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### Seeing Higher Education and Faculty Responsibility Through Richard Matasar's Critiques of Law Schools: College Completion, Economic Viability, and the Liberal Arts Ideal in Higher Education

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# SEEING HIGHER EDUCATION AND FACULTY RESPONSIBILITY THROUGH RICHARD MATASAR'S CRITIQUES OF LAW SCHOOLS: COLLEGE COMPLETION, ECONOMIC VIABILITY, AND THE LIBERAL ARTS IDEAL IN HIGHER EDUCATION

John Valery White<sup>†</sup>

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## INTRODUCTION

Everywhere, it seems, there are books, essays, and editorials describing a crisis in higher education. *Chronicle of Higher Education* writer Goldie Blumenstyk summarizes the crisis by asking, rhetorically, if there is one and answering:

Over the past thirty years, the price of college has gone up faster than prices of almost all other goods and services. Student debt is at an all-time high of \$1.2 trillion. Doubts about the value of college are on the rise. State support for the public-college sector, which educates seven of ten students, has yet to (and may never) return to the generous levels of the early 2000s. The financial model underlying many private colleges is becoming more and more fragile. Collectively, colleges reflect—some say even amplify—the racial and income inequities of the nation's neighborhoods and elementary and

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secondary schools. Demands for career-focused training are growing, even as experts argue that the skills of a liberal arts education are becoming increasingly important. And a restless reform movement, inspired by the promise of new technology and backed by powerful political and financial might, is growing more insistent that the enterprise spend less, show better results, and become more open to new kinds of education providers.

So in a word, Yes. Higher education is most assuredly in crisis.<sup>1</sup>

Higher education is alternatively an economic sector ripe for disruption, an emblematic collection of self-focused, bureaucratic institutions that are resistant to structural change, a social institution failing our youth, or a collection of entities captured by rent-seeking manipulators (be they tenured faculty, overpaid administrators, or heartless corporations), to just touch upon some of the critical themes.

In this environment it would be difficult to suggest that there is an aspect of the “crisis” in higher education that has gone unexplored, much less a significant challenge to higher education that is being given short shrift. This Essay focuses, then, on how I believe this crisis is widely characterized. As is often the case when talk of crisis is afoot, we “fight the last war” as pent up frustrations with existing conditions are delivered as “withering critique” of a now venerable target that has the attention of the general public.<sup>2</sup> In this Essay I argue that the crisis in higher education has been framed around discomfort with and critiques of changes that have taken place in the last few decades as universities grew and became more complex, and more expensive. These arguments raise valid and significant concerns about higher education and its subcomponents like legal education but on the whole have missed the true challenge to higher education of recent years. I argue that the significant current policy push to improve college attainment has led to the loss of academic authority and leadership by higher education institutions, their administrators, and especially their faculties. This policy challenge has focused discussion on the financial model of higher education and triggered arguments rejecting the core

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1. GOLDIE BLUMENSTYK, *AMERICAN HIGHER EDUCATION IN CRISIS? WHAT EVERYONE NEEDS TO KNOW* 1 (2015). Given the massive amount of writing on higher education recently, I rely on Blumenstyk’s excellent summary of the issues surrounding higher education throughout this Essay for the sake of brevity and simplicity.

2. Blumenstyk notes that until the early 2000s most of the critiques of higher education were from “within its own membership associations . . . or from established groups like the National Governors’ Association and the Education Commission of the States.” *Id.* at 117–18. Today, the “list of organizations conducting research and issuing reports and polls on higher education has ballooned [with national policy groups having] all established programs specifically devoted to studying higher education.” *Id.* at 118.

principle around which American higher education has been built. These changes demand faculty leadership in pursuit of what Richard Matasar has termed the “value proposition” in his critiques of legal education. I contend, however, that the existing framework for critiquing higher education obscures the current challenges institutions face and undercuts institutions’ ability to meet those challenges, focused as it is on lamenting changes to higher education that are well settled.

The occasion for this Essay is a reflection on the work of Matasar, particularly his commentary on legal education and higher education as institutions grappling with their existence as social institutions in an increasingly fast-changing market economy. Matasar’s work has often been prescient but in all cases has highlighted the difficulty that complex, collegial institutions face in the late twentieth and early twenty-first centuries trying to anticipate and respond to the challenges before them. Matasar’s refrain has been for institutions (implicitly their faculty members) to look around them and engage the issues afoot, to turn their creative energies to addressing the challenges facing their profession. While the challenges are complex and often relatively remote from individual faculty members’ interests and strengths, engaging them as a collective is what shared governance demands. It is what academic leadership demands, especially in these times of rapid change.

In his *Canary in the Coal Mine* article, Matasar argues that law schools grew and transformed until changes in the profession underscored the mission drift, lack of focus, and high cost that had come to undercut the value delivered to students.<sup>3</sup> Legal education is a particularly attractive target for criticism but is “providing an early warning system to the rest of the higher education ecosystem.”<sup>4</sup> Highlighting the MOOC-mania<sup>5</sup> that overwhelmed higher education debates in 2012, Matasar explores ways in which technology is both threatening higher education and providing a way forward. For both law schools and universities, he argues for a reassessment of the whole enterprise with a focus on the value delivered to students. In this Essay, I seek to underscore the urgency of faculty ownership of the key underlying policy challenge of student completion and the related business model crisis as a means of fending off rising attacks on the

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3. Richard A. Matasar, *The Canary in the Coal Mine: What the University Can Learn from Legal Education*, 45 MCGEORGE L. REV. 161 (2013) [hereinafter *Canary in the Coal Mine*].

4. *Id.* at 170.

5. “MOOC” refers to massive open online courses.

core definition of university education in the United States. Like Matasar's call for universities to reassess their value proposition, mine is a recommendation drawn from the experience of law schools in recent years.

Matasar has consistently raised questions about the value of legal education as currently offered. Whether his discussion in 1994 of the economics of legal education in an article on the *MacCrate Report*,<sup>6</sup> or his arguments about *The Rise and Fall of American Legal Education*,<sup>7</sup> or the viability of the American approach to legal education,<sup>8</sup> his calls to focus on students, to add outputs to the current input-focused characterization of institutional quality, and to control costs presage the chorus now demanding change in higher education. Because law schools operate in a mostly closed system with great similarity in mission and significant transparency, law schools could be seen as outliers, but today the criticisms of universities sound much like criticisms of law schools. Matasar's arguments about addressing the value proposition for law schools are therefore very much applicable to universities. And because such an analysis might suggest significant change, triggering reallocation of resources, moving forward productively requires fully engaged faculty.<sup>9</sup> One need not agree with Matasar's prescription<sup>10</sup> or that such a prescription is appropriate to any given university, but he correctly highlights the need for significant change that, in my view, demands that faculty play a prominent role in charting a path to achieving value in higher education. As former Association of American Law Schools President Michael Olivas has said,

[A]ll of us . . . have a serious interest in cost containment and making legal education accessible and affordable to our students . . . . Faculty need to keep up with [developments to reduce costs and improve our system of legal education], counter challenges to our existence, and

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6. Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLINICAL L. REV. 457, 467 (1994).

7. Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 474–75 (2004).

8. See generally Richard A. Matasar, *Does the Current Economic Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?*, 82 N.Y. ST. B.J. 20, 20–21 (2010); Richard A. Matasar, *The Viability of the Law Degree: Cost, Value, and Intrinsic Worth*, 96 IOWA L. REV. 1579 (2011) [hereinafter *The Viability of the Law Degree*].

9. See *The Viability of the Law Degree*, supra note 8, at 1603–27.

10. See Michael A. Olivas, *Ask Not for Whom the Law School Bell Tolls: Professor Tamanaha, Failing Law Schools, and (Mis)Diagnosing the Problem*, 41 WASH. U. J.L. & POL'Y 101, 122–26 (2013).

work harder to explain why our system is worth saving at its core.<sup>11</sup>

Such is the case for higher education as well.

Addressing the value proposition in higher education is inherently tied to meeting the challenge to increase college completion and to do so in an environment where substantial new revenue is unlikely to support such an effort. In this context faculty must “counter challenges to our existence” by defending the defining substantive attributes of higher education. This is no less than a call to reassert academic leadership. Doing so requires a clear understanding of what is the pressing crisis for universities. Below I distinguish two versions of the higher education crisis, the first of which I believe is a reaction to changes in higher education over the past three decades or so. That version, though important and urgent at individual schools, concerns largely settled changes in how higher education operates. Troublingly, it operates to obscure a second, more pressing set of challenges framing the current crisis in higher education.

#### I. THE PREVAILING CRITIQUE OF HIGHER EDUCATION

After years of significant, if quiet, social change, much emanating from technological and demographic shifts that have made the country seem smaller and that have steadily concentrated an ever more diverse population in growing metropolitan areas, higher education institutions have come to operate differently from how many imagine. They have had to become competitive entities, are constantly seeking efficiencies, and are striving to identify new revenue sources to support both traditional and new operations. Though the broad diversity of higher education institutions means that there are varied responses to the social changes around us, these changes have made institutions of higher education much more complex, have focused institutions on issues relatively removed from their traditional academic mission, have spawned a host of jobs on some campuses that did not exist until recently, and have involved schools in new activities. The pace of change has been especially stark for public universities. Moreover, the impetus for change has penetrated deep into universities with colleges and departments regularly building advancement and communications operations, obsessing about enrollment management, and focusing on student satisfaction. Change of this scope has naturally affected the nature of educational institutions, their staffing patterns, and the interaction of campus leaders with the rest of the institution. As these

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11. *Id.* at 126.

changes have occurred, universities have become much more expensive, even while institutions in some regions and segments of the sector have come to spend extravagantly on tuition-discounting to compete for stronger students.

In response to this significant transformation, a rough critique of higher education (the “Prevailing Critique”) has emerged that puts together a number of arguments about these changes in a powerful way. Specifically, the critique is a criticism of the corporatization of the university,<sup>12</sup> suggesting that much of what has been added to higher education has little to do with the academic enterprise but is the product of poorly thought out efforts to import a corporate model in replacement of the shared governance or faculty independence that has traditionally characterized higher education.<sup>13</sup> This more corporate structure, the critique goes, has led to the proliferation of excess administrators and of academic leaders who are remote from or disinterested in the academic enterprise. These leaders are committed to building bureaucracy and overly focused on fundraising, athletics, and other auxiliary enterprises. These changes in structure and staffing are offered as explanations for the rising costs of higher education, with high salaries of top

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12. Corporatization of university management can be traced at least to George Keller’s *Academic Strategy: The Management Revolution in Higher Education*, which advocates for the replacement of collegial governance with strategies and structures drawn from businesses. See generally GEORGE KELLER, *ACADEMIC STRATEGY: THE MANAGEMENT REVOLUTION IN HIGHER EDUCATION* (1983).

13. In her survey of the contemporary crises in higher education, Goldie Blumenstyk summarizes the state of shared governance as under pressure:

Today, as some institutions have become more sophisticated in their operations . . . and more businesslike in their management style, faculty groups on some campuses worry that decisions that once fell under the purview of “shared governance” . . . are now being handled by administrators, or that the consultation is more *pro forma* than genuine. The weakening of shared governance is hard to quantify, but in a poll conducted in May 2013 by Gallup and the online publication *Inside Higher Ed*, nearly one of five college presidents agreed that shared governance was “no longer respected by their governing boards as it was in the past.”

BLUMENSTYK, *supra* note 1, at 100 (citing GALLUP, *INSIDE HIGHER ED COLLEGE AND UNIVERSITY PRESIDENTS PANEL—INAUGURAL SURVEY FINDINGS, PRESIDENTS BULLISH ON THEIR INSTITUTION’S, BUT NOT ON MASSIVE OPEN ONLINE COURSES AND HIGHER EDUCATION GENERALLY* 5 (2013)).

William G. Bowen and Eugene M. Tobin’s wide-ranging survey of shared governance over time highlights that shared governance has meant different things in different places and times. WILLIAM BOWEN & EUGENE TOBIN, *LOCUS OF AUTHORITY: THE EVOLUTION OF FACULTY ROLES IN THE GOVERNANCE OF HIGHER EDUCATION* 1–4 (2015). That diversity in governance structures has tended to be a strength for higher education as shared governance has evolved to suit the transformation of higher education of the past century and a quarter. However, their book is guided by the question of whether shared governance is up to the significant challenges facing higher education today and the belief that a historical understanding of what has been is critical to answering that question. *Id.* at 4–8.

administrators cited, along with profligate spending on nonacademic personnel and facilities, as drivers of higher costs.<sup>14</sup> Simultaneously, these problematic drivers of higher costs evidence institutions that are aloof to the fundamental teaching mission of universities and therefore the interests of students and their families.

As defined here, the Prevailing Critique is very general, capturing most attacks on higher education but leaving much detail out. Matasar's summary of "set pieces" structuring discussion of higher education differs but shares important attributes:

Higher education is too expensive . . . [and perhaps unnecessary, as evidenced by] profiles of the local entrepreneur, who made a fortune by dropping out of school, or the higher salaries earned by tradespeople versus college graduates. Others might focus on the waste of taxpayers' money funding silly research or goofy majors. Yet others focus on wasteful university expenditures on climbing walls, salaries for abusive coaches, or concierge services.<sup>15</sup>

What these summaries share is a notion that high costs are the product of mismanagement and institutions adrift from their core mission. They also resemble descriptions of law schools leading to the recent drop in enrollment; that is, universities today match the law schools that Matasar argued represented the canary in the coal mine.<sup>16</sup> Both the Prevailing Critique and Matasar's set pieces depict universities (as law schools were depicted) as bringing the crisis on themselves through poor leadership and obsession with the wrong values.

The power of the Prevailing Critique and others of its sort lies in its elements of truth. Universities have become much more complex organizations, due in large part to the heightened expectations placed on them. Thus, the Prevailing Critique is right to cite the complexity of institutions and their greater remoteness from traditional approaches to teaching and research. Eugene Tobin's observations about flagship universities is easily generalized: "since the end of World War II, undergraduate education at flagship universities has become a smaller part of the increasingly variegated missions of these complex

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14. *Contra* Daniel H. Weiss, *Challenges and Opportunities in the Changing Landscape*, in *REMAKING COLLEGE: INNOVATION AND THE LIBERAL ARTS* 25, 26 (Rebecca Chopp, Susan Frost, & Daniel H. Weiss eds., 2014) ("Once thought to be largely the consequence of shortsighted management practices and an excessive focus on consumerism, the root cause of these financial problems are now generally recognized to be systemic and cumulative.").

15. *Canary in the Coal Mine*, *supra* note 3, at 171 (footnotes omitted).

