EMERGENCY SURGERY: A PLEA FOR STUDENT DEBT RELIEF

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I. Introduction

Student loan reform has received considerable attention in recent months, particularly since President Joe Biden proposed a one-time forgiveness of $10,000 for all student loan borrowers and as much as $20,000 for lower- and middle-class Pell Grant recipients.[1] While many who took student loans would welcome even this myopic beneficence, it would do little to attack the underlying structural problem surrounding student loans and the insurmountable debt burdens that they create. Roughly 45 million Americans have outstanding student loan debt, with the average class of 2020 graduate leaving his or her undergraduate career with $30,000 in debt.[2] This figure does not account for any graduate or post-graduate loans the student may subsequently take, with graduate loans dwarfing undergraduate debt.[3] Studies further show that the median debt is $24,000, while the mean of all debt is $37,500.[4]

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[1] *The Biden-Harris Administration's Student Debt Relief Plan Explained*, FED. STUDENT AID, https://studentaid.gov/debt-relief-announcement (last visited Jan. 5, 2024).
[2] Anna Helhoski & Eliza Haverstock, *How Many Americans Have Student Loan Debt?,* NERDWALLET (Jan. 19, 2023), https://www.nerdwallet.com/article/loans/student-loans/how-many-americans-have-student-loan-debt .
[3] *Id.* Melanie Hanson, *Average Student Loan Debt*, EDUC. DATA INITIATIVE (May 22, 2023), https://educationdata.org/average-student-loan-debt.
[4] Lyss Welding, *Average Student Loan Debt: 2023 Statistics*, BEST COLLEGES (Oct. 6, 2023), https://www.bestcolleges.com/research/average-student-loan-debt/ . Median displays the middle point of all debt holders; that is, one half of borrowers hold less than $24,000 and

In light of these numbers, $10,000 would only be a drop in the bucket for the majority of debtors. Rather than a panacea, the absolution of some portion of student debt would be an inflationary kick of the can down the road, a favorite of the federal government to be sure. That which gains political capital and dumps the problem on someone else's lawn is eternally popular in Washington. Loan forgiveness might very well buy some time and relieve some pressure in the rapidly inflating debt balloon, and some percentage of debtors would see their balances wiped clean, but the systemic instabilities in the higher education financing edifice would remain. The same factors that led to the creation of this debt bubble would re-emerge after a time, and the government, for want of the political will to fix the problem, would consider subsequent debt forgiveness, which again would not fix the underlying issues. Debt would increase, and the cycle would begin again *ad infinitum*. Suffice it to say, there must be a better answer.

Introductory background aside, the purpose of this paper is not to critique the policy of unilateral or legislative *en masse* student loan forgiveness. That such a policy is even under consideration by this, or any other presidential administration, is indicative of a much larger, more fundamental

one half hold more. The large difference between mean and median is thanks to those on the right half of the bell curve owing sums vastly larger than the median. In statistics, this is referred to as a skew.

problem with how the student loan system is administered. As described *supra*, such a policy attacks the symptom rather than the disease. Since the Bankruptcy Act of 1976, it has been exceedingly difficult to discharge student loan debt in a bankruptcy proceeding. A debtor may well have liabilities far in excess of his or her assets, but even should that debtor go through a Chapter 7 or Chapter 13 filing (and successfully complete the three- or five-year plan –a middling proposition at best – in the case of the latter), unless undue hardship can be demonstrated during the proceedings, student loan debt will survive.[5] One's credit will be ruined, and one's assets may be severely diminished, but unlike almost all other types of debt, student loan debt remains in all but a very few cases.[6]

First, this Article will examine myriad policy reasons behind the current reality of bankruptcy's interaction with student loans in greater depth, along with the legislative history that caused Congress to amend the Bankruptcy code and increase the difficulty in discharging student loan debt. Second, this Article will consider the problems associated with the ambiguous nature of the statute itself and the inconsistency with which the courts have treated debtors seeking to discharge their student loans. Third,

[5] *Discharge in Bankruptcy*, FED. STUDENT AID, https://studentaid.gov/manage-loans/forgiveness-cancellation/bankruptcy (last visited Jan. 5, 2024).
[6] *See id.*

this Article will examine the shifting reality of college costs and the associated debts compared to when these policies were set in place, thereby exposing the outmoded basis for the original policy prescriptions; fourth, the societal detriment of the current system, namely its effects on; fifth, the structural inequalities, that is how college debt negatively affects different groups of historically disadvantaged individuals who look toward a college degree as a means of escaping those generational disadvantages. Finally, this article will consider and discuss proposed alternatives to the current reality.

II. Historical Background and Development of the Bankruptcy Code

For roughly the first 120 years of the American experiment, there was no permanent way in which a citizen could declare bankruptcy.[7] Though the Constitution grants Congress the authority to establish a uniform bankruptcy code across several states,[8] it is a power that Congress was loath to exercise. The economic devastations caused by the Panic of 1837 and the Civil War led to the respective Bankruptcy codes of 1841 and 1867, but both were subsequently repealed after the situation improved.[9] The first permanent Bankruptcy Code was the Nelson Act of 1898, prompted by the Panic of

7 David A. Skeel, DEBT'S DOMINION: A HIST. OF BANKR. L. IN AM. 23 (2004).
8 U.S. CONST. art. 1, § 8, cl. 4.
9 Skeel *supra* note 7 at 32.

1893 and the financial meltdown that followed it.[10] There is a wide variety of opinions as to why Congress failed to act in any kind of a permanent way, particularly given that financial crises were a regular occurrence throughout the nineteenth century. Perhaps the best explanation is that shifting political opinion on the form that bankruptcy law should take led to persistent inaction; the leading political forces of the day differed on whether the best option was bankruptcy initiated by creditors alone (involuntary bankruptcy), bankruptcy initiated by debtors alone (voluntary bankruptcy), or a system in which either creditor or debtor could initiate bankruptcy proceedings.[11] The two times Congress did manage to pass a uniform bankruptcy code during the 19th century, the law had substantial opposition along these ideological lines, and when the other party returned to power, the law was repealed.[12]

The first permanent bankruptcy code, commonly referred to as the Nelson Act of 1898 after its senatorial author, adopted a complete bankruptcy system in which either debtor or creditor could initiate proceedings if debt exceeded $1,000, which is the modern equivalent of roughly $36,000.[13] There were numerous restrictions on who could file for

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10 *See id.* at 28–34.*See also* David Skeel, *The Genius of the 1898 Bankruptcy Act*, BANKR. DEV. J. 321, 323 (1999).

11 *Id.* at 23–34.

12 *See* Skeel, *supra* note 7, at 28–34.

