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The Investment Imperative

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ARTICLE

THE INVESTMENT IMPERATIVE

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ABSTRACT

This Article names and identifies the "investment imperative" as the widely-held belief that higher education is necessary to increase one's financial prosperity and social standing in America. Increasingly, higher education policy has supported the investment imperative by shifting the benefit, burden, and risk of higher education from the public to the private consumer. This has resulted in a patchwork of laws that encourage education at any cost, primarily driven by personal debt, and without concomitant regulations that control for instructional quality.

Drawing on interdisciplinary scholarship, empirical studies, and original interviews with student loan borrowers across the country, this Article argues that the investment imperative drives and distorts students' financial behaviors and decisions. Because students are conditioned to see higher education as an imperative investment in their own human capital, many fail to connect college attendance with college financing. More specifically, this Article argues that the investment imperative (1) permits and encourages an "ostrich effect," whereby student borrowers ignore

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information about higher education institutions and the cost of debt; and (2) creates the conditions for a "student debt cascade," whereby the disconnect between the financial promise of higher education and the student's financial reality leads to distress emotions, avoidance, nonpayment, and default. Throughout, this Article recognizes that, in its implementation, the investment imperative leaves students vulnerable to exploitation and ignores the effects of systemic inequalities related to race, gender, and class.

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I. INTRODUCTION

Since the founding of this nation, Americans have touted the promise of social and economic advancement through hard work.[1] It is the cornerstone of the American Dream. And there is widespread belief that, today, higher education is a key to that advancement.[2] Increasing one's socioeconomic status has, in fact, become so intertwined with higher education that it is difficult to separate what this Article names the "investment imperative" from individual decisions to seek higher education.

The investment imperative is the widely-held belief that higher education is necessary to increase one's financial prosperity and social standing in America. This Article argues that the investment imperative is a driving force behind students' financial behavior and decisions about higher education and student debt, often distorting that decision-making. And while higher education is not a monolith, and postsecondary students are diverse in every measure, the investment imperative surfaces as a theme across institutions and students.

This imperative did not simply emerge out of our culture. Higher education policy throughout the last century has supported and stoked the investment imperative. Beginning with the Morrill Land-Grant Acts, the federal government took an active role in higher education.[3] One major aim of higher education legislation

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1. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 187–88 (Francis Bowen ed., Henry Reeve trans., Sever & Francis 1862) (1840); *see also* RONALD REAGAN, AN AMERICAN LIFE 27 (1990) ("I learned that hard work is an essential part of life—that by and large, you don't get something for nothing—and that America was a place that offered unlimited opportunity to those who did work hard.").

2. *See, e.g.*, BARACK OBAMA, THE AUDACITY OF HOPE 159 (1st ed. 2006) ("Throughout our history, education has been at the heart of a bargain this nation makes with its citizens: If you work hard and take responsibility, you'll have a chance for a better life."); *infra* note 71 and accompanying text. In reality, this is not the case for all of those who seek postsecondary education. *See* TRESSIE MCMILLAN COTTOM, LOWER ED: THE TROUBLING RISE OF FOR-PROFIT COLLEGES IN THE NEW ECONOMY 13–14 (2017) (highlighting the financial risks for those who attend for-profit colleges and universities); Katherine Porter, *College Lessons: The Financial Risks of Dropping Out*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS 85, 85–86 (Katherine Porter ed., 2012) (explaining that those who have "some college," but no degree, are at a disproportionately high risk for financial failure); DARRICK HAMILTON ET AL., UMBRELLAS DON'T MAKE IT RAIN: WHY STUDYING AND WORKING HARD ISN'T ENOUGH FOR BLACK AMERICANS 3 (2015), http://insightcced.org/wp-content/uploads/2015/08/Umbrellas_Dont_Make_It_Rain_Final.pdf [https://perma.cc/7V4C-WKUB] (arguing that education alone does not explain economic well-being, especially when viewed across races).

3. *See* SARA GOLDRICK-RAB, PAYING THE PRICE: COLLEGE COSTS, FINANCIAL AID, AND THE BETRAYAL OF THE AMERICAN DREAM 12–14, 86–88 (2016) (tracing the legal history of college access legislation, including the Morrill Act of 1862, the Servicemen's Readjustment Act of 1944, the report of the Truman Commission in 1947, the National

has been to increase access to bolster individual and societal advancement.[4] That push for increased access to higher education—in aggregate terms—has been a success.[5] The Morrill Act of 1862 led to the creation of forty-eight land-grant colleges[6] and the G.I. Bill, passed in 1944, led to a major increase in veterans seeking higher education.[7] Each decade since the passage of the Higher Education Act in 1965 has brought a significant increase in college attendance. At last count, at least twenty million American adults were enrolled in some form of higher education.[8] That number grew by 14 percent in the last decade and is expected to increase by almost the same amount in the next decade.[9]

As this Article details, however, federal higher education policy has increasingly treated postsecondary education as a private, rather than a public, good. That has led to a patchwork of laws that encourage education at ever-increasing costs,[10]

Defense Education Act of 1958, the Higher Education Act of 1965 and its subsequent amendments, the Middle Income Student Assistance Act of 1978, and the College Cost Reduction and Access Act of 2007).

4. Jonathan D. Glater, *Student Debt and Higher Education Risk*, 103 CALIF. L. REV. 1561, 1575–76 (2015) (recognizing that the primary goal of the Higher Education Act was to "put college within reach of any student who wanted to go, regardless of that student's means"); *see also* Press Release, U.S. Dep't Educ., Fact Sheet: Increasing College Access by Making Loans Easier to Pay (Mar. 18, 2016), https://www.ed.gov/news/press-releases/fact-sheet-increasing-college-access-making-loans-easier-pay [https://perma.cc/7URJ-PSDW] ("Higher education continues to be the single most important investment students can make in themselves and the surest engine to enter the middle class.").

5. But see *infra* Section II.B for a discussion of those who have been excluded from higher education.

6. David J. Staley, *Democratizing American Higher Education: The Legacy of the Morrill Land Grant Act*, ORIGINS, Jan. 2013, at 1.

7. LIZABETH COHEN, A CONSUMERS' REPUBLIC 139–40 (2003) ("Of the more than 15 million eligible veterans, about half took advantage of these educational benefits: 2.2 million attended college or post-graduate study, 3.5 million enrolled in other schooling, 1.4 million chose on-the-job training, and 700,000 sought farm training.").

8. The most comprehensive data on higher education are collected and disseminated by the National Center for Education Statistics' (NCES) National Postsecondary Student Aid Study (NPSAS). NCES is a unit of the U.S. Department of Education. The most recent data were released in January of 2018, covering 2015–2016. See RADWIN ET AL., NAT'L CTR. FOR EDUC. STATISTICS, NCES 2018-466, 2015–2016 NATIONAL POSTSECONDARY STUDENT AID STUDY (NPSAS:16) (2018), https://nces.ed.gov/pubs2018/2018466.pdf [https://perma.cc/NYZ5-L272] for the most recent NPSAS. These numbers do not account for the more than 400,000 adults enrolled in postsecondary-school certificate and nondegree granting programs during that time. SNYDER ET AL., NAT'L CTR. FOR EDUC. STATISTICS, NCES 2017-094, DIGEST OF EDUCATION STATISTICS: 2016, at 399–400 (2018), https://nces.ed.gov/pubs2017/2017094.pdf [https://perma.cc/67PD-ZSLW].

9. SNYDER ET AL., *supra* note 8, at 399–400.

10. In the last decade, the annual cost for one undergraduate year at a public nonprofit institution increased by 34 percent and the annual cost for one undergraduate year at a private nonprofit institution increased by 26 percent. *Id.* at 403. For-profit

primarily driven by personal debt, and without concomitant regulations that control for instructional quality. Access has increasingly been supported through the proliferation of unsubsidized loans on the front end, a rise in largely unregulated postsecondary institutions in the middle, and punitive collection tools on the back end.[11]

Unsurprisingly, the consumption of higher education under the current regulatory framework has problematic consequences. Student debt has skyrocketed, delinquency and default are on the rise, and students have been left vulnerable to predatory institutions. Students are increasingly financing their higher education with debt, tapping into both public and private credit sources.[12] As of May 2019, nearly forty-four million Americans were carrying student debt, and the cumulative debt load was $1.49 trillion.[13] The average balance per borrower now hovers around $30,000.[14] Not only are more borrowers taking on more education debt, but those borrowers are also having increasing difficulty repaying their loans. Student loan delinquency now

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institutions have had a slightly different history, whereby their costs have decreased over the last decade. *Id.*

11. *See* Daniela Kraiem, *The Cost of Opportunity: Student Debt and Social Mobility*, 48 SUFFOLK U. L. REV. 689, 702–04, 714 (2015) (arguing that higher education policy has been driven by an "education is a commodity" metaphor, including the focus on higher education as an investment in an individual's human capital); *see also* Robert Shireman, *Learn Now, Pay Later: A History of Income-Contingent Student Loans in the United States*, 671 ANNALS AM. ACAD. POL. & SOC. SCI. 184, 185, 191 (2017) ("Instead of using coercion, the United States promotes higher education through exhortation, with the most common argument not about the social benefits, but instead about the individual earnings gains associated with college degrees.").

12. SALLIE MAE, HOW AMERICA PAYS FOR COLLEGE 12 (2017), https://www.salliemae.com/assets/Research/HAP/HowAmericaPaysforCollege2017.pdf [https://perma.cc/Z5MR-NL4U] (detailing data from 2017 that showed that borrowed money accounted for 27 percent of education costs, which was up from 20 percent the prior year); KEVIN MILLER, AM. ASS'N OF UNIV. WOMEN, DEEPER IN DEBT: WOMEN AND STUDENT LOANS 11–12 (2017), https://www.aauw.org/aauw_check/pdf_download/show_pdf.php?file=deeper-in-debt [https://perma.cc/478D-VAMJ].

13. RESEARCH & STATISTICS GRP., FED. RESERVE BANK OF N.Y., QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT (2019), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2019Q1.pdf [https://perma.cc/LG27-E6M9]. Different organizations put this number at different amounts. For example, LendEDU reports that, as of August 2019, the cumulative student debt load was $1.61 trillion. *Average Student Loan Debt Statistics for 2019*, LENDEDU (Aug. 19, 2019), https://lendedu.com/blog/average-student-loan-debt-statistics [https://perma.cc/EBE3-T8SD] (citing FED. RESERVE BANK OF ST. LOUIS, *Student Loans Owned and Securitized, Outstanding*, FRED, https://fred.stlouisfed.org/series/SLOAS [https://perma.cc/LKV9-Z64B?type=image] (last updated Aug. 7, 2019)).

