelming majority of students still see college as a place for intellectual enrichment as well as a way to get a job.

Further evidence of commodification can be gleaned from research that assesses the financial return to a college diploma. Based on these findings, students may be rightly concerned about the economic consequences of going to college, given that the stakes appear to be higher than ever. In 2011, for example, the Pew Research Center published a report asking “Is College Worth It?”<sup>73</sup> The study found that the earnings gap between those with and without a college degree had increased steadily from the 1970s to the 1990s and has been stable ever since.<sup>74</sup> A 2014 study concluded that this gap had reached unprecedented levels.<sup>75</sup> Adults between the ages of twenty-five and thirty-two with a college degree on average earned \$17,500

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68. Pusser, *supra* note 38, at 115 (noting that the nonprofit form has long dominated American higher education and that public subsidies and public supply have been central features of the system that make application of a pure market model complicated). *But cf.* Shaw, *supra* note 63, at 241, 249–50 (questioning whether the nonprofit form leads to inefficiencies).

69. See Jonathan D. Glater, *Student Debt and Higher Education Risk*, 103 CAL. L. REV. 1561, 1567–68 (2015).

70. John H. Pryor et al., *The American Freshman: National Norms Fall 2012*, HIGHER EDUC. RES. INST. AT UCLA 4 (2012), <http://www.heri.ucla.edu/monographs/TheAmericanFreshman2012.pdf> [<https://perma.cc/3U5E-757F>].

71. *Id.*

72. *Id.*

73. PAUL TAYLOR ET AL., PEW RESEARCH CTR., IS COLLEGE WORTH IT?: COLLEGE PRESIDENTS, PUBLIC ASSESS VALUE, QUALITY AND MISSION OF HIGHER EDUCATION (2011), <http://www.pewsocialtrends.org/2011/05/15/is-college-worth-it/> [<https://perma.cc/6Y34-VPCQ>].

74. *Id.* at 7.

75. PAUL TAYLOR ET AL., PEW RESEARCH CTR., THE RISING COST OF NOT GOING TO COLLEGE 1 (2014), <http://www.pewsocialtrends.org/2014/02/11/the-rising-cost-of-not-going-to-college/> [<https://perma.cc/VXL2-ZM3M>].

more per year than peers with no more than a high school diploma, while for adults aged sixty-eight to eighty-five, the gap was just \$7500 per year.<sup>76</sup>

In monetizing the value of a degree, cost is naturally a significant factor. College tuition varies widely depending on whether an institution is public or private, two-year or four-year, and highly selective or not. According to a 2011 report, some community colleges charged under \$1000, while Ivy League schools charged well over \$50,000.<sup>77</sup> The mean undergraduate tuition at four-year private colleges and universities was \$27,139 in 2008–09; at four-year public institutions, it was \$6811.<sup>78</sup> Community colleges charged just \$2713 in 2010–11.<sup>79</sup> Rates of tuition have been rising steadily for decades at all institutions of higher education, whether private or public.<sup>80</sup> Four-year public colleges and universities have seen the steepest increases, with tuition growing by 225% since 1984.<sup>81</sup> According to the Center on Budget and Policy Priorities, the average tuition at four-year public colleges and universities rose by 27% in real terms between 2007–08 and 2012–13 alone.<sup>82</sup> These steep tuition hikes were a direct result of declining state support, a trend that has continued in recent years and is consistent with calls for privatization.<sup>83</sup>

Of course, sticker price should not be confused with actual cost. Tuition discounting has become so pervasive that the federal government now requires schools to post an online calculator so that students can estimate their effective rate of tuition.<sup>84</sup> Discounts reflect vigorous bargaining over price by buyer and seller, an

76. *Id.* Other studies focusing on the value of a degree have concluded that graduates benefit from lower unemployment rates than the general population, a pattern that has been consistent since the 1960s and 1970s. TAYLOR ET AL., *supra* note 73, at 99.

77. SANDY BAUM ET AL., TRENDS IN COMMUNITY COLLEGE EDUCATION: ENROLLMENT, PRICES, STUDENT AID, AND DEBT LEVELS 1 (2011), <http://trends.collegeboard.org/sites/default/files/trends-2011-community-colleges-ed-enrollment-debt-brief.pdf> [<https://perma.cc/3MJC-D7QA>]; Blake Ellis, *More Colleges Charging \$50,000-Plus A Year*, CNN MONEY (Oct. 28, 2011, 2:22 PM), <http://money.cnn.com/2012/10/24/pf/college/college-tuition/> [<https://perma.cc/EPX7-XF9P>].

78. SANDY BAUM ET AL., TUITION DISCOUNTING: INSTITUTIONAL AID PATTERNS AT PUBLIC AND PRIVATE COLLEGES AND UNIVERSITIES, 2000-01 TO 2008-09, at 7, 14 (Sept. 2010), [http://www.collegeboard.com/prod\\_downloads/trends/tuition-discount-report.pdf](http://www.collegeboard.com/prod_downloads/trends/tuition-discount-report.pdf) [<https://perma.cc/U298-DMHW>].

79. BAUM ET AL., *supra* note 77, at 1.

80. SANDY BAUM & JENNIFER MA, TRENDS IN COLLEGE PRICING 2014, at 17 (2014), <https://secure-media.collegeboard.org/digitalServices/misc/trends/2014-trends-college-pricing-report-final.pdf> [<https://perma.cc/BRD5-LXMS>]; Caroline Hoxby, *The Return to Attending A More Selective College: 1960 to the Present*, in 3 FORUM STRATEGY SERIES 13, 22 (Maureen Devlin & Joel Meyerson eds., 2001).

81. BAUM & MA, *supra* note 80, at 16.

82. PHIL OLIFF ET AL., CTR. ON BUDGET & POLICY PRIORITIES, RECENT DEEP STATE HIGHER EDUCATION CUTS MAY HARM STUDENTS AND THE ECONOMY FOR YEARS TO COME 7 (2013), <http://www.cbpp.org/sites/default/files/atoms/files/3-19-13sfp.pdf> [<https://perma.cc/6QYT-KJL8>]. During this period, average tuition grew more than 50% in seven states, more than 25% in eighteen states, and more than 15% in forty states. Arizona and California raised tuition by over 70%. *Id.*

83. BAUM & MA, *supra* note 80, at 27; OLIFF ET AL., *supra* note 82, at 1–2, 7–8.

84. Higher Education Act of 2008, Pub. L. No. 110-315, § 132(h), 122 Stat. 3101-02 (2008); Lucie Lapovsky, *How to Determine Your Tuition Discount (Merit Scholarships and Financial Aid)*,

approach entirely consistent with commodification. Indeed, in recent years, some colleges and universities have offered such steep discounts that they may not be sustainable.<sup>85</sup> In 2008–09, the average reduction in tuition was about one-third for four-year private institutions, and about one-fifth for four-year public colleges and universities.<sup>86</sup> These price cuts have helped to make college affordable but also reduced the resources available for instruction, particularly at schools with few alternative sources of support.<sup>87</sup>

Commodification presumes that students will self-finance their education, and in fact, students are incurring increasing amounts of debt to go to college. Families are less able to cover the cost because tuition has come to represent an increasingly large percentage of family income. Today, the typical four-year public institution's tuition is equivalent to 11% of an average family's income, up from 4% in 1973.<sup>88</sup> Meanwhile, a four-year private school's average tuition grew from 16% to 36% of average household income.<sup>89</sup> At the same time, federal support has shifted from grants and scholarships to student loans. In 1980, for instance, grants made up about 55% of total student aid, but by 1997, that figure had dropped to 38.9%.<sup>90</sup> The proportion rose to 47% in 2012–13, driven by an expansion of Pell Grants for low-income students and higher education benefits for veterans; however, there has been some retrenchment in the Pell Grant program since then.<sup>91</sup> State grants did not offset changes in federal support.<sup>92</sup> As a result, between 1972 and 1997, student loans grew at a rapid rate, becoming by far the largest share of

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FORBES (July 30, 2014, 10:20 AM), <http://www.forbes.com/sites/lucielapovsky/2014/07/30/whats-your-tuition-discount/#10a6b7894d9a> [https://perma.cc/5856-2RP9].

85. For example, the average discount rate at private colleges and universities rose to 48% in 2014, up from 46.4% in 2013. Herman Berliner, *Tuition Discounting*, INSIDE HIGHER EDUC. (Aug. 30, 2015, 3:51 PM), <https://www.insidehighered.com/blogs/prose-and-purpose/tuition-discounting> [https://perma.cc/EZG5-8X6N]; Kellie Woodhouse, *Tuition Discounting Grows at Private Colleges and Universities*, INSIDE HIGHER EDUC. (Aug. 25, 2015, 3:00 AM), <https://www.insidehighered.com/news/2015/08/25/tuition-discounting-grows-private-colleges-and-universities> [https://perma.cc/GM4Y-WMZN].

86. BAUM & MA, *supra* note 80, at 7, 14.

87. MICHAEL MITCHELL & MICHAEL LEACHMAN, CENTER ON BUDGET & POLICY PRIORITIES, YEARS OF CUTS THREATEN TO PUT COLLEGE OUT OF REACH FOR MORE STUDENTS (2015), <http://www.cbpp.org/research/state-budget-and-tax/years-of-cuts-threaten-to-put-college-out-of-reach-for-more-students> [https://perma.cc/45LK-Z64T].

88. METTLER, *supra* note 66, at 8.

89. *Id.*

90. THE COLL. BD., TRENDS IN STUDENT AID 1998, at 12 (1998), [http://trends.collegeboard.org/sites/default/files/SA\\_1998.pdf](http://trends.collegeboard.org/sites/default/files/SA_1998.pdf) [https://perma.cc/9UZ2-N68Y].

91. SANDY BAUM ET AL., THE COLL. BD., TRENDS IN STUDENT AID 2014 at 10 (2014), <https://secure-media.collegeboard.org/digitalServices/misc/trends/2014-trends-student-aid-report-final.pdf> [https://perma.cc/4EP6-TAGS].

92. *Id.* As mentioned, tuition discounting did rise during this period as institutions of higher education sought to make degrees more affordable, and a modest amount of grants from private organizations and employers increased as well. *Id.*



federal financial aid.<sup>93</sup> That trend persisted through 2013, with loans outstripping all forms of federal grants by a factor of almost two to one.<sup>94</sup>

Today, more students than ever before are going into debt to finance a college education. In 1992, 34% of students had taken out loans; by 2012, that figure was 69%.<sup>95</sup> In addition, the amount of indebtedness each student incurred was growing. During the period from 1992 to 2012, the median amount that students borrowed rose from \$12,434 to \$26,885 (after adjusting for inflation).<sup>96</sup> As a result of this shift, student loan debt was second only to home mortgages as a source of consumer indebtedness in the United States.<sup>97</sup> Debt loads are rising even though nearly 80% of students are working to pay for college, and the average amount of time they spend on the job is just under twenty hours per week.<sup>98</sup> The burdens of student debt may influence the way that graduates make major life decisions after college, including whether to pursue a particular career, launch a business, purchase a home, or start a family.<sup>99</sup> It is not clear whether these growing debt loads also reduce recent graduates' engagement in community affairs and civic life, activities that are hallmarks of a successful democratic education.

The pressures of self-financing a college education are particularly intense for students from low-income backgrounds. Tuition discounting provides some relief, but the awards are most generous and most focused on financial need at elite schools that serve small numbers of socioeconomically disadvantaged students.<sup>100</sup> Other schools use discounts primarily to attract students with high grades and test

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93. THE COLL. BD., *supra* note 90, at 10.

94. *Id.*

95. RICHARD FRY, PEW RESEARCH CTR., THE CHANGING PROFILE OF STUDENT BORROWERS: BIGGEST INCREASE IN BORROWING HAS BEEN AMONG MORE AFFLUENT STUDENTS 4 (2014), <http://www.pewsocialtrends.org/2014/10/07/the-changing-profile-of-student-borrowers/> [<https://perma.cc/8E7Y-3TWE>].

96. *Id.* at 5.

97. Susan Dynarski, *So Much Student Debt, So Little Information*, N.Y. TIMES, Mar. 22, 2015, at BU5; DONGHOON LEE, HOUSEHOLD DEBT AND CREDIT: STUDENT DEBT 5 (2013), <https://www.newyorkfed.org/medialibrary/media/newsevents/mediaadvisory/2013/Lee022813.pdf> [<https://perma.cc/MJ2E-WHWT>]. The rapid growth in student borrowing in turn led to fears of a "student loan bubble" based on evidence of rising default rates. Jonathan D. Glater, *Student Debt and the Siren Song of Systemic Risk*, 53 HARV. J. LEGIS. 99, 107–19 (2016).

98. Citi & Seventeen Magazine, *The New Financial Realities of College Life*, MINTLIFE (Aug. 26, 2013), <https://blog.mint.com/planning/the-financial-realities-of-college-life-infographic-0813/> [<https://perma.cc/94VA-FVMH>].

99. So far, most of the analysis has focused on whether student debt affects career choices. In addition, some have explored whether high debt levels delay decisions to start a family, purchase a home, or start a business. Jesse Rothstein & Cecilia Elena Rouse, *Constrained After College: Student Loans and Early Career Occupational Choices*, 95 J. PUB. ECON. 149, 149 (2011) (describing how high levels of student debt may steer students away from public service jobs to more lucrative occupations as well as delay other major life decisions); HEATHER BOUSHEY, CTR. FOR ECON. & POL'Y RESEARCH, STUDENT DEBT: BIGGER AND BIGGER 9 (2005), [http://cepr.net/documents/publications/student\\_debt\\_2005\\_09.pdf](http://cepr.net/documents/publications/student_debt_2005_09.pdf) [<https://perma.cc/H9XF-Y2A8>] (same).

100. See BAUM & MA, *supra* note 80, at 1, 2, 11–12.

scores.<sup>101</sup> At community colleges, which serve high numbers of nontraditional students, financial aid typically comes in the form of federal grants, and tuition discounts are extremely modest.<sup>102</sup> Though the tuition at community colleges is relatively inexpensive, the total cost of attendance can be a significant burden for students.<sup>103</sup> Many nontraditional students lack sophistication about the process of seeking financial aid, do not get adequate counseling, and therefore do not successfully complete applications for assistance.<sup>104</sup> For those who do receive support, the aid packages may not align with students' trajectories at community colleges. For example, Pell Grants have been limited to twelve rather than eighteen semesters, even though community college students, especially those in part-time programs, typically take more time to complete a degree.<sup>105</sup> To cover the costs of attendance, many community college students work long hours while in school with three-fifths spending over twenty hours per week on the job and more than one-quarter spending over thirty-five hours a week.<sup>106</sup> These conflicting obligations contribute to the risk of dropping out before completing a degree.<sup>107</sup>

Despite growth in the total funding for Pell Grants, awards have not kept pace with tuition increases.<sup>108</sup> In 1994–95, for example, a Pell Grant covered 85% of the average tuition at a four-year public college, but in 2014–15, it covered just 63%.<sup>109</sup> At private schools, the amount fell from 20% to 18%.<sup>110</sup> The shortfalls were even more daunting when room and board were added to the cost of attendance. A Pell Grant covered only 30% of the total expense at a four-year public college in 2014–15, down from 35% in 1994–95. At private schools, the amount remained at 14%.<sup>111</sup> Again, state support did not make up the difference.<sup>112</sup> In fact, between 2003 and 2013, Pell Grants grew at a substantially faster rate than state grants did.<sup>113</sup>

101. *Id.* at 11–12. In public university systems, flagship campuses discounted more aggressively than their sister campuses and devoted a larger share of their resources to need-based aid. *Id.* at 18.

102. *See* BAUM ET AL., *supra* note 77, at 1, 4.