16. *See id.*



institutions and the statewide systems to which they belong.”<sup>17</sup> The transformation is most prominent in light of universities’ ancillary activities.

In many respects, flagship universities came to resemble vertically and horizontally integrated corporations in their management of undergraduate, graduate, and professional education; in their ownership and operation of hospitals, publishing companies, airports, hotels, stadiums, athletic complexes, television stations, farms, and research centers; and in some case, in their financing or subsidizing of low-cost housing projects.<sup>18</sup>

In these transformed institutions, faculty, and especially teaching faculty, are undoubtedly less prominent than in years past.

Not all of the complexity is outside of the contemporary university’s instructional mission, however. For example, whereas most public universities had been charged primarily with creating an *opportunity* for a state’s citizens to obtain a college education, new demands for increasing student completion insist that those schools effectively educate the students who enroll. The prior obligation to provide opportunity entailed little more than offering classes in which hardworking, industrious students could prove their mettle; an obligation largely in accord with a system of shared governance where faculty members in departments constructed curriculum with little input from central administrators.

By contrast, this new completion mission at those schools has necessitated the addition of advisors, tutors, academic success centers, and the like, along with upgrading data systems to track student success, staffing focused on identifying impediments and crafting solutions to student progression. To a great extent the expanded, more complex university is arguably better for students. “[T]he advising of undergraduates and their socialization into a university community is a highly specialized skill that many faculty members do not possess. The delegation of that critically important academic function to professionals has, in many instances, improved the quality of undergraduates’ experience.”<sup>19</sup> The large number of non-instructional employees associated solely with the *teaching enterprise* explains much of the growth in university staffing at access-oriented schools, even as

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17. Eugene Tobin, *The Modern Evolution of America’s Flagship Universities* [hereinafter Tobin, *The Modern Evolution of America’s Flagship Universities*], in *CROSSING THE FINISH LINE: COMPLETING COLLEGE AT AMERICA’S PUBLIC UNIVERSITIES* 239, 240 (William G. Bowen, Matthew M. Chingos & Michael S. McPherson eds., 2009).

18. *Id.* at 258.

19. *Id.*

these staff members' input on student success risks disrupting expectations about shared governance. Still, with so many non-faculty members engaged in the educational enterprise, it is hard to see how faculty roles are not diminished by these developments as well.

And none of this touches on the large numbers of employees associated with substantial research activity or with complex recruitment, alumni relations, and fundraising efforts that many public universities focused on access only recently built. As Blumenstyk suggests:

[T]he expansion of student services, the increasing sophistication of sponsored research, and even the growing use of information technology has required additional hiring of nonacademic personnel. Whether these changes require all the administrators and [their] staff that some colleges have hired in marketing, grants management, fundraising, public relations, real-estate management, and countless other operations . . . is an entirely different question.<sup>20</sup>

All of these developments deserve significant examination on their own with a critical eye focused on evaluating them in light of any particular university's mission and culture. What is undeniable, though, is that these kinds of changes have substantially transformed the university and its constituent parts. No amount of nostalgia will bring us back to a simpler university structure, but critics are right to raise concerns about so substantial a change in the ways and functioning of the university, particularly if it seems to come at the cost of the core instructional function or to distract from the broader liberal arts mission at the heart of American universities throughout our history.

The Prevailing Critique draws strength because it basically expresses alarm at the increased number and proportion of administrators at universities, as such. Blumenstyk notes:

[A] number of studies . . . have sought to document an undue increase in the number of nonacademic employees . . . as signs of inefficiency and misplaced spending priorities. While these studies often strike a chord . . . the findings often do not fully reflect the changes in how universities operate that have taken place during the same period.<sup>21</sup>

These studies nonetheless underscore a sharp increase in administrative ranks at universities. Benjamin Ginsberg notes that in 1975 the work of 446,830 professors was supported by 268,952 administrators and staffers.<sup>22</sup> In the following forty years the professorial ranks increased

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20. BLUMENSTYK, *supra* note 1, at 91.

21. *Id.* at 90–91.

22. BENJAMIN GINSBERG, *THE FALL OF THE FACULTY: THE RISE OF THE ALL-*

50%, while administrators increased 95%, and staff over 240%.<sup>23</sup> A Goldwater Institute report found that at a sample of research universities full-time administrators per 100 students had increased by 39% between 1993 and 2007 compared to employees pursuing teaching, research, and public service whose ranks only increased by 18%.<sup>24</sup> Another study found the number of administrators per tenure track faculty had increased by 100% at public universities and by 47% at private universities between 1987 and 2011.<sup>25</sup>

These data are confirmed by a Department of Education study showing a 58% increase in “executive, administrative, and managerial” employees versus a 23% increase in full-time faculty between 2001 and 2011.<sup>26</sup> While these studies do not distinguish between growth in areas focused on student success, or the development of admissions offices at public schools, for example, necessitated by greater competition for students and the need to focus on student completion, they nevertheless underscore the significant transformation of the university in recent decades. And they do so in a way that raises alarms among critics and supporters alike, as it invokes the recent evaluation of charities for how much of their donations go to support overhead.<sup>27</sup>

The new functions universities fulfill, some of which were informally met by faculty and are often addressed today by administrative employees, vary greatly from school to school making it difficult to generalize about what is happening. The inability to generalize makes the growth of administrative ranks a transcendent problem and an easy target of critics, especially in light of rapid increases in the list price of university education. The growth of administrative ranks underscores complaints about lost faculty power since even if a university’s faculty agreed to and participated in the creation of a program staffed by administrative employees, it is not

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ADMINISTRATIVE UNIVERSITY AND WHY IT MATTERS 25 (2011).

23. BLUMENSTYK, *supra* note 1, at 91–92.

24. JAY P. GREENE, BRIAN KISIDA, & JONATHAN MILLS, GOLDWATER INST. POL’Y REP., ADMINISTRATIVE BLOAT AT AMERICAN UNIVERSITIES: THE REAL REASON FOR HIGH COSTS IN HIGHER EDUCATION 7 (2010), [https://goldwater-media.s3.amazonaws.com/cms\\_page\\_media/2015/3/24/Administrative%20Bloat.pdf](https://goldwater-media.s3.amazonaws.com/cms_page_media/2015/3/24/Administrative%20Bloat.pdf).

25. ROBERT E. MARTIN & R. CARTER HILL, BAUMOL AND BOWEN COST EFFECTS IN RESEARCH UNIVERSITIES 19 (2014), <http://ssrn.com/abstract=2153122>.

26. THOMAS D. SNYDER & SALLY A. DILLOW, U.S. DEP’T OF EDUC., INST. OF EDUC. SCI., NAT’L CTR. FOR EDUC. STATISTICS, DIGEST OF EDUCATION STATISTICS 2012, at 411 tbl.284 (2013), <http://nces.ed.gov/pubs2014/2014015.pdf>.

27. Three prominent ratings of charities are: CHARITY NAVIGATOR, <http://charitynavigator.org> (last visited Feb. 27, 2016); CHARITYWATCH, <https://www.charitywatch.org/home> (last visited Feb. 27, 2016); and BBB WISE GIVING ALLIANCE, BETTER BUSINESS BUREAU, <http://www.give.org> (last visited Feb. 27, 2016).

necessarily the case that faculty members will supervise those employees on a day-to-day basis or have regular input on key policy decisions made by them. Simultaneously, the growth of administrative ranks helps draw attention to the changed proportions of tenure track faculty to other faculty and the dilution of tenure track faculty influence in a university community populated by groups of faculty with different statuses. Universities have changed in many ways in recent decades, fueled by steady increases in student demand, and it is fair to question the consequences of those changes, which the Prevailing Critique does in a powerful way.

It should also be noted that the transformation of universities and our expectations of them over the last few decades present significant crises at particular universities. The Prevailing Critique effectively highlights challenges that some universities are facing or helps put specific challenges into a broader framework that resonates with important constituents. Since universities are complex organizations and higher education is a sector of many varied types of organizations, the resonance of the Prevailing Critique lies in its ability to transcend those differences to relate the problems presented by the changes to universities and the changes in the world around us. The Prevailing Critique has an evident power that reveals why it strikes a chord with many in the public. However, it is a narrow explanation of the condition of higher education and one that I fear is largely anachronistic.

## II. AN INCOMPLETE CRITIQUE

The more substantial aspect of the Prevailing Critique of higher education is what it leaves out.<sup>28</sup> There is little reference to the growth of the university over the last thirty years, the decline in state support for higher education, the changed expectations of students and parents, or very much about the changes in the world over that period. These omissions are significant and troubling. And though they supply ready retorts in discussions of the crisis of higher education that invoke elements of the Prevailing Critique, the power of the critique is evident in the fact that criticisms of universities are not often qualified by these developments.

If criticisms of higher education were to regularly reference the

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28. I have offered the Prevailing Critique as an idealized version of the dominant discussion of higher education in the general public. It is a straw man, for sure, but one that captures the essence of a major part of the discussion of higher education. As an idealized argument it is inherently incomplete but what is left out is important—not because I have defined the Prevailing Critique without it, but because I believe these omissions are less prominent than they should be in contemporary discussion of higher education.

growth of higher education they would show a sector that has successfully responded to significant societal demands, albeit demands the nature of which are rapidly changing.<sup>29</sup> Such a discussion would acknowledge the greater penetration of higher education among the populous, increasing the number of students attending college and reflecting greater access in the first two income quartiles even as these successes underscore the problem of student completion.<sup>30</sup> “Between 1980 and 2011, the undergraduate higher education population nearly doubled, growing from 9.4 million to 18.1 million. Students from needy families accounted for nearly all of that growth—and the number of undergraduates with Pell Grants rose from 2.7 million to 9.4 million during that period.”<sup>31</sup> Deindustrialization has made university study more and more necessary to highly sought after jobs even as the social mobility related to a university education has been dampened.<sup>32</sup> In this environment there are more institutions, bigger institutions, and institutions with more complex missions. Even as they have grown in size and number, the ranks of American universities have also grown in the scope of their function. The ranks of research universities have grown as the role of universities in research and development has become more central to the United States economy.<sup>33</sup> Moreover,

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29. This growth is cited as a contributing factor in the growth of tuition rates as demand was ever-present in the face of rising tuition, at least until the middle of the Great Recession. “For a very long time [higher education] lived in an environment that rewarded ever more institutional growth and program enhancement.” Weiss, *supra* note 14, at 28–29.

30. Note the increase in college attendance of the bottom two quartiles, albeit without a comparable increase in completion. THE PELL INST., UNIV. OF PA., INDICATOR OF HIGHER EDUCATION EQUITY IN THE UNITED STATES: 45 YEAR TREND REPORT (2015).

31. *Id.* at 27–28.

32. The Georgetown University Center on Education and the Workforce has highlighted that the societal effect of much of this increase has been dampened by higher education’s magnification of the inequality it inherits from K–12 systems. As summarized by Blumenstyk:

[B]etween 1995 and 2009, new freshmen enrollments grew by 197 percent for Hispanic students and 73 percent for African American students, far outpacing the 15-percent increase in white students. But *where* those students went to college differed greatly by ethnicity. Most of the white students went to one of the nation’s 468 more-selective public and private four-year colleges, while most of the Hispanic and African American students ended up at open-access two-year and four-year institutions . . . . The divergent paths have a quantifiable impact on students’ opportunity for upward mobility . . . . The more-selective institutions spend three to five times as much per student on instruction than the open-access colleges, have higher graduation rates, and send more students on to graduate school. Ten years after finishing college, the graduates of those more-selective institutions also out-earn those from an open-access college, by an average of \$67,000 to \$49,000.

*Id.* at 28–29 (footnotes omitted).

33. Robert Atkinson and Luke Stewart have said:

As U.S. companies have shifted their [research & development (“R&D”)]

globalization has added to the demand for American university education, placing particular pressure on admission to the most elite institutions.

Overall, it has been a golden age for American universities as these developments were topped off by the millennial baby boom that drove more students into the pipeline for university education while the percentage of college-aged students enrolled in college also increased.<sup>34</sup>

Undergraduate enrollment increased 47 percent between 1970 and 1983 . . . dipped . . . in 1984 and 1985, but then increased each year from 1985 to 1992, rising 18 percent before stabilizing between 1992 and 1998. Between 2002 and 2012, undergraduate enrollment rose 24 percent overall, from 14.3 million to 17.7 million; however undergraduate enrollment in 2012 was lower than in 2010 (18.1

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activities upstream, universities have taken on a larger role in the innovation system. Today, universities perform 56 percent of all basic research, compared to 38 percent in 1960. Moreover, universities are increasingly passing on these results to the private sector: Between 1991 and 2009, the number of patent applications filed by universities increased from 14 per institution to 68 per institution; licensing income increased from \$1.9 million per institution to \$13 million per institution; and new start-ups formed as a result of university research increased from 212 in 1994 to 685 in 2009.

ROBERT D. ATKINSON & LUKE A. STEWART, UNIVERSITY RESEARCH FUNDING: THE UNITED STATES IS BEHIND AND FALLING, THE INFO. TECH. & INFO. FOUND. 1, 3 (2011), <http://www.itif.org/files/2011-university-research-funding.pdf>. University research spending has gone up every year until 2012. See *University R&D Funding by Source (graph)*, *R&D at Colleges and Universities*, AM. ASSOC. FOR ADVANCEMENT SCI., <http://www.aaas.org/page/rd-colleges-and-universities> (last visited Feb. 27, 2016).

Total federal research spending has risen from \$74.6 billion to \$160.5 billion between 1976 and 2007 (using constant 2015 dollars), see *Trends in Federal R&D, FY 1976–2016*, *Historical Trends in Federal R&D*, AM. ASSOC. FOR ADVANCEMENT SCI., <http://www.aaas.org/page/historical-trends-federal-rd> (last visited Feb. 27, 2016), the bulk of which has gone to university-based researchers (for example, approximately half of the federally funded R&D went to universities in 2011), see *Federal Research Funding by Performer, 1953–2012*, *Historical Trends in Federal R&D*, AM. ASSOC. FOR ADVANCEMENT SCI., <http://www.aaas.org/page/historical-trends-federal-rd> (last visited Feb. 27, 2016). A sharp drop since 2007, to \$136.4 billion last year, has caused consternation among researchers as the percentage of grants funded by federal agencies has dropped to very low levels. Moreover, the large increase in aggregate funding obscures a drop in funding for R&D as a percentage of gross domestic product (GDP), with funding dripping from 1.2% of GDP to less than 0.8% today. See *Trends in Federal R&D*, *Historical Trends in Federal R&D*, AM. ASSOC. FOR ADVANCEMENT SCI., <http://www.aaas.org/page/historical-trends-federal-rd> (last visited Feb. 27, 2016).

