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The Morass of Higher Education Financing

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BOOK REVIEW

THE MORASS OF HIGHER EDUCATION FINANCING

THE DEBT TRAP: HOW STUDENT LOANS BECAME A NATIONAL CATASTROPHE.
Josh Mitchell. Simon & Schuster, 2021.
260 pp. (ISBN 978-1-5011-9944-8).

ROBERT W. MILLER†

President Biden unsuccessfully sought to forgive up to $20,000 in student debt per borrower.[1] Although many criticized this blanket amnesty, few support the current status quo that has led to a total outstanding balance of $1.774 trillion (and counting).[2] Josh Mitchell's *The Debt Trap: How Student Loans Became a National Catastrophe* ("*The Debt Trap*") attempts to explain how we ended up at this juncture.

Mitchell's use of the word "how" in the title is apt. This is not a book that focuses on the "why." Yet, he cannot escape that question entirely and his throughline is familiar: politics and money distorted the student loan program, leading it far astray of its original goals.[3] Instead of dwelling on why this distortion was bad, he identifies how individual actors in both the public and private sectors altered the intended trajectory. Mitchell includes borrower profiles that not only reflect the human cost of student loans, but also provide an important reminder that students directly bear the risk in the current system. However, he concentrates on the people who wielded political power and the consequences of their actions. This is a book about how the current student loan system developed — i.e., how the "sausage" was made, not why it tastes so bad. It is an ideal source

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† Assistant Professor of Law, University of South Dakota, Knudson School of Law. Many thanks to John Patrick Hunt for his insightful comments and Jenna Riedel for her outstanding research assistance. All errors are my own.

1. Biden v. Nebraska, 143 S. Ct. 2355, 2371 (2023).

2. EDUCATION DATA INITIATIVE, *Student Loan Debt Statistics*, https://perma.cc/4GJZ-T3WL (last visited Aug. 3, 2023); Congress considered more than 80 pieces of student loan-related legislation during its 116th session alone. Mark Kantrowitz, *Year in Review: Student Loan Forgiveness Legislation*, FORBES (Dec. 24, 2020), https://perma.cc/AQ2T-7Y35.

3. JOSH MITCHELL, THE DEBT TRAP: HOW STUDENT LOANS BECAME A NATIONAL CATASTROPHE 9 (2021). Mitchell is not the first to recognize this reality. *See* Luke Herrine*, The Law and Political Economy of a Student Debt Jubilee*, 68 BUFF. L. REV. 281, 285 (2020) ("[A]s more and more institutions—from servicers to for-profit colleges to public universities— come to be dependent on the student debt system, student debt creates its own political inertia."); Jonathan D. Glater, *The Other Big Test: Why Congress Should Allow College Students to Borrow More Through Federal Aid Programs*, 14 N.Y.U. J. LEGIS. & PUB. POL'Y 11, 38 (2011) (suggesting that even early higher education finance legislation created a "conflict between the interest of both society and students in accessing education and the interest of private industry in profits.").

for anyone exploring the origins and evolution of American higher education finance.

In the final chapter, Mitchell offers six suggestions for improving higher education financing. Perhaps in the interest of brevity, he barely attempts to link them to his narrative. Some even feel untethered from the rest of the book. This review will attempt to cover this ground and provide the reader with sources for further engagement.[4] For each of the suggestions, it will first link them with the major actors and actions identified by Mitchell, and then situate them in the landscape of legal and economic scholarship evaluating higher education financing policy.

I. FORGIVE INTEREST ON STUDENT LOANS.

In the first chapter, Mitchell highlights one of the early forks in the road for higher education financing policy: whether it should involve loans at all.[5] Taxpayer funded grants were an alternative to loans as politicians debated how to increase post-secondary educational attainment after World War II.[6] Indeed, the Servicemen's Readjustment Act of 1944 (commonly called the "G.I. Bill"), the first federal education finance legislation, provided block grants for tuition to institutions of higher education ("IHEs") while some politicians supported the wide availability of grants to promote affordability.[7] Mitchell uses characters (principally Lyndon Johnson, Senator Carl Elliot, and American Bankers Association President, Charls Walker) to explain how a bipartisan compromise manifested as federal guarantees of private student loans.[8] The dual priorities of increasing access to education financing while also minimizing the effect on the federal budget made student loans a natural choice.[9] That initial decision established the baseline that loans, rather than grants, would be the primary public policy tool for higher education finance.[10]

The result was the first general federal education finance legislation, the Higher Education Act of 1965 (the "HEA"). It provided a fixed-market rate of interest to incentivize lender participation as originators of loans guaranteed by the federal government.[11] Economic conditions thwarted the HEA's goal of increasing access. High inflation led to increases in interest rates, which made the fixed student loan rate uncompetitive.[12] Lenders rationally responded by failing

4. The sources identified in this review were the backbone for a seminar I taught focused on student higher education financing. Although I did not assign *The Debt Trap*, with the benefit of having now taught the course, I would anticipate using it in the future as an introductory reading to frame many of the subsequent assignments and discussions.

5. MITCHELL, *supra* note 3, at 18-19.

6. *Id.* at 16-18. This review uses the term "grant" to encompass grants, scholarships, and other types of non-debt higher education funding sources.

7. *Id.* at 15.

8. *Id.* at 14-23, 26-28.

9. *Id.* at 27-28.

10. *Id.*

11. *Id.* at 28.

12. *Id.* at 29-30.

to make loans.[13] To increase loan availability, the government needed to provide banks with further support.[14]

Mitchell masterfully tells the story of the rise of the Student Loan Marketing Association (better known as Sallie Mae). Although founded as a government-sponsored enterprise with the expressed goal of further increasing student loan availability, the banks who originated the guaranteed loans and Sallie Mae's executives were perhaps the greatest beneficiaries of its success.[15] Sallie Mae was a boon for banks in two ways: (i) it would buy loans from banks following origination (thereby providing funds for new loans); and (ii) it would allow banks who kept student loans on their balance sheets to use them as collateral for loans from Sallie Mae at below market interest.[16] Sallie Mae could afford to finance these arrangements because it received a 3.5% interest rate sweetener above borrowing costs: the financial alchemy of guaranteed profits.[17] When student loan lending exploded, these profits made Sallie Mae executives like Al Lord and Ed Fox rich.[18]

Over time, however, the federal government's involvement in the higher education finance became more invasive and the role of private lenders waned. Direct loans originated by the federal government became an alternative to guaranteed private loans.[19] This shift culminated in Subtitle A of the Health Care and Education Reconciliation Act of 2010 ("SAFRA"), which ended federal student loan guarantees and left direct loans from the federal government as the sole source of federal student loans.[20] Even though SAFRA eliminated the initial reason interest was charged (to incentivize private originators), direct student loans still charge interest.[21] To be sure, a portion of the interest currently charged can be categorized as an offset for costs of default, however the high interest rates are a source of revenue for the government that is not consistent with the goals of higher education financing.[22]