13 Ian Webster, *$1,000 in 1898 is worth $38,155.71 Today*, CPI INFLATION CALCULATOR: OFF. INFLATION DATA, ALIOTH FIN.,

bankruptcy, with farmers and certain types of corporate entities barred from filing.[14] The code was largely unfriendly to voluntary filers, which dissuaded many debtors from seeking bankruptcy relief.[15] Such a system differs markedly from the current system, which allows for voluntary filing only, with a separate legal framework for a creditor forcing a debtor into collections.[16] Not much more needs to be said about the Nelson Act, save that it was a noteworthy milestone in the development of the modern bankruptcy code of the United States and served to inform the development of the subsequent Chandler Act of 1938.[17]

The Nelson Act continued along for almost 35 years before it hit a crisis inflection point in the form of the Great Depression.[18] With tens of thousands of Americans needing to file for bankruptcy as a result of the worst financial crisis so far experienced in the United States and the existing code inadequate for the task, Congress was again spurred into action to exercise its Constitutional duty.[19] The Chandler Act softened the edges of the

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https://www.in2013dollars.com/us/inflation/1898?amount=1000 (last visited Jan. 5, 2024).

14 J. Adriance Bush, NAT'L BANKR. ACT OF 1898: WITH NOTES, PROC. AND FORMS 63 (N.Y., Banks Law Publishing Co. 1899).

15 *Id.*

16 *See* 11 U.S.C. §§ 301, 303.

17 *See* Skeel, *supra* note 7, at 73–74.

18 *See id.*

19 *See id.*

existing code, making bankruptcy more friendly to debtors.[20] One of the major reforms was that investment banks were removed from their position as overseers of the corporate bankruptcy process, with the newly created Securities and Exchange Commission empowered to appoint a trustee to administer a debtor's bankruptcy proceeding.[21]

Trusteeship is a system still in use in the modern code. Other reforms included expanding access to the voluntary bankruptcy process. Though completely superseded by the Bankruptcy Code of 1978, the Chandler Act remains relevant compared to its predecessor because the Supreme Court has opted to use the now-defunct law to interpret disputes in the bankruptcy code. Namely, when the code of 1978 and the subsequent code of 2006 are silent on issues previously addressed in the Chandler Act, the Supreme Court has chosen to interpret Congress as saying that the old provisions remain in force.[22] This first occurred in 1983, when Congress required that the IRS return property to a debtor corporation.[23] Subsequent noteworthy decisions utilized the Chandler Act to define a "claim" in bankruptcy

[20] *See id.* at 119–23.
[21] *Id.*
[22] Karen Gebbia, *Interpreting the Bankruptcy Code: An Empirical Study of the Supreme Court's Bankruptcy Decisions,* 3 CHAPMAN L. REV. 173, 175 (2000).
[23] *See generally* United States v. Whiting Pools, Inc., 462 U.S. 198 (1983) (the IRS confiscated Whiting Pool's property, but the Court said that property must be returned in conjunction with a bankruptcy proceeding. The holding centered on the premise that such returns were the common practice prior to the adoption of the 1978 code and Congress must have been aware of the practice and opted not to amend it via the new code).

proceedings,[24]interpreting avoidable preferences[25] and defining which types of debt were non-dischargeable.[26] This is a practice which some legal scholars argue leads to confusion and disjointed enforcement in how the bankruptcy law is applied, namely in that it has created inconsistent rulings in the lower courts and engages in the logical fallacy of argument from silence, but it remains precedent to the present day.[27]

The next major development in the American bankruptcy code came with the Bankruptcy Code of 1978. This act created the various chapter filings under which individuals and corporations may file for bankruptcy. Most relevant to the subject of this paper are Chapters 7 and 13, which allow for the total discharge of the debts of an individual debtor after the liquidation of assets and a managed plan of bankruptcy.[28] This act also enacted a sweeping reform in the administration of bankruptcy, empowering the bankruptcy courts' wide subject matter jurisdiction to hear cases.[29] Though the Supreme Court would declare this grant of jurisdiction unconstitutional,[30] a subsequent amendment of the Code in 1984 created

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24 Johnson v. Home State Bank, 501 U.S. 78, 85 (1991).
25 Fidelity Fin. Servs., Inc. v. Fink, 522 U.S. 211, 228 (1998).
26 Cohen v. de la Cruz, 523 U.S. 213, 233 (1998).
27 Gebbia *supra* note 22 at 201–02.
28 Bankruptcy Reform Act of 1978, Pub. L. 95-598 (1978).
29 *Id.*
30 *See generally* Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) (holding Congress had not properly endowed the bankruptcy courts with subject matter jurisdiction viz the requirements of Article III).

jurisdiction legislatively in a way that ameliorated the court's objections in *Marathon*. A major change, as it relates to student loans, is that they could no longer be discharged in a bankruptcy proceeding within five years unless the debtor could prove that retention of these debts would create an undue hardship.[31] The nebulous meaning of that statutory provision would be the subject of much consternation both to creditors and debtors, as seen *infra*. Congress (at the behest of creditors) was concerned about a spike in the number of debtors who sought to discharge student loans during the 1970s. The figures in question are laughably enough that creditors were successful in convincing Congress to severely curtail the ability to discharge student loan debt—unsecured claims. Unlike other items purchased with unsecured credit, an education cannot be reclaimed. Thus, these loans must operate under different rules than other debts, or so the argument goes. Though arguably unconvincing and unsatisfactory, this argument won the day all the same.

As alluded to *supra*, Chapter 7 filings allow a debtor to completely discharge his or her debts, provided any assets owned by that debtor are liquidated. In the almost thirty years between the enactment of the 1978

[31] John M Pawlik, *Student Loan Bankruptcies: A Chapter 13 Revival?*, 5 J. OF EDUC. FIN. 452, 452–58 (1980).

Bankruptcy Code and the Banking Abuse Prevention and Consumer Protection Act (BACPA) of 2005, a great number of debtors, both individual and corporate, were able to liquidate, reorganize, and bounce back from the unfortunate circumstance of having liabilities exceed assets. The number of individuals who did so, causing creditors to lose out on billions of dollars owed, rankled with many in Congress, particularly within the Republican Party, and the result was the BACPA.

With the requirements for Chapter 7 filings severely constrained under BACPA by the "means test,"[32] the only option for many individual debtors was now Chapter 13. This, along with other provisions in the code, had the corollary effect of further limiting the ability of the holders of student loan debt to discharge those debts in a bankruptcy proceeding. This creates a unique situation in the world of unsecured debt, given that almost all other forms are eligible for discharge in a bankruptcy proceeding. Alexander Gouzoules succinctly states the problem in his white paper, which proposes that lack of health insurance ought to be considered an undue hardship which meets the statutory requirements for discharge.