34. “Between 2002 and 2012, the number of 18 to 24-year-olds increased from 28.5 million to 31.4 million, an increase of 10 percent, and the percentage of 18 to 24-year-olds enrolled in college rose from 37 percent in 2002 to 41 percent in 2012.” U.S. Dep’t of Educ., *Fast Facts: Enrollment*, IES Nat’l Ctr. For Educ. Stat., <http://nces.ed.gov/fastfacts/display.asp?id=98> (last visited Feb. 27, 2016).

million).<sup>35</sup>

As these drivers of growth are coming to an end, universities face significant challenges, making the omission of the growth of universities in arguments like the Prevailing Critique troubling.<sup>36</sup> Simply put, if all the ills of the Prevailing Critique were solved, it is unclear that the crisis in higher education would abate since the more pressing issue for most schools is the impending drop in the number of attractive students and the anticipated greater difficulty in educating those who will enroll in the future. Efforts to anticipate and plan for this drop in students by focusing on international, nontraditional, and online students have simply opened new fronts of competition for institutions.

The steady drop in state support for higher education is also a significant omission from the Prevailing Critique. Discussion of the drop in state support for higher education has helped politicize higher education, as some have actively sought to diminish the effect of these legislative actions. But nothing has made higher education less accessible to the vast majority of citizens than the steep rise in the tuition at public universities, and much of that increase has come from deep cuts to state higher education budgets.<sup>37</sup> Thus, during the five

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35. *Id.* Similar growth in overall college enrollment (undergraduate and graduate together) has occurred. *Id.* "Enrollment in degree-granting institutions increased by 15 percent between 1992 and 2002. Between 2002 and 2012, enrollment increased 24 percent, from 16.6 million to 20.6 million." *Id.*

36. "College enrollment [undergraduate and graduate] declined by close to half a million (463,000) between 2012 and 2013, marking the second year in a row that a drop of this magnitude has occurred. The cumulative two-year drop of 930,000 was larger than any college enrollment drop before the recent recession." *College Enrollment Declines for Second Year in a Row*, U.S. CENSUS BUREAU (Sept. 24, 2014), <http://www.census.gov/newsroom/press-releases/2014/cb14-177.html>. Growth in college enrollment among Hispanic and Black students also stopped in 2013. *Id.* The National Center for Education Statistics projects flat undergraduate enrollment from 2014 to 2016 after two years of decreased enrollment. *Undergraduate Enrollment*, Nat'l Ctr. for Educ. Statistics tbl. 303.70 (May 2015), [http://nces.ed.gov/programs/coe/indicator\\_cha.asp](http://nces.ed.gov/programs/coe/indicator_cha.asp) (follow link to table 303.70). Undergraduate enrollment is projected to rise from 17.5 million to 19.6 million in the eight years from 2017 and 2024. *Id.*

37. The complex interaction between three developments confuses the issue and perhaps explains the diminished prominence of reduced state support in explaining the higher education crisis. First, higher education spending has shrunk as a proportion of state spending, going from 12% to 10% from 1987 to 2011, as state mandatory spending on programs like Medicaid and non-mandatory spending on prisons and law enforcement rose. Second, average state spending per student on higher education dropped. *See* BLUMENSTYK, *supra* note 1, at 49. "Between 2007 and 2012 state and local appropriations to public colleges per full-time-equivalent student declined by 23 percent . . . . Fourteen states cut funding by 30 percent or more." *Id.* at 49–50. Third, state spending in absolute dollars on higher education has increased in all but eight years during the last fifty. While the reductions in the percentage of state funding going to higher education and per student spending highlight the reductions in state support, the steady growth in higher education

years of steepest cuts in state support for higher education (in the years of the Great Recession), the average sticker price for higher education rose 27% after adjusting for inflation.<sup>38</sup> Everyone seems to want to talk about rising higher education costs but few seem as committed to discussing reductions in state support. It is not too much to say that the force of the Prevailing Critique is tied in part to its ability to obscure the consequences of state budget cuts for access to higher education. While state budget cuts say little about increased costs at private institutions, those cuts have forced public universities into greater competition with private schools. And with discussion of high costs widespread, many parents are reluctant to permit students to attend private schools when nearby public schools are recruiting them with substantial tuition discounts.

Budget uncertainty has also contributed to the conditions that have made higher education institutions more complex while driving a convergence between public and private schools that has changed the priorities between and among institutions.<sup>39</sup> Facing budget cuts and uncertainty, some public institutions have sought to diversify their revenue sources through expanded research funding, more entrepreneurial activity, and expanded philanthropy. With many of the practical advantages of being a public university eroded, some institutions have sought the greater reliability of rejecting state funds, sending a troubling signal to beleaguered state legislatures that public support might not be necessary to maintaining their higher education systems.<sup>40</sup>

As flagships have become more selective and the number of high school graduates has continued to increase [as of 2009], high-achieving, affluent, and middle-income students who in earlier years might have attended first- and second-tier private colleges and

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spending confuses the issue. In the end, state spending has not kept up with inflation nor has it matched the substantial growth in enrollment, leading to the steep decline in inflation adjusted per student spending. *See id.* at 49; *see also* NATE JOHNSON & TAKESHI YANAGIURA, POSTSECONDARY ANALYTICS, L.L.C., HOW DID REVENUE AND SPENDING PER STUDENT CHANGE AT FOUR-YEAR COLLEGES AND UNIVERSITIES BETWEEN 2006–07 AND 2012–13? PREPARED FOR THE ASSOCIATION OF PUBLIC & LAND-GRANT UNIVERSITIES (2015).

38. *Id.* at 50.

39. Matasar's convergence essay presages the crisis talk. *See* Richard A. Matasar, *Issues in Higher Education: Private Publics, Public Privates: An Essay on Convergence in Higher Education*, 10 U. FLA. J.L. & PUB. POL'Y 5, 10–11 (1998). Indeed, much of the crisis has come from the loss of effective segmentation of roles resulting from the convergence. On convergence of law schools *see* Rachel F. Moran, *Clark Kerr and Me: The Future of Public Law Schools*, 88 IND. L.J. 1021, 1031–32 (2013).

40. Tobin, *The Modern Evolution of America's Flagship Universities*, *supra* note 17, at 262 (describing this trend for flagships).



universities have been attracted to the academic quality, prestige (in the case of honors colleges), broad range of programs and comparatively lower cost of their states' public universities.<sup>41</sup>

The consequence has been increased competition among elite schools, public and private, along with a substantial diminution of public schools' role in driving social mobility.<sup>42</sup> As the Prevailing Critique tends not to highlight the direct effects of state budget cuts on universities, it also obscures these second order changes that have contributed to university complexity and increased costs.

Also missing from the Prevailing Critique is substantial reference to the dramatic changes in the expectations of parents and students.

In the past, higher education has always been seen as both a public and a private good. But over the past few decades, college leaders and policy makers have increasingly touted the financial payoff from a college degree as an individual benefit (in part to justify rising prices), and individual and collective expectations of college have changed.

. . . As polls by Gallup show, two-thirds of Americans now say a very important reason for getting an education beyond high school is "to get a good job," . . . More than ever, a college education is seen less as a process and more as a product . . .<sup>43</sup>

Concerned as faculty and college leaders are about this transformation, it cannot be wholly ignored.

In the background is the significant increase in income and wealth inequality in the United States and the related rampant consumerism of rich and poor alike. At least for schools whose students come from the wealthier quartiles, student and parent (consumer) expectations may not align with the Spartan facilities and modest student lifestyles associated with college in lore. Additionally, greater competition among schools for students from wealthy families has changed how universities operate. Much has been made of lazy rivers and fancy recreation centers as stark examples of waste or at least misdirected spending priorities. But universities face substantial competitive pressure from other schools and often also from local developers and businesses that see students as a promising market and have no problem convincing them to forego campus for housing, recreation, and other services they offer nearby. Consequently, some assumptions about the kind of campus facilities students and their parents will accept are rooted in romance or anachronism. In any case, residential universities can hardly be

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41. *Id.* at 263.

42. *Id.*

43. BLUMENSTYK, *supra* note 1, at 3-4.

expected to ignore the (new) expectations of their students. And since evidence suggests that students living on campus have higher success rates in college, there is a practical reason for universities to work to ensure they will choose campus living. But the business reason is substantial too: can a university afford to have underutilized campus facilities, with additional business effects on its dining and auxiliary services? It may be awkward to think of the consumer demands of our students when it comes to education, but where they are consumers—of housing, food, recreation—universities must at least be sensitive to the students' needs. In the end, whether these are appropriate expenditures, whether individual universities can afford these investments, and who ultimately pays for them are significant questions that must be examined. But it is troubling that the substantial change in student and parent expectations are not at the forefront of the Prevailing Critique.

Despite these and other substantial omissions, the Prevailing Critique has had particular resonance for a host of reasons. Among other things, the critique comports with a well-worn and widely-known criticism of corporations concerning the growing gulf between worker and corporate executive compensation. By reference to the corporate nature of universities the Prevailing Critique underscores lost faculty power and control in higher education.<sup>44</sup> Though manifestations of the Prevailing Critique stop short of identifying who is responsible for lost faculty authority—indeed, it is capacious enough to permit faculty to be blamed through attacks on tenure and shared governance as traditions that are dooming higher education—the similarity between low paid faculty and high paid administrators captures the rhetorical power of the conventional corporate critique. If that were not clear enough, the increasingly frequent discussion of contingent faculty at wealthy universities whose low pay, involuntary part-time status, and limited voice about job conditions cast universities in the same lot as fast food

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44. This sentiment was conveyed, perhaps overdramatically, in a *New York Times Magazine* article by Fredrik deBoer.

[A] constantly expanding layer of university administrative jobs now exist at an increasing remove from the actual academic enterprise. It is not unheard-of for colleges now to employ more senior administrators than professors. There are, of course, essential functions that many university administrators perform, but such an imbalance is absurd—try imagining a high school with more vice principals than teachers. This legion of bureaucrats enables a world of pitiless surveillance; no segment of campus life, no matter how small, does not have some administrator who worries about it. Piece by piece, every corner of the average campus is being slowly made congruent with a single, totalizing vision.

Fredrik deBoer, *Why We Should Fear University, Inc.*, N.Y. TIMES MAG. (September 13, 2015), [http://mobile.nytimes.com/2015/09/13/magazine/why-we-should-fear-university-inc.html?referrer=&\\_r=0](http://mobile.nytimes.com/2015/09/13/magazine/why-we-should-fear-university-inc.html?referrer=&_r=0).

restaurants whose brutal scheduling systems force workers into part-time schedules while demanding they make themselves available full-time on the hopes of being called in to work.

Additionally, the Prevailing Critique comports with a narrative about government (bureaucratic) waste with the recreation center climbing wall operating as the Defense Department's \$1000 hammer. The Prevailing Critique implies that a quick way to offer higher education at a much lower cost—the \$10,000 degree—is to eliminate waste and high salaries. Not only are universities supposedly run by overpaid administrators in the interest of permanent employees (tenured faculty), they are supposed to be run poorly, with inadequate attention paid to costs that matter. Never mind that to date none of the new business models said to take over higher education have shown much success; one is to assume that the way universities work—particularly their traditional organization around self-governing departments of faculty experts working in tandem with central administrators in very diverse systems of shared governance—is inefficient and ineffective. The implication of widespread waste does double duty, highlighting apparently poor spending choices while also calling into question the organizational and management structures extant at universities. There are, of course, better and worse performing institutions among universities and, as providers of an important public good, universities can expect particularly close scrutiny from the states that established them, parents and students who pay tuition, or the funders and bond rating agencies who underwrite their operations. Though the case for systematic poor performance has not been yet made, the argument resonates powerfully because it invokes the existing, resilient narrative about government waste.

Moreover, the Prevailing Critique comports with a narrative about legacy industries that are self-regarding and ripe for disruption and change. If universities are beholden to entrenched interests and poorly run there is the promise of great advantage from blowing up the existing structures to the benefit of customers (students and parents). This argument about the promise of disruption in the higher education space is persistent precisely because universities are modern representations of very old institutions with the ability to trace traditions back to the Middle Ages if you wish. Even references to the origin of practices in just the immediate post-war years are cited as markers of the need for radical change in higher education. The origins of higher education notwithstanding, higher education institutions are characterized as static and resistant to change—as out of touch.

Both too little and too much has been made of the argument that

higher education is slow, old, and ripe for disruption. Too little because all aspects of our society are constantly subject to transformation, and the technological, economic, and demographic changes afoot in the United States suggest that higher education will be very different in years to come.<sup>45</sup> Whether this happens in a cataclysmic implosion as experienced by journalism or as a slower process, the result will be very different institutions than we know today. Higher education is not immune to systemic change.

Too much has been made because part of the basis for the crisis of higher education captured by the Prevailing Critique has been its rapid and destabilizing transformation in recent years. Innovation is widespread at universities, meeting needs for change while—yes—resulting in rising investments in non-academic and quasi-academic elements of the university.

Today's dire predictions [about the future of higher education] overlook the adaptations many colleges have already undertaken. Witness, for instance, the growing use of data analytics by colleges to help students stay on track toward their degrees, the incorporation of technologies that allow for greater personalization in pedagogy, the increasing number of community colleges where students can now earn a more-affordable bachelor's degree, and the more than five million students now taking classes online or in "hybrid" formats that mix distance education with face-to-face instruction.<sup>46</sup>

"Although colleges are criticized for being slow moving and impervious to change, they have evolved as necessary and have adapted effectively to their changing environment."<sup>47</sup> If one only assumed the pace of change already in place remains the same, the transformation of higher education will be startling in only a few years. The question is whether that pace will be sufficient.

Advocates of disruption see the need for even more shocking change, much of which has yet to be realized in this sector or many others. While the recording industry and journalism are strong examples of change from disruption, many other sectors, like hospitality, have absorbed the putative disruption of technology, the sharing economy,

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45. See Kevin M. Guthrie, *You Can Run, but You Can't Hide*, in REMAKING COLLEGE: INNOVATION AND THE LIBERAL ARTS 105, 105–22 (Rebecca Chopp, Susan Frost & Daniel H. Weiss eds., 2014) (making a case for the ways technology might change higher education).