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13. *Id.* at 30.
14. *Id.* at 31.
15. *Id.* at 31.
16. *Id.*
17. *Id.* at 52-53.
18. *Id.* at 62-63, 118.
19. Glater, *supra* note 3, at 39-41.
20. Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-52, § 2001, 124 Stat. 1029 (2010). At the time of SAFRA's enactment, direct loans comprised approximately 30% of total federal loan volume. Robert Proudfoot, *Securitization of Student Loans: A Proposal to Reform Federal Accounting, Reduce Government Risk, and Introduce Market Mechanisms as Indicators of Quality Education*, 9 U. MASS. L. REV. 6, 24-25 (2014).
21. To make matters worse, "[t]he rules on origination fees (essentially points), interest forbearance, deferral, accrual, compounding, and capitalization are highly complex, so it is almost impossible for borrowers to understand ex ante how much interest they will actually pay or what their effective interest rates will be." John R. Brooks & Adam J. Levitin, *Redesigning Education Finance: How Student Loans Outgrew the "Debt" Paradigm*, 109 GEO. L.J. 5, 38 (2020). Academics and politicians have suggested changes to provide would-be students/borrowers with more and better disclosure of borrowing terms and costs. Amanda Harmon Cooley, *Promissory Education: Reforming the Federal Student Loan Counseling Process to Promote Informed Access and to Reduce Student Debt Burdens*, 46 CONN. L. REV. 119, 124 (2013).
22. Brooks & Levitin, *supra* note 21, at 76-77.

Mitchell bases his recommendation for the forgiveness of interest on borrower anecdotes highlighting their inability to pay off their loans while interest continues to mount.[23] Congressional partisanship makes broad forgiveness of student loans (whether principal or interest) unlikely.[24] The recent United States Supreme Court precedent in *Biden v. Nebraska*[25] rebuffed the executive branch's attempt to bypass this gridlock.[26] In that case, the Court rejected the Secretary of Education's proposed forgiveness of up to $20,000 per borrower as a violation of the separation of powers pursuant to the "major questions doctrine."[27] That doctrine establishes a much more searching inquiry concerning regulatory authority when "history and the breadth of the authority that the agency has asserted, and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority."[28] When regulating a "major question," the agency must identify "clear congressional authorization for the power it claims."[29] The Court found that the student loan forgiveness plan triggered the major questions doctrine because (i) it would have an economic impact of approximately $500 billion (10x the amount the Court had previously identified as a trigger); and (ii) forgiveness of student loans have been subject to significant political debate.[30] The Court next considered whether The Higher Education Relief Opportunities for Students Act of 2003 ("HEROES Act") clearly authorized the proposed student loan forgiveness. It held that the HEROES Act's authorization for the Secretary of Education to "waive or modify" student loans on account of an emergency did not clearly grant the power to implement a student loan forgiveness program.[31]

The Biden administration has vowed to make a second attempt at forgiveness based on the text of the HEA.[32] Scholars have suggested that this alternative argument is unlikely to succeed.[33] With this legal background and given that the current amount of outstanding federal student loan interest is approximately

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23. MITCHELL, *supra* note 3, at 216; *accord* Brooks & Levitin, *supra* note 21, at 77 (supporting their proposal for elimination of interest based on "the psychological costs of seeing a debt balance grow even while making regular payments").

24. Although Republican members of Congress have supported targeted forgiveness, they appear unwilling to support the broad forgiveness of all interest proposed by Mitchell. Kyle Stewart, *House Republicans Introduce Their Own Student Loan Debt Plan*, NBC NEWS (June 15, 2023), https://perma.cc/SS5Z-WNHC.

25. 143 S. Ct. 2355 (2023).

26. *Id.* at 2369.

27. *Id.* at 2375.

28. West Virginia v. Env't Prot. Agency, 142 S. Ct. 2587, 2608 (2022) (internal quotations omitted).

29. *Id.* at 2609 (internal quotations omitted).

30. *Biden*, 143 S. Ct. at 2373-74.

31. *Id.* at 2372.

32. *See* Amy Budner Smith et al., *Supreme Court Strikes Down Biden Student Loan Forgiveness. What's Next?,* ARNOLD & PORTER NEWS & PERSPECTIVES, (June 30, 2023) https://perma.cc/WRT6-SLL9 (analyzing a possible "Plan B" for the Biden administration, which may rely upon the powers granted to the Secretary of Education in the HEA); Herrine, *supra* note 3, at 411 (analyzing student loan forgiveness authority under the HEA).

33. *C.f.*, John Patrick Hunt, *The Failed Legal Case Against Student Debt Jubilee*, 2022 U. ILL. L. REV. Online 84 (2022) (attempting to rebut the argument that the executive branch lacks authority to cancel student loans while admitting that most published analyses are skeptical of his position).

$109.5 billion,[34] the lack of real distinction between forgiveness of a certain sum of principal plus interest (the unconstitutional proposal) and forgiveness of interest appears to make Mitchell's proposal unworkable.

Drastically reconceptualizing how student loans operate, including the elimination of traditional interest, should not be off limits. Professors John Brooks and Adam Levitin have suggested that student loans should be liberated from the traditional notions of debt.[35] They argue that the problems with student loans stem from the "incompatibility between the legal and institutional apparatus of debt and the economic reality of student loans . . . ."[36] The current status is an artifact of the original framework for education financing predicated upon federal guarantees of private loans.[37] Following the enactment of SAFRA, private federal loans are no longer originated, and market-based interest is no longer needed to incentivize private lenders' participation.[38] Recognizing this opening, Brooks and Levitin suggest reforming student education financing as a grant system with liability capped at the original amount, adjusted for inflation.[39] In concert with another proposal of Brooks and Levitin, automatic enrollment in income-based repayment, affordability would be improved as payments would be a function of income while the complex rules (not to mention the perceived hardship noted by Mitchell) associated with interest accrual and capitalization would be eliminated.

Given the current legal and political landscape, it appears appropriate to consider more comprehensive reform than just eliminating accrued student loan interest. Mitchell identified SAFRA as an inflection point that the Obama administration could have used to change the paradigm for higher education financing.[40] The uncertainty following the failure of President Biden's forgiveness plan could provide a similar opportunity.[41] However, the slim legislative majorities in Congress and the unwillingness of Democrats and Republicans to work in a bipartisan manner may see this window close without meaningful reform. From a more fundamental perspective, the dramatically increased costs associated with Brooks and Levitin's proposed reform create a significant political hurdle.