> Unlike virtually all other forms of unsecured debt, student loans are presumptively not included in a discharge order. While a petitioner will be relieved of, among other

[32] 11 U.S.C. § 707(b)(7).

> things, consumer debt, medical debt, tort liability, and mortgages, 11 U.S.C. § 523(a) sets the default rule that student-loan debt will remain in place. To overcome this presumption, a debtor must initiate an adversary proceeding, a separate and more formal lawsuit in conjunction with the bankruptcy proceeding, against any student-loan creditors to establish that "excepting [their student loans] from discharge . . . would impose undue hardship on the debtor and the debtor's dependents." Unless the debtor "affirmatively secures a hardship determination" during this proceeding, "the discharge order will not include a student loan debt.[33]

While the limit is not official in the sense that a statutory out exists for a debtor with student loans, a combination of jurisprudence, misinformed debtors, and the Code itself form a pseudo barrier that is nigh on impenetrable. The limitation created by the de facto non-dischargeable status of student debt has seen the creation of a massive student loan debt bubble with myriad social, economic, and political consequences—the worst of which have yet to be fully realized. Suffice it to say that if something is not done to defuse the ticking bomb, the consequences will be disastrous.

III. Jurisprudential Problems Interpreting "Undue Hardship"

[33] Alexander Gouzoules, "*Undue Hardship" and Uninsured Americans: How Access to Healthcare Should Impact Student-Loan Discharge in Bankruptcy,* 69 EMORY L. J. ONLINE 2019 (2020). Available at https://scholarlycommons.law.emory.edu/elj-online/2.

In any legal problem, regardless of the arena, one must first look to the statutory construction to provide the context of that problem. §523(a) of the Bankruptcy Code provides a list of types of debt a petitioner may not discharge in a bankruptcy proceeding. The full text of §523(a)(8) of the Bankruptcy Code reads:

> A Chapter 7 or Chapter 13 discharge will not apply to the following:
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> . . . .
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> (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
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> (A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
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> (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
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> (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;[34]

The code carves out a clear exception for student loans, distinct from other forms of debt an individual can accrue, in that they are almost entirely not dischargeable under either Chapter 7 or Chapter 13. Though serviced by private corporations, nearly every student loan is either insured by the United States government or is a loan made by the U.S. government in the form of

[34] 11 U.S.C. 523(a)(8)(A-B).

a Stafford Loan or Pell Grant. Thus, sections (A)(i) and (A)(ii) outright preclude almost all debtors from extinguishing student loan debts. Perhaps anticipating that the preclusion of federally backed loans would lead to a rise in private loans, section (B) bars relief for privately offered loans. This leaves the exception of "undue hardship" mentioned in the prefatory part of the statute as the only means by which an individual may receive relief from his or her student loan debts. As with many statutory constructions, the meaning of the phrase was largely left open to interpretation. What, exactly, was an undue hardship?

It did not take long for a student debtor to test for weaknesses in Congress's newly constructed electric fence, though Congress did not help matters by leaving a nearly eleven-month gap between the law's passage and its effective date. An early proceeding saw defendant Perkins attempt to discharge slightly more than $4,000 in student loans in a clever attempt to game the system. Perkins filed for bankruptcy in September of 1979, six months before her first loan payment was due, which also fell within the gap that Congress unintentionally created when it passed the Bankruptcy Act of 1978.[35] A bankruptcy court agreed that Perkins' student loan debts were to be discharged along with her other unsecured debts. The holder of the debt

[35] State v. Perkins, 490 N.Y.S.2d 900 (1985).

(the state of New York) sued, arguing that those debts had not been discharged and that the full balance was owed plus interest. The Court relied entirely on the wording of the statute and offered no real edification as to what it believed Congress meant with regard to undue hardship. The justices merely held that the bankruptcy court had not identified an undue hardship, and thus, the debts remained in force.[36] Though this case was a procedural one, it hinted at larger issues that were looming both for bankruptcy and appellate courts.

Various courts struggled to determine what Congress intended "undue hardship" to mean. Certain courts found that a hardship existed, thus freeing the debtor from his or her obligation, whereas similar fact patterns would be rejected by other courts, and the debtor would still be on the hook. The consistent inconsistency made for a difficult situation for jurists, and the jurisprudence was Dickensian according to some scholars.[37] The Second Circuit attempted to standardize the practice in *Brunner v. New York State Higher Education Services Corp.* in 1987. In this case, the Second Circuit court affirmed the constitutionality of the district court's three-part test. The three components are:

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[36] *Id.*

[37] MICHAEL L. BERNSTEIN & GEORGE W. KUNEY, BANKR. IN PRAC. 456 (Andrew B. Dawson ed., 6th ed. 2022).

> (1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans;
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> (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
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> (3) that the debtor has made good faith efforts to repay the loans.[38]

The court noted that the first component had, to that point, been the factor that courts across the United States had most frequently turned to in order to determine whether an undue hardship existed. The court cited cases in Pennsylvania, North Dakota, and Minnesota as affirmation of the generally accepted common sense principle; if a debt is not discharged and the debtor cannot afford to eat and or keep a roof over his or her head, an undue hardship exists.[39] In an effort to obviate the obvious potential for different courts subjectively finding similar circumstances to either be undue hardship or to not be undue hardship, the Second Circuit went further and adopted two more prongs to the test.

[38] Brunner v. New York State Higher Educ. Servs. Corp., 831 F.2d 395, 396 (2d Cir. 1987).
[39] *Id.*

First, the conditions set forth in determining whether undue hardship exists must be reasonably assumed to endure throughout the repayment period, and second, the debtor must have made a reasonable effort to repay the loans. Marie Brunner had filed for bankruptcy within a month of her graduate school loans coming due. The court found that Ms. Brunner had not made any substantive effort to repay her loans; rather, she had borrowed the money, gotten the degree, and immediately declared bankruptcy so as to wriggle out of paying for her prize. This was precisely the kind of debtor which Congress had been concerned about when it placed strict limitations on discharging student loans in the 1978 Bankruptcy Act.

As with most judicially crafted tests, there exists a subjective reality underlying what is supposed to be an objective way to measure whether or not student debt represents an undue hardship. In the *Brunner* case, the court did hint at some of the factors which ought to be considered as enduring hardships. Specifically, age, disability, and whether the debtor has children or other dependents were the factors the court considered before denying Brummer's requested relief.[40] Unfortunately, despite the existence of a persuasive test (the Supreme Court has not heard a student loan bankruptcy case to either affirm or strike down the test), different courts in the United

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[40] *Id.*

States continue to come to wildly disparate conclusions on how a particular debtor's circumstances either meets or fails to meet the criteria set forth in *Brunner*.