46. BLUMENSTYK, *supra* note 1, at 2.

47. Guthrie, *supra* note 45, at 105; see also Goldie Blumenstyk, *How For-Profit Education Is Now Embedded in Traditional Colleges*, CHRON. HIGHER EDUC. (January 04, 2016), <http://chronicle.com/article/How-For-Profit-Education-Is/234550> (noting that many business practices associated with for-profits exist in modern universities).

and other changes (so far), transformed but largely intact. The situation for higher education may lie somewhere in between, seeing vast transformations while the fundamental institutional structure remains familiar. This does not mean that any particular institution will survive; indeed, many may close or, more likely, fundamentally transform. Nor does it suggest that faculty positions will remain unchanged. But faculty positions are much more transformed from even the 1960s heyday of the university that critics allow. In any case, the apparent vulnerability of higher education to disruption is implied by the critique as it depicts legacy institutions, slow moving and gone astray in the service of non-core functions. From the Prevailing Critique they seem to be sitting ducks for disrupters with the newest technology behind them.

Ultimately a big part of the power of the Prevailing Critique is that it largely absolves faculty, students, and parents, streamlining the debate and opening it to use by faculty, students, and parents in service of their interests. Most of the participants responsible for the transformation of higher education can point to others' responsibility for the crisis. In the end, only high-level administrators are consistently condemned for the state of higher education. The Prevailing Critique begs for easy answers to a complex problem. If administrators were more sensitive to their role as fiduciaries, kept their university focused on the educational interests of students, all while respecting the needs of their employees and transforming their institutions to comport with contemporary demands, and while eliminating waste and holding down costs, all would be fine. One does not need to be very sympathetic to university administrators to see that the thrust of the assessment of the crisis in higher education is equal parts naïve (we can fix it all with just a better focus on my own interests) or fatalist (the whole thing is doomed so we should blow it up ourselves to speed along disruptive change).

The Prevailing Critique has gotten significant push by recent events; the key driver of calls for change has to do with the needs of the current American economy. Criticism of higher education took off after the Great Recession. A direct effect of the tumult of the recession was sharp increases in costs for universities—for private schools whose endowments were savaged and bond ratings downgraded and particularly for public schools whose state subsidies were cut. The Recession simultaneously prompted questioning about the sustainability of those cost increases. Immediate increases in tuition allowed many schools to address operating deficits, but in a short time the tuition charges of independent colleges and professional schools quickly came to match the median household income, while public professional school tuition came to match median annual salaries (and in many

instances equaled independent college tuition). This all occurred when the job market for college graduates became very soft, making it difficult for students to service the record levels of student loans. It is apparent that something is awry and the Prevailing Critique has provided an excellent indictment of higher education, particularly at its most expensive. Significant though changes in higher education over the past few decades have been, the recession highlighted changes in the American economy that raised questions about how American universities were performing. The Prevailing Critique may miss much, but it captures the sense of crisis and the need for change. Unfortunately, the change it calls for may not be the change we need.

### III. COLLEGE ATTAINMENT AS THE FUNDAMENTAL CHALLENGE DRIVING CALLS FOR CHANGE

Underlying the widespread discussion of a crisis in higher education is a policy problem of great significance—the end of increases in the percentage of Americans receiving college degrees.<sup>48</sup> The consequence has been that the United States, recently the undisputed leader in the percentage of its citizens graduating from college, has fallen behind many nations in the percentage of twenty-five- to thirty-five-year-olds who have college degrees.<sup>49</sup> “[T]he evidence is quite unequivocal: the United States needs to increase the percentage of its citizens who attain college degrees,” says Susan Mettler in her book on higher education’s role in increasing inequality.<sup>50</sup> Much of the crisis atmosphere is connected to rankings of countries in the Organization for Economic Cooperation and Development,<sup>51</sup> but some have raised concerns about that ranking.<sup>52</sup> Nonetheless, slowing of

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48. See SUZANNE METTLER, *DEGREES OF INEQUALITY: HOW THE POLITICS OF HIGHER EDUCATION SABOTAGED THE AMERICAN DREAM* 21 (2014).

49. See *id.* at 22 fig.1.1.

50. *Id.* at 23. See also CLAUDIA GOLDIN & LAWRENCE KATZ, *THE RACE BETWEEN EDUCATION AND TECHNOLOGY* (2008) (steady and substantial progress in educational attainment in first three quarters of twentieth century followed by dramatic falling off in rate of increase since).

51. ORG. FOR ECON. CO-OPERATION & DEV., *EDUCATION AT A GLANCE* 31 tbl.A1.3 (2104), <http://www.oecd.org/edu/Education-at-a-Glance-2014.pdf>; see e.g., Daniel de Vise, *U.S. Falls in Global Ranking of Young Adults Who Finish College*, WASH. POST (Sept. 13, 2011), [https://www.washingtonpost.com/local/education/us-falls-in-global-ranking-of-young-adults-who-finish-college/2011/08/22/gIQAAsU3OK\\_story.html](https://www.washingtonpost.com/local/education/us-falls-in-global-ranking-of-young-adults-who-finish-college/2011/08/22/gIQAAsU3OK_story.html).

52. See WILLIAM G. BOWEN, MATTHEW M. CHINGOS & MICHAEL S. MCPHERSON, *CROSSING THE FINISH LINE: COMPLETING COLLEGE AT AMERICA’S PUBLIC UNIVERSITIES* 1–19 (2009) (summarizing the completion crisis); Authur M. Hauptman, *U.S. Attainment Rates, Demographics and the Supply of College Graduates*, CHANGE: THE MAG. HIGHER LEARNING, May/June 2013, at 24.

the increases in the percentages of Americans with college degrees as well as lower rates of college attainment among younger Americans is reason to be concerned. Mettler notes, along with others, that in the Great Recession, college graduates vastly outperformed peers in employment. The Brookings Institute has noted that metropolitan areas with the highest percentages of college graduates were most resilient during the Recession and bounced back from it earlier.<sup>53</sup> And recent evidence suggests that borderline students who went to four-year universities outperformed their peers who attended community and career colleges, even when those students did not attain a bachelor's degree.<sup>54</sup>

Evidence seems to suggest that Americans are aware of the need for a college degree as well as the wage premium such degree attainment will produce; and as tenth graders express high aspirations for attending college, degree attainment is out of line with their awareness and desire.<sup>55</sup> Overall this has led to calls from the President to increase college attainment by 2020—the 2020 Goal; the College Board's articulation of a goal of 55% of Americans with a post-secondary credential, and the Lumina Foundation's "Big Goal," for 60% of Americans to have a high-quality degree, certificate, or other credential by 2025.<sup>56</sup>

But if universities are at the end of a golden age of enrollment, with the numbers of students attending college increasing annually until recently, why the concerning national results on degree attainment? The fundamental problem is the still low level of college attendance among low income Americans and the poor college completion rates among students in all but the top two income quartiles.<sup>57</sup> Degree attainment by

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53. Alan Berube, *Degrees of Separation: Education, Employment and the Great Recession in Metropolitan America*, BROOKINGS INST. (Nov. 5, 2010), <http://www.brookings.edu/research/papers/2010/11/05-metro-america-education-berube>.

54. David Leonhardt, *College for the Masses*, N.Y. TIMES (Apr. 24, 2015), [http://www.nytimes.com/2015/04/26/upshot/college-for-the-masses.html?\\_r=0](http://www.nytimes.com/2015/04/26/upshot/college-for-the-masses.html?_r=0) (citing Jonathan Goodman et al., *College Access, Initial College Choice and Degree Completion* 22 (Nat'l Bureau of Econ. Research, Working Paper No. 20996, 2015), <http://www.nber.org/papers/w20996.pdf>); Seth Zimmerman, *The Returns on College Admission for Academically Marginal Students*, 32 J. LAB. ECON. 711, 711 (2014).

55. See Tobin, *The Modern Evolution of America's Flagship Universities*, *supra* note 17, at 5–7. Much of the book is dedicated to resolving this apparent disconnection.

56. See BLUMENSTYK, *supra* note 1, at 18. See also LUMINA FOUNDATION, A STRONGER NATION THROUGH HIGHER EDUCATION: AN ANNUAL REPORT 1 (2015). Lumina's "Big Goal" was later deemed "Goal 2025." *Id.*

57. The Advisory Committee on Student Financial Assistance estimates that millions of bachelor's degrees will be lost due to reduced enrollment in four-year institutions by low and moderate-income students incapable of meeting the increased cost of university

age twenty four among the top income quartile has risen from 40% in 1971 to over 70% in 2011.<sup>58</sup> With the other quartiles, the drop off is significant and the gains since 1971 have been mostly insubstantial.<sup>59</sup> For the third quartile, only 30% attain the bachelor's degree by age twenty-four (albeit doubling since 1971).<sup>60</sup> For those from families below the median household income, the graduation percentages are only 15% and 10% for the second and bottom quartiles, respectively (with only 4% increases for both groups since 1971).<sup>61</sup> Even when student achievement on test scores is taken into account, the substantial gaps between rich and poor students persist; students from families with the highest incomes but with the lowest test scores are as likely to graduate college as the poorest students with the highest test scores.<sup>62</sup> For students likely to attend college by one measure (students who have taken Algebra II in high school), enrollment in a four-year college by students in the bottom quartile dropped from 54% to 40% between 1992 and 2004.<sup>63</sup> Smaller reductions exist for the other three quartiles but nothing of the scope to the drop in the bottom quartile.<sup>64</sup> While there are many factors that might explain these results, the rising cost of college, especially at state-supported institutions, stands out as the most compelling explanation for low attendance, persistence, and degree attainment, especially among students from poor families.<sup>65</sup>

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education. Advisory Comm. on Student Fin. Assistance, *Access Matters: Meeting the Nation's College Completion Goals Requires Large Increases in Need-Based Grant Aid*, U.S. DEP'T EDUC. 4-A (Spring 2013), <https://www2.ed.gov/about/bdscomm/list/acsf/a/accessmattersspring2013.pdf> [hereinafter *Access Matters*]. As concerning, enrollment among the poorest high school graduates has been dropping since 2008. Emma Brown, *College Enrollment Rates Are Dropping, Especially Among Low-Income Students*, WASHINGTON POST (November 24, 2015), <https://www.washingtonpost.com/news/education/wp/2015/11/24/college-enrollment-rates-are-dropping-especially-among-low-income-students/>.

58. METTLER, *supra* note 48, at 24 fig.1.2.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 26 fig.1.3.

63. *Access Matters*, *supra* note 57, at 1-B.

64. *Id.*

65. See METTLER, *supra* note 48, at 24 fig.1.2.; Martha J. Bailey & Susan M. Dynarski, *Inequality in Postsecondary Education*, in WHITHER OPPORTUNITY? 117, 117–31 (Greg J. Duncan and Richard J. Murane eds., 2011). In *Access Matters*, the Advisory Committee on Student Financial Assistance observes that the net price of college has risen from 41% to 46% of low family income, and it projects that the net price of college will soon exceed half of the income of low income families, with an inverse effect on college enrollment. *Access Matters*, *supra* note 57, at 4-B. If the Committee's projections are correct, as little as one quarter of college ready students from low income families could be enrolling in four-year institutions by 2020. *Id.* at 3-A, 3-B, 3-C, 3-D, 3-E, 4-B.



Aside from any debate over the underlying causes of low degree attainment, it is apparent that the core policy challenge is the need to improve degree attainment among students who enroll in college and particularly among students from poor, working-class, and middle-class families. From the individual student's perspective, economic changes since 1971 have made college completion more necessary to their life chances.

[T]here was a brief period of time during the 1970s when the "wage premium" associated with the lifetime earnings of someone who had earned a postsecondary degree actually fell relative to the earnings of someone with just a high school diploma, in today's economy there is little doubt that a higher education offers virtually the only path to a middle-class lifestyle, now and in years to come.<sup>66</sup>

While students from the lower income quartiles might have foregone college in years past to pursue stable, well-paying employment in manufacturing and other fields, employment in those fields has become unstable at best, even as many employers have come to require college degrees for many jobs that just thirty years ago were open to students without a college degree.<sup>67</sup> The consequence is that a college degree is much more important to the life chances of poor students than it was before. From a national perspective, preparing a workforce that can compete for the best jobs in an increasingly globalized and competitive world economy is an urgent concern, as is ensuring a citizenry prepared to engage our democracy in an ever more complicated geopolitical and economic world.

Thus, while the Prevailing Critique focuses our attention on changes mostly internal to how universities operate, the broader policy imperative positions universities as crucial to the nation's future economic performance and as central to the future of social equality in America. Policymakers and analysts are thus necessarily focused on

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66. *Knocking at the College Door: Projections of High School Graduates*, W. INTERSTATE COMM'N FOR HIGHER EDUC. (WICHE), December 2012, at 1, <http://www.wiche.edu/info/publications/knocking-8th/knocking-8th.pdf> [hereinafter WICHE] (citing Claudia Golden & Lawrence Katz, *The Race Between Education and Technology: The Evolution of U.S. Educational Wage Differentials, 1890 to 2005* 11 (Nat'l Bureau of Econ. Research, Working Paper No. 12984, 2007), [www.nber.org/papers/w12984.pdf](http://www.nber.org/papers/w12984.pdf)).

67. "Owing to decades of pushing college as the path to success, we have so many graduates that employers can screen out anyone without a college degree—even for jobs that do not call for anything beyond basic trainability," said education policy analyst George Leef. George Leef, *College Board Hearts College Bubble*, THE JOHN WILLIAM POPE CTR. FOR HIGHER EDUC. POL'Y (Nov. 20, 2013), <http://www.popecenter.org/commentaries/article.html?id=2932>. Putting aside the causal question, it is clear that college degrees have become a prerequisite to many jobs recently.

higher education as a sector and on the institutions within that sector. They want to see better results than we have seen to date and are mostly unsympathetic to fine distinctions between institutions' missions or time-honored traditions of governance and structure.

#### IV. THE POLICY CRISIS

It is unsurprising then that governors throughout the country have made increasing degree attainment a primary policy concern and have turned to the colleges their states fund with tough questions about low graduation rates.<sup>68</sup> Similarly, policy analysts have started to ask about low graduation rates<sup>69</sup> more generally and queried independent colleges about their enrollment of poorer students, emphasizing the public support received by private schools through federal loan and aid programs. With good evidence that the cost of higher education is an impediment to student success,<sup>70</sup> both policymakers and policy analysts have asked why college is so expensive<sup>71</sup> and embraced nearly any proposal that promises to reduce the costs substantially. As President Obama noted in his 2012 State of the Union address, "So let me put colleges and universities on notice: If you can't stop tuition from going up, the funding you get from taxpayers will go down. Higher education

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68. The Complete College America Alliance of States counts thirty-three states, the District of Columbia, and the Commonwealth of the Northern Mariana Islands as members who commit to (1) set state and institution-specific college completion goals, (2) collect and report common measures of progress, and (3) develop and implement aggressive state and campus-level action plans to improve degree attainment. *Alliance of States*, COMPLETE C. AM., [www.completecollege.org/the-alliance-of-states/](http://www.completecollege.org/the-alliance-of-states/) (last visited Feb. 27, 2016).