14. Robert Kelchen, *Examining Average Student Loan Balances by State*, ROBERT KELCHEN (Feb. 1, 2018), https://robertkelchen.com/2018/02/01/examining-average-student-loan-balances-by-state/ [https://perma.cc/P2PK-57GS] (relying on the most recently-available data from the U.S. Department of Education's Office of Federal Student Aid).

accounts for the principal kind of household debt default, exceeding credit card, mortgage, auto loan, and home equity revolving debt.[15]

Importantly, these negative effects of student debt disproportionally burden women, people of color, members of the LGBTQ community, and students from poor families. Women, for example, represent 57 percent of college students, but hold two-thirds of the nation's student debt.[16] Black undergraduates borrow more than their White counterparts.[17] The most recent federal data reflects an astounding figure: 30 percent of Black student borrowers owe more than $100,000, compared to just 12 percent of their White counterparts.[18] And LGBTQ borrowers reported an average of $16,000 more student debt than the general population.[19] In addition to individual circumstances, there are

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15. *See* RESEARCH & STATISTICS GRP., FED. RESERVE BANK OF N.Y., *supra* note 13. This is particularly true for students attending for-profit institutions. *See infra* notes 117–19 and accompanying text.

16. MILLER, *supra* note 12, at 1 ("[M]any do not think of student debt as a women's issue despite the fact that women represented 56 percent of those enrolled in American colleges and universities in fall 2016. This report reveals that they also take on larger student loans than do men. And because of the gender pay gap, they have less disposable income with which to repay their loans after graduating from college, so they require more time to pay back their student debt than do men. As a result, women hold nearly two-thirds of the outstanding student debt in the United States.").

17. GOLDRICK-RAB, *supra* note 3, at 90; *see also* SARA GOLDRICK-RAB ET AL., THE COLOR OF STUDENT DEBT: IMPLICATIONS OF FEDERAL LOAN PROGRAM REFORMS FOR BLACK STUDENTS AND HISTORICALLY BLACK COLLEGES AND UNIVERSITIES 14–15 (2014), https://news.education.wisc.edu/docs/WebDispenser/news-connections-pdf/thecolorofstudentdebt-draft.pdf?sfvrsn=4 [https://perma.cc/RQV2-QDZF] (arguing that the racial wealth gap explains much of the borrowing discrepancy between Black and White undergraduates); MARK HUELSMAN, DEMOS, THE DEBT DIVIDE: THE RACIAL AND CLASS BIAS BEHIND THE "NEW NORMAL" OF STUDENT BORROWING 2, 9–10 figs. 2, 3, & 4 (2015), https://www.demos.org/sites/default/files/publications/Mark-Debt%20divide%20Final%20%28SF%29.pdf [https://perma.cc/LW6F-7BRV] (depicting data showing that Black and low-income students borrow more and more often to finance their undergraduate studies). *Cf.* Sandy Baum, *Student Debt: Where Is the Crisis?*, 7 UC IRVINE L. REV. 21, 36–37 (2017) (arguing that Black undergraduates graduate with higher levels of debt than other racial and ethnic groups due to a combination of for-profit enrollment, borrowing at older ages, independence from family, longer completion times, lower family income, and lower family wealth).

18. Robert Kelchen, *Examining Trends in Graduate Student Debt by Race and Ethnicity*, ROBERT KELCHEN (May 15, 2018), https://robertkelchen.com/2018/05/15/examining-trends-in-graduate-student-debt-by-race-and-ethnicity/ [https://perma.cc/T7UZ-J9FN]; Robert Kelchen, *What Explains Racial Gaps in Large Graduate Student Debt Burdens?*, ROBERT KELCHEN (May 17, 2018), https://robertkelchen.com/2018/05/17/what-explains-racial-gaps-in-large-graduate-student-debt-burdens/ [https://perma.cc/DHD8-NFJK] (finding, through a regression analysis on these data controlling for gender, age, marital status, level of study, institution type, and field of study, a strong suggestion that "the [B]lack/[W]hite gap in large student debt burdens cannot be explained by other demographic characteristics or individuals' fields of study").

19. Carmen Reinicke, *Student Debt Is Crushing Dreams for This Group*, CNBC (July 23, 2018, 11:17 AM), https://www.cnbc.com/2018/07/20/there-are-added-risks--lgbtq-

systemic factors connected to these discrepancies—gender and racial income gaps, intergenerational class and race wealth gaps, redlining, poor-quality elementary and secondary education and counseling, and social and familial rejection, to name a few. Further, students who attend for-profit postsecondary institutions, which reflect a higher default rate,[20] are disproportionately female, African American, older, and parents.[21]

This Article argues that the investment imperative does not simply exist as a matter of form in higher education policy; it is also the driving force behind students' financial behavior and decisions around higher education and student debt. By prioritizing college attendance above all, the investment imperative drives and distorts students' financial decision-making. It then leaves students, especially those with limited opportunity or significant debt, vulnerable to exploitation.

This Article identifies and explores two specific decision-making distortions and their consequences.[22]

First, the investment imperative permits and encourages students to decouple their decision-making about attendance at an institution of higher education from financing that attendance. Understanding higher education as a genuine imperative distorts a rational cost-benefit analysis. This Article argues that the investment imperative thus creates an "ostrich effect,"[23] whereby

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student-loan-borrowers.html [https://perma.cc/R2Y2-CRBQ] (citing to a study by Student Loan Hero of 11,000 student borrowers who identify as LGBTQ).

20. *See infra* notes 117–19 and accompanying text.

21. *See For-Profit Colleges: By the Numbers*, CTR. FOR ANALYSIS POSTSECONDARY EDUC. & EMP., https://capseecenter.org/research/by-the-numbers/for-profit-college-infographic/ [https://perma.cc/8NFK-9MEN] (last updated Feb. 2018). In New York's schools, for example, 72 percent of Black for-profit students defaulted on their loans within twelve years, relative to 25 percent of their Black peers who attended public and nonprofit New York colleges. *See* YAN CAO, THE CENTURY FOUND., GRADING NEW YORK'S COLLEGES 3 (2018), https://production-tcf.imgix.net/app/uploads/2018/03/26094105/grading-new-yorks-colleges.pdf [https://perma.cc/QT97-SXGV]. Both of those numbers are high relative to their White peers. *Id.* White for-profit students defaulted on their loans at a nearly 40 percent rate and White nonprofit students defaulted on their loans at a 9 percent rate. *Id*.

22. See *infra* Part IV for a detailed discussion of the decision-making distortions and their consequences. While the normative consequences do not ring true for every student borrower, these themes are prevalent enough in quantitative studies, qualitative studies (including the one contained herein), and the literature to warrant significant concern and further study.

23. The "ostrich effect" is used in cognitive science and behavioral economics and refers to the preference to focus on positive information and avoid negative information. *See* Peter H. Huang, *Achieving American Retirement Prosperity by Changing Americans' Thinking About Retirement*, 22 STAN. J.L. BUS. & FIN. 189, 231–32 (2017) (citing Russell Golman & George Loewenstein, Curiosity, Information Gaps, and the Utility of Knowledge (Apr. 16, 2015) (unpublished manuscript), https://www.cmu.edu/dietrich/sds/docs/golman/Curiosity%2C%20Information%20Gaps%2C%20and%20the%20Utility%20of%20Knowledge

student borrowers ignore the costs of their attendance, fail to seek or understand information about the rights and responsibilities associated with their loans, fail to seek advice or assistance with their loans, and fall prey to scams and misinformation directed at chronically under-informed borrowers.

Second, the investment imperative risks overpromising students certain financial outcomes from attaining a college certification or degree by instilling overconfidence in their ability to repay education debt. This is particularly perilous where information asymmetry between lender/institution and student is combined with a failure to hold institutions accountable for their graduates' negative outcomes. For many, graduation comes with the start of student loan repayment and the shock that, in part because of their education debt, borrowers do not have the financial stability that the investment imperative promised. This causes a "student debt cascade," wherein the disconnect between the financial promise of the investment imperative does not align with the graduate's financial reality, leading to distress emotions (i.e., shame and fear), avoidance, and default. This student debt cascade has negative financial implications for the borrower, her family, and her lender—the American taxpayer.[24]

To support these theories, this Article looks to both interdisciplinary scholarship and original qualitative data. The original data comes from sixty-five in-depth, semi-structured interviews from 2017 and 2018 with student borrowers in ten American cities. These data, along with the existing literature, are

%20Golman_Loewenstein%20April%202015.pdf [https://perma.cc/H4SL-TGAB]; Geoffrey P. Miller & Gerald Rosenfeld, *Intellectual Hazard: How Conceptual Biases in Complex Organizations Contributed to the Crisis of 2008*, 33 HARV. J.L. & PUB. POL'Y 807, 818 (2010) (citing Niklas Karlsson et al., *The Ostrich Effect: Selective Attention to Information*, 38 J. RISK & UNCERTAINTY 95, 96 (2009)) ("The ostrich effect is the tendency for market actors to ignore news, data, or analysis that imply negative outcomes."). The term was originally coined by Dan Galai and Orly Sade. Dan Galai & Orly Sade, *The "Ostrich Effect" and the Relationship Between the Liquidity and the Yields of Financial Assets*, 79 J. BUS. 2741, 2743–44 (2006) (defining "ostrich effect" as "avoiding apparently risky financial situations by pretending they do not exist"). Similar language and constructs have been used in the bankruptcy literature. *See* Pamela Foohey, *When Faith Falls Short: Bankruptcy Decisions of Churches*, 76 OHIO ST. L.J. 1319, 1345 (2015) ("The term 'ostrich defense' is most commonly associated with how individuals tend to approach their increasingly precarious finances. . . . [T]hey refuse to deal with their situations because they believe better financial times lay ahead or because they simply do not want to admit failure."); Ronald J. Mann & Katherine Porter, *Saving up for Bankruptcy*, 98 GEO. L.J. 289, 313 (2010) (describing debtors' use of avoidance techniques prior to filing for bankruptcy or to deter collection as the "ostrich defense").

24. Approximately 90 percent of student loans are federal loans. John R. Brooks, *The Case for More Debt: Expanding College Affordability by Expanding Income-Driven Repayment*, 2018 UTAH L. REV. 847, 851.

used to explain and explore the real effects of the investment imperative on students and their families.

This Article proceeds in three parts. Part II sets out the legal history and current facts related to higher education access. It traces the investment imperative's imprint on the law's push for higher education through a series of statutes designed to increase access to college. In other words, it sets out how the investment imperative has been supported by the supply side—through policymaking and by postsecondary institutions. It recognizes the overwhelming success of that push, setting forth data both in the aggregate and across decades, institutions, degrees, and students. Yet it acknowledges that there are those who have been excluded. Part II also explores the financial costs of increased access to higher education and the ways that financing responsibility has shifted from public entities to students and their families. Part III traces the existence of the investment imperative on the demand side—from the perspective of students. It introduces the original qualitative data, layering the data on top of existing interdisciplinary research to explore how borrowers experience the investment imperative. Part IV then identifies the ways in which the investment imperative drives and distorts consumers' decision-making, especially with respect to financing higher education. It defines and explores the ostrich effect and the student debt cascade as consequences of that distortion.