This inconsistency was problematic enough during the 1980s when the cost of tuition was substantially lower. In 1984, a year of tuition, room and board at an elite institution such as Harvard University cost roughly $13,000.[41] State schools were substantially cheaper than that, and the figure for Harvard in 1984 is approximately what it costs for instate tuition alone at the University of Tennessee today,[42] while the total cost for Harvard is approaching $80,000.[43] This is at a time when the value of the degree is decreasing almost as rapidly as its price is increasing; simply put, something needs to be done about the Bankruptcy Code. It is understandable that Congress was concerned about college graduates taking the money and running, back when the cost was under $10,000 for a four-year degree at a state school, and one had a reasonable expectation of a decent job upon receipt of that degree. This is at a time when the value of the degree is

[41] Edward B. Fiske, *Rises in College Tuition Fees Are Moderating*, N.Y. TIMES, Mar. 13, 1984, at A1.
[42] *University of Tennessee, Knoxville Tuition & Financial Aid*, U.S. NEWS, https://www.usnews.com/best-colleges/university-of-tennessee-3530/paying (last visited Jan. 20, 2024).
[43] *Harvard University Tuition & Financial Aid*, U.S. NEWS https://www.usnews.com/best-colleges/harvard-university-2155/paying (last visited Jan. 20, 2024).

decreasing almost as rapidly as its price is increasing.[44] Simply put, something needs to be done about the Bankruptcy Code. It is understandable that Congress was concerned about college graduates taking the money and running back when the cost was under $10,000 for a four-year degree at a state school, and one had a reasonable expectation of a decent job upon receipt of that degree. Adequate employment is far from certain in 2023, and a student is staring down the barrel at more than $120,000[45] in debt for a state school with no relief in sight from either the courts or Congress. Then there are the added costs associated with the pursuit of a post-secondary degree, which is increasingly necessary in today's job market[46]. At the University of Tennessee, if a student graduates in four years and gets a *juris doctor*, that's $200,000 in debt.[47] Even on a lawyer's salary, that takes quite some time to pay down.[48] The problems run deeper than merely the ability to wipe out these debts via bankruptcy, but such an ability would at least

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[44] Peter Clark, *Why College Degrees Are Losing Their Value*, FEE STORIES (Dec. 19, 2021) https://fee.org/articles/why-college-degrees-are-losing-their-value/.
[45] *Undergraduate Budget*, UNIV. OF TENN. KNOXVILLE, https://onestop.utk.edu/cost-of-attending-ut/undergrad.
[46] Michelle Hodara, *Why Postsecondary Education Matters*, EDUC. NORTHWEST (April 2018), https://educationnorthwest.org/insights/why-postsecondary-education-matters.
[47] *See* UNIV. OF TENN. KNOXVILLE, *supra* note 45; *see also Estimated Law Student Budget*, UNIV. OF TENN. KNOXVILLE, https://onestop.utk.edu/cost-of-attending-ut/law.
[48] *See* Meghan Hunt, *Average Student Loan Debt for Law School*, BANKRATE (October 25, 2023), https://www.bankrate.com/loans/student-loans/average-law-school-debt .

provide a pressure release valve to a problem that has wide-reaching societal effects, as the next section will show.

IV. Deleterious Effects of Undischargeable Loans

It is one thing to speak in the abstract about the problems of burgeoning student debt and the inability to discharge it during the course of a bankruptcy proceeding. Yes, the number of digits in the average student loan continues to grow, and the student loan bubble is over ten figures now.[49] But there are concrete, pernicious effects to the debt bubble beyond the mere size of the debt itself.[50] Student debt serves as a major pressure on all groups of people in the United States, both in terms of how they are limited after graduation and what the realistic prospects of digging out of the hole truly are.[51] This type of debt also has consequences that extend into the future, given that it has had a negative impact on birth rates.[52] With government programs operating as legalized Ponzi schemes with the new investors (the young) paying off the older investors (the elderly), a dent in the birth rate, particularly among high earners, turns Social Security into a disaster the likes

[49] Jessica Dickler & Annie Nova, *This is How Student Loan Debt Became a $1.7 Trillion Crisis*, CNBC (May 6, 2022, 11:09 AM), https://www.cnbc.com/2022/05/06/this-is-how-student-loan-debt-became-a-1point7-trillion-crisis.html .
[50] Jeffery J. Williams, *The Remediation of Higher Education and the Harm of Student Debt*, 66 COMPAR. LITERATURE. 43, 45–48 (2014).
[51] *See id.* at 45–48.
[52] Jason N. Houle, *A Generation Indebted: Young Adult Debt across Three Cohorts*, 61 SOC. PROBS. 448, 450–451 (2014).

of which Bernie Madoff could not even dream about.[53] Student debt also burdens particular groups of Americans, reinforcing long-existing socio-economic inequalities in a new and rather ironic way; a college education, the means to breaking these historical inequities, instead reinforces the very conditions which young Americans are hard sold that education will help them break out of.[54] All of these will be considered, in turn, as the effects of debt are considered.

Beginning with an effect that crosses gender, race, and socio-economic cohorts, it is clear that an increasing debt load for young Americans has strongly curtailed normative functions, both biological and economic. However, to adequately understand how student loan policy viz a viz the Bankruptcy Code is broken and what effect it has on things like birth rate and the onerous burden placed on African Americans and working women, an analysis of the house of cards that is American consumer debt must be examined. There are a variety of interconnected facts and figures, each one straining the citizens of this country and forcing them into the position of having to take expensive student loans for degrees that are increasingly not worth the price of admission. The takeaway is that with all

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53 Alexander Garza, *The Economic Impact of Low Birth* Rates, HUM. DEF. INITIATIVE (Apr. 7, 2019), https://humandefense.com/the-economic-impact-of-low-birth-rates .
54 Andrew Ross, *Anti-Social Debts*, 11 CONTEXTS 28, 29–30 (2012).

of these other forms of debt, coupled with the astronomical cost of a college education, there simply is no good policy reason to continue treating student loan debt differently from most other types of consumer debt. Since the end of World War II, the American economy has thrived on a precept that is colloquially known as "keeping up with the Joneses."[55] Providing the fuel for the economic model fueled by covetousness was an access to easy credit.[56] Get the stuff today, pay for it tomorrow. The availability of easy credit convinced more and more Americans that financing on credit was a good idea with minimal consequences.[57]