103. *Id.* at 1 (noting that in the 2010–11 school year, annual tuition at a public, two-year college was \$2713 but that figure rose to \$14,637 after including room and board, books, and transportation).

104. Bridget Terry Long, Brief Prepared for the White House Summit on Community Colleges: Financial Aid: A Key to Community College Student Success 53–54 (2010), <https://www2.ed.gov/PDFDocs/college-completion/08-financial-aid.pdf> [<https://perma.cc/2KZF-26JP>].

105. Caralee J. Adams, *Budget Deal Usbers in New Pell Grant Eligibility Rules*, EDUC. WEEK (Jan. 11, 2012), <http://www.edweek.org/ew/articles/2012/01/11/15budget-pell.h31.html> [<https://perma.cc/RN9Z-AU26>]; *see* BAUM ET AL., *supra* note 77, at 5.

106. JEAN JOHNSON & JON ROCHKIND, PUB. AGENDA, WITH THEIR WHOLE LIVES AHEAD OF THEM: MYTHS AND REALITIES ABOUT WHY SO MANY STUDENTS FAIL TO FINISH COLLEGE 4 (2011), <http://www.publicagenda.org/files/theirwholelivesaheadofthem.pdf> [<https://perma.cc/LTF2-TBWM>].

107. *Id.* at 5–7.

108. BAUM ET AL., *supra* note 91, at 31.

109. *Id.* at 3, 31.

110. *Id.*

111. *Id.* at 31.

112. THE PEW CHARITABLE TRUSTS, FEDERAL AND STATE FUNDING OF HIGHER EDUCATION: A CHANGING LANDSCAPE 4, 12 (June 2015), [http://www.pewtrusts.org/~media/assets/2015/06/federal\\_state\\_funding\\_higher\\_education\\_final.pdf](http://www.pewtrusts.org/~media/assets/2015/06/federal_state_funding_higher_education_final.pdf) [<https://perma.cc/98B7-TRPS>].

113. THE COLL. BD., *supra* note 90, at 7; BAUM ET AL., *supra* note 91, at 10.

Moreover, fewer state grants targeted low-income students than had been true in the past. Before 1980, nearly all of these grants were earmarked for socioeconomically disadvantaged students, but by 2012–13, only 75% were, and merit aid was growing more rapidly than need-based aid.<sup>114</sup>

The tendency to treat college like other consumer goods has had predictable consequences for students of limited means. As a result of declining state subsidies and increased self-financing of higher education, low-income students are less likely to pursue higher education than their affluent peers, even after holding academic qualifications constant.<sup>115</sup> Poor students are more apt to attend a two-year college, even when their credentials make them competitive for admission to a more selective but more expensive four-year institution.<sup>116</sup> If disadvantaged students do attend a four-year college, they are less apt to be at the priciest elite schools despite generous need-based aid.<sup>117</sup> As compared to their more privileged peers, higher percentages of low-income students assume debt and the debt is larger.<sup>118</sup> Due to

114. BAUM ET AL., *supra* note 91, at 34; JENNIE H. WOO & SUSAN P. CHOY, U.S. DEP'T OF EDUC., MERIT AID FOR UNDERGRADUATES: TRENDS FROM 1995–96 TO 2007–08, at 5 (2011), <http://nces.ed.gov/pubs2012/2012160.pdf> [<https://perma.cc/QY2N-C47Y>]. There also was a shift from need- to merit-based aid provided by colleges and universities themselves as they competed for students with strong grades and test scores. STEVEN BURD, UNDERMINING PELL: HOW COLLEGES COMPETE FOR WEALTHY STUDENTS AND LEAVE THE LOW-INCOME BEHIND, NEW AM. FOUND. 3–5 (May 2013), [https://static.newamerica.org/attachments/2320-undermining-pell-2/Merit\\_Aid%20Final.b3b89c275d2249eeb19cb53d3fc049b6.pdf](https://static.newamerica.org/attachments/2320-undermining-pell-2/Merit_Aid%20Final.b3b89c275d2249eeb19cb53d3fc049b6.pdf) [<https://perma.cc/G7PF-NQTR>].

115. EXEC. OFFICE OF THE PRESIDENT, INCREASING COLLEGE OPPORTUNITY FOR LOW-INCOME STUDENTS: PROMISING MODELS AND A CALL TO ACTION 17 (Jan. 2014), [https://obamawhitehouse.archives.gov/sites/default/files/docs/increasing\\_college\\_opportunity\\_for\\_low-income\\_students\\_report.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/increasing_college_opportunity_for_low-income_students_report.pdf) [<https://perma.cc/D8V6-1J5R>]; THE PELL INSTITUTE, INDICATORS OF HIGHER EDUCATION EQUITY IN THE UNITED STATES: 45 YEAR TREND REPORT 13 (2015), [http://www.pellinstitute.org/downloads/publications-Indicators\\_of\\_Higher\\_Education\\_Equity\\_in\\_the\\_US\\_45\\_Year\\_Trend\\_Report.pdf](http://www.pellinstitute.org/downloads/publications-Indicators_of_Higher_Education_Equity_in_the_US_45_Year_Trend_Report.pdf) [<https://perma.cc/LX2V-QQJC>]; Drew Desilver, *College Enrollment Among Low-Income Students Still Trails Richer Groups*, PEW RESEARCH CTR. (Jan. 15, 2014), [www.pewresearch.org/fact-tank/2014/01/15/college-enrollment-among-low-income-students-still-trails-richer-groups/](http://www.pewresearch.org/fact-tank/2014/01/15/college-enrollment-among-low-income-students-still-trails-richer-groups/) [<https://perma.cc/8NEF-3NL3>].

116. EXEC. OFFICE OF THE PRESIDENT, *supra* note 115, at 16–17; THE PELL INSTITUTE, *supra* note 115, at 15; *Economic Segregation of Higher Education Opportunity, 1973 to 2001*, 136 POSTSECONDARY EDUC. OPPORTUNITY 3, 6–8 (2003).

117. Alexander W. Astin & Leticia Oseguera, *The Declining “Equity” of American Higher Education*, 27 REV. OF HIGHER EDUC. 321, 329–31, 333–34 (2004); Anthony P. Carnevale & Stephen J. Rose, *Socioeconomic Status, Race/Ethnicity, and Selective College Admissions*, in AMERICA'S UNTAPPED RESOURCE: LOW-INCOME STUDENTS IN HIGHER EDUCATION 131 (Richard D. Kahlenberg ed., 2003); SEAN F. REARDON, RACHEL BAKER, & DAVID KLASIK, CTR. FOR EDUC. POLICY, RACE, INCOME, AND ENROLLMENT PATTERNS IN HIGHLY SELECTIVE COLLEGES, 1982–2004, at 6–8 (2012), <https://cepa.stanford.edu/sites/default/files/race%20income%20%26%20selective%20college%20enrollment%20august%203%202012.pdf> [<https://perma.cc/B36T-DFK9>].

118. SUSAN P. CHOY & LARRY BOBBITT, NAT'L CTR. FOR EDUC. STATISTICS, LOW-INCOME STUDENTS: WHO THEY ARE AND HOW THEY PAY FOR THEIR EDUCATION, 36–37 (2000), <http://nces.ed.gov/pubs2000/2000169.pdf> [<https://perma.cc/BL8J-Z67N>]; MARK HUELSMAN, DEMOS, THE DEBT DIVIDE: THE RACIAL AND CLASS BIAS BEHIND THE “NEW NORMAL” OF STUDENT BORROWING, 2, 7–13 (2015), [http://www.demos.org/sites/default/files/publications/Mark-Debt%20divide%20Final%20\(SF\).pdf](http://www.demos.org/sites/default/files/publications/Mark-Debt%20divide%20Final%20(SF).pdf) [<https://perma.cc/HJ9R-7FYC>] (finding significant differences in both the proportion of low-income students who take out loans as well as the total amount of indebtedness they incur as compared to more affluent peers).

financial pressures, less affluent students are more likely to attend school part-time, to leave school temporarily to earn money for tuition, and to drop out altogether to support themselves and their families.<sup>119</sup> In addition, there is some evidence that incurring larger amounts of student debt has made households headed by African-American and Latino college graduates less resilient in the face of economic adversity than those headed by White and Asian-American graduates.<sup>120</sup> As with other commodities treated as private goods and priced accordingly, the poor are less able to pay for college and to choose the college of their choice.

### B. Segmentation

Segmentation, that is, the need to create separate and identifiable market niches that can be converted into “brands,” has been a somewhat understudied feature of privatization in higher education. This differentiation certainly can serve useful purposes, but it also can produce artificial barriers to cooperation and collaboration. Though the evidence is admittedly limited, some research suggests that privatization leads to increasingly uncoordinated delivery of higher education—at least in public colleges and universities.<sup>121</sup> In a case study of three states, North Carolina, California, and Virginia, Matthew T. Lambert found that only North Carolina had a strong unified vision for its public campuses.<sup>122</sup> Perhaps not coincidentally, North Carolina also was the most committed to treating higher education as a public good, perhaps because the system was founded in 1776 with a constitutional guarantee of affordability and an express recognition that it would train future leaders.<sup>123</sup> Reflecting this history, the state provided North Carolina’s colleges and universities with generous support and a stable partnership.<sup>124</sup> In recent years, however, this political commitment has begun to erode in response to pressures to privatize. Per-capita student funding has declined, tuition has risen steadily, and the relationship with the state legislature has grown acrimonious.<sup>125</sup> At

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119. THE PELL INSTITUTE, *supra* note 115, at 40–41; *see also* HEATHER BOUSHEY, *supra* note 99, at 9. *But cf.* Matthew M. Chingos & Susan M. Dynarski, *How Can We Track Trends in Educational Attainment by Parental Income? Hint: Not With the Current Population Survey*, BROOKINGS (Mar. 12, 2015), <https://www.brookings.edu/research/how-can-we-track-trends-in-educational-attainment-by-parental-income-hint-not-with-the-current-population-survey/> [<https://perma.cc/FS7C-5X2Z>] (questioning method for measuring the size of the gap).

120. William R. Emmons & Bryan J. Noeth, *Why Didn't Higher Education Protect Hispanic and Black Wealth?*, FED. RESERVE BANK OF ST. LOUIS 1 (Aug. 2015), <https://www.stlouisfed.org/publications/in-the-balance/issue12-2015/why-didnt-higher-education-protect-hispanic-and-black-wealth> [<https://perma.cc/Z3YY-E7BW>]; Patricia Cohen, *Racial Wealth Gap Persists Despite Degree, Study Says*, N.Y. TIMES, Aug. 17, 2015, at B1.

121. *See* John Lee, *Higher Education and Privatization*, 10 NAT’L EDUC. ASS’N, May 2004, at 1, 3–4, <http://www.nea.org/assets/docs/HE/vol10no2.pdf> [<https://perma.cc/N7J7-9B6Y>] (showing the various changes of support for higher education in different states).

122. LAMBERT, *supra* note 38, at 248–51.

123. N.C. Const., art. IX, § 9 (1776); LAMBERT, *supra* note 38, at 157, 163–64, 175–76.

124. LAMBERT, *supra* note 38, at 159–60, 165–67.

125. *Id.* at 171–72; Valerie Strauss, *North Carolina’s Step-by-Step War on Public Education*, WASH. POST, Aug. 7, 2015.

one time, there had been growing interest in according increased autonomy and flexibility to public colleges and universities, but today, the university is living with state-imposed mandates that may damage its competitiveness.<sup>126</sup>

Lambert's study suggests that California moved away from a unified vision of higher education at an earlier time than North Carolina. In 1960, California's Master Plan offered the most influential blueprint for designing a coordinated system of public higher education anywhere in the nation.<sup>127</sup> But those days are long gone. In the intervening years, the pool of students has grown by leaps and bounds and has become increasingly diverse.<sup>128</sup> Despite these changes, the state did not adopt a new strategy for its system of colleges and universities, even after the Master Plan expired in 1975. On the contrary, in 2011, Governor Jerry Brown did away with the California Postsecondary Education Commission, which was charged with overseeing and improving all of the state's colleges and universities; without this oversight, each sector of higher education in the state has become largely autonomous.<sup>129</sup> Critics had assailed the Commission as being unduly narrow and formalistic, but now there is no comprehensive planning process for the single largest system of public colleges and universities in the country.<sup>130</sup>

Today, communication, cooperation, and coordination among the community colleges, the California State University system, and the University of California take place informally, growing out of the personal and professional relationships among the leaders of each sector of the system.<sup>131</sup> Competition for scarce funds has been a significant feature of these relationships. Even after Proposition 98 bolstered support for community colleges and Proposition 30 averted severe funding cuts in the higher education sector, the governor and the universities continued to wrangle over state support, enrollments, and institutional autonomy.<sup>132</sup> The trend toward

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126. LAMBERT, *supra* note 38, at 175, 182–84; Strauss, *supra* note 125; Cole Stanley and Jamie Gwaltney, *State Budget Cuts UNC Funding, Freezes Tuition*, DAILY TARHEEL (July 20, 2016, 11:11 PM), <http://www.dailytarheel.com/article/2016/07/state-budget-cuts-unc-funding-freezes-tuition> [https://perma.cc/XV3K-L3Z3].

127. MASTER PLAN, *supra* note 24.

128. PATRICK M. CALLAN, THE NAT'L CTR. FOR PUB. POL'Y & HIGHER EDUC., CALIFORNIA HIGHER EDUCATION, THE MASTER PLAN, AND THE EROSION OF COLLEGE OPPORTUNITY 7–18 (2009), [http://www.highereducation.org/reports/cal\\_highered/cal\\_highered.pdf](http://www.highereducation.org/reports/cal_highered/cal_highered.pdf) [https://perma.cc/P2GR-AUFF].

129. LAMBERT, *supra* note 38, at 210–11; JONI E. FINNEY ET AL., UNIV. OF PA. GRADUATE SCH. OF EDUC., INST. FOR RESEARCH ON HIGHER EDUC., FROM MASTER PLAN TO MEDIOCRITY: HIGHER EDUCATION PERFORMANCE & POLICY IN CALIFORNIA 17 (2014), <https://www.luminafoundation.org/files/resources/california-report.pdf> [https://perma.cc/P448-55]Z].

130. MAC TAYLOR, LEGISLATIVE ANALYST OFFICE, IMPROVING HIGHER EDUCATION OVERSIGHT 3–7, 11–20 (2012), <http://www.lao.ca.gov/reports/2012/edu/ihe/improving-higher-education-010612.pdf> [https://perma.cc/V4UE-B7XL]; LAMBERT, *supra* note 38, at 210–11; FINNEY ET AL., *supra* note 129, at 17–18. So far, efforts to create a new agency have been unsuccessful. *See, e.g.*, A.B. 1348, 2013–14 Leg., Reg. Sess. (Cal. 2013) (proposing establishment of the California Higher Education Authority to replace the California Post-Secondary Education Commission).