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34. Email from Tara Marini, Communications Specialist at United State Federal Government, to Jenna Riedel, research assistant to Robert Miller, Assistant Professor of L., U. of S.D. Knudson Sch. of L. (Aug. 10, 2023) (on file with author).

35. Brooks & Levitin, *supra* note 21, at 48.

36. *Id.*

37. *Id.*

38. U.S. Dep't of the Treasury, *Dep't of Treasury, Dep't of Educ. and The Consumer Financial Protection Bureau Issue Joint Principles on Student Loan Servicing*, (Sept. 29, 2015), https://perma.cc/7CEB-G9Y7.

39. Brooks & Levitin*, supra* note 21, at 14.

40. MITCHELL, *supra* note 3, at 134.

41. *E.g.*, Eric A. Posner & Adrian Vermeule, *Emergencies and Political Change: A Reply to Tushnet*, 56 STAN. L. REV. 1593, 1593 (2004) (supporting "the idea that emergencies can enlarge the scope of the politically possible").

II. MAKE FOUR-YEAR SCHOOLS PUT UP THEIR OWN MONEY

Mitchell suggests that if four-year IHEs bore some of the risk for student defaults they would not raise tuition too high or award unbearable loan amounts.[42] He draws inspiration from then-Senator Lyndon Johnson's proposal for a quasi-insurance system where both the federal government and the school would share losses on loan guarantees.[43] According to Mitchell, both would have money at stake and be incentivized to minimize losses.[44]

Currently, IHEs are heavily insulated from student loan risk. "They can be ruled ineligible for federal student financial aid," known as Title IV funds, "if they exceed upper limits on student default rates."[45] However, income-based repayment, together with strong debt collection mechanisms, have reduced student defaults and lessened institutional risk.[46] Historically, for-profit two-year IHEs have been the only cohort in danger of losing access to Title IV funds.[47] This "risk reduction eliminates the institutional incentives to make sure students are taking out affordable loans, making appropriate progress toward completion, and achieving expected levels of earnings."[48] Mitchell suggests that IHEs must have skin in the game in the form of risk sharing, which will incentivize IHEs to make attendance more affordable.[49] Conventional economic theory, as well as relevant empirical research, cast doubt on this perspective.

Even if IHEs were forced to internalize some of the losses on an accounting basis, IHEs would likely manipulate other levers to maintain margins.[50] Put another way, students may indirectly cover the losses through increases in tuition/fees or lower institutional financial aid.[51] The situation is analogous to

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42. MITCHELL, *supra* note 3, at 216-17.

43. *Id.* at 25.

44. *Id.*

45. Stephen Crawford & Robert Sheets, *How Risk-Based Loans Would Help Students Achieve Better Outcomes*, 48 SUFFOLK U. L. REV. 623, 634 (2015).

46. *Id*.

47. *Id.*; *see* Matthew A. Bruckner, *The Forgotten Stewards of Higher Education Quality*, 11 UC IRVINE L. REV. 1, 25 (2020) (criticizing current methodology for cohort default rate); Jean Braucher, *Mortgaging Human Capital: Federally Funded Subprime Higher Education*, 69 WASH. & LEE L. REV. 439, 464-65 (2012) (explaining how some IHEs minimized their cohort default rate through strategy deferment and forbearance, which is excluded in the computation of a school's cohort default rate). Since 2010, for-profit and certificate programs have been subject to Gainful Employment Rule ("GER") may lose access to Title IV funds for failure of certain thresholds twice in three years. U.S. Dep't of Educ., *Dep't of Educ. Releases Proposed Rules on Accountability for Certificate and For-Profit Programs and Transparency Into Unaffordable Student Debt,* (May 17, 2023), https://perma.cc/PA83-UVP4; *see* Proudfoot, *supra* note 20, at 38-39 (summarizing history of the GER). Another major Title IV funding exclusion is for IHEs that file bankruptcy proceedings. Together, these restrictions function as a crude underwriting standard focused on the school, while student loans themselves are not subject to individualized underwriting ex ante. Robert W. Miller, *A New Bankruptcy Subchapter for Institutions of Higher Education: A Path but not a Destiny*, 97 AM. BANKR. L.J. 313, 325 (2023).

48. Crawford & Sheets, *supra* note 45, at 634.

49. MITCHELL, *supra* note 3, at 217.

50. Lois Miller & Minseon Park, *Making College Affordable? The Impacts of Tuition Freezes and Caps* 2 (Annenberg Inst. at Brown Univ., EdWorkingPaper No. 21-387, 2021), https://perma.cc/X5MK-LSJ5.

51. *Id.*

tuition caps, which have been enacted in some jurisdictions in an effort to facilitate affordability.[52] When faced with financial shocks, IHEs generally adjust margins they can control to limit the impact.[53] In the context of tuition caps, research shows that non-research, four-year IHEs responded to restrictions by decreasing institutional aid.[54] Put another way, these IHEs altered margins that they controlled to cushion or even eliminate the effects of the tuition cap on margins.[55] IHEs would likely respond similarly to an IHE-insurer insurance regime or other risk sharing arrangement.[56] The anticipated insurance costs for the IHEs would cause institutional financial aid to decrease proportionately. Mitchell actually supports this argument when he discusses how Kalamazoo College turned away poor students when it did not want to provide large tuition discounts or scholarships, which would decrease margins.[57] Although defaults would presumably increase incrementally due to the decrease in affordability, the IHEs could model this impact, and a new equilibrium with lower institutional aid and higher student costs would be reached.

Mitchell appears to suggest a more optimistic (at least from the student perspective) narrative where the school cuts costs in response to insurance losses and institutional student aid is not significantly diminished.[58] Even ignoring the parallels with IHEs' response to tuition caps, implementing cost cutting or right-sizing liabilities is difficult. Indeed, IHEs face unique challenges in attempting a balance sheet or cash flow restructuring.

Debt service cannot be unilaterally restructured outside of a chapter 11 bankruptcy filing.[59] Even that unpalatable option is generally unavailable for IHEs as certain provisions of the Bankruptcy Code make it functionally

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52. *Id.* at 4.

53. *Id.* at 2.

54. *Id*. Most students pay far less than the "sticker price" for tuition with institutional aid often comprising a significant portion of any discount. Jonathan D. Glater, *Student Debt and the Siren Song of Systemic Risk*, 53 HARV. J. ON LEGIS. 99, 112-13 (2016). Research four-year IHEs are "defined as doctoral universities[,] a Carnegie classification of with high or very high research activity." Miller & Park, *supra* note 50, at 3 n.1. These IHEs did not materially alter institutional aid.