The model worked well enough so long as wages kept pace with inflation, a phenomenon that lasted mostly through the end of the gold standard in 1971.[58] After this inflection point, prices spiked, and wages grew at or below the rate of inflation.[59] Anti-usury laws, long a hallmark of western societies, were watered down in response to the decreased earning power and increased consumer drive of the American middle class; riskier debtors

[55] Jordi Gali, *Keeping up with the Joneses: Consumption Externalities, Portfolio Choice, and Asset Prices*, 26 J. MONEY, CREDIT & BANKING 1, 1 (1994).
[56] Jan Logemann, *Different Paths to Mass Consumption: Consumer Credit in the United States and West Germany during the 1950s and '60s*, 41 J. SOC. HIST. 525, 527–528 (2008).
[57] *See id.* at 527–28.
[58] *Cf.* LAWRENCE MISHEL ET AL., ECON. POL'Y INST., WAGE STAGNATION IN NINE CHARTS 10 (2015), https://www.epi.org/publication/charting-wage-stagnation/ (providing a figure that "shows the decline in the real (inflation-adjusted) value of the minimum wage since its high in 1968," but "not shown in the figure, the federal minimum wage did keep pace with productivity in the 30 years before 1968").
[59] *Id.*

demanded more vigorish in order for lending to be worth the creditors' while.[60] While Visa and Mastercard will not break anyone's legs, the line continues to be blurred between them and loan sharks of yesteryear. Concrete evidence for how the decline in wages leads to American consumers saddling themselves with debt for want was put forth by the Manhattan Institute in a study published in 2018.[61] In it, the Institute found that in 1985, the average household expenses for an American family cost roughly $13,000, and it took 30 weeks of work for the average man to pay for them all; in 2018, those costs had risen to over $54,000, which required the average man to work 53 weeks to pay for them all.[62] It does not take a mathematical genius to see the problem: there are only 52 weeks in a year. Thus, just in regular, day to day expenses, credit is a necessity. Add in consumer spending for wants, rather than needs, and emergencies, and one can begin to understand how the American debt bubble has risen to more

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[60] *See The History of Usury*, AM. FOR FAIRNESS IN LENDING, https://americansforfairnessinlending.wordpress.com/the-history-of-usury/ (last visited Jan. 20, 2024) (outlining the history of usury—a practice that had once been anathema in the West had loosened to an 8% cap on interest by the founding of the American Republic, increased to 12% by the early 20th century, and by the 1970s the maximum interest rate was 36%).

[61] Hillary Hoffower, *The Typical US Worker can no Longer Afford a Family on a Year's Salary, showing the dire state of America's Middle Class*, BUS. INSIDER (Feb. 25, 2020, 2:50 PM), https://www.businessinsider.com/america-middle-class-living-expenses-family-of-four-2020-2 .

[62] *Id.*

than 16 trillion dollars, with more than 10% of that being student debt.[63] There are now American citizens relying on the buy now pay later model for ***groceries*****,** with some creditors reporting a 95% growth in spending by their customers on staple goods.[64] In a matter of decades, the American economy has gone from "keeping up with the Joneses," to needing a credit card to stay alive. A wretched state of affairs, indeed.

What does all of that have to do with student debt? Everything. The increasing costs of consumer goods (both essential and discretionary), coupled with stagnated wages, spiking interest rates, and rising inflation force more and more would-be college attendees into the student loan trap. When the baby boomers were of college age, they could easily pay for a full year's tuition with a summer job, making student loans mostly optional. Though we cannot know for sure, it seems plausible that the comparatively low cost of a college education in the 1970s might have been a strong influence on the 1978 Bankruptcy Code's student loan provisions; if a student is going to take a loan, rather than work to pay for school, he or she should be required to

[63] Jeff Cox, *Household Debt Tops $16 Trillion for the First Time, Fuel by Higher Inflation and Interest Rates*, CNBC (Aug. 2, 2022, 6:47 PM), https://www.cnbc.com/2022/08/02/household-debt-tops-16-trillion-as-inflation-surges-and-rates-rise.html.

[64] Jessica Dickler, *More Americans Tapping Buy Now, Pay Later Services for Groceries 'Shows the Height of Personal Desperation,' Harvard Researcher Says*, CNBC (Sept. 7, 2022, 3:57 PM), https://www.cnbc.com/2022/09/07/harvard-fellow-using-bnpl-for-food-shows-personal-desperation.html .

pay back that loan. A reasonable sentiment, for sure. However, contrary to the expectations of certain older Americans, this is no longer a feasible option. Making 15 dollars an hour (high for a part time job in Tennessee), one would have to work 26.7 hours a week to pay tuition alone for the University of Tennessee, Knoxville law school, which is by all objective metrics an affordable option at around $20,000 per year.[65] While that work load might not seem bad to some, the cost figure is not inclusive of room, board, nor books. Using the University's own cost analysis of nearly $41,000 a year for the total package of receiving an education and surviving,[66] and that same fifteen dollars an hour salary, the required hours worked per week balloons to 48. Where one would find the time to go to class and study after spending 32% of the week at work and 33% asleep (assuming healthy patterns) is a mystery. The point being: working one's way through school via most easily obtainable forms of employment is no longer an option.

Per the College Board, if one seeks to avoid a mountain of debt, tuition payment by one's parents is the only realistic option.[67] In tandem with

[65] *Cost of Attendance*, UNIV. OF TENN., https://law.utk.edu/admissions/financial-aid/tuition/ (last visited Jan. 1, 2024) (showing that total annual cost of tuition and fees at the University of Tennessee College of Law is $20,408).
[66] *Id.* (providing an inclusive estimate of tuition, fees, room, board, books, transportation, and miscellaneous expenses totaling $41,352).
[67] *Cf.* Jason N. Houle, *Disparities in Debt: Parents' Socioeconomic Resources and Young Adult Student Loan Debt*, 87 SOCIO. OF EDUC. 1, 53–69 (2014) (analyzing the relationship between parents' income and education and the student loan debt of young adults ultimately concluding that

the factors described above, this all but forces the vast majority of students seeking to attend college or a secondary program into taking student loans. While the upper decile can still afford to send their children to college – even if it might temporarily stretch the means of those on the lower end of that cohort to the breaking point—most American parents cannot. When it takes more weeks than there are in a year to pay off middle class expenses, a parent paying for college simply is not on the table. The children of the wealthy get a helping hand from mom and dad, and those of the poor who have the aptitude and desire to go to college get help from the government (though not enough, as the Pell Grants have not been indexed to inflation) or from the institutions of learning themselves. The middle three quintiles get squeezed.