131. LAMBERT, *supra* note 38, at 211; FINNEY ET AL., *supra* note 129, at 15–16.

132. The latest turf battle relates to a proposal that California community colleges be authorized to award bachelor's degrees. Paul Fain, *California's Evolving Master Plan*, INSIDE HIGHER ED,

privatization in California clearly seems to be associated with intensifying segmentation in an increasingly Darwinian race for scarce resources.<sup>133</sup>

Virginia has moved the farthest toward a privatized model of higher education. The state has long taken a deregulatory approach to its public colleges and universities, which have enjoyed a relatively autonomous status and have relied on a mix of public and private funding.<sup>134</sup> As a result, there is little coordination among the campuses, which vie with one another for status and resources.<sup>135</sup> In a highly segmented system, the flagship campus at the University of Virginia has been able to insulate itself and make the most of its comparative advantages in trying fiscal times. For example, in the mid-1990s, its hospitals became a private authority so that they could compete effectively with other health care providers; in exchange, the state was relieved of liability for skyrocketing costs.<sup>136</sup> In 1996, the legislature began to entertain the possibility of allowing some campus units to privatize in the face of declining state support.<sup>137</sup> By 2003, both the business and law schools at the University of Virginia had become formally self-sufficient, thereby signaling their elite status despite limited state resources. They were among the first professional schools at public institutions to take this step.<sup>138</sup>

Legislators and university leaders in Virginia seem satisfied with arrangements that give public colleges and universities greater autonomy as state funding declines, and there does not seem to be any widespread concern that the higher education system is neglecting its public mission.<sup>139</sup> Yet, after studying the University of Virginia's privatization efforts, David L. Kirp and Patrick S. Roberts were considerably less sanguine, concluding that the campus had moved "farther from

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(Sept. 27, 2013), <https://www.insidehighered.com/news/2013/09/27/two-year-colleges-california-mull-bachelors-degrees> [<https://perma.cc/PY2S-PAWH>]; see also MAC TAYLOR, *supra* note 130, at 11 (describing how each segment of the public higher education system in California has its "own interests and priorities, which do not always match the broader public interest."). For examples of earlier tensions, see KATHY REEVES BRACCO & PATRICK M. CALLEN, NAT'L CTR. FOR PUB. POL'Y & HIGHER EDUC., COMPETITION AND COLLABORATION IN CALIFORNIA HIGHER EDUCATION 11–12 (2002), [www.highereducation.org/reports/calcomp/callen.shtml](http://www.highereducation.org/reports/calcomp/callen.shtml) [<https://perma.cc/3QHQ-SJR4>].

133. FINNEY ET AL., *supra* note 129, at 14–18.

134. LAMBERT, *supra* note 38, at 127.

135. *Id.* at 129.

136. *Id.* at 135.

137. *Id.*

138. KIRP, *supra* note 38, at 130, 134–35, 144. Later, other parts of the University of Virginia campus found ways to use a decentralized model to differentiate themselves in signaling their elite status in the face of limited state resources. *Id.* at 141–42.

139. LAMBERT, *supra* note 38, at 151–53. In 2016, however, the state legislature criticized the University of Virginia for raising in-state tuition while setting aside \$2 billion in an investment fund. *University of Virginia Faces Scrutiny After Raising Tuition*, WBUR 90.9 (Aug. 26, 2016), <http://www.wbur.org/hereandnow/2016/08/26/uva-tuition> [<https://perma.cc/Q9VB-U4W4>]. Eventually, the university agreed to lower in-state tuition in exchange for increased state support. McGregor McCance, *Generous State Budget Investment in Higher Ed Allows UVA to Lower Tuition Rates for In-State Students*, UVA TODAY (Apr. 13, 2016), <https://news.virginia.edu/content/generous-state-budget-investment-higher-ed-allows-uva-lower-tuition-rates-state-students> [<https://perma.cc/Z5EW-7GNH>].

being a university that emphasizes the cultivation of knowledge and closer to being a holding company.”<sup>140</sup> In their view, the public interest at the University of Virginia now is “conceived as the sum of all the stakeholders’ interests,” an approach necessitated by classic welfare economics at a campus that has become “a great money-making engine.”<sup>141</sup> Whether or not this stark assessment is entirely accurate, privatization clearly seems to have resulted in significant segmentation in Virginia, as campuses and departments increasingly seek to define their own destinies based on the capacity to raise private dollars.

Segmentation has consequences that go beyond the erosion of a unified vision for state systems of higher education. Colleges and universities may miss opportunities to cooperate because of intense pressures to compete. For example, relatively few institutions of higher education have created robust consortia that share resources through cross-listing of courses, joint appointments of faculty, or semester exchanges for students.<sup>142</sup> Despite technologies that have substantially lowered the cost of collaboration, consortia remain a largely untapped possibility for several reasons.<sup>143</sup> Upfront costs associated with infrastructure and technology can be prohibitive for already cash-strapped institutions.<sup>144</sup> In addition, faculty often have concerns about the quality of online courses.<sup>145</sup> These obstacles are real, but some higher education researchers have concluded that the most significant barrier is intense competition, which hinders cooperation despite the potential for mutual benefit.<sup>146</sup>

Even when cooperation among campuses is built into operational plans, the results can be disappointing. Currently, two-year public colleges are expressly charged with preparing students to transfer to four-year institutions. Because community colleges disproportionately serve students of color and low-income students, the transition from two-year to four-year institutions is critical not only to achieve goals for college attainment but also to promote diversity in higher education.<sup>147</sup> Yet, according to data from Complete College America, fewer than 20% of full-time community college students finish an associate’s degree in four

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140. KIRP, *supra* note 38, at 144.

141. *Id.*

142. Allen Carden, *Mobilizing a Region in Crisis to Build a College-Going Culture*, 2007 NEW DIRECTIONS FOR HIGHER EDUC. 27, 33; Lorna M. Peterson, *Articulating the Future Through Collaboration*, 2007 NEW DIRECTIONS FOR HIGHER EDUC. 95, 96 (2007).

143. Diana Burley et al., *Leveraging Higher Education Consortia for Institutional Advancement*, INT’L J. EDUC. MGMT. 274, 280–81 (2012).

144. RACHEL FISHMAN, NEW AM. FOUND., TECHNOLOGY AND THE NEXT GENERATION UNIVERSITY 2 (2013), <https://www.newamerica.org/education-policy/technology-and-the-next-generation-university> [<https://perma.cc/MRQ8-QR3N>].

145. *Id.* at 3.

146. See Frederick Baus, *A University Center Leverages Resources and Provides Access*, 2007 NEW DIRECTIONS FOR HIGHER EDUC. 67, 71 (2007).

147. See BOB RATH ET AL., OUR PIECE OF THE PIE, INC., PATHWAYS THROUGH COLLEGE: STRATEGIES FOR IMPROVING COMMUNITY COLLEGE STUDENT SUCCESS 3, 6 (2013), [https://pdfs.semanticscholar.org/94e6/99f34d900fb18d11bf5cad12c3991f62157f.pdf?\\_ga=2.165540287.1092091925.1495913452-1955591173.1495913452](https://pdfs.semanticscholar.org/94e6/99f34d900fb18d11bf5cad12c3991f62157f.pdf?_ga=2.165540287.1092091925.1495913452-1955591173.1495913452) [<https://perma.cc/E5G2-2CBT>].

years.<sup>148</sup> Moreover, just 7.5% of African-American students, 11.1% of Latino students, and 11.8% of socioeconomically disadvantaged students will complete their degrees in three years.<sup>149</sup> And, the results for part-time community college students are even worse with 2.1% of African-American students, 2.6% of Latino students, and 4.3% of low-income students obtaining an associate's degree after three years.<sup>150</sup> As a consequence, only 25% to 39% of community college students who intend to transfer ultimately do so.<sup>151</sup>

The reasons for low transfer rates are manifold, but some relate to a lack of coordination and cooperation among two-year and four-year campuses. For example, there are still difficulties in aligning course requirements to promote successful transfer and completion of a bachelor's degree. To get an idea of how serious the problem is, consider the following statistics: when all of a transfer student's community college credits are accepted by a four-year school, that student's odds of obtaining a bachelor's degree are 82%; when only some credits are accepted, the odds fall to 42%.<sup>152</sup> Despite the tremendous importance of articulating transfer standards, serious obstacles remain even in a state like California that relies heavily on community colleges to accommodate demand for a post-secondary degree.<sup>153</sup> Even with a longstanding commitment to transfer programs, the state's higher education system continues to struggle with the process,<sup>154</sup> and a

148. COMPLETE COLL. AM., TIME IS THE ENEMY: THE SURPRISING TRUTH ABOUT WHY TODAY'S COLLEGE STUDENTS AREN'T GRADUATING . . . AND WHAT NEEDS TO CHANGE 8 (2011), [http://www.completecollege.org/docs/Time\\_Is\\_the\\_Enemy.pdf](http://www.completecollege.org/docs/Time_Is_the_Enemy.pdf) [<https://perma.cc/HG6B-XZE8>].

149. *Id.* at 10.

150. *Id.*

151. AM. ASS'N OF CMTY. COLLS., RECLAIMING THE AMERICAN DREAM: A REPORT FROM THE 21ST CENTURY COMMISSION ON THE FUTURE OF COMMUNITY COLLEGES 10 (2012), [https://www.insidehighered.com/sites/default/server\\_files/files/21stCentReport.pdf](https://www.insidehighered.com/sites/default/server_files/files/21stCentReport.pdf) [<https://perma.cc/H26D-AZYG>]. According to a 2013 report, only 11.6% of entering community college students complete a bachelor's degree within six years. THE CENTURY FOUND. TASK FORCE ON PREVENTING CMTY. COLLS. FROM BECOMING SEPARATE AND UNEQUAL, BRIDGING THE HIGHER EDUCATION DIVIDE: STRENGTHENING COMMUNITY COLLEGES AND RESTORING THE AMERICAN DREAM 12 (2013) [hereinafter THE CENTURY FOUND.], [https://tcf.org/assets/downloads/20130523-Bridging\\_the\\_Higher\\_Education\\_Divide-REPORT-ONLY.pdf](https://tcf.org/assets/downloads/20130523-Bridging_the_Higher_Education_Divide-REPORT-ONLY.pdf) [<https://perma.cc/Rf9A-9BNH>].

152. CHRISTOPHER M. MULLIN, AM. ASS'N OF CMTY. COLLS., TRANSFER: AN INDISPENSABLE PART OF THE COMMUNITY COLLEGE MISSION 6 (2012) (citing another source), [http://www.aacc.nche.edu/Publications/Briefs/Documents/AACC\\_Transfer\\_to\\_LUMINA\\_BW.pdf](http://www.aacc.nche.edu/Publications/Briefs/Documents/AACC_Transfer_to_LUMINA_BW.pdf) [<https://perma.cc/2U4V-PCWP>]. See generally UNIV. OF CAL. COMM'N ON GEN. EDUC. IN THE 21ST CENTURY, GENERAL EDUCATION IN THE 21ST CENTURY: A REPORT OF THE UNIVERSITY OF CALIFORNIA COMMISSION ON GENERAL EDUCATION IN THE 21ST CENTURY 33–35 (2007), <http://www.cshe.berkeley.edu/sites/default/files/shared/publications/docs/GEC-WEB.FINAL.pdf> [<https://perma.cc/K9V2-FXLY>] (calling for greater alignment of course offerings in California's system of higher education).

153. Geiser & Atkinson, *supra* note 24, at 5, 7, 46–47. In 2006–07, for instance, California's public colleges and universities enrolled 93% of those seeking a bachelor's degree in the state, and two-year colleges in turn enrolled about 40 to 50% of these students. *Id.* at 5–7.

154. MAC TAYLOR, LEGISLATIVE ANALYST'S OFFICE, IMPLEMENTATION UPDATE: REFORMING TRANSFER FROM CCC TO CSU 3 (2015), <http://www.lao.ca.gov/reports/2015/edu/reforming-transfer/reforming-transfer-020215.pdf> [<https://perma.cc/8TQF-3XPX>]; UNIV. OF CAL. TRANSFER ACTION TEAM, PREPARING CALIFORNIA FOR ITS FUTURE: ENHANCING



sagging college completion rate suggests just how serious the shortcomings are.<sup>155</sup> The difficulties begin with underprepared community college students. Over the years, the state's once enviable system of elementary and secondary education has slipped to the bottom in terms of both resources and performance metrics.<sup>156</sup> As a consequence, more students arrive on two-year campuses with a need for remedial classes, which in turn delays progress toward completion of a degree.<sup>157</sup> At the same time, budget cuts have forced community colleges to trim course offerings and student advising services, making it more difficult for students to navigate their way to four-year colleges.<sup>158</sup> Finally, limited funding has meant that four-year colleges and universities in the state have implemented tuition hikes, which exacerbate financial worries about transfer.<sup>159</sup> California officials have been exploring a number of ways to enhance the transparency of the transfer process, the ease of transfer, and the partnerships among community colleges and four-year institutions that sustain successful transfer.<sup>160</sup> There may be limits to what these efforts can accomplish, however, if the state remains unwilling to provide the resources needed to meet increasing demand for higher education.<sup>161</sup>

Today, privatization has led to yet another form of segmentation: the divide between for-profit and non-profit institutions of higher education. For-profit colleges and universities tout their business models as intensely consumer-focused: the goal is to keep costs low and offer degrees in areas that will land students a job.<sup>162</sup> According to for-profit schools, their model is an attractive alternative to

COMMUNITY COLLEGE STUDENT TRANSFER TO UC 15 (2014), <http://ucop.edu/transfer-action-team/transfer-action-team-report-2014.pdf> [<https://perma.cc/J2J4-47PB>].

155. See Douglass, *supra* note 25, at 14–15; Geiser & Atkinson, *supra* note 24, at 6, 9, 11–12 (“California enrolls the lowest proportion of college students in four-year institutions—26%—and ranks last on this measure by a wide margin”).

156. See Michael B. Marois & James Nash, *California Schools Suffer Under Proposition 13 Tax Cap's Chaos*, BLOOMBERG TECHNOLOGY (July 11, 2011), <http://www.bloomberg.com/news/articles/2011-07-12/california-schools-suffering-as-proposition-13-tax-cap-breeds-fiscal-chaos> (describing declining per-pupil support in California's elementary and secondary schools). According to *Education Week's Quality Counts* survey for 2015, California ranks 40th in school finance, 33rd in achievement, and 42nd overall among the 50 states. Press Release, Educ. Week Research Ctr., Early Childhood's Academic Countdown: New Findings from *Quality Counts 2015: Preparing to Launch 3* (Jan. 8, 2015), [http://www.edweek.org/media/qualitycounts2015\\_release.pdf](http://www.edweek.org/media/qualitycounts2015_release.pdf) [<https://perma.cc/X8ZY-8WLK>].

157. According to the California Community Colleges Success Scorecard, in the 2014–2015 academic year, 32.7% of students required remedial mathematics courses and 45.4% needed remedial English courses. *Student Success Scorecard: Statewide*, CALIFORNIA COMMUNITY COLLEGES, <http://scorecard.cccco.edu/scorecardrates.aspx?CollegeID=000#home> (select Remedial/ESL) (last visited Mar. 6, 2017).

158. UNIV. OF CAL. TRANSFER ACTION TEAM, PREPARING CALIFORNIA FOR ITS FUTURE: ENHANCING COMMUNITY COLLEGE TRANSFER TO UC 15 (2014), <http://www.ucop.edu/transfer-action-team/transfer-action-team-report-2014.pdf> [<https://perma.cc/FY6E-3DTB>].

159. *Id.* at 15–16.

160. See *id.* at 24–41; TAYLOR, *supra* note 154, at 6–7.

161. Geiser & Atkinson, *supra* note 24, at 20–22.

162. See, e.g., *Mission and Purpose*, UNIVERSITY OF PHOENIX, [http://www.phoenix.edu/about\\_us/about\\_university\\_of\\_phoenix/mission\\_and\\_purpose.html](http://www.phoenix.edu/about_us/about_university_of_phoenix/mission_and_purpose.html) [<https://perma.cc/WAG6->

colleges and universities that make students pay for everything from faculty research to curricular breadth to feel-good amenities.<sup>163</sup> Yet, some observers worry that the for-profit sector has mercenary tendencies and engages in predatory practices. There are stories of students who have incurred significant debt only to obtain a degree that is worthless or who have been unable to finish degrees when for-profit institutions suddenly shut their doors.<sup>164</sup> And, there are allegations of improper recruiting of students with promises of a quick path to a highly marketable degree.<sup>165</sup> Not surprisingly, the segmentation between traditional institutions of higher education and the emerging for-profit sector is quite pronounced. For example, there are colleges and universities that will not recognize credits or degrees from for-profit institutions when students apply for admission or transfer.<sup>166</sup> This is perhaps the most profound division within higher education that has been generated by the push for privatization.