This is not, of course, the first time higher education has captured the attention of policy makers and analysts, as governors and other state policymakers in the post-World War II period, and increasingly federal policy makers in the post-Sputnik era, drove the process of creating the expansive and inclusive systems of higher education we know today. See Tobin, *The Modern Evolution of America's Flagship Universities*, *supra* note 17, at 244–55.

69. It should be noted that graduation rates are not the same as college completion rates and that raising the former (which for individual schools can be accomplished by admitting more students more likely to graduate, for example) will not necessarily raise the latter. ADVISORY COMM. ON STUDENT FIN. ASSISTANCE, DO NO HARM: UNDERMINING ACCESS WILL NOT IMPROVE COLLEGE COMPLETION 2 (Sept. 2013), <https://www2.ed.gov/about/bdscomm/list/acsfa/donoharm093013.pdf>.

70. See, e.g., ADVISORY COMM. ON STUDENT FIN. ASSISTANCE, THE RISING PRICE OF INEQUALITY: HOW INADEQUATE GRANT AID LIMITS COLLEGE ACCESS AND PERSISTENCE 13–25 (June 2010), <http://www2.ed.gov/about/bdscomm/list/acsfa/rpijune.pdf> [hereinafter THE RISING PRICE OF INEQUALITY].

71. BLUMENSTYK, *supra* note 1, at 6 ("In the early 1980s, the average sticker price for a private college equaled about 20 percent of the median annual family income, and that of a public college about 5 percent. By 2002, the average sticker price of a private college equaled 40 percent of the median family income and a public college would have taken up nearly 10 percent.").

can't be a luxury—it is an economic imperative that every family in America should be able to afford.”<sup>72</sup> So while the crisis in higher education looks on the surface to be associated with various aspects of existing institutions—self-interested administrators and faculty, liberal bastions, aloof researchers, wealthy athletic programs—and while the Prevailing Critique reasonably captures this version of the crisis, the underlying policy crisis turns on a fundamental problem of improving enrollment, persistence, and graduation of students who have not traditionally performed well while reducing the costs of doing so.<sup>73</sup>

Making real progress on college completion appears to necessitate significant innovation to address apparent conditions precedent like reversing the decreasing percentage of low- and moderate-income college-aged students enrolling in college,<sup>74</sup> improving those students' persistence, and serving nontraditional students (without college degrees)<sup>75</sup> whose ranks are expected to grow faster than college-age students in years to come.<sup>76</sup> It does not take too much effort to see the

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72. Barack Obama, President of the U.S., Remarks by the President in State of the Union Address at the White House (Jan. 24, 2012), <http://www.whitehouse.gov/the-press-office/2012/01/24/remarks-president-state-union-address>.

73. An Advisory Committee on Student Financial Assistance study shows an inverse relationship between the percentage of first-time students who are Pell Grant recipients, average test score, and six-year graduation rate at nonprofit four-year public and private colleges. ADVISORY COMM. ON STUDENT FIN. ASSISTANCE, MEASURE TWICE: THE IMPACT ON GRADUATION RATES OF SERVING PELL GRANT RECIPIENTS 2 (July 2013), <https://www2.ed.gov/about/bdscomm/list/acsfa/measurtwice073113.pdf> [hereinafter MEASURE TWICE]. Indeed, the percent of students who are Pell Grant Recipients determines over half of the variation in six-year graduation rates and over 76% when test scores are combined with Pell Recipient status. *Id.* These effects intensify as endowment per student declines. *Id.* at 2 tbl.3.

74. Between 1992 and 2004, when enrollment in college was increasing overall, enrollment in four-year colleges by “college ready” low- and moderate-income students (the first and second quartiles of family income) dropped significantly, from 54% to 40% for low-income students and 59% to 53% for moderate-income students. *Access Matters*, *supra* note 57, at 1-B. More of these students enrolled in two year colleges, *id.*, supporting the finding of another Advisory Committee on Student Financial Assistance study showing drops in enrollment, persistence, and completion correlated with the increased costs of higher education. *See THE RISING PRICE OF INEQUALITY*, *supra* note 70. The shift of poor and moderate income students to two-year colleges keeps the overall gap between the bottom and top quartiles of students mostly unchanged (at 30%), *see* Immediate College Enrollment Rate fig.1, NAT'L CTR. FOR EDUC. STAT. (March 2015), [http://nces.ed.gov/programs/coe/indicator\\_cpa.asp](http://nces.ed.gov/programs/coe/indicator_cpa.asp), but points to the disproportionate progress in degree attainment between the bottom and top quartiles, with the latter showing substantial progress since the 1970s and the former very little. *See* METTLER, *supra* note 48, at 21.

75. ADVISORY COMM. ON STUDENT FIN. ASSISTANCE, PATHWAYS TO SUCCESS: INTEGRATING LEARNING WITH LIFE AND WORK TO INCREASE NATIONAL COLLEGE COMPLETION iii, 6, 67 (Feb. 2012), <http://www2.ed.gov/about/bdscomm/list/acsfa/ptsreport2.pdf> (report on public hearing suggesting that structure and delivery of higher education are necessary to increase degree attainment of nontraditional students).

76. The National Center on Education Statistics projects the rate of increase in college

appeal of disruption, of the application of new technologies, of blowing up the system among some commentators on higher education; nor does it take much to understand the contempt shown for existing institutions by some of them. Surely some critics are proceeding in bad faith with agendas polluted by other interests; nonetheless, the fundamental policy problem is quite substantial and appears intractable.

These developments and the frustration surrounding them has led to the “accountability movement,”<sup>77</sup> a key feature of which is the “completion agenda.” The former is a broad focus among lawmakers, policy advocates, and parents about student outcomes in light of the significant taxpayer investment in higher education at both public and private colleges.<sup>78</sup> The latter is the particular concern of that movement to improve graduation rates and to better understand impediments to student success.<sup>79</sup> The demands of the accountability movement are wide-ranging and sometimes arguably counterproductive. However, they have led to a number of states adopting performance funding and embracing an emphasis on student progression, time to degree, and completion percentages. In all cases, the movement has asked universities to account for their performance; its demands tend not to defer to the educational mission or pedagogical focus of the institutions in question.

Difficult as this policy problem is, the discussion is complicated by the troublesome role and performance of the recently emerged for-profit sector. For-profits actively market to poorer students,<sup>80</sup> as well as to

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enrollment of students twenty-five and over (20%) to nearly double that of students under the age twenty-five (12%) between 2012 and 2023. Fast Facts: Enrollment, NAT'L CTR. FOR EDUC. STAT., <http://nces.ed.gov/fastfacts/display.asp?id=98> (last visited Feb. 27, 2016). From 2000 to 2012, the rate of enrollment for both groups increased substantially and at identical rates (35%). *Id.*

77. If this sounds like the discussion of K–12 education, it is: “The accountability revolution that transformed K–12 schools has come to higher education, bringing new expectations for colleges and universities to demonstrate efficiency and productivity—however these terms may be defined.” Mitchell L. Stevens, *Introduction: The Changing Ecology of U.S. Higher Education*, in *REMAKING COLLEGE: THE CHANGING ECOLOGY OF HIGHER EDUCATION*, 1–2 (Michael W. Kirst & Mitchell L. Stevens eds., 2015).

78. BLUMENSTYK, *supra* note 1, at 109.

79. *Id.* at 109–10.

80. Sixty-three percent of students at for-profit colleges were Pell Grant recipients in 2011–2012, almost double the percentage of Pell Grant recipients at public (35%) and private nonprofit four-year colleges (37%). See NABEEL ALSALAM ET AL, CONG. BUDGET OFFICE, *THE FEDERAL PELL GRANT PROGRAM: RECENT GROWTH AND POLICY OPTIONS* 6 (Sept. 2013), [https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44448\\_PellGrants\\_9-5-13.pdf](https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44448_PellGrants_9-5-13.pdf). As Blumenstyk notes,

An enrollment shift to for-profit colleges from public colleges began in 2000. At first, it was most pronounced among low-income white students. In 2000, 22 percent

nontraditional students<sup>81</sup>—those who did not attain a college degree by age twenty-four—promising a university education consistent with the substantial life demands those students face: full time employment (or multiple, part-time jobs), family obligations, and inability to access traditional campuses due to geographic or scheduling limitations. The rapid growth of the for-profit sector has been substantial<sup>82</sup> and driven by the availability of federal student aid.<sup>83</sup> Notwithstanding the implication that such schools present a low-cost alternative to traditional universities, their average tuition is nearly twice the in-state average tuition at the public schools<sup>84</sup> whose role in fulfilling an access mission they (ultimately) seek to displace. Nonetheless, some for-profits have spent tremendous sums marketing their schools and lobbying Congress to defend against what would be crippling regulation. In the former case they have been undoubtedly successful, with the biggest players having established themselves as household names and effectively blurring the

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of low-income white students attended four-year public colleges and 10 percent enrolled in for-profits . . . . By 2008, the share of low-income white [students] at public colleges had fallen to 14 percent and had risen to 16 percent at for-profit colleges . . . . In 2000, about one third of low-income students who were black or Hispanic enrolled in for-profit colleges. In 2008, nearly half of them did.

BLUMENSTYK, *supra* note 1, at 31–32.

81. See G. KENA ET AL., NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T EDUC., THE CONDITION OF EDUCATION 2015, at 194 (2015), <http://nces.ed.gov/pubs2015/2015144.pdf> (stating that “[a]t private for-profit 4-year institutions . . . just 30 percent of full-time students were young adults (39 percent were ages 25–34, and 31 percent were age 35 and older) . . .”). And while African American students constituted only 12% and 13% of public and private nonprofits, respectively, African American students represented 30% of the students at private for-profit four-year institutions. *Id.* at 196. No other ethnic group showed such disproportionate representation between nonprofit and for-profit institutions. *Id.*

82. Enrollment in for-profit, degree-granting institutions has gone from only about 20,000 students in 1970 to over 450,000 in 2000; since then the number has more than tripled to roughly 1.8 million in 2012. See Thomas D. Snyder & Sally A. Dillow, NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T EDUC., DIGEST OF EDUCATION STATISTICS 2013, at 396–97 (2015), <http://nces.ed.gov/pubs2015/2015011.pdf>. Whereas in 1970, students at for-profit institutions represented far less than 1% of the 8.5 million students enrolled in college, they now represent almost 9% of the 20 million students at all levels of postsecondary education. *Id.*

83. Blumenstyk notes:

In 2011–2012 . . . nearly one out of every four dollars in Pell Grant funds were being spent at a for-profit college, up from 14 percent a decade earlier. Also that year, six of the top ten recipients of the military “tuition assistance” funds, which are available to active-duty service members, were for-profit colleges.

BLUMENSTYK, *supra* note 1, at 78.

84. The average published charges for full-time undergraduates in 2013–2014 show public four-year, in state tuition at \$8893 while for-profit tuition was \$15,130. BLUMENSTYK, *supra* note 1, at xii (citing COLLEGEBOARD, TRENDS IN COLLEGE PRICING 2013, at 3 (2013), <http://trends.collegeboard.org/sites/default/files/college-pricing-2013-full-report.pdf>).

line between career colleges (focused on technical skills without the liberal arts core of universities) and the traditional university. The success in their lobbying efforts is less clear as several colleges have been investigated by the Consumer Financial Protection Bureau pursuant to the so-called “Gainful Employment” rule,<sup>85</sup> with devastating effect on their ability to operate.<sup>86</sup>

Though success of poor, working, and middle class students is the fundamental policy challenge, a significant portion of the debate about the crisis in higher education has tilted toward the high tuition of independent universities, particularly well-known elite universities, even though those schools educate a small fraction of poor students.<sup>87</sup> While the high costs of college today affects even families in the top income quartiles, the focus on these schools seems inordinate and the extensive discussion of their costs has arguably resulted in *greater* headwinds on improving college completion for poorer Americans,<sup>88</sup> as working class families have come to think of college as utterly

85. The Gainful Employment Rule was proposed in 2013 and has yet to go into effect. *Negotiated Rulemaking 2013–2014—Gainful Employment*, U.S. DEP’T OF HIGHER EDUC., <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html> (last modified Mar. 16, 2015). Nonetheless, it was the basis for investigation into performance of Corinthian College and others by the Consumer Financial Protection Bureau, leading to Corinthian’s closure. See Kevin Cary, *Corinthian Colleges Are Closing and Students Might Be Better Off as a Result*, N.Y. TIMES (July 2, 2014), [http://www.nytimes.com/2014/07/03/upshot/corinthian-colleges-is-closing-its-students-may-be-better-off-as-a-result.html?\\_r=0&abt=0002&abg=0](http://www.nytimes.com/2014/07/03/upshot/corinthian-colleges-is-closing-its-students-may-be-better-off-as-a-result.html?_r=0&abt=0002&abg=0).

86. The Higher Education Act is due for renewal in the fall of 2015, and whether that rule and others that could undercut for-profits are included in the renewal will speak volumes about the success for their efforts.

87. A reason for this shift likely has to do with evidence of a “mismatch” between the schools poor and moderate-income families should choose for their children to attend based on their GPA and test scores and those schools their children actually select. This mismatch is a direct response to the rising net cost of higher education and is reflected especially in the choice of less expensive two-year colleges over four-year institutions. See BOWEN, CHINGOS & MCPHERSON, *supra* note 52. See also Caroline Hoxby & Christopher Avery, *The Missing One-Offs: The Hidden Supply of High-Achieving Low-Income Students*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2013, at 1, [http://www.brookings.edu/~media/projects/bpea/spring-2013/2013a\\_hoxby.pdf](http://www.brookings.edu/~media/projects/bpea/spring-2013/2013a_hoxby.pdf); see generally ALEXANDRIA WALTON RADFORD, TOP STUDENT, TOP SCHOOL?: HOW SOCIAL CLASS SHAPES WHERE VALEDICTORIANS GO TO COLLEGE (2013); THE RISING PRICE OF INEQUALITY, *supra* note 70, at 33.

88. Fundamental to the mismatch theory is evidence that students’ college choice is being short-circuited by costs. A University of California, Los Angeles freshman survey noted, “four out of ten students who were accepted to their first choice college but declined to enroll there said they turned it down because they could not afford it.” BLUMENSTYK, *supra* note 1, at 7; see also KEVIN EAGAN ET AL., COOP. INSTITUTIONAL RESEARCH PROGRAM AT THE HIGHER EDUC. RESEARCH INST. AT UCLA, THE AMERICAN FRESHMAN: NATIONAL NORMS FALL 2013 6 (2013), <http://www.heri.ucla.edu/monographs/theamericanfreshman2013.pdf>.

unattainable, focused as discussions are on the cost of attending an Ivy League school.