> "Middle income young adults may also have more difficulty paying for college than their higher income counterparts…children from middle income households make too much to qualify for student aid package, but they do not have the financial means to cover the costs of college. Young adults from middle income families…suffer a disproportionate burden of student loan debt compared to their low- and high-income peers."[68]

"the relationship between parents' income and student loan debt is nonlinear. [Y]oung adults from college-educated and high-income families are relatively protected from debt").

[68] *Id.* at 55.

The lack of an ability to pay for college is exacerbated by a societal milieu which pushes education as the be all end all solution for how to break out of the middle class. As opposed to European nations which provide higher education to all citizens, the American method for providing education for all has been debt financing.[69] That is not to say that this writer favors such a solution: the United States has a vastly larger and more diverse population than the small, homogeneous countries of Europe. Though a popular talking point on the farther left, it is an apples-to-oranges comparison that likely would fail dramatically were it to be attempted here. Rather than get into a deeper political discussion, the point is simply this: college as the only answer is an idea that is hammered into the brains of our young people from the time they are in grade school, and the powers that be have determined that debt financing is the only way to get there.[70] Indeed, debt-based financing has a strong negative impact on finishing a degree, with studies finding that as the cost of college increases and the size of the required debt becomes commensurately larger, more Americans are dropping out.[71] It is mind

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[69] Dwyer et al., *Debt and Graduation from American Universities*, 90(4) SOC. FORCES 1133, 1135 (2012).

[70] *Id.*

[71]Natasha Yurk Quadlin & Daniel Rudel., *Responsibility or Liability? Student Loan Debt and Time Use in College*, 94(2) SOC. FORCES 589 (2015); *Debt, But No Degree: The College Dropout Crisis*, ONTOCOLLEGE (Dec. 5, 2023), https://www.ontocollege.com/debt-but-no-degree-the-college-dropout-crisis/#:~:text=Almost%2040%25%20of%20students,to%20a%202016%20federal%20report.

boggling to consider that for an increasing number of Americans, the debt burden is so gargantuan that they would rather service the debt they have without achieving the brass ring at the end, diminished value though it may have. While the European method would not work for the USA, there are certainly better ways than how we do it now. It is clear from the research that working one's way through college is no longer an option, and most Americans who go to college (which is likely too many and for too long by a fair margin) cannot count on parental help to carry the load. Student loans are the only option available.[72] The consequences have far-reaching and potentially disastrous consequences as the debt bubble continues to inflate unabated.

Having a family used to be a key part of the American dream, including an average of 2.1 children to go along with the house (more on that later), the car, and the white picket fence. The economy of the United States as well as its social welfare policies were constructed with fecund citizens as their underpinnings. The birth rate in the United States has fallen to a mere 1.6 children per female, or roughly a quarter short of the 2.1 needed to maintain demographic consistency.[73] To some, this is not a problem, as they

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72 Dwyer, *supra* note 69, at 1135.
73 *US birth rate falls 4% to its lowest point ever*, BBC NEWS (May 5, 2021), https://www.bbc.com/news/world-us-canada-57003722.

note that the world is "overpopulated" and that an ever-expanding human race is devastating the environment. The counter-point is that math dictates that in order for a population to maintain its numbers, there must be on average 2.1 children for every female.[74] Some on the political right have, for decades, pointed out that without this basic population maintenance, the social programs of the United States cannot survive. With entitlement programs such as Social Security and Medicare requiring the young, less wealthy workers to pay for the older, wealthier workers as those men and women did before for the generation before them,[75]if there are not enough young workers, there simply are not enough payroll taxes collected to fund the statutory benefits to those who earned them.[76] Without placing a value judgment on the rest of his proposed solutions to the problem, it is safe to say that Pat Buchanan was objectively correct in making this assessment.[77]

What, then, if any are the effects of student loan debt on marriage and childrearing? Quite substantial. Bozick and Estacion found that while there was a negligible effect on men, for every $1,000 dollars of student loan debt, the average woman delayed getting married by a month, though the effect

74 *Id.*
75 Wendy Connett, *Social Security Explained: How It Works and Types of Benefits*, INVESTOPEDIA (Oct. 27, 2023), https://www.investopedia.com/terms/s/socialsecurity.asp.
76 PATRICK J. BUCHANAN, THE DEATH OF THE WEST: HOW DYING POPULATIONS AND IMMIGRANT INVASIONS IMPERIL OUR COUNTRY AND CIVILIZATION 98, 231–32 (2002).
77 *Id.* at 232.

decreased with time.[78] Specifically, at some point the debt considerations were not as important, and women did get married. However, the delay is problematic for population statistics. Using the example of the University of Tennessee described *supra*, a fully debt-financed college education for a young woman attending the Knoxville campus would lead to a delay of roughly ten years in her getting married and presumably having children. If this hypothetical woman graduated on time (rare in a state university), she would be 32 years old before getting married. Most women would not want to rush right into motherhood at this point, if they want children at all, as that debt is still looming large. Thus, college educated women are toward the end of their fertile lives, with fecundity beginning to decline by age 35 and ended in most cases by the age of 45,[79] by the time they even consider having children. With women making up 56 percent of college graduates[80] in the current generational cohort, it does not take a statistics laden linear regression to establish the correlation between debt and declining birth rates.

78 Robert Bozick & Angela Estacion, *Do Student Loans Delay Marriage? Debt Repayment and Family Formation in Young Adulthood*, 30 DEMOGRAPHIC RSCH. 1865 (2014).
79 *Age and Fertility: A Guide for Patients*, AM. SOC'Y FOR REPROD. MED., https://www.reproductivefacts.org/news-and-publications/fact-sheets-and-infographics/age-and-fertility-booklet/?_t_tags=siteid%3adb69d13f-2074-446c-b7f0-d15628807d0c%2clanguage%3aen&_t_hit.id=ASRM_Models_Pages_ContentPage/_2b205942-4404-4b20-98a3-4a181aec60e3_en&_t_hit.pos=5 (last visited Feb. 20, 2024).
80 Jon Marcus, *Why Men Are the New College Minority*, THE ATLANTIC (Aug. 8, 2017), https://www.theatlantic.com/education/archive/2017/08/why-men-are-the-new-college-minority/536103/.