### C. Stratification

As we have seen, the present hierarchy among colleges and universities stems to some extent from the massification that took place after World War II. The question now is whether privatization is intensifying these distinctions. Available evidence suggests that this is the case. Although the average college has not become more selective, students today confront a greater range of selectivity when choosing a school.<sup>167</sup> Since the 1960s, elite colleges have grown more exclusive, and less prestigious schools have become more open.<sup>168</sup> As a result, disparities in student credentials have widened. In the 1960s, the gap in median SAT and ACT scores

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UY33] (last visited Mar. 27, 2016, 10:10 AM) (describing the school's purpose as helping students "achieve their professional goals"); *Our Story*, LE CORDON BLEU, <https://www.cordonbleu.edu/our-story/en> [https://perma.cc/DKS7-DMDP] (last visited Mar. 27, 2016, 10:03 AM) (describing the school's purpose as helping students obtain employment in the culinary industry).

163. Judah Bellin, *The Unacknowledged Value of For-Profit Education*, MANHATTAN INST. (Apr. 20, 2013), <http://www.manhattan-institute.org/html/unacknowledged-value-profit-education-5713.html> [https://perma.cc/Y6A7-X8JC].

164. METTLER, *supra* note 66, at 87–88, 95; *see, e.g.*, Marissa Lang, *Abrupt Closure of Corinthian Colleges, Including Heald, Shocks Students*, SACRAMENTO BEE, (Apr. 26, 2015, 1:16 PM), <http://www.sacbee.com/news/local/education/article19638141.html> [https://perma.cc/J79Y-MXLV]; Danielle Douglas-Gabriel, *Education Department Beefs Up Effort to Help ITT Tech Students*, WASH. POST, (Sept. 19, 2016, 3:20 PM), <https://www.washingtonpost.com/news/grade-point/wp/2016/09/19/education-department-beefs-up-effort-to-help-itt-tech-students> [https://perma.cc/T5QZ-BN3E].

165. METTLER, *supra* note 66, at 90–91, 93–94; U.S. SENATE HEALTH, EDUC., LABOR & PENSIONS COMM., FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS 46–71 (2012) [hereinafter SENATE], [http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartI.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf) [https://perma.cc/DYV8-2EFQ].

166. SENATE, *supra* note 165, at 56–57; Stephanie Chen, *For-Profit College Risk: Huge Debt, Questionable Degree*, CNN, (Sept. 2, 2010, 9:50 AM), <http://www.cnn.com/2010/LIVING/09/02/for.profit.college.debt/> [https://perma.cc/RH23-JGL7].

167. Hoxby, *Changing Selectivity*, *supra* note 66, at 115–16.

168. *Id.* at 98–99.

between the most and least selective colleges was 40 percentage points; in 2009, that gap had increased to 76 percentage points.<sup>169</sup>

With growing stratification, the initial choice of a college can have profound implications for a student's future. To help students navigate this choice, U.S. News & World Report launched its college ranking system in 1983.<sup>170</sup> Over the years, the rankings have exerted a growing but far from dominant influence over students' decisions about which college to attend. In 1995, only 10.5% of entering freshmen thought that rankings played a very important role in their choice; by 2006, 16.5% thought so.<sup>171</sup> The reliance on rankings varies significantly by race and socioeconomic status. A 1998 study found that Asian-American students, students whose parents attended college, and students from affluent families attach the greatest weight to rankings.<sup>172</sup> A more recent 2013 national survey found that about one in four affluent students weighs rankings heavily as compared to about one in seven of their less affluent counterparts.<sup>173</sup> The importance of rankings also varies with the selectivity of the college chosen: 24% of students at highly selective institutions, 11% at moderately selective ones, and 10% at less selective ones are significantly influenced by rankings.<sup>174</sup>

Privilege often is marked by the selectivity of one's alma mater.<sup>175</sup> African-American and Latino students remain underrepresented at prestigious colleges and universities, and the situation for low-income students is even worse.<sup>176</sup> Affluent students are substantially more likely to attend college and to matriculate at a highly selective institution than are their low- or middle-income peers.<sup>177</sup> In fact, the advantages of the most privileged have been growing: between 1985 and 2000, the proportion of high-income students at selective institutions increased from 46% to 55%, while the proportion of middle-income students declined from 41% to 33%

169. *Id.*

170. Nicholas Thomson, *The Best, The Top, The Most*, N.Y. TIMES, Aug. 3, 2003, at 24.

171. HIGHER EDUC. RESEARCH INST., COLLEGE RANKINGS & COLLEGE CHOICE: HOW IMPORTANT ARE COLLEGE RANKINGS IN STUDENT'S COLLEGE CHOICE PROCESS? 1 (2007), <https://www.heri.ucla.edu/PDFs/pubs/briefs/brief-081707-CollegeRankings.pdf>; LORELLE L. ESPINOSA ET AL., AM. COUNCIL ON EDUC., RANKINGS, INSTITUTIONAL BEHAVIOR, AND COLLEGE AND UNIVERSITY CHOICE: FRAMING THE NATIONAL DIALOGUE ON OBAMA'S RATINGS PLAN 12 (2014), <http://www.acenet.edu/news-room/Documents/Rankings-Institutional-Behavior-and-College-and-University-Choice.pdf> [<https://perma.cc/384B-GTVV>].

172. Patricia M. McDonough et. al., *College Rankings: Democratized College Knowledge for Whom?*, 39 RES. IN HIGHER EDUC. 513, 520 (1998).

173. ESPINOSA ET AL., *supra* note 171, at 12.

174. *Id.*

175. See Anthony P. Carnevale & Jeff Strohl, *How Increasing College Access Is Increasing Inequality, and What to Do About It*, in REWARDING STRIVERS: HELPING LOW-INCOME STUDENTS SUCCEED IN COLLEGE 71, 93–97, 99–100 (Richard D. Kahlenberg ed. 2010); THE CENTURY FOUND., *supra* note 151, at 18.

176. See ANTHONY P. CARNEVALE & STEPHEN J. ROSE, THE CENTURY FOUND., SOCIOECONOMIC STATUS, RACE/ETHNICITY, AND SELECTIVE COLLEGE ADMISSIONS 37–38 (Mar. 2003), <http://files.eric.ed.gov/fulltext/ED482419.pdf> [<https://perma.cc/RDH7-HK4C>].

177. Astin & Osuguera, *supra* note 117, at 330.

and the proportion of low-income students grew slightly from 9% to 13%.<sup>178</sup> Given that high-income students were drawn from those in the top 25% of the income spectrum, they were overrepresented by a factor of two; middle-income students, drawn from the second and third quartiles, were underrepresented by a factor of about one-third; and low-income students, drawn from the bottom 25%, were underrepresented by a factor of about 50%.<sup>179</sup> The situation at the most elite Ivy League schools is even more striking: only 5% of students there were drawn from the bottom quartile of the income distribution.<sup>180</sup> Even if these gaps stem from differences in academic preparedness that correlate with socioeconomic status, the disparities are stark enough to cause concern.

Stratification among colleges and universities correlates with the amount of resources available for instruction. The most elite institutions spend over seven times as much on a student's education as do less prestigious colleges.<sup>181</sup> In 2010, for instance, private nonprofit universities invested an average of almost \$50,000 per student, and the most elite colleges spent about \$100,000. By contrast, four-year public colleges and universities invested \$36,000 per student, while community colleges spent just \$12,000.<sup>182</sup> Stratification relates not only to the funding devoted to a student's education but also to the size of the subsidy for instruction from sources other than tuition. At top schools, the proportion of the cost of instruction covered by tuition fell from 46% in 1966 to just 21% in 2007.<sup>183</sup> Among less selective schools, that figure declined from 60% to 44%.<sup>184</sup> As these data show, the gap in subsidies widened. In 1966, students at less competitive institutions paid a share that was about 1.3 times that of their peers in prestigious schools. By 2007, they were covering over twice as much. The pay-as-you-go model associated with privatization seems to have had the greatest impact on students who can least afford it. Not only were students at less prestigious schools paying a larger share of the cost of their education, but they also were reaping a smaller return on their degree. Graduates of selective colleges earned more than their peers at less elite schools, and that gap has been growing, too.<sup>185</sup> What all of this research suggests is that with

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178. *Id.* at 329.

179. *Id.* at 330.

180. Andrew Delbanco, *Our Universities: The Outrageous Reality*, THE N.Y. REV. OF BOOKS, July 9, 2015, at 38.

181. Hoxby, *Changing Selectivity*, *supra* note 66, at 108–09. These resources included support for instruction, student services, academic and institutional support, and maintenance and operation of facilities. *Id.*

182. Delbanco, *supra* note 180, at 39.

183. Hoxby, *Changing Selectivity*, *supra* note 66, at 113.

184. *Id.*

185. Hoxby, *The Return to Attending a More Selective College*, *supra* note 80, at 32, 37. Research has consistently demonstrated this earnings premium, though the size varies, depending on how the question is framed and what methodology is employed. For example, a 2004 study found a 12–17% increase in earnings when students switched from a college in the bottom quintile to one in the top quintile. Dan A. Black & Jeffrey A. Smith, *How Robust is the Evidence on the Effects of College Quality? Evidence from Matching*, 121 J. ECONOMETRICS 99, 118 (2004). Another analysis concluded that the most significant premiums accrue to those who attend elite private schools and that the evidence of

intensifying stratification, selective institutions are yielding increasingly valuable returns even as they become ever more elusive destinations, particularly for the less affluent student.

*D. The Impact of Commodification, Segmentation, and Stratification  
on Democratic Equality*

Taken together, commodification, segmentation, and stratification have serious implications for democratic equality. First of all, these forces can eclipse higher education's role in preparing students for civic life. Although students remain committed to treating college as a time for intellectual enrichment and exploration, the need to self-finance a diploma has forced students to work long hours, which in turn may limit the time they have to participate in activities that promote a sense of civic engagement and develop critical leadership skills.<sup>186</sup> At present, it is unclear whether high debt loads require recent graduates to focus on paying off their student loans, leaving them with little time or energy to devote to community activities and volunteering.<sup>187</sup> More research on this point is needed to determine how seriously privatization is displacing preparation for and participation in civic life.

The concentration of non-traditional students in two-year colleges means that they have fewer opportunities to interact with peers from other walks of life. Students at all college and university campuses therefore are deprived of the kind of broad engagement that exposes them to a range of perspectives on social and political issues.<sup>188</sup> Moreover, because two-year institutions suffer from a lack of resources as well as depressed graduation and transfer rates, historically underrepresented students are not likely to find themselves on pathways to leadership in their communities.<sup>189</sup> As a result, broadly inclusive dialogues about civic concerns are less likely to take place either on campus or after graduation.

Additionally, insofar as privatization accepts (indeed assumes) that there will be price differentiation and stratification in higher education, it is inconsistent with a norm of equal treatment that demands meaningfully comparable experiences for

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return for attending flagship public campuses is weaker. Dominic J. Brewer, Eric R. Eide, & Ronald G. Ehrenberg, *Does It Pay to Attend an Elite Private College? Cross-Cohort Evidence on the Effects of College Type on Earnings*, 34 J. HUM. RESOURCES 104, 105, 119 (1999). *But cf.* Mark Hoekstra, *The Effect of Attending the Flagship State University on Earnings: A Discontinuity-Based Approach*, 91 REV. ECON. & STAT. 717, 718, 723 (2009) (finding a 20% earnings premium from attending flagship campuses as compared to other in-state schools for White men aged 28 to 33). Even an inquiry that sought to control for student credentials concluded that the relative investment in students' education likely makes a difference and that low-income students benefit the most from attending a selective college or university. Stacey Berg Dale & Alan B. Krueger, *Estimating the Payoff to Attending a More Selective College: An Application of Selection in Observables and Unobservables*, 117 Q.J. ECON. 1491, 1522–25 (2002).

186. *See supra* notes 98, 106 and accompanying text.

187. *See supra* note 99 and accompanying text.

188. *See* Grutter v. Bollinger, 539 U.S. 306, 330–33 (2003).

189. *See supra* notes 147, 151, 182 and accompanying text.

all students. Today, elite private colleges invest over seven times as many resources per-capita as community colleges do.<sup>190</sup> Because students at less prestigious institutions cover much more of the cost of their education with tuition dollars, this gap will be difficult to narrow without public subsidies.<sup>191</sup> The disparities are especially worrisome because low-income students, first-generation students, and students of color are disproportionately concentrated in colleges with the fewest resources for instruction.<sup>192</sup> At the same time, barriers to transfer make it unlikely that students who begin at these campuses will finish at a better supported institution.<sup>193</sup> Under the circumstances, it is hard to conclude that treatment is equal when the most disadvantaged students regularly take on substantially more debt, work longer hours, and cover a larger share of their educational costs to obtain a degree with less market value than that of their affluent peers.<sup>194</sup>

Finally, with respect to equal access, the requirement that students self-finance a college education clearly runs counter to a principle that the best and the brightest should have the opportunity to attend top-notch institutions, regardless of ability to pay. Federal and state governments continue to offer need-based grants, but the awards have failed to keep pace with the growth in tuition.<sup>195</sup> Decreasing state support for public institutions of higher education, which serve the vast majority of undergraduates, has led to particularly steep tuition increases, and those increases have not been offset by enhanced financial aid.<sup>196</sup> Students without substantial personal or family assets therefore have been forced to take on larger amounts of debt to attend college.<sup>197</sup> For that reason, low-income students are more likely than their affluent peers to forego attendance altogether, are less able to enroll at the college of their choice, and are more prone to drop out as a result of financial pressures, even when their academic qualifications are competitive.<sup>198</sup>

The impact of poverty has become so pronounced that students with weak scholastic indicators from high-income backgrounds are now slightly more likely to finish college than students with strong scholastic indicators from low-income backgrounds.<sup>199</sup> In fact, rates of college attainment for Latinos and African Americans, especially young men, are lagging so far behind those of Whites and Asian Americans that one scholar of higher education has concluded that: “College-going, once associated with opportunity, now engenders the creation of a something that increasingly resembles a caste system: it takes Americans who grew up in

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190. See *supra* note 181 and accompanying text.

191. See *supra* notes 183–84 and accompanying text.

192. See *supra* notes 147, 176–81 and accompanying text.

193. See *supra* notes 147–51 and accompanying text.

194. See *supra* notes 106–07, 118–19 and accompanying text.

195. See *supra* notes 108–14 and accompanying text.

196. See *supra* notes 80–83, 88–101 and accompanying text.

197. See *supra* notes 95–107 and accompanying text.

198. See *supra* notes 115–19 and accompanying text.

199. METTLER, *supra* note 66, at 26; Susan Dynarski, *For the Poor, the Graduation Gap Is Even Wider than the Enrollment Gap*, N.Y. TIMES, June 2, 2015, at A3.

different social strata and it widens the divisions between them and makes them more rigid.”<sup>200</sup> Another historian of higher education fears that colleges and universities are now “reflecting the stratification of our society more than resisting it.”<sup>201</sup>

These developments raise serious doubts about whether colleges and universities are fulfilling a vision of inclusive education because “in our time of focus on the wealthy elite and the shrinking middle class, there is a diminished general will to regard poor Americans as worthy of what are sometimes called ‘the blessings of American life’—among which the right to education has always been high if not paramount.”<sup>202</sup> Commodification, segmentation, and stratification erode the sense that there is a level playing field that permits talented students from all walks of life to go to college and enjoy the same opportunities to obtain satisfying jobs and become leaders in their communities. As a result, privatization does serious injury to norms of democratic equality.