The discussion of the completion crisis seems distorted with part of the discussion focusing on how elite universities might better serve poor students and another part of the discussion focusing on how something other than college as we know it is the solution. Whether programs include work experience, abbreviated programs, radical online models,<sup>89</sup> or the President's free community college program, the goal increasingly seems to be to offer poor students something other than four-year college as we have known it. Existing schools focused on student access appear marginalized by the discussion, perhaps because of their low graduation rates or maybe because of the recognition of the already strained budgets of public universities fulfilling the access mission and the widespread inability of states to make greater investments in those schools.

What is most telling about the discussion of the policy challenges related to increasing degree attainment is how far removed the Prevailing Critique of higher education is from that challenge. The Prevailing Critique says little about educating poorer students. Moreover, much about the modern university that is criticized in that critique is crucial to addressing the persistence and graduation challenge for poorer students. Rather than being merely sensitive to and accommodating of students' need to work, universities need to find productive ways to get students focused on graduation. Such efforts surely would require additional revenue for tuition reduction, housing and living expenses, and the kind of soft support structures that come from creating student cohorts with dedicated peer and professional advisors and for having student cohorts live together in thoughtfully designed housing. None of this reduces the expenditures of colleges; little of it represents expenditures on teaching or research; and all of it necessitates staff and administrators dedicated to such efforts. That is, quite apart from the expensive direct commitments like increased scholarship spending for poor students, universities need to invest heavily in just the kind of facilities, personnel, and programs that the Prevailing Critique implies are wasteful. Absent increased state subsidies or angel donors, these programs will inevitably add to the high tuition at universities or cannibalize other programs, perhaps other education and research programs at those schools.

Not only would resolution of the issues underlying the Prevailing

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89. See, e.g., KEVIN CARY, *THE END OF COLLEGE: CREATING THE FUTURE OF LEARNING AND THE UNIVERSITY OF EVERYWHERE* 125–26 (2015).

Critique not address the completion crisis, it might make some institutions less capable of addressing it. If anything, the completion crisis highlights the need for institutions to become especially focused on student success, making student success a key part of the “value proposition” they develop. The Prevailing Critique risks capturing the pressure developed around student degree completion and redirecting it toward university administration, governing boards, and policy analysts as more evidence of institutions adrift. To the extent this happens, the Prevailing Critique operates to promote blindness to the policy consensus pushing for better results from universities. Improving college completion will require substantial investments during a time when new revenue is unlikely to be dedicated to universities. The problem today is not the corporatized university but the demand that universities be restructured to produce better results. Focusing on what seem to be settled changes making universities more complex, at least to the extent it is not part of improving a school’s contribution to overall degree attainment, seems a risky distraction.

#### V. THE ECONOMIC CRISIS

Neither the important policy discussions around improving student completion results nor the Prevailing Critique really touch on the business model challenges facing many institutions. Yet the ability of most institutions to address the policy imperative to improve student completion turns on their ability to make investments in improving student completion or in recruiting and enrolling poorer students. The business model challenges which many schools face are significant, with a recent poll of university chief financial officers showing that almost 20% believed that their institution could close in the foreseeable future.<sup>90</sup> The business model challenges faced by universities are multifaceted<sup>91</sup> but turn on demographic trends that will reduce the

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90. Doug Lederman, Co-Editor, *Inside Higher Ed* & Scott Jaschick, Co-Editor, *Inside Higher Ed*, Financial Viability, Debt, & Shared Services: A Survey of Chief Business Officers 6 (Aug. 13, 2015), [https://www.insidehighered.com/sites/default/server\\_files/files/2015%20Business%20Officers%20Webinar%20Presentation.pdf](https://www.insidehighered.com/sites/default/server_files/files/2015%20Business%20Officers%20Webinar%20Presentation.pdf) (presentation slides). Also, only 64% agreed or strongly agreed that their institution’s financial model was sustainable over the next five years and only 42% believing so over the next ten years. *Id.*; see also Andy Thomason, *Small Colleges’ Closure Rate Could Triple by 2017, Moody’s Says*, CHRON. HIGHER EDUC. (September 25, 2015), <http://chronicle.com/blogs/ticker/small-colleges-closure-rate-could-triple-by-2017-moodys-says/105053>.

91. For all universities, significant pressures exist on both the income and revenue sides of the ledger. Income growth is limited by the dropping numbers of traditional college-aged students (particularly from families likely to pay full tuition) and flat potential enrollment overall, reduced state subsidies per students at public schools, and greater competition for and reduced federal spending on funded research. On the expense side,



overall pipeline of traditional college students (ages eighteen to twenty four) while also making that population more diverse and more heavily represented by first generation college students from poorer family backgrounds. These students will need greater support in the form of financial aid, student success programs, or both. This, combined with rising public discomfort with high tuition costs, suggests a significant reduction in net revenue for many schools.<sup>92</sup> As law schools have come to know well, this is a formula for crisis.

For many years universities have seen steady increases in the number of college-aged Americans, and therefore a growing pool of potential students as “Millennials” graduated high school. And since the 1970s, a greater percentage of students from families in the top income quartiles began attending college. Additionally, globalization made American university degrees attractive to international students and a growing pool of wealthy citizens in the developing world, particularly in the BRIC nations (Brazil, Russia, India, and China), which created a larger pool of international students capable of attending an American university.<sup>93</sup>

As the Millennial boom passes, the number of high school

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pressure comes from rising discount rates and higher recruiting expenses; greater expenses to educate poor, minority, and first generation college students; rising athletics expenses; greater competition among and reduced revenue from professional degree programs like the J.D. and professional masters programs; salary pressure, particularly for benefits; expenses related to building and maintaining competitive facilities, particularly housing and research space; heavy debt service costs; and accumulating deferred maintenance expenses; not to mention “administrative bloat,” mission creep, cost disease, and “Bowen’s Law” cited by critics of higher education. Though no institution suffers all these pressures, combined they paint a picture of an unstable universe for many schools—especially small, tuition dependent schools that cannot distinguish themselves.

92. Daniel Weiss argues that the rise in prices at universities is the product of “cost disease,” “the cost premium for investing in quality and innovation,” “the consequence of an overheated competitive environment,” and “historical management practices” always predicated on new resources and a consequence of market demand that showed inelasticity in the face of rising prices. *See* Weiss, *supra* note 14, at 26–29. Except for the last of these factors, all are immune to “consumer sentiment.” *Id.* at 28. It remains to be seen whether family worry about high tuition costs will suppress the rise in tuition; however, policymakers might intervene to do so in any case.

93. Bowen, Chingos, and McPherson note:

For much of our recent history, the United States has relied heavily on “imports” of well-educated students from other countries to compensate for its own difficulties in graduating enough native-born candidates for advanced degrees and, in particular, for jobs in science and engineering . . . . [F]oreign-born holders of doctorates constituted approximately *half* of all doctorate-holders among employed engineers, scientists, and mathematicians. The percentage of science and engineering Ph.D. graduates who were foreign born increased from 23 percent in 1966 to 39 percent in 2000.

BOWEN, CHINGOS & MCPHERSON, *supra* note 52, at 7.

graduates in many parts of the country is dropping, even as greater competition from universities in other developed countries and the growth of domestic universities in China and other developing countries has slowed the growth in enrollment of international students in American schools. The Western Interstate Commission on Higher Education described the problem:

[W]ith the number of high school graduates overall having peaked during the 2010–11 academic year . . . all four regions will see short-term declines in their numbers. The South and West will pull out of their modest declines more quickly than the Midwest, while the Northeast appears unlikely to see any turnaround for several years to come . . . . [T]he extent to which these projections vary across states is a big part of the story. Many states will see much more rapid changes in both the size and the composition of their graduating classes than others will.<sup>94</sup>

Blumenstyk added:

The shrinking pool of high-school graduates will also include more students from low-income households and lower-performing high schools. That means more of the students heading to college will require more in financial aid to be able to afford it—and increasing competition among colleges for the students who can afford to pay more.<sup>95</sup>

These trends will produce drops in enrollments at some schools with the direct budget effects that come with it. Moreover, similar to the experience of law schools in recent years, universities have faced secondary revenue shortfalls as the costs of recruiting a class spike. Sharp drops in enrollment at law schools forced elite law schools to be more aggressive in recruiting attractive students, triggering a downhill competition that sharply increased tuition discounting across law schools. Similarly, tuition discounting at private universities is significant: “According to the latest annual survey by the National Association of College and University Business Officers, which included results from 401 private colleges, institutions discounted tuition by an estimated average of 41 percent overall and 46 percent for freshmen in 2013–14.”<sup>96</sup> Despite this aggressive discounting, many colleges still saw enrollment drops. Given these developments,

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94. WICHE, *supra* note 66, at vii. These trends have persisted as of December 2015. Doug Lederman, *Downward Spiral on Enrollments*, INSIDE HIGHER ED (December 16, 2015), <https://www.insidehighered.com/news/2015/12/16/decline-postsecondary-enrollments-continues-and-speeds>.

95. BLUMENSTYK, *supra* note 1, at 81.

96. *Id.* at 72–73.

Matasar's writing on the need for law schools to consider the value proposition of the law degree is illuminating for universities more generally. Law schools, it seems, have been the canary in the coal mine.<sup>97</sup>

The combination of fewer high school graduates and increasing competition for those students has led to significant issues for some schools. "[E]nrollment losses were particularly acute among the four-year colleges with fewer than four thousand students," and one estimate is that "only about a quarter of all students at private colleges pay the full price, and at some less-competitive colleges, fewer than one out of ten do."<sup>98</sup> In 2013, Moody's Investors Service,

found tuition concerns even among the four-year public colleges whose debt it rates. . . . Of the 114 respondents, 28 percent said they expected declines in net tuition in the coming years and 44 percent reported that the increases in net-tuition revenue that they did expect would not keep up with inflation.<sup>99</sup>

A draconian scenario given the high cost of tuition and the shrinking pool is "a period of intense competition for full-paying students and the financial failure of many institutions as students pursue other options for postsecondary education."<sup>100</sup>

Some schools have anticipated these issues, recruiting more aggressively among international students, but such efforts are subject to competition from other developed countries and the whims of families from the major sources of international students—China, India, and Korea.<sup>101</sup> Many public schools have focused on recruiting regionally and nationally, enrolling large numbers of nonresident students at the higher tuition rates those students pay.<sup>102</sup> However, these

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97. See generally *Canary in the Coal Mine*, *supra* note 3.

98. BLUMENSTYK, *supra* note 1, at 73.

99. *Id.*

100. Guthrie, *supra* note 45, at 114.

101. Bowen, Chingos, and McPherson note:

An important consideration to bear in mind is that universities in other parts of the world, including both Europe and Asia, are making increasingly aggressive efforts to compete for top students from all over the world. India, China, and South Korea are examples of countries actively engaged in improving their own educational systems.

BOWEN, CHINGOS & MCPHERSON, *supra* note 52, at 7.

102. The University of Alabama has grown its student body by ninety-two percent in recent years, largely by increasing non-resident enrollment. See Nick Anderson, *U. of Alabama is Fastest-growing Flagship; Others are Standing Still*, WASHINGTON POST (September 25, 2015); Nick Anderson & Danielle Douglas-Gabriel, *Nation's Prominent Public Universities Are Shifting to Out-of-State-Students*, WASHINGTON POST (January 30, 2016).

efforts risk accelerating the competition for strong students across schools, triggering even greater tuition-discounting among public and private schools for the strongest students. Troublingly, 82% of college and university business officers surveyed by Gallup and Inside Higher Education said that their institution intended to grow enrollment to meet financial challenges,<sup>103</sup> suggesting more aggressive recruitment for a shrinking pool of traditional students.

As Professor Matasar noted at the April conference, any school should ask if it is capable of doing three things; if it cannot, it needs to determine how it can change. His test asks:

1. Can you increase your tuition 3% forward in perpetuity?
2. Can you maintain your student quality while doing this?
3. Can you maintain student diversity while doing so?

Many schools will fail the first test, given high tuition, growing tuition discounting, and hard to bear net prices for many families. With the drop in high school graduates, and especially the regional variation in that drop, many more schools will be challenged in meeting the second test, as well. And, if the first two are met, the third test suggests rising costs for schools, either in recruiting diverse students who can pay, discounting tuition, or serving underprepared students. Schools must ask how they will compete more effectively for highly qualified college-age students, how they will effectively recruit regionally, nationally, and internationally while continuing to attract the students who have traditionally enrolled in their schools, and how they will enroll nontraditional students. And, schools need to determine how to do this while not sacrificing diversity and while preparing to effectively educate students who are first-generation college students and from poorer backgrounds, as these students will represent a higher proportion of the reduced pool of traditional college students and already represent a disproportionate percentage of nontraditional students.

The diversity point is a complex but important one. “[T]he longstanding educational goal of increasing diversity within the small college sector is likely also to become a strategic necessity” as it will be for larger institutions.<sup>104</sup> In years to come, the number of non-Hispanic, white high school graduates is predicted to drop nationally by 12% and non-Hispanic, black high school graduates by 9%, while the number of Hispanic, Asian/Pacific Islander, and American Indian/Alaska Native graduates are expected to increase by 41%, 30%, and 2%,

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103. Lederman & Jaschick, *supra* note 90, at 9.

104. Weiss, *supra* note 14, at 30.

respectively<sup>105</sup>

In regions or states facing substantial declines in White students, will institutions that have traditionally relied on these students seek to better serve students of color . . . [o]r will they begin to search more vigilantly for students outside their current service area who are more like [the students] they have traditionally served?<sup>106</sup>

And will interstate recruiting trigger changes in residency requirements or different approaches to financial aid to facilitate or defend against regional movement of students?<sup>107</sup> Aside from changes in the proportion of students of color, there promises to be substantial increases in the absolute numbers of Hispanic and black students as we have already seen. “The number of Hispanic students in any level of higher education more than doubled from 1976 to about 782,000 in 1990 and then nearly quadrupled by 2012, reaching almost three million. Young Hispanics are the fastest growing demographic in the country . . . .”<sup>108</sup> Similarly, “[e]nrollment of black students has nearly tripled between 1976 and 2012, to just short of three million.”<sup>109</sup>

Given the substantial growth in the proportion of minority students among high school graduates across the country and in many states, it is not unreasonable to assume that a greater percentage of these students will be first-generation college students, requiring different approaches to recruiting and educating them.