Linked to this phenomenon is the decline in home ownership among younger Americans. Fully half of Americans surveyed cited student loan debt as the number one factor in their reticence to buy a home, with that number skewed heavily toward younger Americans with larger loan burdens.[81] While it is still possible to get access to credit and have outsized student loans, the interest rates generally are not as friendly, which acts as a further barrier. Now that interest rates are rising for the first time in twenty years, this is even more of a problem than it was when the survey was conducted in 2021; the lowest mortgage rate available today is hovering just under 7%, versus a hair under 3% at the height of the pandemic.[82] Debt laden borrowers, rightly seen as credit risks, could not qualify for these low figures, making the bar for entry that much higher. As alluded to above, the entire American economy has long functioned on a means of society sanctioned covetousness: "I have to have what my neighbor has, or I'm less than." But with student loans becoming an ever-larger albatross round the neck of young people, there are fewer opportunities available for discretionary spending. Keeping up with the

[81] Annie Nova, *Student debt can make buying a home feel impossible. Here are your options*, CNBC (Sept. 17, 2021), https://www.cnbc.com/2021/09/17/student-debt-is-a-main-obstacle-for-millennials-wanting-to-buy-a-house.html.

[82] *Current Mortgage Rates Today*, ROCKET MORTG. (Jan. 18, 2024), https://www.rocketmortgage.com/mortgage-rates; Peter Miller & Aleksandra Kadzielawski, *Mortgage Rates Chart: Historical and Current Rate Trends*, THE MORTG. REPS. (January 10, 2024), https://themortgagereports.com/61853/30-year-mortgage-rates-chart#average.

Joneses has become keeping up with Great Lakes Financial or another student loan servicer that receives all the benefits of the inability to keep up with loan payments with none of the risk. After all, these loans are fully backed by the full faith and credit of the United States Treasury.

Beyond the general detriment to all who receive college loans, there are particular groups of citizens on whom the burden disproportionately falls. These are groups which have traditionally been disadvantaged when it comes to socioeconomics: minorities and women. Go to college, they say. It'll break you out of generational poverty, they say. The reality is far from that. Ironically, the very thing that is supposed to be the solution to generational poverty tends to reinforce it. As Senator Elizabeth Warren noted, college debt is a big part of the problem for women trying to break out of poverty. Women are more likely to go to college than men and thus borrow more money.[83] Discounting attendance differences between men and women, student loans tend to be more heavily relied upon by female students than their male counterparts.[84] Add in other potential factors, such as single motherhood and divorce, and one begins to see how the supposed solutions

83 Elizabeth Warren, *Feminomics: Women and Bankruptcy*, HUFFPOST: THE BLOG (Mar. 18, 2010), https://www.huffpost.com/entry/feminomics-women-and-bank_b_395667 .

84 Rachel E. Dwyer et al., *Gender, Debt, and Dropping Out of College*, 27 GENDER & SOC'Y 30, 40 (2013).

to problems that have been around since the women's liberation movement of the 1960s make things worse rather than better.

African Americans find themselves faced with a similar dilemma: college is touted as a means to break out of centuries of economic disadvantage, but the reality waiting at the end of the tunnel is a mountain of debt and only moderate prospects of economic success.[85] The figures provided by the *Journal of Blacks in Higher Education* show that income parity increases with more education, as is to be expected; however, the need to service debt is not accounted for with these calculations.[86] The rise in income is blunted (if not eliminated) by the costs of student loan debt, making the increases a mirage. The return on investment continues to decline, and the combination of an increased number of recipients of college degrees and rising prices is crippling the value of a college degree. At the same time, the debt load often reaches a temporary apex each year before that mountaintop is eclipsed the following year.[87]As bad as this reality is for a white middle-class American, it is even more pernicious to those historically faced with

[85] *Holding a Four-Year Degree Brings Blacks Close to Economic Parity with Whites*, 47 J. BLACKS IN HIGHER EDUC. 6, 6–7 (2005).
[86] *Id.* at 7–8.
[87] Philip Oreopoulos & Uros Petronijevic, *Making College Worth It: A Review of the Returns to Higher Education*, 23 FUTURE OF CHILD. 41, 42, 51 (2013).

disadvantage. Far from solving the problems of centuries of inequality, college debt only reinforces them.

I. Are There Any Solutions?

So far, we have examined the history of the bankruptcy code, the rise in American consumer debt, how these factors negatively affect cohorts of college attendees, and how they specifically weigh on historically disadvantaged groups. A grim picture has been painted to this point. As alluded to in the introduction, no good answers to these problems have been put forward by politicians, wags, or pundits. The responses range from "the status quo works" (which is the equivalent of the popular image of a cartoon dog surrounded by flames and saying "this is fine")[88], to President Biden's modest debt forgiveness proposal of $10,000 for all borrowers and $20,000 to those who received Pell Grants,[89] to Senators Warren's proposal to forgive $50,000 in debt, which would completely wipe the slate clean for 95% of borrowers.[90] Debt forgiveness would certainly solve *a* problem, but it would

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[88] *See* Chris Plant, *This is Fine Creator Explains the Timelessness of his Meme*, THE VERGE (May 5, 2016, 9:49 AM), https://www.theverge.com/2016/5/5/11592622/this-is-fine-meme-comic.
[89] Eliza Haverstock & Trea Branch, *Joe Biden and Student Loans: What He's Done for Borrowers, Students, and Colleges,* NERDWALLET (Dec. 6, 2023), https://www.nerdwallet.com/article/loans/student-loans/joe-biden-student-loans.
[90] Annie Nova & John W. Schoen, *Here's Who Would Benefit from Sen. Elizabth Warren's Proposal to Cancel Student Debt*, CNBC (Apr. 22, 2019, 10:30 AM), https://www.cnbc.com/2019/04/22/elizabeth-warren-wants-to-erase-student-debt-heres-who-would-benefit.html.

likely create another one (a boom in inflation).[91] It also would not attack the underlying problems that created the debt bubble in the first place.[92] Without some kind of systemic reform, having the Federal Reserve pop the balloon by printing money would be temporary at best; eventually, that balloon would refill, and probably faster than before. More students would borrow more money because they would know that when things got really bad, Uncle Sam would come in with a bailout. The same lesson US Banks did not learn from the 2008 crisis that we are currently in the early stages of reliving at the time of this writing. George Santayana famously said that "those who do not know history are doomed to repeat it."[93] The lesser-known corollary to this is that those who know history are doomed to watch others repeat it.