#### IV. REBUILDING THE CITY ON A HILL: RECENT CALLS FOR HIGHER EDUCATION REFORM AND THEIR IMPLICATIONS FOR DEMOCRATIC EDUCATION

Perhaps because of these trends, politicians have been paying more attention to higher education recently. In 2015, President Barack Obama announced his College Promise proposal,<sup>203</sup> while former Democratic presidential candidate Hillary Clinton unveiled her College Compact<sup>204</sup> and rival Bernie Sanders introduced the College for All Act in the United States Senate.<sup>205</sup> Republican Senator and former presidential candidate Marco Rubio offered his own reform initiative.<sup>206</sup> These proposals all have focused on helping students to defray the cost of attending college. Access has dominated the discussion, and there has been relatively little interest in promoting civic engagement or addressing resource disparities among campuses. Yet, all of the values associated with democratic

200. METTLER, *supra* note 66, at 5.

201. Delbanco, *supra* note 180.

202. *Id.*

203. America’s College Promise Act of 2015, H.R. 2952, 114th Cong. (1st Sess. 2015).

204. Julie Bosman & Tamar Lewin, *Clinton Spurs Rivals with a Student Debt Plan*, N.Y. TIMES, Aug. 14, 2015, at A1; Laura Meckler & Josh Mitchell, *Clinton Proposes Debt-Free College Tuition*, WALL ST. J., Aug. 10, 2015, at A4; Danielle Douglas-Gabriel & Anne Gearan, *Clinton Proposes a \$350 Billion Plan to Make College Affordable*, WASH. POST (Aug. 10, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/08/10/clinton-proposes-a-350-billion-plan-to-make-college-affordable> [<https://perma.cc/STS6-6YGT>].

205. College for All Act, S. 1373, 114th Cong. (1st Sess. 2015); Michael Schramm & Ethan Stoetzer, *Bernie Sanders Issues Bill to Make 4-Year Colleges Tuition-Free*, USA TODAY (May 19, 2015), <http://college.usatoday.com/2015/05/19/bernie-sanders-issues-bill-to-make-4-year-colleges-tuition-free> [<https://perma.cc/GZR7-VW2J>].

206. Marco Rubio, U.S. Senator for Fla., Making Higher Education Affordable Again, Remarks as Prepared for Delivery, Miami-Dade College, Miami, Fla., (Feb. 10, 2014) (transcript available at <http://www.rubio.senate.gov/public/index.cfm/press-releases?ID=a24acd97-025e-4ed7-9672-7a84eb76606b> [<https://perma.cc/M5S7-F2DZJ>]).

equality are important, and so I will explore how various reform initiatives bear on each of them.

*A. The Unheeded Call for Civic Preparedness*

Preparation for civic leadership has not figured prominently in current debates about higher education. Very often, this kind of training is treated as exceptional rather than ordinary. For example, AmeriCorps and loan forgiveness programs allow a select group of students to pursue public interest work, but there are few proposals to prepare all students to become civically engaged and politically active.<sup>207</sup> This inattention is not justified by available research on civic awareness. According to a 2012 report from the National Task Force on Civic Learning and Democratic Engagement,<sup>208</sup> “too few postsecondary institutions offer programs that prepare students to engage the questions Americans face as a global democratic power.”<sup>209</sup> The shortfall is especially troubling, the Task Force notes, given the acute need for these programs as the nation grows increasingly diverse and faces new challenges on the world stage.<sup>210</sup> The report laments the failure to capitalize on the massification of higher education, including large enrollments of students of color, foreign-born students, and first-generation students, to address shared social and political concerns in an inclusive way.<sup>211</sup>

The importance of this kind of training has been heightened by weaknesses in civic education at the elementary and secondary school level. According to the National Center on Education Statistics, only 24% of graduating high school seniors scored at the proficient or advanced levels for civics in 2010, while 36% scored below the basic level.<sup>212</sup> There also was a significant gap between the scores of White students and those of African-American and Latino students.<sup>213</sup> Indeed, the results were so disappointing that one commentator worried that the United States is suffering a “civic recession.”<sup>214</sup> Even so, institutions of higher education have

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207. Over 75,000 Americans, not all of whom are college students, participate in AmeriCorps each year. *AmeriCorps*, CORP. FOR NAT’L & CMTY. SERV., <http://www.nationalservice.gov/programs/ameriCorps> [<https://perma.cc/HNP2-B47G>] (last visited Sept. 15, 2015). By contrast, over 20 million students have enrolled in post-secondary education each year since 2009. SNYDER ET AL., *supra* note 5, at 460 tbl.303.10.

208. THE NAT’L TASK FORCE ON CIVIC LEARNING AND DEMOCRATIC ENGAGEMENT, *A CRUCIBLE MOMENT: COLLEGE LEARNING AND DEMOCRACY’S FUTURE* (2012) [hereinafter THE NAT’L TASK FORCE], [https://www.aacu.org/sites/default/files/files/crucible/Crucible\\_508F.pdf](https://www.aacu.org/sites/default/files/files/crucible/Crucible_508F.pdf) [<https://perma.cc/7VU7-721B>].

209. *Id.* at 2.

210. *Id.* at 3.

211. *Id.* at 2.

212. NAT’L CTR. FOR EDUC. STATISTICS, *THE NATION’S REPORT CARD: CIVICS 2010*, at 36 (2011).

213. *Id.* at 35.

214. Charles N. Quigley, *Call to Action: National Assessment of Educational Progress*, CTR. FOR CIVIC EDUC. (May 4, 2011), <http://www.civiced.org/resources/civic-education-links/call-to-action> [<https://perma.cc/52XX-V6U3>]. These concerns are not new, nor are they wholly attributable to the recent privatization movement. During the 1950s, there were similar concerns about Americans’ lack



done little to ameliorate deficiencies in civic knowledge. In one study, the average score on a civic literacy exam for both college freshmen and seniors was just over 50%, which was deemed a failing grade.<sup>215</sup>

Programs to promote civic engagement should meet with a receptive audience. College students generally express an interest in experiences that will allow them to contribute to their communities.<sup>216</sup> Many have participated in service activities and student government while in high school, though these opportunities are disproportionately available to affluent students.<sup>217</sup> Student interest in civic life does not wane upon arriving at college.<sup>218</sup> In fact, according to a 2009 study, eight in ten seniors reported that they had done some form of community service during college.<sup>219</sup> Yet, another study reported that the longer that students are in college, the less they feel that their post-secondary programs advance awareness of social, political, and economic issues facing the nation and the world.<sup>220</sup> In short, there is a missed opportunity to match student interest with campus offerings. This mismatch may stem from “a troubling chorus of public pronouncements from outside higher education [that] has reduced expectations for a college education to job preparation alone. Dominating the policy discussions are demands that college curricula and research cater to ‘labor market needs’ and to ‘industry availability.’”<sup>221</sup> For example, a 2011 National Governors Association report called for narrowly vocational higher education that focuses on economic goals, workforce preparedness, and competitive advantage.<sup>222</sup> Ironically, these leading public officials were largely indifferent to the civic preparation that makes for a healthy democracy.<sup>223</sup>

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of information about national and international affairs and their limited sense of civic responsibility. LOSS, *supra* note 23, at 134–35. Efforts to rectify the problem through higher education met with disappointing results, in part because students were “at once apathetic and hostile—indifferent to real politics on the one hand, yet mad at their administrators for cultivating an infantile environment that rewarded indifference on the other.” *Id.* at 141–42.

215. *Failing Our Students, Failing America: Holding Colleges Accountable for Teaching America’s History and Institutions*, INTERCOLLEGIATE STUDIES INST., [http://www.americancivilliteracy.org/2007/summary\\_summary.html](http://www.americancivilliteracy.org/2007/summary_summary.html) [https://perma.cc/BCB2-S9VC] (last visited Mar. 1, 2017).

216. ERIC L. DEY ET AL., CIVIC RESPONSIBILITY: WHAT IS THE CAMPUS CLIMATE FOR LEARNING? 3 (2009).

217. THE CTR. FOR INFOR. & RESEARCH ON CIVIC LEARNING & ENGAGEMENT, CIVIC SKILLS AND FEDERAL POLICY 5–7 (May 2, 2010), [http://civicyouth.org/PopUps/FactSheets/FS\\_10\\_Civic\\_Skills\\_final.pdf](http://civicyouth.org/PopUps/FactSheets/FS_10_Civic_Skills_final.pdf) [https://perma.cc/A4D4-556B].

218. THE NAT’L TASK FORCE ON CIVIC LEARNING AND DEMOCRATIC ENGAGEMENT, *supra* note 208, at 5.

219. *Id.*

220. DEY ET AL., *supra* note 216, at 4–8.

221. NAT’L TASK FORCE ON CIVIC LEARNING AND DEMOCRATIC ENGAGEMENT, *supra* note 208, at 9.

222. ERIN SPARKS & MARY JO WAITS, NGA CTR. FOR BEST PRACTICES, DEGREES FOR WHAT JOBS? RAISING EXPECTATIONS FOR UNIVERSITIES AND COLLEGES IN A GLOBAL ECONOMY 3–5 (2011).

223. NAT’L TASK FORCE ON CIVIC LEARNING AND DEMOCRATIC ENGAGEMENT, *supra* note 208, at 13.

In 2012, the U.S. Department of Education partnered with non-profit organizations to propose ways to enhance preparation for the fulfillment of democratic responsibilities.<sup>224</sup> The report recommended that institutions of higher education improve opportunities for high-quality civic learning, use these efforts to promote college completion, foster community-based work-study placements, and encourage graduates to pursue public service careers by improving the terms for loan forgiveness.<sup>225</sup> The report's recommendations so far have been ignored, perhaps because they do not fit neatly with a focus on economic preparedness or personal mobility.

*B. The Neglected Problem of Unequal Treatment*

Despite substantial disparities in the resources that campuses have to educate students, policymakers have paid scant attention to the principle of equal treatment. As previously mentioned, learning consortia remain a relative rarity in higher education,<sup>226</sup> and transfer rates are still disappointingly low.<sup>227</sup> Unfortunately, some recent measures have the potential to worsen the resource divide among schools. Because cost-cutting proposals for public colleges and universities often treat higher education as a luxury good and ignore stark inequalities among campuses, the initiatives threaten to inflict serious damage on community colleges, institutions that serve a disproportionate number of low-income, first-generation, African-American, and Latino undergraduate students.

When critics talk about administrative bloat and wasteful practices in higher education, they typically rely on anecdotal evidence from the most affluent campuses. These stories are used to decry the expense associated with star faculty, luxurious dorms, fancy sports facilities, and other amenities that have driven tuition up to unprecedented levels.<sup>228</sup> Reports on skyrocketing salaries for university faculty and administrators typically focus on campuses with considerable wherewithal as well.<sup>229</sup> Seldom is there any explicit acknowledgment of the unique difficulties that less well-financed institutions face. Community colleges are regularly asked to do

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224. U.S. DEP'T OF EDUC., *ADVANCING CIVIC LEARNING AND ENGAGEMENT IN DEMOCRACY: A ROAD MAP AND CALL TO ACTION 2* (2012).

225. *Id.* at 24–25. The report also urged a special focus on historically Black colleges and universities and minority-serving institutions. *Id.* at 25.

226. *See supra* notes 142–46 and accompanying text.

227. *See supra* note 151 and accompanying text.

228. ANDREW HACKER & CLAUDIA DREIFUS, *HIGHER EDUCATION? HOW COLLEGES ARE WASTING OUR MONEY AND FAILING OUR KIDS AND WHAT WE CAN DO ABOUT IT* 117–23 (2010); *Schumpeter: Declining by Degree: Will America's Universities Go the Way of Its Car Companies?*, THE ECONOMIST (Sept. 2, 2010), <http://www.economist.com/node/16941775> [<https://perma.cc/7QSP-UR3X>].

229. *See, e.g.*, Kevin Kiley, *Where Universities Can Be Cut*, INSIDE HIGHER ED (Sept. 16, 2011), [https://www.insidehighered.com/news/2011/09/16/unc\\_berkeley\\_cornell\\_experience\\_show\\_where\\_administrative\\_cuts\\_can\\_be\\_made](https://www.insidehighered.com/news/2011/09/16/unc_berkeley_cornell_experience_show_where_administrative_cuts_can_be_made) [<https://perma.cc/WK5Z-V5HA>] (describing cost-cutting measures at Cornell University, the University of California at Berkeley, and the University of North Carolina at Chapel Hill).

more with less. Because these schools serve a wide array of students with varying degrees of scholastic preparation, different career goals, and a range of financial and personal challenges, there are heavier demands for remedial courses and academic support as well as guidance and counseling than at four-year schools.<sup>230</sup>

Based on perceptions that institutions of higher education are generally profligate, community colleges have faced steep funding cuts and calls for greater accountability.<sup>231</sup> According to an estimate from the Delta Project, per-capita student funding from state and local sources at two-year colleges declined by 5% in the decade leading up to 2009.<sup>232</sup> Moreover, the total per-capita subsidies from all sources, public and private, provided to community college students declined by 10% from 2001 to 2011.<sup>233</sup> These cuts have been hard to absorb because two-year institutions already have fewer dollars to support each student, are less able to raise tuition, and have fewer opportunities to do private fundraising than four-year schools.<sup>234</sup> California's experience with cost-cutting is particularly instructive because its community colleges served 2.4 million students in 2011–12 and, standing alone, constituted the largest system of public higher education in the nation.<sup>235</sup> According to a March 2013 study, the state's two-year public colleges faced historic declines in funding between 2006 and 2012.<sup>236</sup> The cuts occurred even as the student population in need of educational services grew substantially.<sup>237</sup> The result was a notable contraction in per-capita student funding: from \$6700 in 2006–07 to \$5100 in 2011–12 (in 2011 dollars).<sup>238</sup> By contrast, per-capita state support for elementary and secondary school students was approximately 50% higher and support for students at the University of California and the California State University was twice as large.<sup>239</sup>

Because community colleges had “relatively few resources to begin with,” they were “not well-positioned to weather such cuts.”<sup>240</sup> In fact, the cuts affected the colleges' core operations as fewer courses were offered and students reported

230. Sara Goldrick-Rab, *Challenges and Opportunities for Improving Community College Student Success*, 80 REV. EDUC. RES. 437, 442–44, 446–49, 450 (2010).

231. Dorine Bethea, *Community Colleges Explore Creative Approaches to Counter Budget Cuts*, 30 DIVERSE: ISSUES IN HIGHER EDUC. 37, 38 (Jan. 7, 2014), <http://diverseeducation.com/article/59943/> [<https://perma.cc/VEY7-YL3>].

232. Chris Kirkham, *Community College Budget Cuts Drive Students to For-Profit Schools*, HUFFINGTON POST (Jan. 3, 2012), [http://www.huffingtonpost.com/2011/12/30/community-college-for-profit-college\\_n\\_1174243.html](http://www.huffingtonpost.com/2011/12/30/community-college-for-profit-college_n_1174243.html) [<https://perma.cc/5DQR-37MK>].

233. *Id.*

234. *See* Sara Goldrick-Rab, *supra* note 230, at 443 (describing how “[d]ependence on state and local funds makes [community] colleges particularly susceptible to fluctuations in the economy and, thus, state and local budgets”); Bethea, *supra* note 231, at 38.

235. SARAH BOHN, ET. AL., PUB. POL'Y INST. OF CAL., *THE IMPACT OF BUDGET CUTS ON CALIFORNIA'S COMMUNITY COLLEGES* 7 (2013), [http://www.ppic.org/content/pubs/report/R\\_313SBR.pdf](http://www.ppic.org/content/pubs/report/R_313SBR.pdf) [<https://perma.cc/GNj5-8DRB>].