55. Miller & Park, *supra* note 50, at 3. Research IHEs are generally less dependent upon tuition and fees for revenue generation. Thus, they likely have alternative options for reacting to a tuition cap other than decreasing institutional aid.

56. *Cf.* Proudfoot, *supra* note 20, at 60-66 (discussing alternative risk-sharing regimes).

57. MITCHELL, *supra* note 3, at 69. Because these students would likely also be more risky borrowers based on their families' lack of wealth, IHEs may decline to admit them. Jonathan D. Glater, *The Unsupportable Cost of Variable Pricing of Student Loans*, 70 WASH. & LEE L. REV. 2137, 2166 (2013) ("a graduate who is independently wealthy is a good risk even after choosing a low-pay career, while a poor graduate who plans to become a doctor may be more likely to default despite career ambitions.").

58. MITCHELL, *supra* note 3, at 234.

59. Usually, a creditor must consensually agree to the alteration of its rights. One exception is liability management transactions where debtors work with certain lenders to obtain concessions and new cash in consideration for granting the chosen creditors improved priority above other lenders. Although these strategies have proliferated in the last few years, one of the first was non-coincidentally undertaken by Education Management Corporation, a for-profit education company who could not use chapter 11 to reorganize. *See* Robert K. Rasmussen, *Lessons for Academic Leaders from Modern Restructuring Practice*, 92 AM. BANKR. L.J. 233, 247-48 (2018).

impossible for a school to reorganize under chapter 11.[60] Lacking the threat of bankruptcy filing has a knock-on effect of making creditors much less likely to agree to consensual restructuring of their debt.[61]

Without the bankruptcy-unique power to reject executory contracts and discharge the associated rejection claims, terminating highly compensated employees is challenging as many will enjoy the protections of tenure.[62] "Tenure is generally defined as a rank that grants the holder continued employment absent extraordinary circumstances such as cause or financial emergency."[63] Even if a basis for termination exists, an onerous administrative process and a material notice period (often one year), commonly delays the termination of tenured faculty.[64] Bankruptcy would allow a school to evade the usual process by rejecting faculty tenure contracts.[65] The general inability of a school to consummate a chapter 11 restructuring neuters what would be a significant tool for right-sizing faculty and cutting costs.[66]

There is less incentive for IHEs to lower student costs as a decrease is unlikely to alter student demand. Demand for higher education is generally inelastic, meaning that the usual price/demand dynamic does not apply and demand does not decrease as price increases.[67] Sometimes, as Mitchell noted, raising tuition even generates increased applications.[68] Due to the inelasticity of

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60. *See generally* Miller, *supra* note 47 (explaining that IHEs are functionally unable to operate under chapter 11 and proposing a new subchapter for IHEs as a solution); Matthew A. Bruckner, *Higher Ed "Do Not Resuscitate" Orders*, 106 KY. L.J. 223 (2018) (discussing IHE bankruptcies and advocating for Congress to "allow IHEs to reorganize in bankruptcy without losing access to federal student loan and grant programs").

61. Matthew A. Bruckner, *Terminating Tenure: Rejecting Tenure Contracts in Bankruptcy*, 92 AM. BANKR. L.J. 255, 290-91 (2018).

62. *Id.* An analogous issue arises in the context of attempting to jettison ongoing leases, which is imperative for a successful for-profit IHE restructuring. Miller, *supra* note 47, at 365-69.

63. Miller, *supra* note 47, at 367. Although tenure is often characterized as a "job for life," it is more precise to consider the specific bundle of substantive and procedural rights, which usually provide some greater protection than at will termination. *See* Bruckner, *supra* note 61, at 265. That being said, "[t]he particular substantive and procedural rights conferred vary substantially based on the tenure-granting institution." *Id.*

64. *Id.* (outlining common due process protections for tenured faculty).

65. *Id.* at 275, 290.

66. Miller, *supra* note 47, at 367-68.

67. David J. Deming & Christopher R. Walters, *Impact of Price Caps and Spending Cuts on U.S. Post Secondary Attainment* 8 (NBER Working Paper Series No. 23736, 2017), NAT'L BUREAU OF ECON. RSCH. https://perma.cc/Z2P8-TFSJ; William S. Howard, *The Student Loan Crisis and the Race to Princeton Law School*, 7 J.L. ECON. & POL'Y 485, 496 (2011). This relationship is present for both Veblen goods and Giffen goods. Demand for Giffen goods is inelastic because no alternatives may exist and the good may be a necessity. Demand for Veblen goods is inelastic because they signal status via conspicuous consumption. *Id.* at 497 n.82. Higher education may have elements of both types of goods. Some students may perceive a school to be unique and the only good option for their post-secondary education even though potential substitutes exist. *See* Kate Sablosky Elengold*, The Investment Imperative,* 57 HOUS. L. REV. 1, 33 (2019) (examining the student view of higher education as a necessity and subsequent failure to connect it to the cost: "It is college at any cost"). Meanwhile, a higher tuition cost may also be a status symbol (i.e., you get what you pay for). Elite IHEs, however, do not maximize revenue as they do not charge significantly more than less elite IHEs. Scholars have suggested accessibility concerns may play a role. Glater, *supra* note 54, at 118.

68. MITCHELL, *supra* note 3, at 68.

student demand, IHEs could generally pass along the costs of an insurance program to students indirectly in the form of higher tuition.[69]

Recognizing the reality that students will generally shoulder the cost of an insurance regime where IHEs are responsible for losses, Professor Glater has suggested an insurance regime where students pay premiums, but their potential regressive nature is mitigated.[70] Two options proposed were a federal subsidy for lower income/less wealthy borrowers/their families or requiring only employed graduates to pay insurance premiums.[71] Another of Glater's alternatives might appeal to Mitchell: make the insurance premiums predicated upon the school's default rate.[72] A higher relative premium rate would be a signal to students that attending a particular school is more risky, thereby decreasing demand.[73] This model may place an unrealistic faith in students as it would require borrowers to be both informed and willing to act upon the premium signal.[74] Financial literacy is generally low, and to make matters worse, disclosures associated with student loans are dense and opaque.[75] Borrowers may also be overly optimistic ex ante about their career trajectory and ignore any risk differential.[76]

III. MAKE COMMUNITY COLLEGE TRULY FREE

Mitchell views free community college as a de-risking mechanism. Students would be able to determine whether higher education is the right path for them without incurring student debt.[77] The problem of student debt for students who

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69. Jonathan D. Glater, *Student Debt and Higher Education Risk*, 103 CAL. L. REV. 1561, 1584-86 (2015).