Whether the investment imperative is a net positive or a net negative is beyond the scope of this Article. The purpose of this Article is to name, identify, and explore the investment imperative and consider how it has operated to drive policymaking and distort consumer decision-making. It makes no claim as to whether access to higher education *should* be an imperative for all Americans. Nor should this Article be read as a critique of legislative and other efforts to increase access to higher education. Rather, this Article evidences how the concept of higher education as an investment imperative *is* affecting the way students think about and finance their postsecondary education. And it shows how those effects leave students, particularly low-income students, students of color, and female students, vulnerable to exploitation. At the end of the day, the way that higher education's investment imperative has been adopted, implemented, and exploited disproportionately burdens communities that have historically been excluded from access to higher education and other forms of wealth development and social mobility.

II. THE INVESTMENT IMPERATIVE IMPRINT

Historically, higher education was seen as a public good. Beginning with the Morrill Act of 1862, Congress passed a series of acts that focused on increasing access to higher education. The passage of the Higher Education Act (HEA) in 1965 represented the "high-water mark" for federal legislative support aimed at increasing access to higher education.[25] Every decade following its passage has brought an increase in postsecondary education enrollment. The legislative push for access has been largely successful, with certain exceptions. But in the decades following the HEA, as more and more diverse Americans entered the higher education sphere, there was a shift in thinking about higher education.[26] In the last fifty years, Congressional action can best be understood through the lens of the investment imperative,[27] a perspective that understands higher education as a private, rather than a public, good. Changes in funding and collection policies have increasingly shifted the benefit, burden, and risk of higher education from the public to the private student and her household, regulating higher education "as though it were actually a real commodity with a single purpose: generating return on investment for the individual student in the form of higher

25. *See* Glater, *supra* note 4, at 1575–76; BETH AKERS & MATTHEW M. CHINGOS, GAME OF LOANS: THE RHETORIC AND REALITY OF STUDENT DEBT 45 (2016) ("HEA had a broad, lasting impact on higher education, including the creation of the first federal grant program for college students . . . .").

26. This Article does not argue that the shift in perspective was caused by increased numbers of women and people of color entering higher education. Such an argument would require a more in-depth study. There were likely multiple causes for the perspective shift, including budget deficits fueled by the Vietnam War, an energy crisis in the late 1970s, and the personal responsibility sentiment advanced by President Reagan's economic policies. *See* Camilla E. Watson, *The Future of Lower-Income Students in Higher Education: Rethinking the Pell Program and Federal Tax Incentives*, 45 FLA. ST. U. L. REV. 1107, 1109–10, 1114, 1116–17 (2018); *see also* Lani Guinier, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARV. L. REV. 113, 129–30 (2003) ("This shift in funding priorities was driven in part by an ideological shift during the Reagan era. Higher education was presented as a private benefit to be financed by the individual, instead of a public good to be funded by the government." (footnotes omitted)).

27. The investment imperative is the cousin of the "education gospel" and the "education is a commodity" metaphor. COTTOM, *supra* note 2, at 10 (explaining economist W. Norton Grubb's and historian Marvin Lazerson's "education gospel" as "our faith in education as moral, personally edifying, collectively beneficial, and a worthwhile investment no matter the cost, either individual or societal"); Kraiem, *supra* note 11, at 690 (arguing that America has adopted an "education is a commodity" metaphor that offers college as "an *investment* in [one's] own *human capital*" and a "*necessity*" such that student consumers "must shop around for the best *return on investment*"); *see also* Rachel E. Dwyer et al., *Youth Debt, Mastery, and Self-Esteem: Class-Stratified Effects of Indebtedness on Self-Concept*, 40 SOC. SCI. RES. 727, 729 (2011) (citing studies that suggest that a college degree is "an investment in human capital that is crucial to improving one's life chances").

wages."[28] As detailed below, the last half-century of federal higher education policymaking has largely maintained a commitment to access initiatives, although without related institutional accountability measures, and tied to more onerous terms and punitive collection tools.

A. *Early Legislative Push for Access*

In the early days of the republic, the nation's commitment to education was in service of both individual advancement and broader democratic values.[29] In 1862 and 1890, Congress maintained that sense with the passage of the Morrill Acts, creating land-grant universities in the United States.[30] Taken together, the Morrill Acts were based on the principles that higher education should be accessible and practical.[31] Senator Justin Smith Morrill argued that agriculture in the United States was deteriorating and that "[i]mproving the skills and knowledge of farmers was the best method to reverse this decline."[32] After several failed attempts, Morrill convinced his colleagues that the public good of education was equal to the value of the public lands the government would give up to fund land-grant schools in every state.[33]

More than half a century later, the Servicemen's Readjustment Act of 1944, commonly known as the G.I. Bill, once again changed the higher education landscape.[34] The G.I. Bill offered returning World War II veterans a "year of full-time tuition or training plus a period equal to their length of service up to forty-

28. Kraiem, *supra* note 11, at 690.

29. *See* Guinier, *supra* note 26, at 125–27 (describing Jefferson's 1819 founding of the University of Virginia and concluding that "the historical guiding principle of both public and private universities has been to educate people who would then better serve society as workers, citizens, and leaders").

30. First Morrill Act, ch. 130, 12 Stat. 503 (1862) (codified as amended at 7 U.S.C. §§ 301–309 (2012 & Supp. V 2018)); Second Morrill Act, ch. 841, 26 Stat. 417 (1890) (codified as amended at 7 U.S.C. §§ 321–328 (2012 & Supp. V 2018)); *see also* Staley, *supra* note 6 (detailing the First and Second Morrill Acts).

31. Staley, *supra* note 6.

32. *Id.*

33. *See id.*

34. Servicemen's Readjustment Act of 1944, Pub. L. No. 346, 58 Stat. 284; Charles R. Jonas, *Reemployment and Readjustment Rights of Veterans*, 23 N.C. L. REV. 107, 115 (1945).

eight months, along with subsistence pay for" all veterans and male veterans' dependents.[35] President Roosevelt explained:

> But after the war shall have been won, the best way that we can repay a portion of that debt is to see to it, by planning and by action now, that those men and women are demobilized into an economy which is sound and prosperous, with a minimum of unemployment and dislocation; and that, with the assistance of Government, they are given the opportunity to find a job for which they are fitted and trained, in a field which offers some reasonable assurance of well-being and continuous employment. For many, what they desire most in the way of employment will require special training and further education. . . . [T]he Nation is morally obligated to provide this training and education and the necessary financial assistance by which they can be secured.[36]

The G.I. Bill was followed by the National Defense Education Act of 1958, which endorsed funding, including student loans, for science, math, engineering, and foreign language programs.[37]

Less than a decade later, Congress passed the Higher Education Act of 1965.[38] Its primary goal was to allow any student who wanted postsecondary education to be able to access that education.[39] The HEA created a financial structure to allow more students to pay for college by providing for grants, loans, and work-study programs.[40] It created a guaranteed student loan

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35. COHEN, *supra* note 7, at 139.

36. *Message to Congress on the Education of War Veterans*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBR. & MUSEUM, http://docs.fdrlibrary.marist.edu/odgiced.html [https://perma.cc/7NF2-DMRS] (last visited Sept. 12, 2019).

37. National Defense Education Act of 1958, Pub. L. No. 85-864, 72 Stat. 1580 (codified as amended in scattered sections of 20 U.S.C.); AKERS & CHINGOS, *supra* note 25, at 46.

38. Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (codified as amended in scattered sections of 20 U.S.C.).

39. *Id.*; *see also* Glater, *supra* note 4, at 1575–76 (describing the primary goals of the HEA).

40. Higher Education Act of 1965 §§ 201, 421, 441. The HEA has been reauthorized and/or amended eight times, in 1968, 1972, 1976, 1980, 1986, 1992, 1998, and 2008. Higher Education Amendments of 1968, Pub. L. No. 90-575, 82 Stat. 1014; Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235; Education Amendments of 1976, Pub. L. No. 94-482, 90 Stat. 2081; Education Amendments of 1980, Pub. L. No. 96-374, 94 Stat. 1367; Higher Education Amendments of 1986, Pub. L. No. 99-498, 100 Stat. 1268; Higher Education Amendments of 1992, Pub. L. No. 102-325, 106 Stat. 448; Higher Education Amendments of 1998, Pub. L. No. 105-244, 112 Stat. 1581; Higher Education Opportunity Act, Pub. L. No. 110-315, 122 Stat. 3078 (2008).

program,[41] recognizing the dual public and private interest in higher education:

> I believe fully in the principle . . . that no boy or girl who can benefit from a college education should be denied the opportunity because of financial disability. When we pass this bill we will be helping them, it is true, but we shall be helping ourselves as a nation fully as much. Our young people are our future, and the Nation a generation hence will be dependent upon them. This is seed money, and the fruit it bears will become apparent only later, when the student generation now in our colleges has become the adult leadership generation of the future.[42]

Early amendments supported the provision of grant dollars to support the access initiative. Importantly, the 1972 amendments gave us the Basic Educational Opportunity Grant, later renamed the Pell Grant, which offered low-income students no-cost access to higher education.[43] The 1978 HEA amendments, known as the Middle Income Student Assistance Act, expanded the grant program to include middle-income students.[44] Primarily beginning with the Reagan Administration and as set forth below, Congress continued the push for higher education access, but it was maintained against the backdrop of the investment imperative.[45] Congress continues to tinker with higher education policy. Today, the 116th Congress is debating a major overhaul of the Higher Education Act.[46]

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41. The guaranteed loan program later became known as "Stafford Loans" and is sometimes referred to as "Title IV funding" in reference to its location in the HEA. Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. No. 100-297, § 2601, 102 Stat. 130, 330.

42. 89 CONG. REC. 22,615 (1965) (statement of Sen. Hartke).

43. Education Amendments of 1972, sec. 131, § 401; *see also Trio Programs*, PELL INST., http://www.pellinstitute.org/ed.shtml [https://perma.cc/96SM-93PM] (last visited Sept. 12, 2019). The Pell Grant increased access to higher education to low-income students by providing $1,200 annually to be used like a voucher at the student's chosen college or university. GOLDRICK-RAB, *supra* note 3, at 13. The 1972 amendments, however, also opened up Title IV funding to proprietary (for-profit) institutions. Education Amendments of 1972, sec. 102(a)(1), § 417B (including proprietary institutions in definition of "institution of higher education").

44. Middle Income Student Assistance Act, Pub. L. No. 95-566, 92 Stat. 2402 (1978) (codified as amended in scattered sections of 20 U.S.C.).

45. *See infra* Section II.C.

46. *See Higher Education*, EDUC. & LAB. COMMITTEE, https://edlabor.house.gov/issues/education/higher-education [https://perma.cc/4XAC-QY9G] (last visited Sept. 12, 2019).