236. *Id.* at 9.

237. *Id.* at 9–10.

238. *Id.* at 10.

239. *Id.*

240. *Id.*

difficulties in getting classes that they needed.<sup>241</sup> Faculty and staff were trimmed,<sup>242</sup> and enrollments declined by approximately half a million from 2008–09 to 2011–12 even as the eligible population grew.<sup>243</sup> Decreased capacity at all California public colleges and universities contributed to the growing disparity between the number of high school graduates and the number attending college: between 2009 and 2012, the gap widened by 29%, seriously undermining the state’s goals for college completion.<sup>244</sup>

Cost-cutting proposals can worsen resource disparities when they fail to account for the challenges facing campuses with the greatest need. Students who enroll at the best supported four-year institutions benefit from significant investments in faculty, curriculum, student services, and facilities. Those who enroll at the most poorly resourced two-year campuses discover that faculty have little time for them, access to classes is rationed, guidance and counseling services are limited, and facilities are not fully maintained. The gap in college completion between two-year and four-year institutions—one that persists even after controlling for incoming students’ credentials—is perhaps the most indelible marker of disparities in the quality of students’ experiences in higher education.<sup>245</sup> Indiscriminate cost-cutting can deepen this divide.

### *C. The Case for Affordability and Access*

In recent years, leading politicians have called for enhanced access and affordability for college students.<sup>246</sup> Some have offered tuition plans, while others have emphasized need-based aid for low-income students or streamlining of the financial aid application process.<sup>247</sup> In general, these initiatives have focused on social efficiency and personal mobility, both of which emphasize the economic benefits associated with a degree.<sup>248</sup> So, even the push for access and affordability may not be strengthening a collective commitment to democratic equality as much as might be expected.

#### *1. College Tuition Plans*

In 2015, President Barack Obama unveiled his America’s College Promise Proposal, which would have made two years of community college free to students who attended at least half-time, maintained a 2.5 grade point average, and achieved

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241. *Id.* at 14–17.

242. *Id.* at 17–22.

243. *Id.* at 23.

244. *Id.* at 25.

245. THE CENTURY FOUND., *supra* note 151, at 5–6.

246. See e.g., Julie Hirschfeld Davis & Tamar Lewin, *Obama Plan Would Help Many Go to Community College Free*, N.Y. TIMES, Jan. 8, 2015 at A1; Douglas-Gabriel & Gearan, *supra* note 204; Schramm & Stoetzer, *supra* note 205; Rubio, *supra* note 206.

247. *Id.*

248. *Id.*

steady progress toward completion of a degree.<sup>249</sup> To be eligible, community colleges had to commit to offering academic programs that would be fully transferable to a four-year public college or university and to providing occupational training in fields with strong market demand.<sup>250</sup> America's College Promise faced powerful resistance in Congress.<sup>251</sup> Even so, two Democratic candidates in the 2016 presidential election, Bernie Sanders and Hillary Clinton, offered their own tuition plans. The Sanders proposal, dubbed the College for All Act, would have gone farther than President Obama's plan by eliminating tuition costs at all public colleges and universities.<sup>252</sup> To qualify for the program, institutions of higher education were required to meet quality standards based on criteria such as spending per student, availability of need-based financial aid, operational expenditures, and the proportion of tenured faculty delivering instruction.<sup>253</sup> Building on President Obama's initiative, Hillary Clinton's initial proposal for a New College Compact would have guaranteed "no-loan college tuition" at four-year public colleges and universities as well as free tuition at community colleges.<sup>254</sup> Her plan was designed to incentivize states so that students could graduate debt-free from public institutions.<sup>255</sup> The financial burden would have been shared: state colleges and universities would commit to cost-cutting and improved completion rates, middle-class families would make realistic contributions, and students would dedicate wages from ten hours of work per week.<sup>256</sup> Eventually, however, in an effort to unify the Democratic Party before the nominating convention, Clinton agreed to endorse Sanders' commitment to free tuition, but only at in-state public colleges and universities.<sup>257</sup>

Clinton's initial proposal, unlike the other plans, included some acknowledgment of public service as a national value. First, veterans would have received enhanced counseling to ensure that they used their existing higher education benefits wisely.<sup>258</sup> In addition, the AmeriCorps program would have grown from 75,000 to 250,000 participants because "if you serve your country

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249. America's College Promise Act of 2015, *supra* note 203; Press Release, Fact Sheet—White House Unveils America's College Promise Proposal: Tuition-Free Community College for Responsible Students (Jan. 9, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/01/09/fact-sheet-white-house-unveils-america-s-college-promise-proposal-tuition> [hereinafter Fact Sheet].

250. *Id.*

251. *See* Davis & Lewin, *supra* note 246.

252. *See* Schramm & Stoetzler, *supra* note 205.

253. *See* America's College Promise Act, *supra* note 203, § 101(c). Funds could not be used for administrators' salaries, merit aid, or non-academic facilities like stadiums and student centers. *Id.* § 101(e)(3).

254. *See* Douglas-Gabriel & Gearan, *supra* note 204.

255. *See generally* *Costs Won't Be A Barrier*, THE BRIEFING: COLLEGE COMPACT, <https://www.hillaryclinton.com/p/briefing/factsheets/2015/08/10/college-compact-costs/> [https://perma.cc/F8NV-JM33] (last visited Aug. 20, 2015).

256. *Id.*

257. Stephanie Saul and Matt Flegenheimer, *Hillary Clinton Embraces Ideas From Bernie Sanders's College Tuition Plan*, N.Y. TIMES, July 6, 2016 at A1.

258. *Costs Won't Be A Barrier*, *supra* note 255.

through national and community service, you should also be awarded with educational benefits.”<sup>259</sup> Those who completed two years of community service and one year in a public service job would have been able to attend a public college or university in their home state without assuming debt or could have had their loans forgiven upon completion of their service.<sup>260</sup>

Though Republicans were less attentive to the issue, presidential aspirant Marco Rubio did propose an alternative to traditional student loans that would have allowed students to graduate debt-free.<sup>261</sup> Under his approach, students could apply for a “Student Investment Plan” from an approved and certified private investment group.<sup>262</sup> Investors then would finance the cost of a student’s tuition in exchange for a percentage of that student’s income over a specified period after graduation.<sup>263</sup> Investors could review factors such as a student’s major, college or university attended, and academic record to determine the likelihood of recouping the tuition dollars and making a profit.<sup>264</sup> Because the plan relied entirely on free market dynamics, it did not address the possibility that investors would consider the least advantaged students to be risky bets and therefore unattractive investments.

Though Rubio’s proposal was clearly the most market driven, all of the plans emphasized the economic rather than the civic implications of a college degree. For instance, President Obama argued that “[t]oday, more than ever, Americans need more knowledge and skills to meet the demands of a growing global economy without having to take on decades of debt before they can even embark on their careers.”<sup>265</sup> Senator Sanders similarly noted that “[w]e live in a highly competitive global economy. If our economy is to be strong, we need the best educated work force in the world.”<sup>266</sup> Hillary Clinton’s plan echoed these themes: “Lifting incomes for everyday Americans is the defining economic challenge of our time. And to raise wages, there is no better investment we can make than in education.”<sup>267</sup> Even if his approach was different, Senator Rubio adopted largely the same rhetoric when he contended that “[o]ur single most important domestic priority should be to put in

259. *Id.*

260. *Id.*

261. *See* Rubio, *supra* note 206.

262. *Id.*

263. Rubio, *supra* note 206. Milton Friedman previously had advocated this approach in 1955. Milton Friedman, *The Role of Government in Education*, in ROBERT A. SOLO (ED.), *ECONOMICS IN THE PUBLIC INTEREST* 123, 138–39 (1955). Although all three Democratic presidential candidates addressed the issue of student debt, Marco Rubio was the only Republican candidate to make a comprehensive statement on possible reforms. Libby Nelson, *Marco Rubio Is the Only Republican Talking About College Costs. Here’s What His Plan Would Mean.*, VOX (Aug. 28, 2015, 8:21 AM), <http://www.vox.com/2015/8/28/9218353/marco-rubio-college> [https://perma.cc/6Y8S-8H4K].

264. Rubio, *supra* note 206.

265. Press Release—Fact Sheet, *supra* note 249, at 1.

266. *The Week in Review*, BERNIE SANDERS, U.S. SENATOR FOR VT. (May 22, 2015), <http://www.sanders.senate.gov/newsroom/recent-business/the-week-in-review-052215> [https://perma.cc/NL8S-ZDD4].

267. *Costs Won’t Be A Barrier*, *supra* note 255.

place policies that foster dynamic economic growth.”<sup>268</sup> To that end, he argued, the United States must develop “a new model of delivering higher education that equips Americans for the better paying careers of this new economy.”<sup>269</sup>

The preoccupation with social efficiency and personal mobility was a bipartisan affair, and concerns about democratic equality were largely invisible. Civic leadership and public service were addressed only in Clinton’s initial proposal, and even there, they were portrayed as an exceptional commitment rather than an ordinary obligation of every American. Though all of the plans promised greater access to higher education, they did not address significant gaps in college attainment based on race, ethnicity, and socioeconomic status. Instead, Obama and Sanders made college free for everyone, putting affordability for the middle class on a par with access for the most disadvantaged. Only the requirement in Clinton’s New College Compact that middle-class families pay their fair share distinguished between the problems of the poor and the burdens of their more affluent peers.

## 2. *Support for Low-Income Students*

Other proposals have targeted the special challenges facing low-income students by proposing reforms to the Pell Grant program. Even here, the focus has been less on democratic equality and more on the perils facing the American economy if rates of college attainment do not improve. Championed by Senator Claiborne Pell when the Higher Education Act was reauthorized in 1972, the grants originally were designed to build on the transformative impact of the GI Bill by making post-secondary education “an entitlement—not as a privilege but as a matter of right . . . to every student in good standing who desires to attend . . .”<sup>270</sup> Senator Pell saw the grants as a way to help not just low-income students but also middle-income families.<sup>271</sup> The most disadvantaged students could attend college for free, while other students would receive more modest assistance.<sup>272</sup>

In the mid-1970s, the grants were generous enough to cover nearly 80% of the tuition, fees, and room and board at a typical four-year public university and about one-third of the average cost at a four-year private university.<sup>273</sup> As previously noted, Pell Grants have not kept pace with rising tuition. As a result, in 2014–15, the grants covered only 30% of the total cost of attendance at four-year public institutions and 14% at private ones.<sup>274</sup> The need for the grants is still tremendous. The number of recipients has increased substantially, outstripping growth in the overall undergraduate population.<sup>275</sup> In the five years following the onset of the

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268. Rubio, *supra* note 206.

269. *Id.*

270. G. WAYNE MILLER, AN UNCOMMON MAN: THE LIFE AND TIMES OF SENATOR CLAIBORNE PELL 169 (2011).

271. *Id.* at 159–60, 169.

272. *Id.* at 159.

273. BAUM ET AL., *supra* note 91, at 10, 59.

274. *See supra* notes 108–111 and accompanying text.

275. BAUM, ET AL., *supra* note 91, at 33.

Great Recession in 2008, for example, there were three million more Pell Grant recipients at a time when college enrollments grew by only 600,000.<sup>276</sup>

Pell Grants can, of course, be supplemented by financial support that states or colleges and universities provide. Indeed, some states like California offer meaningful need-based aid.<sup>277</sup> However, there is increasing pressure to make college affordable for middle-class students through state scholarship programs and increased merit aid at colleges and universities.<sup>278</sup> As a result, these supplemental sources of support have not mitigated concerns about the shortfall in Pell Grant funding for low-income students. President Obama called on Congress to make the grants an entitlement, thereby extricating them from the vagaries of a discretionary appropriations process.<sup>279</sup> He also proposed an increase in the maximum awards as well as automatic adjustments for inflation.<sup>280</sup> His efforts to turn the grants into an entitlement program did not succeed, but the amounts did increase and now grow with inflation—though at a somewhat less generous rate than he had proposed.<sup>281</sup>

Reformers continue to press for change. In 2015, the Pell Grant Protection Act<sup>282</sup> was introduced in Congress “to strengthen the economy of the United States by improving opportunities for low-income students to complete higher education and join the middle class.”<sup>283</sup> Seeking to fulfill President Obama’s vision, the act would have removed the grants from the discretionary budget and thereby safeguarded them during tight fiscal times.<sup>284</sup> Republicans responded by expressing

276. *Id.* at 29.

277. HANS JOHNSON, PUB. POL’Y INST. CAL., MAKING COLLEGE POSSIBLE FOR LOW-INCOME STUDENTS: GRANT AND SCHOLARSHIP AID IN CALIFORNIA 8–9 (Oct. 2014), [http://www.ppic.org/content/pubs/report/R\\_1014HJR.pdf](http://www.ppic.org/content/pubs/report/R_1014HJR.pdf) [<https://perma.cc/F7DT-FVH8>] (discussing how California’s grants account for over 20% of all financial aid for students in the state; aid is based on need, minimum academic qualifications, and institutional eligibility).

278. *See, e.g., id.* at 9–10, 18–20 (describing adoption of new Middle Class Scholarship Program in California even as grants for low-income students fail to keep pace with rising tuition). Recently, however, California’s governor called for a phase-out of this program due to ongoing fiscal exigencies in the state. EDMUND G. BROWN, JR., GOVERNOR, 2017–18 GOVERNOR’S BUDGET SUMMARY 40 (Jan. 10, 2017), <http://www.ebudget.ca.gov/FullBudgetSummary.pdf> [<https://perma.cc/5DQA-EJWS>].

279. *See* OFFICE OF MGMT. & BUDGET, A NEW ERA OF RESPONSIBILITY: RENEWING AMERICA’S PROMISE 61 (2009) (proposing to convert Pell Grants to a mandatory program and substantially increase amount of aid); *see also* OFFICE OF MGMT. & BUDGET, ANALYTICAL PERSPECTIVES: BUDGET OF THE U.S. GOVERNMENT 217 (2009).

280. Health Care and Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 1029 (2010); *Investing in Pell Grants to Make College Affordable*, THE WHITE HOUSE (2010), <https://obamawhitehouse.archives.gov/issues/education/higher-education/investing-in-pell-grants-to-make-college-affordable> [<https://perma.cc/H67P-XUDT>].

281. METTLER, *supra* note 66, at 154–57.

282. H.R. 1956, 114th Cong. (2015); S. 1060, 114th Cong. (2015). This act also was introduced in 2014 without success. H.R. 4373, 113th Cong. (2014); S. 2194, 113th Cong. (2014); *see also* Stephen Burd, et al., Rebalancing Resources and Incentives in Student Financial Aid 6–8, 12 (New American Foundation 2013), <http://files.eric.ed.gov/fulltext/ED540301.pdf> [<https://perma.cc/H87Q-C95J>] (supporting reforms to Pell Grant program along the lines of those proposed by President Obama).