70. *Id.* at 1597; *see* Crawford & Sheets, *supra* note 45, at 633-34 (advocating for a national student loan insurance regime, which would be added at time of loan origination). Professor Glater also suggested potentially using the excess revenue generated by interest to eliminate premiums. Glater, *supra* note 69, at 1597-98. Following the publication of his article, the amount of revenue generated swung to a loss during the Trump administration, which became much larger due to the payment pause during the COVID-19 pandemic. Mark Kantrowitz, *Does the Government Profit Off of Student Loans?*, THE COLLEGE INVESTOR (June 4, 2023), https://perma.cc/Z7BH-CPG6. These subsequent developments have made relying upon this revenue currently untenable.

71. Glater, *supra* note 69, at 1599 n.177.

72. *Id.* at 1599.

73. *Cf.* Michael Simkovic, *Risk-Based Student Loans*, 70 WASH. & LEE L. REV. 527 (2013) (proposing risk-based individualized pricing for federal student loans).

74. *Cf.* Glater, *supra* note 69 (suggesting that one of the reasons that student loan insurance does not exist as a product is due to the lack of information about default risk).

75. Glater, *supra* note 57, at 2142-46 (noting that students may not comprehend, recognize, or care about interest-rate differentials in the parallel context of risk-based interest rates for student loans). *But see* Crawford & Sheets, *supra* note 45, at 627 (advocating for use of choice architecture to make disclosures for student loans as efficient as possible to enable student choice in a risk-based student loan regime).

76. Jack Millman, *Paying for Failure: Subsidizing Schools, Not Education*, 10 DREXEL L. REV. 307, 352 (2018) (suggesting that even when borrowers understand that usual student outcomes are poor, they may still enroll because they believe they are doing what is necessary to better themselves and can beat the odds). This perspective is also consistent with the price inelasticity of higher education and its perceived status as a Giffen good. *See supra* note 67 and accompanying text.

77. Students will still incur the opportunity cost of attendance. *See* John R. Kramer, *Will Legal Education Remain Affordable, by Whom, and How?* 1987 DUKE L.J. 240, 242 (1987) (identifying that students incur opportunity cost, in addition to any debt, to attend a law school).

never graduate pervades the book.[78] With good reason: nearly 50% of borrowers who default on their student loans failed to graduate.[79] Community college borrowers face an outsized risk of non-graduation because they are often ill-prepared for the rigors of higher education and must complete remedial courses.[80]

Not only do these borrowers fail to attain the goal of higher education (the culminating degree or certification), but they will almost assuredly be required to pay the debt. As Mitchell puts it: "They got none of the benefits of college while taking on all of the costs."[81] The government possesses extremely strong debt collection mechanisms, including the ability to garnish tax returns or government benefits.[82] Evading these powers is extremely challenging because one of the primary options for wiping out debt, a bankruptcy discharge, is generally not available for student loans. Almost all categories of debt are easily discharged in a bankruptcy case.[83] Moreover, creditors usually have the burden of showing that a debt is non-dischargeable.[84] Student loans, however, are different and can be discharged only upon a showing by the debtor of undue hardship.[85] This procedural barrier is significant.[86] Combined with the high standard for showing undue hardship, obtaining a discharge of student loans has historically been very hard.[87] Although Mitchell ends the book by discussing one borrower's successful

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78. *E.g.*, MITCHELL, *supra* note 3, at 139, 156, 165.

79. *Comments of Bankruptcy Scholars on Evaluating Hardship Claims in Bankruptcy*, 21 J. CONSUMER & COM. L. 114, 116 (2018) (noting that nearly one-half of defaulters never graduated).

80. MITCHELL, *supra* note 3, at 139.

81. *Id.*

82. *Comments of Bankruptcy Scholars on Evaluating Hardship Claims in Bankruptcy*, *supra* note 79, at 117-18.

83. Presuming that the debtor follows the steps needed to obtain a discharge. Although debtors generally navigate the simple process for obtaining a discharge under chapter 7, the chapter 13 discharge process is more expensive, complex, and lengthy, which leads to a far lower percentage of discharges. *Compare* Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. 103, 107 (2011) (noting that the chapter 7 discharge rate exceeds 95%), *with* Sara S. Greene et al., *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes*, 101 MINN. L. REV. 1031, 1042 (2017) (finding that 36.5% of a sample of chapter 13 cases filed in 2007 ended in discharge after plan completion).

84. The § 523 exceptions are typically strictly construed in favor of the debtor, and the party asserting non-dischargeability bears the burden to show, by a preponderance of the evidence, that the disputed debt is not dischargeable. Grogan v. Garner, 498 U.S. 279, 287-88 (1991); Ins. Co. of N. Am. v. Cohn (*In re* Cohn), 54 F.3d 1108, 1114 (3d Cir. 1995).

85. *See* 11 U.S.C. § 523(a)(8) (providing that student loans are nondischargeable absent a showing of undue hardship). Most jurisdictions evaluate undue hardship under the *Brunner* test, which requires a debtor to show an inability to maintain a minimal standard of living for a significant duration of the repayment period regardless of the debtor's good effort to repay. Brunner v. N.Y. Higher Educ. Servs. Corp., 831 F.2d 395, 395 (2d Cir. 1987); Bruce Grohsgal, *The Long Strange Trip to a Certainty of Hopelessness: The Legislative and Political History of the Nondischarge of Student Loans in Bankruptcy*, 95 AM. BANKR. L.J. 443, 452 (2021).

86. *See* John P. Hunt, *Reforming Student Loan Bankruptcy Procedure*, 73 BAYLOR L. REV. 355 (2021) (proposing to reform the discharge procedure for student debt by placing the burden on the creditor).

87. *See, e.g.*, Brightful v. Pa. Higher Educ. Assistance Agency (*In re* Brightful), 267 F.3d 324, 329-31 (3d Cir. 2001) (holding no undue hardship for debtor who had one dependent, forced to live with her sister, had no college degree, and was "emotionally unstable" with "glaring psychiatric problems"). "In many courts, a debtor must prove total incapacity to pay any part of the debt, not just for a 'significant portion of the repayment period,' but at any time in the future, for reasons beyond the debtor's control."

discharge of student loans,[88] such stories remain the exception, not the rule.[89] That may be changing as recognition of the weak legal foundation for the penal application of undue hardship grows.[90]

The bookend to community college as a de-risking mechanism is increasing the benefits they confer by facilitating transfers to four-year IHEs.[91] Although community college can be an end unto itself, many students see it as a steppingstone to obtaining a four-year degree following a transfer. For those students who successfully transfer, they graduate at approximately the same rate as non-transferees.[92] Unfortunately, "only 25% to 39% of community college students who intend to transfer ultimately do so."[93] One of the primary reasons for this disparity is the "lack of coordination and cooperation among two-year and four-year campuses."[94] Credit transferability and transparency is one of the areas that must be improved to facilitate transfers.[95] Effective partnerships between the IHEs could establish a feeder system to further streamline the transfer process.[96]

Grohsgal, *supra* note 85, at 452. Even when debtors successfully obtain a discharge of student loans, the system appears unfair as "factors unrelated to the command of the law (e.g., the identity of the judge assigned to the debtor's adversary proceeding), rather than factors deemed relevant by the legal doctrine (e.g., the debtor's income and expenses), account for the substantive outcomes . . . ." Rafael I. Pardo & Michelle R. Lacey, *The Real Student-Loan Scandal: Undue Hardship Discharge Litigation*, 83 AM. BANKR. L.J. 179, 185 (2009).