B. The Access Initiative Finds Great Success

For the most part, the government's legislative push to increase access to higher education has been successful, when viewed both over time and in aggregate raw numbers.[47]

Approximately half of the fifteen million World War II veterans enrolled in postsecondary education or training using their G.I. benefits.[48] Prior to 1940, only 10 percent of Americans sought higher education; by 1948, that number grew by 50 percent and continued to climb, with "vets [making up] half the undergraduate population."[49] And the HEA has had a profound effect on access to higher education.[50] Between 1961 and 1969, higher education enrollment increased by 93 percent.[51] And, today, the aggregate numbers are impressive. At last count, at least twenty million American adults were enrolled in a degree-granting higher education program.[52] Today, 63 percent of Americans in their late twenties reported some college, compared to 53 percent just two decades ago; those with a bachelor's degree increased from 24 percent to 34 percent.[53]

Access to higher education has increased across many segments of the population and across various institutions. In the wake of the civil rights and women's rights movements, more women and people of color entered higher education.[54] In the thirteen years between 1970 and 1983, undergraduate enrollment

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47. The passage of federal legislation is not the only motivator for increased participation in higher education. Key pieces of higher education legislation were passed amidst the political and social backdrop of World War II, the civil rights movement, the women's rights movement, and an influx of immigration. One cannot separate the policy from the political context. *See* GOLDRICK-RAB, *supra* note 3, at 12–13 ("In the 1960s, when federal financial aid policy was first formulated, the nation was in the midst of a period of economic growth and security, declining poverty, and great social change. Women, African Americans, immigrants, and working-class [W]hite people were all clamoring for a shot at middle-class jobs and the American dream, and politicians in Washington wanted to help. . . . Providing access to higher education was a clear and seemingly fair way to do that."); Guinier, *supra* note 26, at 127–28 (noting that legal challenges and social movements of the 1950s and 1960s opened the door to higher education to previously excluded students, including women and people of color).

48. COHEN, *supra* note 7, at 139–40 ("Of the more than 15 million eligible veterans, about half took advantage of these educational benefits: 2.2 million attended college or post-graduate study, 3.5 million enrolled in other schooling, 1.4 million chose on-the-job training, and 700,000 sought farm training.").

49. *Id.* at 140.

50. Watson, *supra* note 26, at 1112–13.

51. *Id.* at 1113 n.29.

52. *Fast Facts: Enrollment*, NAT'L CTR. FOR EDUC. STAT., https://nces.ed.gov/fastfacts/display.asp?id=98 [https://perma.cc/DCK3-SXWU] (last visited Sept. 12, 2019).

53. AKERS & CHINGOS, *supra* note 25, at 40.

54. *See* Guinier, *supra* note 26, at 127–28.

increased 47 percent, and rose another 18 percent by 1992.[55] In the decade between 2004–2005 and 2014–2015, the number of bachelor's degrees awarded to male students increased by 33 percent and to female students increased by 31 percent.[56] During that same time period, White students saw a 15 percent increase in bachelor's degrees, Black students saw a 42 percent increase, Hispanic students saw a 115 percent increase, and Asian/Pacific Islander students saw a 38 percent increase.[57] The aggregate number of degrees increased dramatically across all levels: the number of associate's degrees increased by 46 percent, the number of bachelor's degrees increased by 32 percent, the number of master's degrees increased by 31 percent, and the number of doctorate degrees increased by 33 percent between 2004–2005 and 2014–2015.[58]

On average, higher education credentials translate into better economic circumstances. Numerous studies, "using a variety of methodologies[,] have consistently found that the economic returns to college are positive and large."[59] One study from Georgetown University's Center on Education and the Workforce found that workers with a bachelor's degree earn almost one million dollars more over the course of their lifetimes than workers without a degree.[60]

The access initiative has not, however, been universally successful or without concern. Many remain excluded from the higher education system altogether.[61] The G.I. Bill, for example,

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55. *Fast Facts: Enrollment*, *supra* note 52.

56. SNYDER ET AL., *supra* note 8, at 9.

57. *Id.* Although racial minority groups saw gains during this period, the gains have not achieved parity among racial groups in attaining bachelor's degrees. "In 2014[–]15, White students earned 67 percent of all bachelor's degrees . . . , Black students earned 11 percent . . . , Hispanic students earned 12 percent . . . , and Asian/Pacific Islander students earned about 7 percent." *Id.*

58. *Id.*

59. AKERS & CHINGOS, *supra* note 25, at 69–70 (citing multiple studies); *see also* Robert Kelchen, *Student Loans: A Brief History, the Current Landscape, and Impacts on Society*, *in* HIGHER EDUCATION AND SOCIETY 173, 191 (Joseph L. DeVitis & Pietro A. Sasso eds., 2016) (citing studies and concluding that "it is likely that the majority of students will benefit from attending college even after taking student loan debt into account").

60. AKERS & CHINGOS, *supra* note 25, at 69–70; *see also* John R. Brooks, *Income-Driven Repayment and the Public Financing of Higher Education*, 104 GEO. L.J. 229, 249 (2016) (citing economists who have concluded that "investing in higher education has consistently been one of the best forms of investment around . . . ."). *But see* AKERS & CHINGOS, *supra* note 25, at 70 (stating that while the studies consistently show that college graduates earn more, on average, than those without college degrees, it is not necessarily because their earnings skyrocket; rather, it is "driven in large part by the declining earnings among workers without college degrees").

61. *See* Brooks, *supra* note 60, at 238 ("[T]he data show that there is still a significant

not only offered returning veterans access to higher education, it also displaced women who would have otherwise accepted those spots.[62] And today, for students from low-income families, the data show that college remains largely out of reach. Among those who graduate from high school, only one in two children from families in the bottom one-fifth of the income distribution enrolls in higher education.[63] And for those who do make it to college, their experiences are varied and unequal.[64] For those low-income students who do enroll in higher education, data suggest that the drop-out rate is 38 percent.[65] And the disproportionate number of Black and Hispanic students who come from low-income families suggests that higher education remains limited for students from those racial and ethnic backgrounds.[66]

C. *With Great Access Comes Individual Responsibility*

In the last fifty years, the investment imperative has emerged as a touchstone of federal higher education policy. Driven by a combination of increased numbers of Americans seeking access to higher education, increased higher education costs, state disinvestment, and a strong personal responsibility rhetoric, Congress began treating higher education as a private, rather than a public, good.

Although federal legislation is never an easy-to-plot line,[67] this Section details four primary features of the recent higher education landscape that reflect the strength of the investment imperative. First, Congress continued access expansion by extending loans to additional categories of people and allowing individual borrowers to borrow more. Second, the loan expansion occurred primarily through unsubsidized loans, which are less

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barrier to higher education for students from low-income families . . . ."); Glater, *supra* note 4, at 1590 (explaining that the prospect of borrowing large amounts of money may deter some students from applying to or enrolling in college).

62. COHEN, *supra* note 7, at 140.

63. GOLDRICK-RAB, *supra* note 3, at 72.

64. *See infra* Section IV.A.3 (discussing for-profit institutions).

65. HUELSMAN, *supra* note 17, at 15.

66. Research shows that nearly 40 percent of Black borrowers drop out, compared with 29 percent of White borrowers. *Id.* at 15–16.

67. GOLDRICK-RAB, *supra* note 3, at 87 ("The history of federal student aid since its inception has been a series of ebbs and flows, periods of generosity and periods of cuts, all while college costs continued to rise. Support for helping economically vulnerable students like ours secure a better future through higher education has been inconsistent, leaving their opportunities subject to a volatile mix of politics and economics. In the midst of it all, students are simply trying to get ahead.").

generous to borrowers than subsidized loans.[68] Third, Congress declined to connect access initiatives to institutional accountability metrics, opening the door for the recent explosion of for-profit colleges and universities. And fourth, at the same time that Congress expanded the menu of education loans, it made it more difficult for those borrowers who could not repay their loans. While these features are arguably in contradiction with one another, the investment imperative connects them all.[69] Because higher education is imperative, individuals will seek it out at all costs. And investment in higher education's "safe bet" justifies both the punitive collection policies and the sluggish motivation for government regulation.[70]

It is important to note that broad access to higher education has remained a potent driving force in higher education policymaking. In 2009, for example, Barack Obama told the American people, "[T]onight, I ask every American to commit to at least one year or more of higher education or career training. . . . [W]hatever the training may be, every American will need to get more than a high school diploma."[71]

Yet, the financing of that access has increasingly been offered through loans, rather than grants. The greatest increase has come in the form of unsubsidized loans, which have higher interest rates than subsidized loans and accrue interest from the disbursement of the loan, even when the student is enrolled in school. In 1968, Congress raised the interest rate in an effort to "tighten up [the HEA] program" by offering loans that "will not provide for an

68. Unsubsidized loans may carry a higher interest rate than subsidized loans and begin to accrue interest as soon as they are disbursed. *Subsidized and Unsubsidized Loans*, FED. STUDENT AID, https://studentaid.ed.gov/sa/types/loans/subsidized-unsubsidized [https://perma.cc/S4S4-TXYA] (last visited Sept. 12, 2019). In contrast, students do not pay interest on subsidized loans while engaged in at least half-time education and during a short grace period after graduation. *Id*.

69. Other scholars have used different lenses through which to view the legislature's shift from viewing higher education as a public good to viewing it as a private good. *See, e.g.*, Camilla E. Watson, *Reforming the Tax Incentives for Higher Education*, 36 VA. TAX REV. 83 (2017) (arguing that politics, a changing economy, and a congressional enmity to students has driven the legislative policy shift on higher education). This can be read in conjunction with the investment imperative.

70. WALTER W. MCMAHON, TIAA-CREF INST., THE PRIVATE AND SOCIAL BENEFITS OF HIGHER EDUCATION 2, 7 (2010), https://www.tiaainstitute.org/sites/default/files/presentations/2017-02/ahe_privatesocial0310c.pdf [https://perma.cc/BJ4H-6USZ] (stating that lawmakers are unlikely to conclude that there is a need for greater governmental intervention to make college more available without an understanding of the widespread public benefits of higher education).

71. President Barack Obama, Address to Joint Session of Congress (Feb. 24, 2009) (transcript *available at* https://obamawhitehouse.archives.gov/the-press-office/remarks-president-barack-obama-address-joint-session-congress [https://perma.cc/YQ5L-AFDM]).

interest subsidy during the repayment period."[72] As Congress decreased grant amounts and increased access to unsubsidized loans, by 1981, loan dollars topped grant dollars as the prevailing form of federal aid.[73] The Student Financial Assistance Technical Amendments Act of 1982 restricted the Pell Grant award and "revised the need-based criteria for [supplemental educational opportunity grants], work-study grants, and direct loans."[74] The 1992 HEA amendments then created an unsubsidized federal loan portfolio, increased loan limits, and eliminated borrowing limits on Parent PLUS loans.[75] The Deficit Reduction Act of 2005 cut $12.7 billion from higher education financial aid.[76] At the same time, Congress added another category of loans—Graduate PLUS loans, which allowed individuals to take on additional unsubsidized federal loans at a higher interest rate for graduate studies.[77]

As Congress expanded access to (mostly unsubsidized) education loans, it failed to tie those federal dollars to accountability measures for the beneficiary postsecondary institutions.[78] While institutions must meet certain requirements to maintain access to federal loan dollars, including accreditation by an agency recognized by the Department of Education,[79] such

72. 90 CONG. REC. 23,111 (1968) (statement of Rep. Meeds) (explaining the purpose was to "increase the volume of loans").

73. AKERS & CHINGOS, *supra* note 25, at 48–49, 49 fig.3.4. This does not account for scholarships provided by institutions and private sources.