283. H.R. 1956 § 2.

284. *Id.* §§ 3(4), 4(a)(1)–(2). The Higher Education Affordability Act also includes a provision for year-round grants. S. 2954, 113th Cong., § 401 (5)(A)(2014).



serious doubts about the long-term fiscal stability of the Pell Grant program. Noting that appropriations for the grants grew from \$12.8 billion in 2006 to \$31.8 billion in 2014, or nearly 250% in eight years, Republicans on the House Committee on Education and the Workforce insisted that the program had been “recklessly expanded,” thereby putting “its ability to serve the neediest students . . . in jeopardy.”<sup>285</sup> To bring fiscal discipline to the program, these legislators proposed a Flex Pell Grant that would be available over a six-year period based on the number of course credits a student takes.<sup>286</sup> The grants would be adjusted annually to reflect any changes in a student’s economic circumstances.<sup>287</sup> In President Trump’s budget proposal for 2018, Pell Grants would remain level, but \$3.9 billion in surplus funds would be redirected to other government programs.<sup>288</sup> In addition, nearly \$200 million in other forms of support for low-income college students would be eliminated.<sup>289</sup>

Some non-profit organizations have tried to change the terms of the debate. The Hamilton Project contends that reforms should focus not only on adjusting the size of the grants but also on maximizing the impact of every dollar spent.<sup>290</sup> According to the Project, recipients ideally should have access to guidance and support services as well as incentives for timely completion, “reforms that . . . would for the first time make Pell a true program, and not just a grant.”<sup>291</sup> In a similar vein, the New America Foundation has recommended inducements for colleges and universities to enroll Pell Grant recipients, provide them with adequate academic support and personal counseling, and ensure their satisfactory progress toward completion of a degree.<sup>292</sup>

None of these proposed changes highlighted concerns about democratic equality. The Pell Grant Protection Act instead centered on the need to strengthen the national economy,<sup>293</sup> and the New America Foundation described “[p]rofound shifts in the structure of the global economy [that] have put a premium on high-

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285. HOUSE COMM. ON EDUC. AND THE WORKFORCE, STRENGTHENING AMERICA’S HIGHER EDUCATION SYSTEM: REPUBLICAN PRIORITIES FOR REAUTHORIZING THE HIGHER EDUCATION ACT 7 (2014), [https://edworkforce.house.gov/uploadedfiles/hea\\_whitepaper.pdf](https://edworkforce.house.gov/uploadedfiles/hea_whitepaper.pdf) [<https://perma.cc/EP2H-Z6LT>].

286. *Id.* at 6–7.

287. *Id.* at 6.

288. Eric Kelderman et al., *What Trump’s Budget Outline Would Mean for Higher Ed*, CHRON. OF HIGHER EDUC. (Mar. 16, 2017), <http://www.chronicle.com/article/What-Trump-s-Budget-Outline/239511> [<https://perma.cc/SF3H-DPVL>].

289. *Id.*; Patrick deHahn, *Bad News for Low-Income College Students in Trump 2017 Budget*, USA TODAY, Mar. 16, 2017.

290. SANDY BAUM & JUDITH SCOTT-CLAYTON, BROOKINGS INST., REDESIGNING THE PELL GRANT PROGRAM FOR THE TWENTY-FIRST CENTURY, 6–7 (Oct. 2013), <https://www.brookings.edu/research/redesigning-the-pell-grant-program-for-the-twenty-first-century/> [<https://perma.cc/N89L-5QRS>].

291. *Id.* at 2.

292. Burd et al., *supra* note 282, at 4–12.

293. H.R. 1956, at § 2.

skill jobs that require advanced credentials.”<sup>294</sup> Indeed, advocates sometimes treated college degrees in wholly monetizable terms. The New America Foundation, for example, emphasized the financial bind facing students because “[t]hey know they need a college degree, but they don’t have enough money to pay ever-rising tuition bills.”<sup>295</sup> These rationales treated the challenges facing low-income students as primarily problems of the marketplace, rather than failed commitments to equal treatment and equal access.

### 3. *Streamlining Applications for College and Financial Aid*

The final area of reform related to access to higher education aims to improve the process of choosing a college and obtaining financial aid. These proposals take the market in higher education as a given, and the goal is to promote greater efficiency through increased transparency and reduced transaction costs. Released in 2013, the U.S. Department of Education’s interactive College Scorecard exemplifies this approach.<sup>296</sup> The Scorecard provides students and families with information about “five key pieces of data about a college: costs, graduation rates, loan default rate, average amount borrowed, and employment.”<sup>297</sup> Information on earnings was added in 2015.<sup>298</sup> President Obama justified the Scorecard as a way to encourage institutions of higher education to “do their part to keep costs down” because “taxpayers can’t keep on subsidizing higher and higher and higher costs for higher education.”<sup>299</sup> The idea was simple, he said: the information would help students and families compare schools and decide “where you can get the most bang for your educational buck.”<sup>300</sup>

Though the Scorecard was meant to enhance access to college, it would be hard to imagine a more commodified account of comparison shopping in higher education.<sup>301</sup> Interestingly, students who saw a draft version of the Scorecard reacted accordingly. One asked, “What am I looking at? It looks like a bill or

294. Burd et al., *supra* note 282, at 1.

295. *Id.*

296. Press Release, U.S. Dep’t of Educ., Education Department Releases College Scorecard to Help Students Choose Best College for Them (Feb. 13, 2013), <http://www.ed.gov/news/press-releases/education-department-releases-college-scorecard-help-students-choose-best-college-them> [<https://perma.cc/ZWN8-DXA8>].

297. *Id.*

298. Kevin Carey, *How One’s Choice of College Affects Future Earnings*, N.Y. TIMES, Sept. 15, 2015, at A3.

299. Press Release, U.S. Dep’t of Educ., *supra* note 296.

300. *Id.*

301. Kevin Kiley, *A Blunt Instrument*, INSIDE HIGHER ED (Feb. 14, 2013, 3:00 AM), <https://www.insidehighered.com/news/2013/02/14/white-houses-new-scorecard-oversimplifies-institutions-liberal-arts-advocates-say> [<https://perma.cc/NA9T-L3SU>] (the College Scorecard offers “an oversimplified view of the college selection process focused exclusively on the short-term financial ramifications of a degree”); Patricia McGuire, *A Scorecard Is No Way to Pick a College*, HUFFINGTON POST (Apr. 23, 2013), [http://www.huffingtonpost.com/patricia-mcguire/college-scorecard-flaws\\_b\\_2707702.html](http://www.huffingtonpost.com/patricia-mcguire/college-scorecard-flaws_b_2707702.html) [<https://perma.cc/K72B-GLV2>] (the College Scorecard equates salaries with excellence and ignores public service).

something . . . ”<sup>302</sup> Another wondered, “Is this supposed to explain something about college?”<sup>303</sup> Though a number of students appreciated the data, they frequently complained that a great deal of relevant information was missing and that they would prefer a Scorecard that could be customized to address their individual concerns.<sup>304</sup> Apparently, even in a highly commodified environment, students still think of college as an opportunity for intellectual enrichment and not just a financial proposition based purely on dollars and cents.<sup>305</sup>

The Bill and Melinda Gates Foundation has taken a leading role in seeking to make the federal financial aid process easier for students to navigate. The Foundation has advocated that the Free Application for Federal Student Aid be shortened and streamlined, both by removing unnecessary questions and by simplifying the documentation of individual and family assets.<sup>306</sup> According to the Foundation, these changes could “help up to 2 million more low-income students access the financial support they need to enroll in higher education and improve their chance of completing a college credential.”<sup>307</sup> Once more, the reform rhetoric focuses on economic imperatives: “By 2025, two-thirds of all jobs in the U.S. will require education beyond high school. At the current rate the nation is producing college graduates, there will be an estimated shortfall of 11 million workers with postsecondary credentials to fill those jobs.”<sup>308</sup> The aim therefore is to ensure that higher education “acts as an engine of social mobility and economic development” by improving “the rate and cost-effectiveness at which it turns credential seekers into credential holders.”<sup>309</sup> To that end, targeting underperforming low-income students is essential “if the nation is to meet its credentialing needs.”<sup>310</sup> It would be difficult to conceive of a stronger statement about the imperative of social efficiency. Indeed, democratic equality figures not at all in this discourse.

In sum, initiatives to improve higher education are couched largely in the language of improving overall economic performance or promoting personal mobility. There is comparatively little interest in preparing students for civic engagement or rectifying resource disparities among college campuses. Even calls

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302. JULIE MARGETTA MORGAN & GADI DECHTER, CTR. FOR AM. PROGRESS, IMPROVING THE COLLEGE SCORECARD: USING STUDENT FEEDBACK TO CREATE AN EFFECTIVE DISCLOSURE 1, 2 (2012), <http://files.eric.ed.gov/fulltext/ED539742.pdf> [<https://perma.cc/W6ZF-2BGA>].

303. *Id.* at 6.

304. *Id.* at 7.

305. *See supra* note 72 and accompanying text.

306. BILL AND MELINDA GATES FOUND., BETTER FOR STUDENTS: SIMPLIFYING THE FEDERAL FINANCIAL AID PROCESS 1, 5–7 (2015), <https://www.luminafoundation.org/files/resources/better-for-students.pdf> [<https://perma.cc/AW3E-SNCR>]; *see also* MARK HUELSMAN & ALISA F. CUNNINGHAM, INST. FOR HIGHER EDUC. POLICY, MAKING SENSE OF THE SYSTEM: FINANCIAL AID REFORM FOR THE 21ST CENTURY STUDENT, 1, 9–10 (Jan. 2013), <http://www.ihep.org/sites/default/files/uploads/docs/pubs/reimagining-aid-design-and-delivery-final-january-2013.pdf> [<https://perma.cc/AEP7-D44W>].

307. *Id.* at 3–4.

308. *Id.* at 1.

309. *Id.* at 3.

310. *Id.*

for promoting greater access are driven almost entirely by concerns about meeting workforce needs so that the United States can remain competitive in a global marketplace. As a result, the most serious injuries that privatization of higher education inflicts on democratic equality—an eroding sense of shared civic responsibility coupled with separate and unequal experiences for the most disadvantaged—have gone largely unaddressed in current debates.

V. THE BEGINNINGS OF A BLUEPRINT FOR THE CITY ON A HILL:  
SOME GUIDELINES FOR REVIVING DEMOCRATIC EQUALITY IN OUR COLLEGES  
AND UNIVERSITIES

The persistent blind spots in our policymakers' panopticon reveal how challenging it will be to resurrect a commitment to democratic equality in higher education. The widening divide between haves and have-nots in the United States has intensified the commodification of a college degree. Today, students must obtain a diploma as a prerequisite to economic security in a country where the price of failure is higher than ever.<sup>311</sup> A dynamic of intense competition for scarce seats at selective colleges and universities has dimmed an appreciation of our interdependency as a democratic people. Relentless efforts by colleges and universities to differentiate and order themselves according to prestige and status have compounded the problem by making the initial choice of a college an increasingly high-stakes proposition. At a moment when rising inequality threatens the underpinnings of democratic equality, we are least able to contemplate higher education's role in rebuilding an awareness of the common good.<sup>312</sup>

To resurrect these important values, we should begin by acknowledging some basic points that must frame any reform efforts. First, every level of government, whether federal, state, or local, has to play a part in inculcating an ethic of civic engagement and honoring democratic commitments to equal treatment and equal access. The federal government can help by articulating a strong national interest in democratic equality in higher education on a regular basis rather than in the occasional Department of Education report.<sup>313</sup> A sustained and comprehensive policy would include strategic incentives and partnerships with state and local governments to promote access to college. State officials could play a valuable role in identifying key challenges facing public college and university systems, particularly the serious resource disparities at two-year and four-year public colleges that undermine equal treatment.<sup>314</sup> At the local level, municipal and county officials

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311. See *supra* notes 73-76 and accompanying text.

312. THE NAT'L TASK FORCE, *supra* note 208, at 19–21 (describing factors like growing inequality and increasing diversity that make civic learning critically important at this historical moment).

313. *Id.* at 35–36 (calling for federal agencies to champion civic learning in a robust and comprehensive way).

314. RICHARD D. KAHLENBERG, THE CENTURY FOUNDATION, HOW HIGHER EDUCATION SHORTCHANGES COMMUNITY COLLEGES 1, 2–7 (2015), <https://tcf.org/content/report/how-higher-education-funding-shortchanges-community-colleges/> [<https://perma.cc/5MDA-73AT>]

should play a vital role in creating university-community partnerships that offer opportunities to learn leadership skills and an ethic of service.<sup>315</sup>

A commitment to democratic equality also should be bipartisan. Whether Democrat or Republican (or Independent for that matter), our elected officials have a shared interest in preparing students for civic life, providing meaningful educational experiences at colleges and universities, and ensuring broad access to qualified students from all walks of life. So far, nearly all of the initiatives in this area have been from Democrats.<sup>316</sup> Undoubtedly, this reflects ideological differences about the role of government in a free-market economy.<sup>317</sup> Yet, this does not mean that there are no areas of consensus when it comes to norms of democratic equality. Republicans and Democrats alike should be worried about the lack of civic awareness among college students and recent graduates.<sup>318</sup> Members of both parties ought to be appalled at stories of veterans who have squandered their benefits on worthless college degrees from diploma mills that invest little in their students' education.<sup>319</sup> Democrats and Republicans should be similarly concerned about ballooning student debt loads and their impact on access to higher education, even if their proposed solutions rely to varying degrees on government subsidies and market-based corrections.<sup>320</sup> Acknowledging this common ground will be important in demonstrating that democratic equality remains a widely shared value.

Moreover, both public and private institutions of higher education should be partners in reviving norms of democratic equality. So far, high-profile reform measures have focused on public institutions, but private schools remain an important force for change. Some of the nation's most prestigious colleges and universities are private institutions with an unparalleled platform to lead by example.<sup>321</sup> Moreover, private schools benefit from government largesse, obtaining

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(describing role of state along with federal agencies and foundations in addressing inadequacies of community colleges and citing Tennessee as a leader in dealing with this issue).

315. See THE NAT'L TASK FORCE, *supra* note 208, at 35–36 (recognizing need for cooperation among federal, state, and local policymakers in promoting civic learning); CAMPAIGN FOR THE CIVIC MISSION OF SCHOOLS, *GUARDIAN OF DEMOCRACY: THE CIVIC MISSION OF SCHOOLS* (2011), <http://civicmission.s3.amazonaws.com/118/f0/5/171/1/Guardian-of-Democracy-report.pdf> [<https://perma.cc/WBR3-9FDW>] (setting forth a framework for cooperation that addresses K-12 as well as higher education).

316. See *supra* notes 249-64 and accompanying text.

317. See generally ANDREW GELMAN ET AL., *RED STATE, BLUE STATE, RICH STATE, POOR STATE: WHY AMERICANS VOTE THE WAY THEY DO* 122–27 (2008) (describing rising polarization along party lines in Congress beginning in the 1970s).

318. See Peter Levine & Scott Warren, *To Revive Our Democracy, Revive Civic Education*, THE HILL (Jan. 14, 2015), <http://thehill.com/opinion/op-ed/229555-to-revive-our-democracy-revive-civic-education> [<https://perma.cc/QZX8-MA8K>].

319. See generally METTLER, *supra* note 66, at 90–110 (describing earlier bipartisan efforts to protect veterans from predatory institutions and how these efforts broke down in the 1990s as for-profit providers effectively lobbied Congress to preserve their commercial advantages).

320. See *supra* notes 95–97 and accompanying text.

321. For example, there is only one public university in the top twenty, the University of California at Berkeley, and it is tied for twentieth. There are four more public universities in the top thirty: UCLA and the University of Virginia tied for twenty-fourth, the University of Michigan-Ann

federal research grants, enrolling students with Pell Grants, and receiving generous tax exemptions that enable university endowments to grow rapidly.<sup>322</sup> Private schools should stand shoulder to shoulder with public colleges and universities in promoting democratic equality.