88. MITCHELL, *supra* note 3, at 203-04.

89. John P. Hunt, *Consent to Student Loan Bankruptcy Discharge,* 95 IND. L.J. 1137, 1137, 1139-40 (2020). While the rate of success of debtors seeking a discharge of student loans might appear robust with success rates as high as 39% to 57%, initiating an adversary proceeding for debtors is often expensive, unpredictable, and unpleasant to litigate. "[A]s few as 0.187% of bankrupt student loan debtors seek relief, combined with a success rate that may be well over 50% when borrowers do seek relief, strongly suggests that borrowers with meritorious claims are not bringing them." *Id*. at 1163.

90. *Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation,* DEP'T OF JUST. (Nov. 17, 2022), https://www.justice.gov/civil/page/file/1552681/download. In late 2022, the Department of Justice published new guidance recommending more lenient treatment of certain issues in student loan discharge litigation. *Id.* Academic proposals for reform have proliferated. *E.g.*, John P. Hunt, *Tempering Bankruptcy Nondischargeability to Promote the Purposes of Student Loans,* 72 SMU L. REV. 725 (2019) (suggesting several changes to limit nondischargeability's interference with the federal student loan program's educational purposes); John P. Hunt, *Student Loan Purpose and the* Brunner *Test*, 15 HARV. L. & POL'Y REV. 201 (2021) (recommending that courts find undue hardship when debtor cannot repay loans in a reasonable period of time while maintaining a middle-class standard of living).

91. One interesting solution is to allow community colleges to grant four-year degrees. California is giving community colleges in remote areas of the state this option. Michael Burke, *What to Know About Bachelor's Degrees at California Community Colleges*, EDSOURCE (July 27, 2023), https://perma.cc/2K4Q-5UWZ. The California State University system is resisting this expansion of community college offerings. Sara Weissman, *A Legal Impasse or a Turf War?*, INSIDE HIGHER ED (Dec. 4, 2022), https://perma.cc/9C99-LC5Y.

92. Mary Deweese, *Failed: The Myths and Realities of Community Colleges, and How to Fulfill the American Dream Through Community College Reform*, 23 GEO. J. ON POVERTY L. & POL'Y 293, 303 (2016).

93. Rachel F. Moran, *City on a Hill: The Democratic Promise of Higher Education*, 7 U.C. IRVINE L. REV. 73, 95 (2017).

94. *Id.*; Deweese, *supra* note 92, at 303. Communication is particularly important as many community college students are low-income, first-generation, and/or students of color who may need greater guidance to successfully transfer. Moran, *supra* note 93, at 101.

95. Moran, *supra* note 93, at 120.

96. *Id*. "Feeder" community colleges send a disproportionate number of graduates to certain four-year IHEs. This result may be organic or a product of formal relationships. *See* Mark Nadel, *Retargeting Affirmative Action: A Program to Serve Those Most Harmed by Past Racism and Avoid Intractable*

IV. REVISE THE IDEA OF THE AMERICAN DREAM TO RESPECT AND REWARD ALTERNATIVES TO THE FOUR-YEAR DEGREE, PARTICULARLY APPRENTICESHIPS

Many of the borrowers that Mitchell profiles viewed post-secondary education as their only path to upward mobility: the American Dream.[97] Mitchell suggests that this perspective needs to be broadened to include alternative paths such as apprenticeships.[98] To be sure, all else being equal, "those with higher levels of education are more likely to be employed full time and earn more per hour of work . . . ."[99] Moreover, societal pressure to enroll in a four-year program is strong.[100] Many, including family members of borrowers profiled by Mitchell, perceive it as the only way to improve economic status.[101]

Public perceptions concerning the necessity of higher education may have recently changed. Both 2021 and 2022 saw significant enrollment declines compared to pre-COVID-19 pandemic levels.[102] The tight labor market and decreased in-person instruction explains some of the decline, but an uptick in demand for apprenticeships also appears to be a contributing factor.[103] It is too early to ascertain the durability of this trend, but it may signal the paradigm shift in the "American Dream" that Mitchell recommends.[104]

Employers' role in establishing the framework for the American Dream should not be overlooked. The primary skills necessary for many occupations are learned on the job or through a special training program. Yet, many employers require a college degree to be hired for these positions.[105] As one study put it: "Jobs do not require four-year college degrees. Employers do."[106] Among the

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Problems Triggered by Per Se Racial Preferences, 80 ST. JOHN'S L. REV. 323, 373 (2006) (noting formal relationships between certain community colleges and four-year IHEs in the University of California system that facilitated feeder relationships).

97. Or, as Jonathan Edel put it, "the illusion of the 'American Dream,' where everyone goes to college and no one has to do 'manual labor.'" Jonathan Noble Edel, *The Pyrrhic Victory of American Higher Education: Bubbles, Lemons, and Revolution*, 88 NOTRE DAME L. REV. 1543, 1543 (2013).

98. MITCHELL, *supra* note 3, at 218.

99. Michael Simkovic, *A Value-Added Perspective on Higher Education*, 7 U.C. IRVINE L. REV. 123, 128 (2017).

100. *See* Edel, *supra* note 97, at 1548-51 (profiling societal pressures favoring enrollment in a four-year school).

101. MITCHELL, *supra* note 3, at 126-27. Professor Elengold described this paradigm as the "investment imperative." Elengold, *supra* note 67, at 3.

102. *E.g.*, Collin Binkley, *The Labor Shortage is Pushing American Colleges Into Crisis, With the Plunge in Enrollment the Worst Ever Recorded*, FORTUNE (Mar. 9, 2023), https://perma.cc/9GET-JGZB (canvassing statistics evidencing the extent of the decline in IHE enrollment); Elissa Nadworny, *More Than 1 Million Fewer Students are in College. Here's How That Impacts the Economy,* NPR (Jan. 13, 2022), https://perma.cc/37W2-PUFA (lamenting the reduced enrollment rates for IHEs over the last two years).