74. Student Financial Assistance Technical Amendments Act of 1982, Pub. L. No. 97-301, 96 Stat. 1400; Watson, *supra* note 26, at 1117. *But see id.* (discussing the 1986 HEA amendments, which increased the Pell Grant award and extended the Perkins Loan for the lowest-income students, among implementing other changes).

75. AKERS & CHINGOS, *supra* note 25, at 47. Parent PLUS loans refer to a loan program for parents of undergraduates, which was first created in 1980. *Id.* at 22. These legislative choices were made, at least in part, to counter a sense that HEA programs had "literally spun out of control." 102 CONG. REC. 6846 (1992) (statement of Rep. Gordon).

76. Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006); Watson, *supra* note 26, at 1124.

77. Deficit Reduction Act, sec. 8005(c), § 428(b). Then, in 2010, Congress passed the Student Aid and Fiscal Responsibility Act ("SAFRA"), which acted to make the federal government, through the Department of Education, the primary direct lender of education debt and changed and expanded income-based repayment options. *See* Brooks, *supra* note 24, at 851–53.

78. *See* GOLDRICK-RAB, *supra* note 3, at 16–17 (discussing how federal student aid flows to colleges and universities without any concomitant requirement that the colleges and universities commit to affordability or quality); Kraiem, *supra* note 11, at 691 (noting that the HEA has been "entirely ineffective in terms of protecting both public and private investment in higher education").

79. ALEXANDRA HEGJI, CONG. RESEARCH SERV., R43826, AN OVERVIEW OF ACCREDITATION OF HIGHER EDUCATION IN THE UNITED STATES 8 (2017), https://fas.org/sgp/crs/misc/R43826.pdf [https://perma.cc/4DZ4-Y6CB].

metrics provide little real accountability. Accreditation, which can be governed by regional, national, or programmatic accrediting agencies, is a poor marker of institutional quality because it does not account for graduation rates, retention rates, job placement rates, or student performance in skills assessments.[80] And although institutions can lose access to federal financial aid dollars if their graduates' default rates are exceedingly high,[81] default rates do not adequately measure students' ability to repay or the quality of the education received, in part because the calculation of default rates ignores long-term ability to repay and can be easily manipulated.[82] Inadequate accountability measures account for one significant cause of the recent proliferation of for-profit colleges and universities. A recent push for deregulation of the higher education industry projects a future of further quality-control slippage.[83] The recent move by Education Secretary Betsy DeVos to formally rescind the "gainful employment rule"[84] that was enacted by the Obama Administration to hold to account the for-profit-college industry, for example, will limit the pressure on those institutions to prove the value of their programs through student outcome metrics.[85]

Finally, we see Congress's institution of a series of punitive collection policies. Before 1978, for example, student loan debts

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80. *Id.* at 2–4, 17.

81. Kelchen, *supra* note 59, at 189 (explaining that colleges can lose access to financial aid if their three-year cohort default rate exceeds 40% in the most recent year or more than 30% in three consecutive years).

82. *See id.* (arguing that the default statistics are an imperfect measure because they only include the first three years of repayment, which ignores long-term outcomes, and because students might be in income-driven repayment plans that allow a student to pay little or no money on her loan without going into default); Andrew Kreighbaum, *GAO: Colleges, Consultants Game Rules to Lower Default Rates*, INSIDE HIGHER ED (Apr. 27, 2018), https://www.insidehighered.com/news/2018/04/27/gao-finds-colleges-manipulating-loan-default-rates-keep-access-federal-aid [https://perma.cc/KH7L-TL3T] (citing U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-163, FEDERAL STUDENT LOANS: ACTIONS NEEDED TO IMPROVE OVERSIGHT OF SCHOOLS' DEFAULT RATES (2018), https://www.gao.gov/assets/700/691520.pdf [https://perma.cc/EGV6-L6XY], which details how some colleges were "gaming" the cohort default statistics by pushing graduates into forbearance to lower the institutions' default statistics).

83. *See* Eric Kelderman, *Era of Deregulation*, CHRON. HIGHER EDUC. (Mar. 4, 2018), https://www.chronicle.com/article/DeVos-Has-Nixed-Several/242664 [https://perma.cc/J5AV-NDNL] (tracking Betsy DeVos's deregulation activities in her first year as Secretary of the Department of Education).

84. Program Integrity: Gainful Employment, 84 Fed. Reg. 31,392 (July 1, 2019) (to be codified at 34 C.F.R. pts. 600, 668).

85. Andrew Kreighbaum, *DeVos Issues Final Repeal of Gainful Employment*, INSIDE HIGHER ED (July 2, 2019, 3:00 AM), https://www.insidehighered.com/quicktakes/2019/07/02/devos-issues-final-repeal-gainful-employment [https://perma.cc/JX6Z-6H7P].

were dischargeable in bankruptcy like other unsecured credit.[86] In 1978, Congress amended the Bankruptcy Code to limit the discharge of education debt in the first five years only to a debtor establishing "undue hardship."[87] Representative Thornton, in 1976, explained the rationale: "The discharge in bankruptcy of student loans is an important contributing factor to the feelings of dissatisfaction and frustration about these programs, and many people are alarmed about the possibility of increasing numbers of students taking advantage of the escape hatch provided by the Bankruptcy law."[88] Other lawmakers pointed to the integrity of the student loan program, arguing that allowing debtors to discharge their education loans in bankruptcy will limit the education loans that can be made to future students.[89]

Congress continued to make discharging education debt in bankruptcy more difficult by extending the exemption to seven years in 1990, extending the exemption to the life of the debt in 1998,[90] and, finally, extending the exemption to all education loans, including private loans, in 2005.[91] Not only did Congress eliminate a debtor's option to use the consumer bankruptcy system to discharge education debt,[92] Congress simultaneously instituted a number of punitive collection tools for outstanding federal student debt.[93] The 1992 HEA Amendments removed the statute

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86. Daniel A. Austin, *The Indentured Generation: Bankruptcy and Student Loan Debt*, 53 SANTA CLARA L. REV. 329, 363 (2013).

87. *Id.*

88. *Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary*, 94th Cong. 1066 (1976) (statement of Rep. Thornton).

89. *See, e.g.*, 95 CONG. REC. 1792 (1978) (statement of Rep. Ertel).

90. Frank T. Bayuk, *The Superiority of Partial Discharge for Student Loans Under 11 U.S.C. § 523(A)(8): Ensuring a Meaningful Existence for the Undue Hardship Exception*, 31 FLA. ST. U. L. REV. 1091, 1096 (2004).

91. The change was made through the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA). Alexei Alexandrov & Dalié Jiménez, *Lessons from Bankruptcy Reform in the Private Student Loan Market*, 11 HARV. L. & POL'Y REV. 175, 178 (2017) (exploring the stated rationale for BAPCPA—that increased creditor rights would translate to lower interest rates and greater access for students).

92. For a full exploration of Congress's treatment of student debtors under the Bankruptcy Code, see Austin, *supra* note 86, at 410 ("By making education debt nondischargeable, Congress has linked student loan default together with offenses such as fraud, willful injury, and failure to pay child support.").

93. *See* Melissa B. Jacoby, *Does Indebtedness Influence Health? A Preliminary Inquiry*, 30 J.L. MED. & ETHICS 560, 565 (2002) ("When the government itself is the unsecured creditor, the legal system provides particularly potent assistance. The government has unique collection tools (such as imposing tax liens), and continuously searches for new methods of getting now-impecunious borrowers to pay taxes or to honor other government obligations.").

of limitations for federal collections.[94] Then, with the passage of the Debt Collection Improvement Act of 1996, Congress gave the federal government unfettered rights to collect from student borrowers by "removing any federal or state statutory, regulatory, or administrative limitation on loan collections and authorizing the garnishment of wages and Social Security benefits."[95]

D. *Increased Access Supported by the Investment Imperative Comes at a Cost*

As the investment imperative took hold in federal policymaking, college costs were also rising at unprecedented rates. That means that the spending power of the Pell Grant and other scholarships declined. Therefore, students turned more and more to credit to finance their higher education. With the combination of federal policy aimed at increasing access to loan dollars, rising costs of education, and fewer state dollars covering those costs, it is no wonder that aggregate student education debt has exploded in the last fifty years.

Over the last fifty years, higher education has become much more expensive. Between the 1970s and mid-2010s, tuition and fees at higher education institutions greatly outpaced inflation; researchers have found that between 1971–1972 and 2014–2015, tuition and fees outpaced inflation by 191 percent at private four-year colleges, by 198 percent at public two-year colleges, and by 265 percent at public four-year colleges.[96] Adjusted for inflation, the average annual net price for a public four-year college has increased by approximately $2,100 since 1990; the annual cost for a private four-year college has increased by approximately $3,500 in the same time.[97] For traditionally low-cost public institutions, that dollar increase represents a 111 percent increase in the last three decades.[98] The cost increase can be traced to a number of

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94. Higher Education Amendments of 1992, Pub. L. No. 102-325, § 1551, 106 Stat. 448, 838.

95. C. Aaron LeMay & Robert C. Cloud, *Student Debt and the Future of Higher Education*, 34 J.C. & U.L. 79, 82 (2007); *see e.g.*, 20 U.S.C. § 1091a (2012) (allowing debt collection to be occur without regard to any state, local, or federal statute of limitations).

96. Kelchen, *supra* note 59, at 173 (citing SANDY BAUM & JENNIFER MA, TRENDS IN COLLEGE PRICING 3, 10 (The College Board ed., 2014)). While students may not necessarily pay the list price for their education due to scholarships and tuition remission, in just the fifteen years between 1995–1996 and 2011–2012 acdemic years, the median net price students paid increased by almost 24 percent, after adjusting for inflation. *Id.* at 174.

97. AKERS & CHINGOS, *supra* note 25, at 50–51.

98. *Id.* at 51; *see also* GOLDRICK-RAB, *supra* note 3, at 39 (noting that, in the last generation, public colleges and universities have seen their state budget allocations slashed; on average, those institutions have seen a decline in state dollars from 75 percent

factors, including state disinvestment in higher education, increased demand for higher education, and increased costs of services provided at institutions of higher education.[99] Without sufficient state financial support, and in the face of increased demand and increased costs, institutions have passed the costs on to individual students and their families. Those families are increasingly turning to debt to finance higher education.[100] In a 2017 study, students aged 18 to 24 and their families reported that they borrowed to pay for 27 percent of higher education, up from only 20 percent just one year prior.[101] Today, after accounting for grant dollars, three-fourths of students' families pay more than 20 percent of their annual income toward higher education and low-

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of operating budget to 50 percent of operating budget).