Preparation levels are notably lower among first-generation college students. In 2013, the nonprofit organization ACT . . . found only 9 percent of first-generation would-be college students met the college-readiness benchmarks in all four subjects that it evaluates . . . compared with 26 percent of all students taking the test. More than half of the first generation students did not meet even one benchmark.<sup>110</sup>

Similarly, given different fertility rates among income quartiles, a disproportionate share of potential students will continue to be students from poor and moderate-income households. The troubling inverse correlation between the percentage of Pell-eligible students and student persistence and graduate rates at existing institutions suggests that the development of a recruitment and persistence plan for any individual

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105. WICHE, *supra* note 66, at xii.

106. *Id.* at vii–viii.

107. *Id.*

108. BLUMENSTYK, *supra* note 1, at 13.

109. *Id.* at 14.

110. *Id.* at 40.

school is no simple matter.<sup>111</sup> Schools will be faced with choosing to shrink enrollment to enroll the students they have traditionally attracted, engage in an expensive recruitment effort to keep up the percentage of full-paying students, or enroll greater percentages of minority, first-generation, and poor students, the enrollment of which will increase institutional costs.

One recent approach has been for universities with well-known, traditional on-campus experiences to aggressively recruit students to their co-branded online university, opening their school to nontraditional students.<sup>112</sup> This approach seems to have undermined the market advantage of for-profits, cutting into their enrollment. Perhaps these efforts will provide nontraditional students with an educational experience approaching that of resident students while accommodating their unique needs. On the other hand, it may be seen as exploiting the nontraditional students to underwrite the more expensive on-campus experience of traditional students.<sup>113</sup> Time will tell. Another trend has been for some public schools to become very big to underwrite the kind of complex, multidimensional institution their metropolitan areas need. Arizona State University (ASU) and the University of Central Florida (UCF) have both nearly doubled in size in recent years, relying on both resident and online growth to build research universities needed by Phoenix and Orlando respectively. So far the ASU and UCF model has proved effective and has allowed ASU to become a leader in innovation around student success. What their growth means for other schools in the region is unclear as is the effect of their expanded online programs on schools not offering them. It is clear that individual schools' efforts to negotiate the drop in college-aged students will not operate in a vacuum, and aggressive plans of some schools risk further destabilizing schools that do not act.

Just how any university builds a model for business success will of

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111. MEASURE TWICE, *supra* note 73, at 105.

112. Consider the operations of Bellevue University in Nebraska, Indiana Wesleyan, and Southern New Hampshire University. A related approach has been for struggling colleges to be purchased by entities to become ground-based campuses for a larger online program. BLUMENSTYK, *supra* note 1, at 75. The entry of public and private nonprofit colleges into the online degree space has started to gain ground on for-profits. *Id.* at 79.

113. Liberty University conceives of its online university as serving poor and working students while it significantly underwrites its traditional religious college experience for other presumably more traditional students. See Jack Stripling, *An Online Kingdom Come: How Liberty U. Became an Unexpected Model for the Future of Higher Education*, CHRON. HIGHER EDUC. (Feb. 23, 2015), <http://chronicle.com/article/How-Liberty-U-Became-an/190247/>. Liberty University has between 57,000 and 100,000 online students who generate tremendous revenue supporting its 14,000 student residential campus. *Id.*

course depend on that school's unique circumstances. However, efforts of individual schools to maintain their existing enrollment capacity (or grow it) are not the same as addressing the completion crisis of the country. Nor do schools' efforts to deal with their "business model problem" suggest substantial reductions in the cost of higher education, save the destabilizing prospect of continued increases in tuition discounting. In the end, the economic crisis for universities only further limits the ability of individual institutions to take on the completion challenges or to educate more poor students, whether because individual schools lack the resources to reduce tuition, to provide the services poorer students require, or because doing so is not consistent with the mission of the institution.

#### VI. THE GENIUS AND FAILINGS OF THE AMERICAN SYSTEM OF HIGHER EDUCATION

These twin developments—a significant policy challenge and a business plan crisis—have brought close attention to American higher education and attention to all elements of the system. Not only are the excesses highlighted by the Prevailing Critique subjected to discussion, but also doubts have been raised about the value of the system and the need to preserve its existing traditions. More and more frequent are predictions of the demise of the existing institutions and the emergence of something new (and presumably better). These often-rash calls seek to undermine the liberal arts core of American higher education, albeit without generally acknowledging that goal. This is a grave concern because in seeking to address underperformance of our system we risk abandoning what is genius and fundamentally American about it.

It is fair to doubt that there is a "system" of higher education, diverse as the over 4000 American higher education institutions are.<sup>114</sup> Along these lines many have argued (as does this Essay) that too much attention is paid to elite institutions that have a fundamentally different mission than the schools educating the vast majority of students. However, our loosely organized system of higher education institutions—neither centralized nor totally unregulated—is characteristically American. That character explains much of the

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114. Tobin notes:

To call American higher education a "system" may sound like a term of art or an oxymoron, something that exists by default and whose sole purpose is to serve as a stark contrast with other nations' more structured systems. But of course there is a system, however unplanned, incremental, and haphazard its character and early development.

Tobin, *The Modern Evolution of America's Flagship Universities*, *supra* note 17, at 239.

success of American higher education. The genius of the American system, I believe, has been the existence of an order in this lightly regulated, diverse universe of higher education institutions, and how that order, built around the liberal arts ideal, has provided a basis for judging higher education institutions. The crisis in student completion reflects a particular failing of that order; specifically, we successfully expanded access to higher education for many poorer students and for nontraditional students without producing proportionate increases in student success. As higher education has become more expensive, we have begun to cut off this access. The assault on American higher education, its institutions and faculty, as well as the presumptions that have followed from this failing, constitute a call to abandon the implicit order, typically without recognizing that that order exists.

In the American system of higher education, elite schools have long defined the ideal of higher education, which other higher education institutions have pursued while modifying that ideal to their circumstance, funding, faculty numbers and ability, and preparation of their students. The American system of higher education has been an adaption of the liberal arts ideal—formalized and practiced with variety at elite schools—for the mass audience. It has thrived in undergraduate and graduate schools alike because its guiding form has come from schools in a position to implement and nurture the grand ideal, while innovation has emerged from other schools adapting the ideal form to mass distribution. Schools do not expect to become Harvard, as such, but seek to emulate the standards of excellence associated with it and other elite schools. This system is genius because it thrived even as the United States has never “defined” higher education, its goals and structure. Thus, the American system is not centralized and bureaucratized, nor are students formally tracked, as is the case in most developed countries. As Eugene Tobin explains:

American higher education differs from the educational systems of other advanced nations in terms of its responsiveness to market forces, institutional and structural diversity, and absence of central authority, as well as the pervasive role of general education in first-degree courses and the rapidity of its evolution from an elite system to a mass system and then to a universal system.<sup>115</sup>

For years the only guidance came from elite liberal arts institutions, but by the middle of the twentieth century it also came from the great American research university, many of which were now found among public universities. Other institutions sought to emulate the liberal arts

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115. *Id.* at 239.



tradition while adjusting to their students, their circumstances, etc. This approach has given coherence to a non-centralized, lightly regulated system. In its most successful phase, during the economic expansion after World War II, the elite model of higher education was translated to mass education, particularly at the prototypical public research institution, educating millions of first-generation college students, while helping to underwrite a broadening of research capacity that has served the nation well.<sup>116</sup>

As Fareed Zakaria has described, American liberal arts education has been built around an ideal memorialized by the Yale faculty and heavily modified by Harvard in the middle of the nineteenth century.<sup>117</sup> In 1828, Yale faculty produced a report defending the classical curriculum then widespread among American colleges.<sup>118</sup> That document nicely summarized the foundations of the liberal arts education that, in highly evolved form, still animates the liberal arts college experience at many such colleges and at the colleges within elite, private universities. Fifty years later, Charles Eliot's *Atlantic Monthly* essay, *The New Education*, articulated a new vision calling for American universities to embrace the research function while preserving the liberal arts core for undergraduate students.<sup>119</sup> From this vision has emerged the American research university, albeit subject to significant changes wrought by the Morrill Act and its successors, and the expansion of funded research during the Cold War. In following the liberal arts ideal, modified for research universities, American universities successfully managed the major postwar expansion of educational opportunity, educating scores of Americans while providing the research and development needed by the country in the Cold War arms and economic races.<sup>120</sup>

The system seems to have been less successful in the post-Civil Rights expansion of educational opportunity to the poor, as evidenced in the dropping proportion of poor students attending, persisting, and completing college by the age of twenty-four. What is evident are three major failings of this system since the early 1970s: first, its adaption to

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116. "By the early 1970s, public higher education was operating on a mass participation model with the expectation that educational opportunity would be extended to every American of college age." *Id.* at 259.

117. FAREED ZAKARIA, IN DEFENSE OF A LIBERAL EDUCATION 40–71 (2015) (an account of the liberal arts ideal).

118. *Id.* at 50–52.

119. *Id.* at 52–56.

120. See Tobin, *The Modern Evolution of America's Flagship Universities*, *supra* note 17, at 249–50 (discussing New York higher education).

provide student access was apparently dependent on a degree of state support-per-student that we are apparently no longer interested in or capable of supplying; second, the diminution of rigor over the past few decades means that student outcomes appear much reduced at all schools, but with devastating effects at large institutions; and third, the expansion of the system to include poor students in large numbers reveals that the system was arguably never adept at translating elite education to a mass, underprepared student body.

Zakaria's book also summarizes nicely the underperformance of our system in successfully "educating" the mass public. He highlights that grade inflation<sup>121</sup> and reduced hours of commitment by students are key elements of an apparent reduction in learning at all institutions.<sup>122</sup> Split commitments by faculty at underfunded schools seeking to do important research and mentor underprepared students likely also plays a part, as does the vastly increased number of students working full-time while attending school. These concerns have long existed, as Eugene Tobin illustrates by reference to the complaints of an Ohio State University faculty committee on undergraduate curriculum concerning the effects of open admission there in the 1980s. The committee "decried faculty overspecialization, overreliance on graduate teaching assistants, a reward system that did not value undergraduate instruction, and 'an unstructured program . . . which provides no coherence . . . and no sense of what a liberal education is.'"<sup>123</sup> In any case, it is fair to say that our failure to support rigor and student success as we translated the liberal arts ideal to a mass audience is the basis for much of the call for reform in higher education as well as the underlying doubts about the ability of American higher education to increase college completion in its current form. If few once doubted the value of classic liberal arts education, most are now prepared to allow that it is an expensive luxury that the country cannot afford for the masses.

Though consumer preference for the "great" university (built around the liberal arts ideal) has been clear, with a perhaps blind drive toward elitism (evidenced by the insatiable appetite for rankings), education reformers seek to fully bifurcate or more broadly segment the sector. Mitchell Stevens in the introduction to *Remaking College* laments the distorted focus on elite universities before arguing against

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121. ZAKARIA, *supra* note 117, at 63–64.

122. *Id.* at 102–03 (citing RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* 69 (2011)).

123. Tobin, *The Modern Evolution of America's Flagship Universities*, *supra* note 17, at 255.

the residential model most of those schools represent and in favor of models more consistent with the lives of non-traditional students.<sup>124</sup> The liberal arts education may be an attractive ideal but it is too expensive for the wealthy, much less as an adaptation for a mass audience or the poor.<sup>125</sup> This misses that the great research university has been an adaptation of the liberal arts ideal to the mass audience and remains generally a good bargain, if one heavily subsidized by the state. Our failings consist not only of underperformance by the great research university but the inability to extend the liberal arts ideal effectively to the open access schools.<sup>126</sup> Mitchell and his contributors would have us unleash those schools and for-profits to innovate.<sup>127</sup> It is not clear, though, around what ideal, if any, they would innovate. In any case, for the poor, reformers seem to see the liberal arts ideal as perhaps appropriate only for strivers who have overcome their circumstances, but for everyone else, along with nontraditional students, something altogether different is prescribed—hence the need to blow up the current order.

Bashing liberal arts is at the center of attacks on university curriculum generally and general education in particular.<sup>128</sup> In one arguably extreme example, an entrepreneur writing for *Forbes* argues for ditching general education for experiential learning.<sup>129</sup> Lest the

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124. Mitchell Stevens, *Introduction*, in REMAKING COLLEGE: THE CHANGING ECOLOGY OF HIGHER EDUCATION 7, 10–11 (Michael W. Kirst & Mitchell L. Stevens eds., 2015) (“Academic researchers, policy makers, journalists, and the general public are often seduced by the glamour of academically selective schools . . .”).

125. Rebecca Chopp summarizes the critique of the liberal arts as, first, an insistence that education should be focused on job training, second, that liberal arts education “is a hopelessly romantic endeavor designed to give privileged students cultivated taste for an outdated, elite life under the guise of leadership,” and third, that liberal arts education is “too expensive in terms of both cost and the experience it provides”—the “sticker price is not justified because the relative ‘returns’ do not directly translate into specific training or expertise.” Rebecca Chopp, *Remaking, Renewing, Reimagining: The Liberal Arts College Takes Advantage of Change*, in REMAKING COLLEGE: INNOVATION AND THE LIBERAL ARTS 13, 15–16 (Rebecca Chopp, Susan Frost, & Daniel H. Weiss eds., 2014).

126. Andrew Delbanco implies that the liberal arts ideal has long been inconsistent with the demands of the research university. See ANDREW DELBANCO, COLLEGE: WHAT IT WAS, IS, AND SHOULD BE 2 (2012).

127. See generally REMAKING COLLEGE: THE CHANGING ECOLOGY OF HIGHER EDUCATION (Michael W. Kirst & Mitchell L. Stevens eds., 2015).

128. Attacks on the liberal arts ideal have not gone unchallenged. See Frank Pasquale’s review of Kevin Carey’s *The End of College: Creating the Future of Learning and the University of Everywhere*. Frank Pasquale, *The University of Nowhere: The False Promise of “Disruption”*, L.A. REV. BOOKS (Nov. 12, 2015), <https://lareviewofbooks.org/article/the-university-of-nowhere-the-false-promise-of-disruption/>.

129. Amy Rees Anderson, *The Secret to Getting a Job After College: Pick a University that Offers Experiential Learning*, FORBES (August 6, 2015, 12:14 AM),

extreme nature of this proposal be lost in the general terms used, the editorialist's words highlight the goal of emphasizing job skills over pursuit of the liberal arts ideal:

Students spend their first few years of college taking "General Education" required classes which they are told will be useful to them in any job they choose—things like social sciences, art and music, literature, history, foreign language, and math ('cause all of those are really necessary for every job that exists . . . right?). Then, after they have suffered through a few years of classes on several topics they will never, and I do mean ever use again in their life, they finally get to start picking classes in the area they think they might have an interest in.

. . . .