103. Binkley, *supra* note 102 (providing examples of how COVID-19 affected perceptions of higher education by students, educators, and researchers).

104. *See* MITCHELL, *supra* note 3, at 93.

105. Tomas Chamorro-Premuzic & Becky Frankiewicz, *Does Higher Education Still Prepare People for Jobs?,* HARV. BUS. REV. (Jan. 7, 2019), https://perma.cc/XD6X-6QRL; Edel, *supra* note 97, at 1552.

106. *The Emerging Degree Reset*, THE BURNING GLASS INST. 4 (2022), https://perma.cc/9LZQ-5J6H.

reasons for this credential creep is that educational attainment provides objective information that can help employers navigate hiring decisions where certain information (like the intelligence or work-ethic of the applicant) is unknown.[107] It also drastically increases the costs, both direct (student loans) and indirect (the opportunity cost), as well as the risks (the borrower may never graduate or the duration of the education may exceed four years). Recognizing that other screening tools like psychological assessments are often "more predictive of future job performance, and less confounded with socioeconomic status and demographic variables[,]" employers are well-placed to help change the paradigm of the American Dream.[108]

V. THE GOVERNMENT SHOULD STOP SUBSIDIZING GRAD SCHOOL

Mitchell suggests that private market discipline should be applied to student financing for graduate IHEs because the returns are far clearer than those from undergraduate IHEs.[109] He is presumably suggesting that the government should limit its graduate student lending and allow the private market to fill the void. As noted previously, federal student loans are not subject to individualized underwriting, while school-focused underwriting is extremely weak.[110] In this way, student loans present a moral hazard: a situation where an actor (the IHE) is incentivized to engage in increasingly risky behavior (having too high of tuition) because they will be protected from the negative consequences of its actions (loan default losses are borne by the federal government and the IHE receives full payment upfront).[111] Although critics have leveled this charge at all IHEs, the explosion in graduate school (master's and professional degree programs) student

107. Peter Q. Blair et al., *Searching for STARs: Work Experience as a Job Market Signal for Workers Without Bachelor's Degrees* 3-4 (2020), (Nat'l Bureau of Econ. Rsch., Working Paper No. 26844), https://perma.cc/R8DY-393M.

108. Chamorro-Premuzic & Frankiewicz, *supra* note 105. The problem of over-credentialism is well-documented and may finally be lessening. *See The Emerging Degree Reset, supra* note 106, at 6.

109. *See* MITCHELL, *supra* note 3, at 218.

110. *See supra* notes 45-48 and text accompanying. Indeed, "all students pay the same fixed rate on unsubsidized loan, regardless of their credit risk. Thus, lower-income individuals going to lower-ranked schools with bad job prospects receive a subsidy compared to someone attending a better institution, such as a top-ranked graduate school." Millman, *supra* note 76, at 334-35.

111. Steven J. Harper, *Bankruptcy and Bad Behavior the Real Moral Hazard: Law Schools Exploiting Market Dysfunction*, 23 AM. BANKR. INST. L. REV. 347, 359 (2015).

debt has been particularly maligned.[112] In contrast, both applicant and school-specific risks are considered by underwriters of private student loans.[113]

Proponents of risk-based student loan pricing believe it will decrease moral hazard by forcing student borrowers to internalize the risks created by their own decisions and pressuring IHEs to improve the value of tuition.[114] It could also "reduce adverse selection by discouraging students with poor prospects from borrowing heavily to attend expensive education programs of dubious value, while encouraging the most promising students to borrow what they need to complete valuable degrees."[115] In the abstract, these economic arguments support risk-based student loan pricing. Remember, however, that Mitchell confined his recommendation to graduate IHEs.[116] At the undergraduate level: (i) where many majors are available, (ii) students do not declare them when they enroll, and (iii) the types of borrower career prospects are numerous, establishing accurate risk-based pricing would be challenging.[117] This is particularly true given that the inquiry must be forward looking and predicting the future of the job market is notoriously difficult.[118] In graduate school, courses of study and career paths are

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112. *E.g.*, *Id.* (criticizing law schools); Jonathan A. LaPlante, *Congress's Tax Bomb: Income-Based Repayment and Disarming A Problem Facing Student Loan Borrowers*, 100 CORNELL L. REV. 703, 730-31 (2015) (stressing the need for systemic reform because, *inter alia*, many graduate and professional programs, do not align with the value they provide). . Graduate degree programs have been a primary driver of growth within federal funding programs, increasing by $2.3 billion from 2010 to 2018. Alyssa Fowers & Danielle Douglas-Gabriel, *Who Has Student Loan Debt in America?*, WASH. POST (July 14, 2023), https://perma.cc/42NK-SUU3. Graduate student loans account for nearly half of the outstanding student loan debt as of May 2022. *See* National Center for Education Statistics Annual Reports, *Trends in Student Loan Debt for Graduate School Completers, Condition of Education*, DEP'T OF EDUC., INST. OF EDUC. SCIS. (May 2018), https://perma.cc/B4CQ-2TB5. Between 1999-2000 and 2015-16, average student loan balances for graduate school completers increased for all degree types. Average student loan balances for research doctorate degrees roughly doubled during this time period, from $53,500 to $108,400 (an increase of 103%). Average student loan balances increased by 90% for those who completed professional doctorate degrees (from $98,200 to $186,600), by 85% for those who completed postbaccalaureate certificates (from $36,600 to $67,800), and by 57% for those who completed master's degrees (from $42,100 to $66,000). *Id*.

113. *See* Benjamin M. Leff & Heather Hughes, *Student Loan Derivatives: Improving on Income-Based Approaches to Financing Law School*, 61 VILL. L. REV. 99, 110, 145 n.187 (2016). Professor Odinet provides a comprehensive evaluation of the use of non-traditional data for underwriting private student loans. Christopher K. Odinet, *The New Data of Student Debt*, 92 S. CAL. L. REV. 1617, 1617-18 (2019). He also identified another risk mitigation tactic used by private student loan lenders: "cosignors (guarantors) that are employed and have certain credit scores and debt-to-income ratios" are often required. *Id.* at 1632. This is because graduate students often do not have outside employment and may lack a substantial credit history. *Id*. at 1620. Use of co-signors would likely be regressive as the co-signor would likely need to prove that he or she is a good credit risk. *See* R. Paul Guerre, *Financial Aid in Higher Education: What's Wrong, Who's Being Hurt, What's Being Done*, 17 J.C. & U.L. 483, 533 n.187 (1991) (noting that some states offered low-cost loans but required proof of credit worthiness from the borrower and co-signer).