99. *See* AKERS & CHINGOS, *supra* note 25, at 56–57. The reason why college costs have risen so dramatically is the subject of some scholarly debate. *Cf. id.* at 54–60; DANIEL D. POLSBY, UNDERSTANDING THE RUNAWAY TUITION PHENOMENON: CREDENCE GOODS IN AN AGE OF SKEPTICISM (2017), https://www.law.gmu.edu/assets/files/publications/working_papers/1710.pdf [https://perma.cc/JC37-SDR4]. Polsby argues that the Bennett hypothesis is the only legitimate explanation for the rise in college tuition. The Bennett hypothesis, named for former Secretary of Education William Bennett, posits that tuition increases are directly linked to federal government subsidies for higher education. In other words, the more grant and loan dollars that the government makes available, the more schools will charge. *Id.* at 4–5. Robert Kelchen, on the other hand, argues that, when one runs the numbers, there is less evidence to support the Bennett hypothesis than one might think, at least in professional education programs. *See* Robert Kelchen, *Does the Bennett Hypothesis Hold in Professional Education? An Empirical Analysis*, RES. HIGHER EDUC. 1, https://link.springer.com/content/pdf/10.1007%2Fs11162-019-09557-9.pdf [https://perma.cc/9B8V-SSH7] (finding "little consistent evidence to support the Bennett [h]ypothesis" in either business or medical school); Robert Kelchen, *Is There Evidence of the Bennett Hypothesis in Legal Education?*, ROBERT KELCHEN (Nov. 8, 2017), https://robertkelchen.com/2017/11/08/bennett-hypothesis-legal-education/ [https://perma.cc/M52H-7R34]. This Article does not generally weigh in on the supply side of the increased costs of higher education, which would require an interrogation of the Bennett hypothesis and other explanations for rising tuition costs. Rather, it is focused on the demand side of the equation, exploring whether and how the investment imperative distorts consumer decision-making with respect to attending and financing higher education. It does recognize, however, that there is a relationship between the supply side of education, the investment imperative, and consumers' decision-making. To the extent that rising tuition costs do not translate to better economic (or noneconomic) outcomes, there is an increased cost for a decreased value. We see this, without question, in the for-profit industry. *See infra* notes 227–31 and accompanying text (discussing the allegations of ineffective educational services with regard to for-profit colleges). To take that a step further, such a disconnect is deeply connected to and distorted by the near mythological belief in higher education as a necessary investment. To the extent that the cultural belief in the investment imperative is outdated, its continued hold on prospective students exacerbates the distortions identified in Part IV and opens vulnerable students to further exploitation.

100. *See* GOLDRICK-RAB, *supra* note 3, at 16 (noting that state disinvestment in public higher education "fueled the declining purchasing power of the Pell [Grant] and the need for so many middle-class families to turn to student loans"); Glater, *supra* note 4, at 1577–78 (tracing the increase in student borrowing to a combination of grant aid that has lagged behind need, stagnated household incomes, and increased tuition).

101. SALLIE MAE, *supra* note 12, at 2, 12.

income families making less than $16,000 per year pay 84 percent of their income to support their children's higher education.[102] For the 39 percent of undergraduates who receive a Pell Grant,[103] the great majority find the grant insufficient to meet the high cost of higher education; today, 90 percent of Pell Grant recipients graduate with debt.[104] Debt-to-income ratios reflect the class disparities; "low-income families hold student debt amounting to about 70 percent of their income, while wealthier families have student debt amounting to around 10 percent of income (a rate deemed manageable by the financial industry)."[105]

In the 1980s, annual student borrowing increased five-fold from a decade prior, to approximately $22 billion in present-day dollars.[106] And by the mid-2010s, annual borrowing increased five-fold again, to more than $100 billion.[107] In the last twenty years, U.S. households aged 20 to 40 have witnessed an almost two-fold increase in education debt, from 20 to 38 percent.[108] Looking just at those households with debt, the average outstanding debt has risen from $8,300 to $21,000.[109] Today, aggregate student debt is closing in on $1.5 trillion, more than double its count a decade prior.[110] The most recent official data show that 36 percent of undergraduate students received federal loans in 2015–2016, with 31 percent taking subsidized loans and 30 percent saddled with unsubsidized loans.[111] Education debt has long-term effects on borrowers' financial well-being; a 2013 report found that a household with student debt stands to lose $208,000 over a lifetime relative to a household without debt.[112]

As costs have risen and increasingly been borne by individual students and their families, the levels of default have also risen.

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102. GOLDRICK-RAB, *supra* note 3, at 5.

103. RADWIN ET AL., *supra* note 8, at 5.

104. GOLDRICK-RAB, *supra* note 3, at 5, 17 (noting that the "maximum Pell [Grant] covers less than one-third of the cost of attending a public four-year college or university and barely 60 percent of the cost of attending a community college").

105. *Id.* at 94.

106. AKERS & CHINGOS, *supra* note 25, at 1.

107. *Id.*

108. *Id.* at 40.

109. *Id.*

110. RESEARCH & STATISTICS GRP., FED. RESERVE BANK OF N.Y., *supra* note 13, at 3.

111. RADWIN ET AL., *supra* note 8, at 5. This is an increase from 26 percent of undergraduates who borrowed to pay for college in the 1995–1996 academic year. Kelchen, *supra* note 59, at 181.

112. ROBERT HILTONSMITH, AT WHAT COST? HOW STUDENT DEBT REDUCES LIFETIME WEALTH 9 (2013), https://www.demos.org/sites/default/files/publications/AtWhatCost.pdf [https://perma.cc/D289-NAZ4] (concluding the discrepancy is largely due to retirement savings).

The current rate of default on federal loans is 10 percent—"representing 475,000 students in a single cohort who defaulted within only two years of entering repayment . . . ."[113] Although many borrowers are able to manage their student debt, there is consensus that certain communities and borrowers are especially vulnerable to default. The greatest risk for defaulting on a loan is failure to obtain a degree.[114] Further, unmanageable student debt "clusters at" certain variables, including low-dollar loans, for-profit student borrowers, low-income borrowers, female borrowers, Black borrowers, and borrowers with dependent family members (parents or children).[115] Older borrowers are also at risk; almost "40 percent of federal student loan borrowers aged 65 and older are in default" on their loans.[116]

For students attending for-profit institutions, an area of rapid growth in the 1990s and 2000s, the statistics are particularly grim. By 2009, the default rate for students attending for-profit colleges had reached 47 percent.[117] For example, in a study of New York postsecondary institutions, the Century Foundation found: (1) a majority of students at 38 percent of for-profit schools left school "with earnings below those of an average worker with only a high school diploma," and (2) almost half of for-profit students defaulted on their federal loans within twelve years, which is more than four times the rate of their peers.[118] The most recent data, which

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113. AKERS & CHINGOS, *supra* note 25, at 101 (calling the default rate a "national tragedy"). A "cohort default rate measures the percentage of students who borrowed, left college in a given year, and defaulted on their loans within a given period of time." Kelchen, *supra* note 59, at 188. For federal loans, a default occurs after nonpayment for 270 days. Many more student borrowers are delinquent on their loans, meaning that they have failed to repay for some period less than nine months. For example, in 2014, of the nearly 350 billion federal dollars that should be in repayment (excluding those in deferment and forbearance), only 72 percent of the dollars was in on-time repayment; "$40.6 billion [was] delinquent between 31 and 180 days, $14 billion [was] delinquent more than 180 days, and . . . $40.1 billion [was] in default." *Id.*

114. *See* Kelchen, *supra* note 59, at 189–90 (noting that in the 2003–2004 school year, those who failed to complete a degree were responsible for more than 60 percent of the defaults by 2009).

115. Kraiem, *supra* note 11, at 699–700.

116. PERSIS YU, NAT'L CONSUMER LAW CTR., PUSHED INTO POVERTY: HOW STUDENT LOAN COLLECTIONS THREATEN THE FINANCIAL SECURITY OF OLDER AMERICANS 3 (2017), http://www.nclc.org/images/pdf/student_loans/student-loan-collections-threaten-fin-sec.pdf [https://perma.cc/BZ7C-CSNY].

117. AKERS & CHINGOS, *supra* note 25, at 102–03 (describing the statistics for students five years into repayment).

118. CAO, *supra* note 21, at 3. Those data are not unique; for-profit institutions have come under fire from Congress and advocates for failing their students and engaging in widespread schemes of misrepresentation and fraud. *See, e.g.*, SENATE COMM. ON HEALTH, EDUC., LABOR AND PENSIONS, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS (2012), https://

provide more of a long-term view, suggest that more than half of for-profit college students default on their loans.[119]

For those borrowers in default, they face yet another huge cost—the punitive collection policies instituted by Congress to collect on federal debt. In addition to facing no statute of limitations on collection,[120] the federal government can rely on a host of punitive collection tools that include administrative wage garnishment, tax return seizure, Social Security offsets, and diminished Earned Income Tax Credits, among others.[121] Many states are also policing default at the behest of the federal government; nineteen states allow for professional licenses to be revoked and one revokes driver's licenses for debtors who default on education loans.[122] Borrowers are also subject to the costs and fees of collection, which are added to the principal of their loan.[123] And, as discussed above, with rare exception, a debtor's education loans cannot be discharged in bankruptcy.[124] Higher education policymaking has written the investment imperative—through its preoccupation with access and treatment of higher education as a private good—into the law. The next Part will investigate how that has affected consumers.[125]

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www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf [https://perma.cc/FAL6-QG2V]. For a full understanding of the failures of for-profit colleges, see *id.* and COTTOM, *supra* note 2.

119. Judith Scott-Clayton, *The Looming Student Loan Default Crisis Is Worse than We Thought*, BROOKINGS (Jan. 11, 2018), https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/ [https://perma.cc/T8KQ-5J8N].

120. 20 U.S.C. § 1091a (2012); *see* LeMay & Cloud, *supra* note 95, at 87.

121. For a full explanation of the administrative collection procedures for student debt, see Austin, *supra* note 86, at 406–07; Doug Rendleman & Scott Weingart, *Collection of Student Loans: A Critical Examination*, 20 WASH. & LEE J. C.R. & SOC. JUST. 215, 243–53 (2014).

122. Jessica Silver-Greenberg et al., *When Unpaid Student Loan Bills Mean You Can No Longer Work*, N.Y. TIMES (Nov. 18, 2017), https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html [https://perma.cc/DE5N-FEBT].

123. *Collections*, FED. STUDENT AID, https://studentaid.ed.gov/sa/repay-loans/default/collections#other-costs [https://perma.cc/7SRJ-NQ4E] (last visited Sept. 12, 2019).

124. *See supra* notes 86–95 and accompanying text.

125. I recognize that even the use of the term "consumer" in this context might be considered an endorsement of the commodification of higher education. *See supra* notes 27–28 and accompanying text. Perhaps a better term would be "student" or even "citizen." *See, e.g.*, D. Carolina Núñez, *Mapping Citizenship: Status, Membership, and the Path in Between*, 2016 UTAH L. REV. 477, 481 (recognizing that legal scholars have put a lot of stock in the concept of citizenship as a means of conceptualizing rights, participation, work, standing, and identity). I use consumer in this context, however, because: (1) it is the primary language used by higher education financing scholars; and (2) I believe that the consumer protection framework doctrine offers a framework that might stem the tide of exploitative financing practices.