Realistic solutions that do not include waving a magic wand range from a more liberalized definition of undue hardship to an outright striking of that entire section of the code and a return to the pre-1978 system, which would allow for a discharge of student debts. In the first case, some scholars have argued that at the very least, large medical debts should serve as proof

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91 Eric Boehm, *Biden's Student Debt Relief Plan Will Worsen Inflation*, REASON, (Aug. 24, 2022, 2:00 PM), https://reason.com/2022/08/24/bidens-student-debt-relief-plan-will-worsen-inflation.
92 Peter Coy, *To Tackle Student Debt, Fix Ineffective Colleges*, THE NEW YORK TIMES (Apr. 29, 2022), https://www.nytimes.com/2022/04/29/opinion/student-loans-debt.html.
93 GEORGE SANTAYANA, THE LIFE OF REASON (Duke Classics 2020) (1905).

under the *Brunner* test.[94] This is a reasonable proposal that should receive consideration and probably acceptance. A severe illness or traumatic injury is not an expense that one can adequately plan for, nor is it one that a person voluntarily accepts. Given the choice between death or catastrophic debt, most people will choose the latter. Another possible answer is that the legislature should set statutory boundaries for what constitutes an undue hardship; vague language leads to inconsistent application by the courts. Congress could easily create a figure and index it to inflation, and then, at least, we would have a more workable system than the one we currently have. A repeal of BAPCPA would be a good start as well, given that the massive advantage to creditors achieved by that bill has only made the debt problem worse both for student loans and generally.[95]

The elephant in the room is whether or not to completely return to the pre-1978 provisions with regard to student debt. On its face, this seems like a good idea. Student debt is a debt like any other; it should be able to be discharged. In some respects, I agree. However, the underlying problem with how Americans look at college and the myopic policy of having unlimited

[94] Alexander Gouzoules, *"Undue Hardship" and Uninsured Americans: How Access to Healthcare Should Impact Student-Loan Discharge in Bankruptcy*, 69 EMORY L. J. ONLINE 2019 (2020), https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1001&context=elj-online.
[95] Tal Gross et al., *The Economic Consequences of Bankruptcy Reform* (U. CHI., BECKER FRIEDMAN INST. FOR ECON., Working Paper No. 2020-164, 2020).

government-backed loans to backstop college borrowing would not go away. Much like Warren's proposal, if one were to waive a congressional wand at §523(a)(8), it would be a boon for those who would now be able to get out from under their crippling debt. But it would not solve the underlying weaknesses in the system.

College costs are non-responsive to market forces thanks to bad government policy; supply, demand, and cost are all up, while the value of the degree continues to decline.[96] With the government willing to hand college administrators a blank check, administrators have no impetus to keep costs low; the President of Tulane University went so far as to say that he deliberately sets the cost as high as possible.[97] Societal pressures are starting to push back against the idea that college is the only means to success, with admissions declining by more than 6% overall since 2019 and registering the largest two-year drop ever.[98] Time will tell whether a decline in attendance rates leads to an adjustment of prices, but skepticism is warranted; those declines, significant though they may be, have not yet arrested cost increases.

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[96] John Hood, *Why College Costs Are Rising*, FEE (Nov. 1, 1988), https://fee.org/articles/why-college-costs-are-rising/.
[97] *Id.*
[98] Laren Camera, *College Enrollments On Track for Largest Two-Year Drop on Record*, U.S. NEWS (Oct. 26, 2021, 12:01 AM), https://www.usnews.com/news/education-news/articles/2021-10-26/college-enrollment-on-track-for-largest-two-year-drop-on-record.

The best solution would be a complete reimagination of the way the United States does college. Step one: make the funding entirely private, with no government security. This would necessarily make price responsive to market forces; if borrowers are not borrowing, creditors and colleges would have to lower prices to make the purchase more attractive; in other words, student loans would behave as a market is supposed to work, as evidenced by other lender/borrower arenas.[99] Step two: treat these debts like any other form of unsecured debt. If creditors run the risk of having debt discharged in a bankruptcy proceeding, they would necessarily have to be more discerning as to whom they lend money. Going to college is like starting a business; a plan is required, and a borrower must be truly committed to it.[100] The days of treating college like an expensive 4+ year bacchanalia—i.e., the "College Experience"—would likely be over, and costs would go down as a result of this departure from the current orthodoxy. Step three: put the liberal arts model out of our collective misery. Liberal arts education is the real-life equivalent of the picture of Dorian Gray; in some dusty Harvard attic, it looks as fetid and outdated as it really is, but on the surface, it looks as attractive and beneficial as it did when first conceived in the 1700s. A la carte academia

[99] Jacques Melitz & Morris Pardue, *The Demand and Supply of Commercial Bank Loans*, 5 J. MONEY, CREDIT AND BANKING 669 (1973).

[100] *Ending Student Loan Exceptionalism: The Case for Risk-Based Pricing and Dischargeability*, 126 HARV. L. REV. 587 (2012).

worked when only the scions of wealthy families were seeking higher education. It is a cruel joke to play in the age of liberal education access.

What all this demonstrates is that finding fault is substantially easier than finding a concrete solution, much less a solution that has a chance of getting through the halls of Congress and the autograph of a president. Almost 400 years ago, Isaac Newton famously wrote that an object in motion will stay in motion unless acted upon by an outside force.[101] Many politicians have talked at length about the need to fix the system, but few have acted. Biden's debt forgiveness, whatever its potential boons or harms, is not likely to pass constitutional muster in the eyes of the current Supreme Court.[102] If that belief is accurate, and it likely is, that will not be the end of the conversation, merely the end of the current chapter and other proposals will be bandied about. Perhaps other attempts to kick the can down the road will be made. What is certain is that this problem will not go away on its own. The looming student loan debt crisis has an inertia rooted in societal beliefs about college education, economics, and government policy, as demonstrated *supra*. However, if an outside force does not act proactively,

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[101] ISAAC NEWTON, PHILOSOPHIAE NATURALIS PRINCIPIA MATHEMATICA (Forgotten Books 2022) (1687).
[102] Mark Joseph Stern, *SCOTUS Will Probably Kill Student Debt Relief. But Biden Has a Backup Plan.*, SLATE (Aug. 25, 2022, 2:41 PM), https://slate.com/news-and-politics/2022/08/biden-student-debt-relief-legal-supreme-court.html.

the gravitational pull of an economic collapse will eventually do the trick. The system simply is not workable in the long term. The question is: do we fix it now or take the Keynesian view that we can act irresponsibly because, in the long run, we will all be dead?[103] Congress, with its majority of gerontocrats, seems to favor the latter. That is a choice, but it is not a good one. Substantive reform of the whole system underpinning college is needed along with reform to the Bankruptcy Act. The inability to discharge student loans in a bankruptcy proceeding exacerbates the problem of American consumer debt, but it is not the root cause of America's love affair with debt. The reforms proposed, whether they are a loosening of the undue hardship provisions, a standardization of the same, or allowing discharge in bankruptcy, would all be helpful, but they would be the equivalent of a band-aid on a gunshot wound. The patient needs emergency surgery, but it is an open question as to whether anyone has the political will to pick up the scalpel.

[103] JOHN MAYNARD KEYNES, A TRACT ON MONETARY REFORM (Cambridge Univ. Press 2013) (1923).