Finally, resurrecting a commitment to democratic equality in higher education is not solely the responsibility of government officials or university leaders, though they have important roles to play. Foundations, non-profit think tanks, corporations, local businesses, and community organizations can be vital partners in this effort. Some foundations and think tanks already have sponsored valuable policy research that bears on concerns about democratic equality, but the initiatives so far have been piecemeal. The problems of democratic inequality will not be resolved through ad hoc solutions, so philanthropists must embrace a comprehensive vision that advances training for civic leadership, equal treatment, and equal access.<sup>323</sup> National partners can articulate a common vision, incentivize innovation, collect stories of success, and disseminate them broadly.<sup>324</sup> State organizations can do the same, and they can highlight particular regional challenges, for example, because of demographic shifts in the student population, funding challenges in state colleges and universities, or depressed transfer rates.<sup>325</sup> Local organizations can help to create service learning, mentoring, and internship opportunities that acquaint students with community needs, collective decision-making, and common values.<sup>326</sup>

Though a comprehensive vision is vital, it is also essential to set priorities, given the magnitude of the difficulties. With the rise of privatization, low-income

Arbor at twenty-seventh, and the University of North Carolina-Chapel Hill at thirtieth. U.S. NEWS & WORLD REPORT, NAT'L UNIV. RANKINGS 2017 (2017), <https://www.usnews.com/best-colleges/rankings/national-universities> [<https://perma.cc/N3CY-T2A9>].

322. THE CENTURY FOUND., *supra* note 151, at 25–27.

323. See Darren Walker, *What's Next for the Ford Foundation?*, EQUALS CHANGE BLOG (June 11, 2015), <http://www.fordfoundation.org/equals-change/post/whats-next-for-the-ford-foundation> [<https://perma.cc/29SB-JQ99>] (describing need for comprehensive strategies that avoid silos in tackling large-scale social challenges).

324. See MARY A. COLWELL, PRIVATE FOUNDATIONS AND PUBLIC POLICY: THE POLITICAL ROLE OF PHILANTHROPY 59 (1993); see also Bill Gates, *Annual Letter 2009*, BILL & MELINDA GATES FOUNDATION (Jan. 2009), <http://www.gatesfoundation.org/who-we-are/resources-and-media/annual-letters-list/annual-letter-2009> [<https://perma.cc/EA4T-URMK>] (describing need for foundations to spur innovation and share best practices).

325. Regional partnerships have taken on a new significance as a way to effect reform when state and local governments do not respond quickly enough to change. Foundations have played a role in these partnerships. Andrew Jones & Stephanie Pinceti, *Rescaling Regions in the State: The New Regionalism in California*, 25 POL. GEOGRAPHY 482 (2006). Interestingly, some national foundations have been criticized for meddling in states' affairs. Katherine Mangan, *How Gates Shapes State Higher-Education Policy*, CHRON. OF HIGHER EDUC. (July 14, 2013), <http://www.chronicle.com/article/How-Gates-Shapes-State/140303> [<https://perma.cc/6HG4-3GGR>].

326. See, e.g., PROJECT PERICLES, <http://www.projectpericles.org/> [<https://perma.cc/3VUR-E8G5>] (last updated 2017) (promoting the development of civic engagement programs at colleges and universities across the United States). See generally THE NAT'L TASK FORCE, *supra* note 208, at 64–67 (describing important role that university-community partnerships can and will play in reviving civic leadership in higher education).

students, who are disproportionately people of color, are faring the worst.<sup>327</sup> These students are less likely to attend college, less likely to go to a school as selective as their credentials would warrant, and less likely to finish a degree.<sup>328</sup> As a result, poor students are unlikely to find themselves on pathways to leadership that will allow them to participate fully in civic and political life.<sup>329</sup> These students also are subject to unequal treatment as they increasingly find themselves concentrated in two-year and for-profit colleges with substantially fewer resources for instruction than four-year institutions can offer.<sup>330</sup> In truth, low rates of completion and transfer at community colleges cast real doubt on whether the promise of access to higher education is an authentic one for the most disadvantaged students.<sup>331</sup>

Focusing on these serious deprivations is not meant to deny the genuine harms that other students experience as a result of privatization. In preparing for civic leadership, affluent students may attend campuses with little socioeconomic diversity; as a result, there will be few occasions to interact with peers from less advantaged backgrounds who can provide insights into the adversities associated with poverty and segregation.<sup>332</sup> Middle-class students may be priced out of a preferred college or university, take on unwanted debt to get a degree, or work longer hours than is ideal for their studies.<sup>333</sup> Problems of affordability for the middle class are real, and there at least some efforts underway to address them by making the market in higher education more transparent, devoting more resources to merit aid and middle-class scholarships, and streamlining the financial aid process.<sup>334</sup> That said, middle-class students still have meaningful, albeit imperfect, pathways to higher education, and their prospects for getting some relief through the political process seem brighter than those of their low-income peers.

The exclusion of low-income students from the promise of a college education strikes at the very heart of democratic equality and has to be tackled head on. First, there must be real paths to leadership for children who grow up in conditions of poverty and segregation. Programs should build a bridge from high school to college, especially when students are the first in their families to pursue postsecondary education and cannot easily turn to friends and relatives for informal advice about the process. At least some bridge programs should prepare students to become civic and political leaders.<sup>335</sup> This type of leadership training could

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327. See Anne Johnson, *Student Debt, Higher College Costs Are Hurting Low-Income Americans The Most*, TALK POVERTY (June 2, 2014), <http://talkpoverty.org/2014/06/04/Johnson> [<https://perma.cc/88A9-KBNL>].

328. See JOHNSON & ROCHKIND, *supra* note 106, at 11.

329. See *supra* notes 188–89 and accompanying text.

330. See THE CENTURY FOUND., *supra* note 151, at 21–28.

331. *Id.* at 17–21, 30–32.

332. *Id.* at 47, 51.

333. See *supra* notes 88–98 and accompanying text.

334. See *supra* notes 114, 296–300, 306 and accompanying text.

335. See CHRISTINE M. CRESS ET AL., A PROMISING CONNECTION: INCREASING COLLEGE ACCESS AND SUCCESS THROUGH CIVIC ENGAGEMENT 15, 17 (2010), <http://www.compact.org/wp-content/uploads/2009/01/A-Promising-Connection-corrected.pdf> [<https://perma.cc/Z8QR-F824>].

strengthen the academic preparedness, cultural capital, and social networks needed to make a smooth transition from high school to college.<sup>336</sup> The training would begin in high school, promote enrollment at two-year and four-year colleges, and continue after a student's arrival on a college campus.<sup>337</sup> There would be numerous opportunities for foundations, nonprofit think tanks, and government officials to partner with colleges and universities in piloting model initiatives.<sup>338</sup>

To make college attendance feasible, Pell Grants should be augmented to cover a reasonable share of the full cost of attendance for students with limited means.<sup>339</sup> If there is ongoing congressional resistance to across-the-board increases,<sup>340</sup> reformers might propose “Pell plus” grants that provide additional funds to high school students who successfully complete bridge programs that prepare them for college and support degree completion. In addition, there could be incentives for campuses to enroll Pell Grant recipients. Though Pell Grants can be used at any college or university, recipients remain heavily concentrated in community colleges.<sup>341</sup> In part, this reflects the fact that the grants have not kept up with rising tuition, which is typically higher at four-year than two-year institutions.<sup>342</sup> Assuming that the grants are increased to make attendance at four-year schools feasible, the federal government could interrupt conventional enrollment patterns by creating Pell bonuses for campuses that increase the proportion of recipients or maintain strong levels of enrollment.<sup>343</sup> An institution could use the bonuses to fund various kinds of support for students and recent graduates, including need-based aid, merit scholarships, and internships and post-graduate fellowships in public

336. *See id.* at 10–12.

337. *See id.* at 13–14 (describing the success of partnerships between community colleges and elementary and secondary schools in promoting civic engagement and college access for low-income youth).

338. *See id.* (describing foundation support for model initiatives).

339. *See supra* notes 108–11 and accompanying text.

340. *See supra* note 285 and accompanying text.

341. Sung-Woo Cho, James Jacobs, & Christine Zhang, *Demographic and Academic Characteristics of Pell Grant Recipients at Community Colleges* 3 (Columbia Univ. Teachers Coll. Cmty. Coll. Research Ctr., Working Paper No. 65, 2013), <http://ccrc.tc.columbia.edu/media/k2/attachments/demographic-academic-characteristics-pell-grant.pdf> [<https://perma.cc/CHY2-FGAS>] (noting that in 2010–11, community colleges served over 35% of Pell Grant recipients, the highest proportion in the higher education sector). Because of overcrowding at community colleges, more students are seeking degrees from for-profit providers. THE CENTURY FOUND., *supra* note 151, at 38.

342. *See* Sara Goldrick-Rab, *The Real College Barrier for the Working Poor*, INSIDE HIGHER ED (Dec. 10, 2013), <https://www.insidehighered.com/views/2013/12/10/federal-aid-needy-students-inadequate-essay> [<https://perma.cc/U34H-QB6D>] (describing community colleges as an affordable alternative as Pell Grants fail to keep up with rising tuition).

343. President Obama's 2015 budget proposal included funding for Pell Grant bonuses at colleges and universities that successfully graduate recipients. The bonuses would have been earmarked for support of low-income students. The plan received a lukewarm reception in Congress. Michael Stratford, *Obama Seeks Funding Boost*, INSIDE HIGHER ED (Feb. 3, 2015), <https://www.insidehighered.com/news/2015/02/03/obama-seeks-boost-higher-education-spending-and-proposes-some-loan-reforms-have> [<https://perma.cc/XHG7-MBZ5>]; Stephen Burd, *Encouraging the Pell Bonus*, NEW AMERICA (June 4, 2015), <https://www.newamerica.org/new-america/encouraging-the-pell-bonus/> [<https://perma.cc/M9XF-K7K5>].



service. In this way, the bonuses would improve access for low-income students but also would enable other students to benefit from opportunities that advance democratic equality.

Because so many low-income students are currently concentrated at community colleges, it is essential that these schools have the resources needed to serve as an authentic gateway to a bachelor's degree. These resources would be used to offer an adequate number of academic and remedial courses, to hire the full-time faculty necessary to create meaningful mentoring opportunities, and to support enough staff to provide students with critical guidance and counseling services.<sup>344</sup> There are clearly challenges in measuring precisely how much funding is needed. Even so, when there are gross disparities in per-capita student expenditures along with significant gaps in completion rates at different campuses, there is good reason to conclude that additional investment is required.<sup>345</sup> Policymakers should be especially concerned about a substantial divide within community college systems, particularly when campuses serving large numbers of students of color and low-income students have the fewest resources and the poorest outcomes, even after controlling for students' academic credentials.<sup>346</sup>

Improving transfer rates must also be a significant priority, given the large number of students, especially nontraditional students, who begin their higher education careers at community colleges.<sup>347</sup> Just as partnerships between high schools and colleges are important in enabling low-income students to pursue postsecondary education, partnerships between two-year and four-year institutions are critical to successful transfer. Partners must work together to align the course requirements for an associate's and a bachelor's degree. These requirements should be clearly defined and widely disseminated to students, and there should be adequate counseling about the progress being made toward a degree.<sup>348</sup> In addition, partners must create networks of support that encourage and sustain the commitment to getting a bachelor's degree. These support networks can be linked to programs of leadership as well as other initiatives that advance students' long-term career goals. Professional staff, college peers, and faculty mentors can play key roles in these efforts.<sup>349</sup> Finally, there should be opportunities for community college students to experience life at a four-year school as the time for transfer draws near. Students may, for example, take advanced classes at a nearby four-year

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344. THE CENTURY FOUND., *supra* note 151, at 39–41.

345. *Id.* at 31–32.

346. *Id.* at 33–35.

347. *Id.* at 11 n.2.

348. *See* TAYLOR, *supra* note 154, at 6–10 (describing important of efforts to align courses in improving transfer rates in California).

349. *See, e.g.*, VERONICA A. LOTKOWSKI, STEVEN B. ROBBINS, & RICHARD J. NOETH, THE ROLE OF ACADEMIC AND NON-ACADEMIC FACTORS IN IMPROVING COLLEGE RETENTION 7–9, 15–19 (2004) (reporting the importance of non-academic as well as academic factors in promoting college performance and retention).

institution or online.<sup>350</sup> These collaborative arrangements will allow students to earn credits and to develop the confidence that they can successfully obtain a bachelor's degree.

In an era marked by competition for scarce state resources, four-year public institutions may reasonably fear that their own support will be reduced in order to augment funding for community colleges and transfer programs. To address this concern, reform proposals must be framed as part of vision for a unified system of higher education in the state. At present, the college pipeline is inefficient in meeting goals for degree completion because of significant attrition at community colleges. In fact, the number of dollars needed to yield a single diploma at a community college is higher than that at a four-year school with higher graduation rates.<sup>351</sup> Enhancing community colleges can rectify these shortcomings. When community colleges develop reputations for quality education and successful transfer, they are attractive and affordable destinations for a range of students seeking to contain costs. Indeed, data suggest that some community colleges with these characteristics become “magnets” for middle-class students, many of whom are White.<sup>352</sup> This in turn reduces the segregation of student bodies at two-year colleges.<sup>353</sup> When community colleges serve a wider array of students, enrollment pressures at four-year schools are eased. With properly aligned academic standards, transfer students are less likely to take duplicative credits and to require extensive academic support when they arrive at four-year campuses. Working together, two-year and four-year public colleges and universities can make the case that their funding should not be a zero-sum game. Students need affordable options that lead not just to an associate's degree but to a bachelor's degree as well. Improving community colleges will count for little if cuts at four-year institutions lead to tuition hikes that stand in the way of transfer.

Redressing the most serious injuries to democratic equality may enable policymakers to recognize the broader need to revitalize our commitment to preparation for civic life and to the creation of meaningful educational opportunities for all. Support for leadership training and for inclusive and diverse student bodies at two-year and four-year campuses can highlight the civic-regarding aspects of higher education. These reforms can serve as a reminder that fulfilling community responsibilities is not an exceptional opportunity for the few but an everyday obligation of the many. Safeguarding high-quality instruction and meaningful access

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350. *See, e.g.*, ANDREA CONKLIN BUESCHEL, *THE MISSING LINK: THE ROLE OF COMMUNITY COLLEGES IN THE TRANSITIONS BETWEEN HIGH SCHOOL AND COLLEGE* 28 (2003) (describing innovative arrangements that allow Sacramento City College students who plan to transfer to take courses at Cal State University-Sacramento and the University of California at Davis). Some proposals go even further, suggesting that some community colleges be converted into branch campuses of four-year institutions or simply be allowed to award some baccalaureate degrees themselves. Geiser & Atkinson, *supra* note 24, at 22–26.

351. THE CENTURY FOUND., *supra* note 151, at 36 (citing the Delta Cost Project).

352. *Id.* at 48–51.

353. *Id.* at 33–35, 47–48.

for the least advantaged can help to level the playing field for all students by diversifying the range of affordable options that lead to a well-regarded bachelor's degree. Perhaps through incremental changes like these, norms of democratic equality can once again figure in policy debates alongside concerns about social efficiency and personal mobility.

#### CONCLUSION

Contemporary discussions of higher education have increasingly focused on the economic benefits that a college degree can confer, whether for society or the individual. As the income and wealth gap in the United States continues to grow, it is easy to become wholly preoccupied with these concerns. There is an understandable fear of being left behind in an unforgiving marketplace, but this anxiety should not blind us to our interdependency as a democratic people. Now, more than ever, we need to understand the duties that we owe one another as fellow members of the body politic. Without broad civic engagement and political participation, we cannot answer profoundly important questions about minimum conditions of human dignity, principles of fairness that should govern the marketplace, and necessary elements of diverse leadership in a representative democracy. Calling for a revival of democratic equality in our colleges and universities can seem like a fool's errand, but building a city on a hill—or a perfect union, for that matter—is necessarily a utopian endeavor. When we refer to our highest aspirations as the American dream, we recognize that though the reality is elusive, a collective belief in its possibility is essential.