III. THE INVESTMENT IMPERATIVE EFFECT

Not only does the investment imperative bubble up in higher education policy, it also drives and distorts individual decision-making about postsecondary education. One industry study reported that nearly 100 percent of respondents, over ten years, noted that the primary driving force for college attendance is the notion that "[c]ollege is an investment in the student's future."[126] It also found that "[c]lose to [nine] in [ten] families said they knew the student would attend college as early as his or her enrollment in preschool."[127] It reported, however, that only about four in ten families had a plan to pay for college, with fewer families confident about that plan over time.[128] Individual stories from original qualitative research provide an additional layer of support and insight as to those findings. The great majority of the sixty-five borrowers interviewed explicitly discussed either: (1) a sense that college was the natural or assumed next step, without articulating individual rationales for college attendance; (2) a belief that college was an economic investment in their future; or (3) both.[129] That commitment to higher education, however, was not necessarily connected to a plan for financing the college investment. Rather, the majority of respondents borrowed indiscriminately against their future, putting faith in the promise of the investment imperative. This Part explores how the investment imperative affects students' decision-making about attending and financing their postsecondary education.

A. *Methodology*

"Qualitative research 'is a broad umbrella term for research methodologies that describe and explain persons' experiences, behavi[or]s, interactions and social contexts' without relying on quantitative or statistical models."[130] By engaging intimately with individuals directly affected by laws, policies, and systems, qualitative work adds context and nuance to quantitative research.[131] It fills in gaps in previous research and opens up new

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126. *See* SALLIE MAE, *supra* note 12, at 5.

127. *Id.* at 6.

128. *Id.* at 28.

129. *See* discussion *infra* Section III.B.

130. Michael D. Sousa, *Bankruptcy Stigma: A Socio-Legal Study*, 87 AM. BANKR. L.J. 435, 458 (2013) (quoting Ellie Fossey et al., *Understanding and Evaluating Qualitative Research*, 36 AUSTL. & N.Z. J. PSYCHIATRY 717, 717 (2002)).

131. Sara Sternberg Greene, *The Bootstrap Trap*, 67 DUKE L.J. 233, 242 (2017) ("[W]hat we can glean only by engaging in in-depth interviews with those directly affected

questions for future research.[132] Because the goal of qualitative work is to garner in-depth information from a smaller group of people, it "makes no claim of the generalizability of findings to a specified larger population in a probabilistic sense."[133] Accordingly, qualitative analysis in this Article does not generally quantify data, but uses terms such as "most," "many," and similar adjectives.[134] Legal scholars frequently rely on qualitative data to investigate the effects of the legal system on individual people.[135]

This Article utilizes the data from an original qualitative research study in which I am a co-investigator.[136] Over the course of ten months (from August 2017 to May 2018), two researchers at the UNC Center for Community Capital interviewed individuals who used loans to finance some or all of their higher education.[137] I set out the basic outlines of the sample below. For a more detailed

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by the legal rules, systems, and processes we study: an understanding of how, in their actual social contexts, these actors experience, understand, and internalize the relevant legal rules and structures, and how these structures become sources of personal meaning and determinants of behavior.").

132. *Id.* at 242, 265–66 ("The aim of the study and sampling strategy is to illuminate and understand rather than to predict or determine causation. This is the dominant strategy used among analytical sociologists.").

133. Sousa, *supra* note 130, at 458 (quoting Fossey et al., *supra* note 130, at 730).

134. This is consistent with accepted qualitative analysis methods. *See* Greene, *supra* note 131, at 266.

135. *See, e.g.*, Foohey, *supra* note 23, at 1345 (using a qualitative study of religious organizations that filed chapter 11 bankruptcy to understand whether and how the leaders conceptualized their financial problems as legal problems solvable through legal reorganization); Greene, *supra* note 131, at 242, 267–68 (using qualitative data to provide insight into the experiences of recipients of the Temporary Assistance for Needy Families (TANF) program); Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515 (2013) (using a qualitative study to test the benefits and drawbacks of the Earned Income Tax Credit (EITC) as a poverty-reduction program); Sousa, *supra* note 130, at 461 (using qualitative data to better understand the relationship between bankruptcy, shame, and stigma); *see also* Greene, *supra*, at 521 n.32 (cataloguing "important studies in legal scholarship [that] have been conducted using qualitative methods").

136. I was not involved in the sampling or interviewing, but was involved in modifying the interview guide, topic monitoring, and analysis.

137. "The [UNC] Center for Community Capital is a non-partisan, multi-disciplinary research center housed within the University of North Carolina at Chapel Hill, and is a leading center for research and policy analysis on the power of financial capital to transform households and communities in the United States." *Our Organization*, CTR. FOR COMMUNITY CAP., https://communitycapital.unc.edu/about-us/ [https://perma.cc/Q2KJ-XYZF] (last visited Sept. 12, 2019). The interviews were undertaken with the approval and guidance of the University of North Carolina Institutional Review Board. All 65 interviews were conducted by Jess Dorrance and/or Julia Barnard, two researchers who were then employed by the UNC Center for Community Capital. For a complete explanation of the methods employed, see DAVID ANSONG ET AL., UNC CTR. FOR CMTY. CAPITAL, RESEARCH ON THE IMPACT OF STUDENT LOAN DEBT ON HOUSEHOLD FINANCIAL HEALTH: METHODOLOGICAL & TECHNICAL APPENDIX 4–5 (2019).

breakdown of the sample and a comparison of the sample characteristics to the nationally-representative sample of undergraduates and graduates contained in the National Post-Secondary Aid Study, please see the Methodological and Technical Appendix for the underlying study.[138] The researchers employed a semi-structured interview approach, using an interview guide on a range of issues, asking about each respondent's experience deciding whether and where to attend college and how to finance that decision, the respondent's financial and social experiences in college, and the respondent's financial and social experiences after college. The researchers surveyed and interviewed 65 people ranging in age from 19 to 58, with an average age of approximately 31. They spoke with 32 men and 33 women currently living in Austin, Texas; Bryan/College Station, Texas; Chicago, Illinois; Durham/Raleigh, North Carolina; Houston, Texas; Kansas City, Kansas; Lawrence, Kansas; Los Angeles, California; New York City, New York; and San Antonio, Texas.[139] Interviews ranged from approximately thirty to seventy-five minutes. Each respondent received a $35.00 Target gift card.[140] To recruit respondents, the researchers "used a combination of three nonprobability sampling strategies[—]convenience, maximum variation, and snowball sampling," supplemented by consecutive sampling in some locations.[141] With the participants' consent, the researchers audio-recorded and transcribed the interviews. The researchers also interviewed a number of "key informant" experts; those interviews provided context for the analysis.

After consulting with the researchers to generate a list of relevant topics and discuss research questions, I reviewed the transcripts for discussion related to the identified topics, using a structural coding technique[142] via a qualitative data analysis software program called Atlas.ti. Such topic monitoring allowed me to examine general themes and patterns across the transcripts.[143]

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138. *See* ANSONG ET AL., *supra* note 137, at 11.

139. The sample is not a representative sample, as compared to the general population or to the primary federal higher education data collection, the National Post-Secondary Aid Study (NPSAS). As relative to NPSAS, the sample used herein is overrepresented by borrowers of color, men, borrowers who have sought higher education beyond an associate's degree, and first generation students. *See id.* at 6–7, 11.

140. This compensation is consistent with standard social-science research protocols. *See, e.g.*, Greene, *supra* note 131, at 265.

141. *See* ANSONG ET AL., *supra* note 137, at 4.

142. JOHNNY SALDAÑA, THE CODING MANUAL FOR QUALITATIVE RESEARCHERS 98–99 (3d ed. 2016).

143. *Id.*; *see also* Greene, *supra* note 131, at 266 (describing a similar process); Sousa,

While I consulted with the researchers throughout the interviews and to develop the interview guide, the interview guide was not designed to test any of the theories this Article advances. Rather, the insights that arose out of the interviews, when viewed alongside other data and scholarship, provided support for the investment imperative theory developed herein.[144] Consistent with basic tenets of social science research, pseudonyms have been used to protect the confidentiality of the respondents.[145]

By paying attention to individual student borrower's experiences, we can understand how higher education laws and policies interact with social context and real lives. While the theories advanced in this Article do not rely on the sample alone, the data from the sample provide information and insight to complement, corroborate, and complicate the theories. Because our sample is small and (purposely) diverse, it is hard to draw conclusions specific to certain subsections of the population. Much more work should be done in this area to better understand how certain population groups experience higher education and student debt in different ways. What is interesting and valuable about this study is that certain themes arose across the varied sample. Those themes, when placed in the context of other qualitative and quantitative studies and scholarly works, suggest that (1) the investment imperative is a widely-held construct; (2) the investment imperative drives college attendance; and (3) the investment imperative distorts students' decision-making about higher education in interesting, and problematic, ways. The remainder of the Article delves into more detail on these themes.

B. The Investment Imperative Buy-In

For the great majority of the students interviewed, college matriculation was assumed. The desire to go to college was ingrained in them and they were unable to articulate when or why they chose to pursue a college education. This theme arose across family income, cultural background, and parental educational attainment. Respondents noted that college was "non-

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supra note 130, at 463 (describing a similar process).

144. *But see* Foohey, *supra* note 23, at 1334, 1340 (using qualitative interviews to test a hypothesis that arose from quantitative findings).

145. *See* Sousa, *supra* note 130, at 463.

negotiable,"[146] "assumed,"[147] "presumed,"[148] "an expectation,"[149] and "just generally what you did."[150] Several respondents explicitly recognized that college attendance was never a choice.[151] In other words, little individual thought centered on whether to pursue higher education. This is the imperative part of the investment imperative. When something is unavoidable or required, it is imperative. It is done without additional consideration because it is necessary.

Upon further investigation, many respondents connected their assumptions about college attendance to messaging they got from their families, high schools, or communities.[152] The source of this messaging did differ somewhat across groups. For some, prep or high schools led them to higher education: "I think it was always, like in high school I was always in college prep courses or honors courses, so it was never a question about whether or not I would go to college."[153] For many, family and friends communicated that college was the only option. Respondents whose parents and grandparents sought higher education made such pronouncements: "I was raised in an environment where college was always the expectation, and higher ed was always the goal. My parents said that to me quite often, and that was just part of my mom's mantras for her kids."[154] Claudio recalled, "My grandmother went to college[,] so I was going to college. I mean, I

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146. Interview with Illinois Borrower One (Jan. 17, 2018).

147. Interview with Kansas Borrower Five (Aug. 30, 2017); *see also* Interview with Texas Borrower Four (Feb. 17, 2018).

148. Interview with Illinois Borrower Nine (Jan. 20, 2018).

149. Interview with Kansas Borrower Two (Aug. 30, 2017).

150. Interview with Illinois Borrower Eleven (Jan. 20, 2018).

151. *See, e.g.*, Interview with California Borrower Five (Apr. 14, 2018) ("Not going to [college] was just not something I ever thought of."); Interview with California Borrower Six (Apr. 14, 2018) (going to college "just was never a second thought"); Interview with Texas Borrower Two (Feb. 17, 2018) (the decision to attend college "wasn't really a choice"); Interview with Texas Borrower Nine (Feb. 18, 2019) ("My parents never really made it an option . . . .").

152. *See* COTTOM, *supra* note 2, at 128 (referencing sociologist Anne Mullen's work with Ivy League students, who could not describe how or why they decided to attend college and could not separate their own college aspirations from their parent's expectations).