114. *E.g.*, Crawford & Sheets, *supra* note 45, at 623; Alexander Yi, *Reforming the Student Debt Market: Income-Related Repayment Plans or Risk-Based Loans?*, 21 VA. J. SOC. POL'Y & L. 511, 514-15 (2014); Simkovic, *supra* note 73, at 529; Peter Zuckerman, Note, *Ending Student Loan Exceptionalism: The Case for Risk-Based Pricing and Dischargeability*, 126 HARV. L. REV. 587, 588 (2012).

115. Simkovic, *supra* note 73, at 590.

116. MITCHELL, *supra* note 3, at 218.

117. Yi, *supra* note 114, at 540-41.

118. Glater, *supra* note 57, at 2149 (criticizing risk-based student loans on basis of unpredictable nature of future job market for different majors).

more limited. Restricting risk-based pricing to these programs, where outcomes are more certain than undergraduate IHEs, appears more feasible.[119]

The counter-point to using debt as a screening mechanism is that "it disproportionately deters poorer students and undermines the goal of educational access."[120] Put another way, it elevates the risk for those who must debt-finance higher education compared to those who do not borrow.[121] As Mitchell periodically reminds the reader, increasing access was, and remains, a focus of higher education policy (at least for politicians).[122] However, a much higher percentage of graduate school students have student debt than undergraduates.[123] As a result, the equity concerns may be less salient if risk-based pricing is limited to graduate students, but fundamental concerns about limiting access may be challenging to overcome.[124] In sum, Mitchell's cabining of risk-based pricing to graduate IHEs is more reasonable (albeit still challenging) than attempting to implement a regime for all IHEs.[125]

VI. STATES, CITIES, AND COMMUNITIES SHOULD STEP UP

The Debt Trap mostly focuses on people, rather than places. As a result, Mitchell's last suggestion has the weakest link to the rest of his narrative.[126] Kalamazoo, Michigan's subsidy for local high school graduates who attend local colleges is his only example of local investment that de-risked students' initial higher education decisions.[127] Nonetheless, Mitchell's recommendation is consistent with the high stakes for municipalities in ensuring the success of both borrowers and local IHEs.[128] This is especially true for college towns.[129]

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119. *See* Leff & Hughes, *supra* note 113, at 144-45 n.186 (applying their analogous income based derivative pricing to law schools due to problems associated with pricing based on undergraduate majors). For instance, it is widely recognized that law school graduate salaries fall on a bi-modal distribution. Michael C. Macchiarola & Arun Abraham, *Options for Student Borrowers: A Derivatives-Based Proposal to Protect Students and Control Debt-Fueled Inflation in the Higher Education Market*, 20 CORNELL J.L. & PUB. POL'Y 67, 105 (2010) (discussing development and calcification of the bi-modal salary distribution).

120. Glater, *supra* note 70, at 1609.

121. *Id.*

122. *E.g.*, MITCHELL, *supra* note 3, at 27-28, and 89.

123. Melanie Hanson, *Average Graduate Student Loan Debt,* EDUCATION DATA INITIATIVE (May 23, 2023), https://perma.cc/72SW-K3NR. The average federal student loan debt total is $76,620. *Id*. In comparison of undergraduate/graduate degree costs, the average undergraduate student loan debt balance is $37,337.00, while the average debt among master's degree holders is a staggering $83,651.00. *Id.* This indicates graduate student debt costs are approximately 141.8% higher than the average student loan borrowers, with only a small percentage (14.3%) of undergraduate loans making up graduate students' debt. *Id.*

124. *See* Glater, *supra* note 70, at 1590-91 n.139 (discussing how greater indebtedness, which would presumably result from privatization, may undermine the effort to recruit diverse graduate school cohorts).

125. *E.g.*, MITCHELL, *supra* note 3, at 218 (explaining that the returns on the investment of obtaining a graduate degree are much clearer than those for an undergraduate degrees).

126. *See id.* at 218-19.

127. *Id.*

128. *See id.*

129. *See, e.g.*, *id.*

The university or college is the center of city life and most "college towns" could not survive without the job market the IHE's presence provides.[130] Students also comprise a significant portion of the local population and non-students often either work for the IHE directly or are employed by businesses dependent upon the IHE.[131] The IHE may benefit from locational stickiness as graduates may also remain residents, where they then provide greater contributions to the local economy than high school graduates.[132] Recognizing a college town's dependence on the IHE and its graduates, the municipality should be motivated to ensure the success of both constituencies. This is especially true given that financial distress for an IHE will likely result in its liquidation, rather than reorganization.[133]

VII. CONCLUSION

The Debt Trap lives up to its subtitle by succinctly describing how the student loan crisis arose. The cross-cutting priorities of access and public cost are central, but Mitchell focuses on the decision-makers who shaped how those priorities were implemented or manipulated. It is a good reminder that legislation is a human process, and, like us humans, it is imperfect.

I appreciate Mitchell's direct and thought-provoking recommendations. Even when I may disagree with his suggestion, such as the forgiveness of student loan interest, it is only one step removed from the intriguing proposal to eliminate interest and index loans to inflation. His proposal for IHEs to internalize some of the risk of borrower default is commonsensical. However, one challenge is implementing the reform without the IHE offsetting the risk-related costs by a corresponding decrease in financial aid. The Bankruptcy Code's unique treatment of IHEs limits their restructuring options, thereby creating another hurdle to lowering tuition through cost-cuts. By limiting his proposal for privatizing student lending to graduate and professional schools, he evades or mitigates many of the most powerful criticisms. Yet, access concerns may still be too strong to overcome. Reconceptualizing and broadening the American Dream to include non-IHE paths could lessen the pressure to attend IHEs, but employers must also embrace it. Mitchell's focus on the roles community colleges and locales can and should play in de-risking the initial decision to attend an IHE highlights two less covered—but workable—solutions.

The Debt Trap should be one of the first books people consider when attempting to inform themselves about student loan discourse and policy. Hopefully, this book review will tie up the few loose ends Mitchell leaves in his final chapter, while also providing a launch point for further exploration of public higher education financing.

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130. Daniel E. Wenner, *Renting in Collegetown*, 84 CORNELL L. REV. 543, 556 (1999).

131. *Id.* at 556, 562.

132. Jonathan Rothwell, *What Colleges Do for Local Economies: A Direct Measure Based on Consumption*, BROOKINGS INST. (Nov. 17, 2015), https://perma.cc/HSG7-CCNA.

133. *See supra* note 60 and accompanying text.