Universities need to make experiential learning the very first General Education Required Class for every student during their first year of college. Doing so will give students a vision of their future and get them excited about a specific field of study right out of the gate. They will also have a better understanding of what classes to choose in order to learn those actual skills needed to get into the particular job they want.<sup>130</sup>

The failure of American higher education to successfully adapt the liberal arts ideal to the expansion of higher education opportunity to the poor has been accompanied by the tremendous growth of community colleges (with an expanded mission) and the rise of the for-profit sector. It is fair to say that major parts of the for-profit sector have never been committed to the liberal arts ideal, and though community colleges have often pursued that ideal in delivering a general education curriculum, the connection of both types of school to trade education confuses the translation of the liberal arts ideal to the mass population they educate. These schools' student bodies are disproportionately poor, minority, and nontraditional, and their role in educating the poor is greater than traditional four-year colleges. Unsurprisingly perhaps, a significant strain of the reform agenda for higher education seeks to emphasize the importance of these institutions in educating to the poor. And while such education could be comparable to that of universities built around the liberal arts ideal and might lead to enrollment in colleges built around that ideal, it should come as no surprise that the emphasis on job pathways is dominant. As policy advocates emphasize these schools

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<http://www.forbes.com/sites/amyanderson/2015/08/06/the-secret-to-getting-a-job-after-college-pick-a-university-that-offers-experiential-learning/>.

130. *Id.*

they undercut the extant system without confronting or acknowledging the implicit system ever existed. There is little wrong with a career focused curriculum, but a college education has long meant that a student's study was built upon a general education curriculum rooted in the liberal arts. While the failings of many universities provide an opportunity to highlight the less expensive approach of community colleges or the more flexible approach of many for-profits, the comparison seems to be to poor performing examples of the traditional four-year college. It is an ever-so-small step from emphasizing the job-training aspects of higher education to contending that the liberal arts model is not a value proposition.

The problem with the call to abandon the liberal arts core of American higher education (however tacit that call) is that it proceeds without much evidence that the various alternative approaches will work or with agreement on what a "college education" consists of. The liberal arts ideal, importantly, has always supplied a way to judge existing schools—how well did they modify the goals of liberal arts education to educate their students with their faculty? The basis of judgment is a notion of quality and rigor—the broad training implicit in the liberal arts ideal with the challenges overt in mastering subjects beyond your background or strengths. One could argue that the problem with the current system is the lack of fidelity to the liberal arts core as evidenced in the lack of learning documented in *Academically Adrift*.<sup>131</sup> In any case, the replacement of this ideal with mere student success and development begs the question of student success *at what*? Should we abandon the liberal arts ideal as an organizing motif of American higher education if it is not clear that we possess an alternative ideal against which to judge the amorphous product that is higher education? Reformers have offered a large number of shifting, ultimately unsatisfying metrics by which to judge schools, such as Amy Anderson's stylized notion of experiential learning, apprenticeship placement, competency-based education, or career and job training tracks. Lacking a consensus on an organizing ideal, student completion (and the related graduation rate) have shown the most resilience. The result has been a hollow, overtly-technical training/job-preparation goal marked by a bureaucratic-regulatory emphasis on data about student progression. This is hardly a basis for defining a university experience, much less building a system.

It seems reformers expect the poor to be satisfied with the new,

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131. RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* (2010).

unproven products that will be built according to an evidence-based model but nonetheless constructed on the fly. The poor have flocked to for-profit institutions, but tellingly those institutions seek to have it all: they sell job-specific, technical education, on your schedule, *as college education*. The last part is crucial. What is necessary is that a market space be *created* to underwrite the mass experimentation aimed at redefining what college is. And while this puts pressure on the old order (generating excellent defenses of the liberal arts college like Zakaria's and Delbanaco's), it has mostly undercut the schools seeking to emulate the liberal arts ideal for poorer students. In effect, the recent reform push has dampened, if not wholly short-circuited, innovation by schools serving the poor in their effort to adapt the liberal arts ideal to the circumstances of poor students. Rather than trying to see how we can provide high quality liberal arts education to the poor—to ensure they can write, communicate, and analyze—we have sought to merely train them for jobs, notwithstanding the fluid, dynamic nature of employment in today's economy. This is not new; James Anderson identified this trend in debates about how to educate freedmen at the turn of the nineteenth century.<sup>132</sup> Only now, the prescription is for the poor to underwrite development of a new system, presumably for everyone.

#### VII. COMPLETION AND THE CHALLENGE TO UNIVERSITIES

The liveliest conversation at our April conference on Matasar's work concerned his 2008 reflections on a fiduciary metaphor as a possible replacement of existing models of governance.<sup>133</sup> The need for faculty to be "academic fiduciaries" is not without problems; however, it anticipates the current crisis for universities, and perhaps points the way to a resolution. The metaphor suggests that faculty and administrators are working in the interest of some other party or entity. In whose interest they act is not clear, nor is it clear that one is capable of being a fiduciary for multiple interested parties (as faculty and administrators would certainly have to be). In that sense, it is possible that "fiduciary" *narrows* the obligations of faculty and administrators in guiding institutions through troubled times. The metaphor says nothing about how one is to resolve disputes between faculty and administrators or among faculty over whose interests predominate. These significant

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132. JAMES D. ANDERSON, *THE EDUCATION OF BLACKS IN THE SOUTH, 1860–1935*, at 35 (1988).

133. See Richard A. Matasar, *Defining Our Responsibilities: Being an Academic Fiduciary*, 17 J. CONTEMP. LEGAL ISSUES 67, 91 (2008) (suggesting that faculty and administrators are fiduciaries).

issues notwithstanding, it is clear that the overlapping issues that have created crisis for higher education demand decisions by those responsible for individual institutions that are made in the best long-term interests of all. The appeal of the metaphor is its clear call for selflessness in service of students, the public good, democracy, and similar interests.

The policy challenge, business plan crisis, and assault on the liberal arts ideal come together in a pernicious way for higher education institutions. They constitute an attack on the mission, business plan, and underlying assumptions of American higher education. The Prevailing Critique and the issues related to it are a dangerous distraction from this fundamental crisis for universities and their faculties. The routine issues of internal power distribution and institutional mission that the Prevailing Critique represents are important but lack the existential gravity of the underlying crises in higher education. The Prevailing Critique has operated to obscure the costs and consequences to universities of addressing student completion in a context where existing resources will likely need to be dedicated to recruitment, persistence, and completion efforts, and where the assumptions of the liberal arts ideal are openly questioned.

Faculty must come to own these issues, asserting academic leadership beyond the walls of the university. The imperative to improve college completion rates overall represents a policy consensus that has led (in the extreme) to outside forces dictating academic goals to universities, while seeking neither faculty input nor providing an option for faculty to opt out. This is most evident at public universities with an access mission where governors have adopted ambitious college completion goals and insisted that their states' universities increase their graduation rates. However, the large number of governors who have signed on to Complete College America and the high proportion of states that have adopted performance-funding systems highlights that the policy commitment to improving college completion is substantial. Among schools with already good college completion rates, the question has become how many poor students are they actually educating? And for private nonprofits, the issue is how they can respond to the anticipated drop in enrollment by substituting poorer students while remaining fiscally viable. To date, the disruption of these developments is limited but there have already been signs that the effects will be felt more broadly.

The details of how any college or university responds to these pressures are highly variable. Importantly, the push to increase college completion rates differs from any individual school's efforts to improve

its six-year graduation rates. So while the completion push has focused attention on individual school graduation rates, much variation exists in how individual schools might contribute to improving college completion, even as much variation exists in how they might improve (or maintain) their own six-year graduation rates. Add to that the variability among established schools in how many poor, minority, and first generation students they might admit, with what support to attract them to attend, and in which ways they might work to ensure persistence and graduation. All that the college completion push has actually mandated is that colleges be more accountable to policymakers, policy analysts, and the general public. That is to say, little in the way of particular programs is mandated by the new policy consensus other than that colleges do something they can defend publicly and which will resonate with their students, parents, alumni, and faculty.

Nonetheless, the significance of the changed focus implicit in the college completion push is hard to underestimate. Aside from the manifold ways the completion focus clashes with traditions of shared governance that give faculty primacy on curriculum, the new focus runs afoul of many faculty members' allegiance to rigor and quality in their teaching. Especially at institutions with an access mission, faculty members have often seen their role as identifying talented, hardworking students and giving the others what they deserve (low grades). Respect for their fields of study demand no less, as does respect for the academy and preservation of the value of the pursuit of knowledge. Accordingly, these faculty members ruthlessly grade mediocrity and much of society has come to rely upon the quality control implicit in this approach. Faith in the fundamental value of a university education has turned on the understanding that grades are earned and completion of a degree represents a broad understanding of the universe of ideas, development of critical thinking ability, and cultivation of oral and written communication skills. That is what has made the evidence of grade inflation so troubling among the failings of American higher education. The new focus on completion potentially puts all the incentives at the university against preserving rigor.

Related to this commitment to rigor is the degree to which faculty members' identities are tied to the quest for stronger, more engaged students. Underlying it is the conviction that strong students make for a better educational experience, a more engaged one, producing deeper understanding. And while doubts have been raised about how much learning is happening in American universities in general and elite universities in particular, the commitment to this idea is widespread. It underlies the outsized role standardized test scores play in our



assessment of universities whether through rankings or through faculty members' informal recognition of "better" schools. Consequently, decisions about how to contribute to improving college completion—necessitating as it does some combination of expanded admission of poor, underserved minority, or first generation students and the creation of support programs necessary to their success—will force many schools to confront their commitment to the mostly unstated but heavily defined notions of good students (for which test scores are generally just convenient markers). The very notion of contributing to improved college completion, even if it is necessitated by fiscal needs of the college or firmly within the institution's mission, risks being at odds with faculty assumptions about the school, assumptions likely widely shared by students and alumni.

Add to the awkward incentives created by the completion push and the university community's commitment to assumptions about what constitutes stronger students the fundamentally top-down structure of the policy push. For public schools this push is often coming from the highest policymaking authorities, disrupting long-held divisions between the political and academic worlds that have deferred to faculty on definition of the academic mission. Naturally, campus leaders are put in a very difficult position. But it is faculty leadership on academic matters that is really imperiled.

Faculty members need to seize ownership and control over the policies around completion even as deference to their expertise on academic matters has been abandoned in the very creation of the policy push. Faculty members need to be actively and prominently involved in developing a particular strategy for addressing the completion imperative at their own school. Bowen and Tobin highlight the importance of faculty participation in charting a path forward for their institutions:

We certainly do not believe that governance is ever an end in itself. In colleges and universities it is a means to the fundamental educational ends of teaching, learning, scholarship, and service.

... [W]e are persuaded that faculty roles are of prime importance at this juncture—both positively, in terms of the ability of faculty to drive badly needed substantive change, and negatively, in terms of the ability of faculty to stand in the way of that change. [Our project starts] then, with the twin premises (1) that the governance challenges facing American higher education today—as it copes with pressures to adapt to a new world marked by a lethal combination of high expectations concerning educational outcomes, severe fiscal constraints, and rapid technological change—are of absolute central

importance, and (2) that these challenges have to be addressed on the basis of a deep understanding of faculty roles, and how they have evolved over time. . . . [T]he ability of American higher education to take full advantage of, among other things, the opportunities that emerging technologies offer, depends critically on the continuing adaptation of governance structures to new circumstances.<sup>134</sup>

At a small liberal arts college, the right answer might be to recruit more low income students, building the support structures to ensure that they thrive *and* enjoy the benefits of a liberal arts education. At a public school with an access mission, the goal might be to recruit better (if still lower income) students to a robust honors program, or it might be to exceed the projected graduation rate for that school's current student body. What faculty cannot do is simply complain that students are not good enough or prepared enough, nor can they leave to the enrollment management office the job of creating a recruitment and enrollment strategy for the university. Most counterproductive is adopting a passive role and assuming they can exercise an effective veto of programs developed by administrators in response to directives from their board or the governor.

These steps are important to preserve shared governance but are most significant in that they constitute faculty reasserting leadership and primacy on academic matters. It is unlikely that faculty engagement will reverse policymakers' and analysts' growing interest in higher education and how it operates. Nor will it dampen the engagement of board members and friends of the university on academic matters. However, leadership has never meant dictatorship and faculty leadership can thrive without total deference on academic matters. Most crucial is the need for faculty to forcefully defend the fundamental definition of college, implicit in the liberal arts ideal as adapted to the various circumstances of particular universities. Zakaria and others have offered strong defenses of the liberal arts college but the reluctance to defend the broader liberal arts ideal as adapted especially in the open access university operates as a tacit concession to those who believe that a university education should be redefined for mass application in a more technical, job-training way. This segregation of the educational universe for poor students might help new businesses better segment the market, but it is a disservice to poor students, the institutions in which most faculty teach, the nation's future, and ultimately faculty themselves.

Whether in the form of a directive from the governor or an

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134. BOWEN & TOBIN, *supra* note 13, at 8–9.

economic imperative born of dropping enrollment, university faculty have little choice but to engage the broad college completion consensus and help develop strategies to improve their own school's performance. New programs will need to be developed and will require financing from existing revenue streams. The decisions that will need to be made will be painful and demand a reconstruction of the university as we know it. Faculty need to take charge in order to defend the liberal arts ideal and the prospect that it can be adapted to a mass audience. Doing so will require resistance to student pressure for less work and higher grades even as it will require a greater commitment from faculty to student achievement.

Ultimately, faculty can lead in three key ways. First, faculty must concede that the expensive process of expanding educational opportunity will need to be pursued without new revenues, necessitating redistribution of resources at many schools. Second, faculty must offer a robust defense of shared governance and the efficiencies implicit in it; it is the only efficient way to sustain the application of the liberal arts ideal to a mass audience. Notably this commitment need make no presumptions about delivery mechanisms or institutional structure, leaving much room for deployment of new technologies and innovation, both of which are necessary to arrest the growth in tuition costs. Third, faculty can ensure better outcomes are achieved without sacrificing rigor—this will require ingenuity, as engagement of working students is difficult to improve and under-preparation for university study makes it hard to simultaneously catch students up while introducing them to the world of ideas, much less ensure their ability to write, communicate and analyze information as necessitated by the liberal arts ideal. Overall, the obligation is to ensure that the university experience continues to be one of growth, introduction to the world of ideas, and the development of a facility to use ideas in a practical way. That will serve students well.

In short, universities can learn from Matasar's sharp critique of legal education and from law schools themselves. Addressing the crisis requires faculty commitment to evaluating the value of the education experience and making student-centered decisions to improve it. We have left the land of easy choices; all the options before us are hard. But through faculty leadership, individual plans can be constructed that, collectively, will adapt American higher education to these new times and preserve our great system, its genius, diversity, and flexibility.