153. Interview with New York Borrower Six (Oct. 17, 2017).

154. Interview with Texas Borrower Five (Feb. 17, 2018); *see also* Interview with California Borrower Nine (Apr. 15, 2018) ("[I]n the community that I grew up in, it was kind of expected. It was really rare for people not to go to college. So it's just kind of like an expectation."); Interview with Illinois Borrower Eleven (Jan. 20, 2018) ("I grew up in northern Virginia, which is pretty well-off suburbs. A lot of successful people, work for the government, other businesses. So, it was already around that, people went to college. And that's just generally what you did.").

guess I never thought about not going to college."[155] First-generation college students received similar messaging from their parents. Savi explained:

> There wasn't even, like, a question as to whether we were gonna go. Like, we had to. You know, I never even know [sic] there were other options other than going to a four-year school. So, I mean, even though neither one of my parents graduated from college they really stressed that we had to go to college.[156]

Cheryl recalled, "I don't think college was ever . . . [t]here was ever a question that I wouldn't go. I mean my parents never went so they definitely pushed it where it was never not an option."[157] And Robert recalled, "I'm the first[-]generation college student in my family, so my dad always came up to me and was like, 'Oh, you're going to go to college, right?' I didn't even know what that was."[158] And for students with immigrant parents, the investment messaging around higher education was particularly strong.[159]

The imperative is justified by the sense of economic investment. Sociologist Sara Goldrick-Rab, after significant quantitative and qualitative work in higher education, has concluded: "Higher education is no longer seen as a choice or a luxury—it is viewed as the only available next step and, indeed, the only hope."[160] Our respondents agreed. Upon reflection about their college decisions, many respondents connected their college goals to an expected financial result.[161] Respondents discussed

155. Interview with California Borrower One (Apr. 13, 2018).

156. Interview with Kansas Borrower Four (Aug. 31, 2017). Scholars agree that, especially for low-income students, "getting ahead in life is a main reason for attending college." GOLDRICK-RAB, *supra* note 3, at 166.

157. Interview with New York Borrower One (Oct. 15, 2017).

158. Interview with New York Borrower Three (Oct. 16, 2017).

159. *See, e.g.*, Interview with New York Borrower Five (Oct. 16, 2017) ("[I]t was a theme that my parents had. They're from the Dominican Republic, so they just felt like school, college, was the way to be a qualified candidate to do jobs that they deemed just admirable: teacher, nurse, doctor, whatever the case may be."); *see also* Interview with New York Borrower Four (Oct. 16, 2017); Interview with North Carolina Borrower Three (Sept. 3, 2017).

160. GOLDRICK-RAB, *supra* note 3, at 19.

161. *See, e.g.*, Interview with Kansas Borrower Eight (Sept. 1, 2017) ("I think that I would tell somebody coming out of high school that the debt that you accrue in undergraduate degree is gonna be insignificant in comparison to the . . . value that you get from having a degree."). Of course, financial investment was not the only reason why our respondents wanted to attend college. *See, e.g.*, Interview with California Borrower Eight (Apr. 15, 2018) ("I knew that the only way out was college."); Interview with Illinois Borrower Two (Jan. 17, 2018) ("I started kind of thinking about the possibility of just using college as a way to get out of . . . a very small town in North Carolina."); Interview with Kansas Borrower One (Aug. 30, 2017) (discussing his "crazy, crazy family" and that "college

college as a means of making money,[162] gaining skills that would lead to career advancement,[163] or as a "business investment."[164] Darryl explained: "I didn't want to be in a warehouse anymore. I didn't want to lay carpet anymore. I didn't want to wash dishes anymore, and I didn't want to scrub floors anymore."[165] Susie disclosed, "I feel like just the way this society is built, you go to college you make more money. The data shows it."[166] And Jesse reflected on the messaging he had received since elementary school that pointed to college as "the golden land" and "the only means to success."[167] Cheryl explained her version of the investment imperative:

> I mean it's kind of a typical, I think, Asian family story. Or an immigrant family story. They just wanted me to have something they didn't[,] and in their eyes[,] education was the only way to become successful. So like going to get my undergrad and then going directly to grad school or some type of higher education is the only way that I could make money . . . . Because they're kind of stuck in one economic status and their income is kind of, it's not fluid. It's very static so the only way to kind of get above that bracket is to go to school.[168]

While not everyone shared the same story, the investment imperative acted as connective tissue throughout the data.

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was going to be the next step away from that . . . ."); Interview with Kansas Borrower Four (Aug. 31, 2017) ("I wanted to be away from my family. I wanted to have my own place."). And many discussed the importance of developing skills and opening their world views. *See, e.g.*, Interview with New York Borrower Two (Oct. 16, 2017) ("I think education, in a way, just helps you to branch out and open new doors and give you ideas and open your own resources to the things that you could use and need."). Several also noted that a bachelor's degree would not provide a sufficient return on investment, requiring further higher education. *See* Interview with New York Borrower Three (Oct. 16, 2017); Interview with New York Borrower Eight (Oct. 17, 2017); Interview with Texas Borrower Ten (Feb. 19, 2018); Interview with Texas Borrower Eleven (Feb. 19, 2018).

162. *See* Interview with Illinois Borrower Three (Jan. 17, 2018) ("I mean, I just saw it as a step so I can have a full-time career so I can make the money to pay it back . . . .").

163. *See* Interview with Illinois Borrower Five (Jan. 18, 2018).

164. Interview with Kansas Borrower Three (Aug. 30, 2017).

165. Interview with Illinois Borrower Eight (Jan. 20, 2018).

166. Interview with New York Borrower Four (Oct.16, 2017).

167. Interview with North Carolina Borrower Three (Sept. 3, 2017).

168. Interview with New York Borrower One (Oct. 15, 2017); *see also* Interview with Kansas Borrower Six (Aug. 31, 2017) ("My dad just said that if I go to college it's a way to improve your life, to do better . . . ."); Interview with New York Borrower Three (Oct. 16, 2017) ("They thought that if I went to college, I would be able to get a job and work full-time and get money.").

Because students are conditioned to see higher education as an imperative investment in their own human capital,[169] many fail to connect college attendance with college financing. It is college at any cost. Respondents noted that they "didn't consider the tuition part,"[170] didn't "remember payment coming up" during the application process,[171] and that affordability was an "afterthought."[172] While the language and attitude differed across respondents, several who qualified for a Pell Grant also noted a disconnect between attending college and paying for college. For example, Diana explained:

> I just never thought of the cost really, because I always just knew it was something that I was gonna do, so I never . . . I don't know. I just always knew I was gonna take out loans to cover what scholarships I couldn't get. So, I never even was thinking, even though I worked a lot in high school, I was never thinking, "Oh, I should be saving some money so that I can support myself when I go to school." It was so off my radar.[173]

LaToya expressed a similar sentiment:

> At some point it wasn't even a question of whether I would go to college or not, I just knew I was going. As far as figuring out how to pay for college, there was no discussion within the home. We just kind of assumed that you were just going to go, it didn't matter how you got there, you were going to go.[174]

Like LaToya, many other low-income students made similar pronouncements.[175]

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169. *See* Kraiem, *supra* note 11, at 706–07 (arguing that "[t]he language of *individual investment* in human capital" is powerful and is the "primary way that we talk about higher education . . . .").

170. Interview with Illinois Borrower Ten (Jan. 20, 2018); *see also* Interview with Illinois Borrower Twelve (Jan. 20, 2018) (describing how she was not thinking about how to pay, but rather "just thinking about the quality of education I wanted to get").

171. Interview with Illinois Borrower Eleven (Jan. 20, 2018).

172. Interview with Illinois Borrower Three (Jan. 17, 2018).

173. Interview with Kansas Borrower Eight (Sept. 1, 2017).

174. Interview with North Carolina Borrower Two (Aug. 4, 2017).

175. LaToya qualified for a Pell Grant, an indicator that she comes from a low-income family. Others also qualified for Pell Grants. *See* Interview with California Borrower Six (Apr. 14, 2018) (noting that her dad indicated that cost didn't matter as long as she went to college); Interview with Illinois Borrower Eight (Jan. 20, 2018) (recognizing that the messaging about the necessity of college depressed the need to understand or limit loans); Interview with Illinois Borrower Twelve (Jan. 20, 2018) (acknowledging that she was not thinking about how to pay for her higher education, instead focusing only on the desired quality of education); Interview with Kansas Borrower Three (Aug. 30, 2017) (recognizing that her conversations with her parents about attending college did not include discussions of how to pay for college); Interview with Kansas Borrower Four (Aug. 31, 2017) (referring to conversations with his parents about college, stating: "[I]t was basically like, 'It doesn't

Because attendance—and not financing—was the primary motivator, many respondents borrowed indiscriminately to finance their education. Several signed loan documents without worrying about the costs that would accrue. Respondents explained, "I was like yes I'll take it all because I didn't know what I would need, and what would happen basically[,]"[176] and "[i]t felt like plugging my nose and diving in."[177] William described feeling disconnected from the loan dollars, only to be hit with reality at a later date. He recalled:

> Even though I was taking out loans for . . . summer school and loans were coming out there and here, . . . I didn't feel like it affected me directly, it was just numbers going up and down; my bank account, or the game I was playing with the . . . Financial Office[,] . . . [b]ut it never really felt real.[178]

An even greater number of respondents noted that they did not understand the loans they were accepting. They failed to understand the amount accrued,[179] interest rates,[180] repayment plans and options,[181] or the difference between a grant and a loan.[182] Some admitted to signing loan documents they did not read or understand.[183] Stephanie lamented, "I realized as a first-

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matter how much money it costs. . . . [I]f you have to get loans you just have to do it'"); Interview with Kansas Borrower Six (Aug. 31, 2017) (discussing finding herself at college without having considered the costs); Interview with New York Borrower Six (Oct. 17, 2017) (noting that there was no question that she was going to college, but that "how [she was] going to pay for it was very different. . . . that was just up in the air"); Interview with Texas Borrower Six (Feb. 17, 2018) (recognizing that cost wasn't a big factor in her decision to attend an HBCU, although "it probably should have been"); Interview with Texas Borrower Eleven (Feb. 19, 2018) (cost was part of the conversation about choosing colleges, but "it wasn't a major factor" and "wasn't even in the top three . . . .").

176. Interview with Illinois Borrower Two (Jan. 17, 2018); *see also* Interview with New York Borrower Seven (Oct. 17, 2017) ("I think I just took honestly whatever was offered as part of the package. I definitely didn't make any decisions at that time to say like well actually I need less or I'll just make up the difference with my other side jobs. I just took whatever was on the paper, and I got the refund and I was happy with it.").

177. Interview with Kansas Borrower Eight (Sept. 1, 2017).

178. Interview with Illinois Borrower Thirteen (Jan. 20, 2018). Borrowing indiscriminately does not necessarily mean borrowing enough. Contrary to the popular conception of overly indulged college students, for many students, even the full financial aid package offered is insufficient to support basic needs while in college. GOLDRICK-RAB, *supra* note 3, at 235–36 ("Relying on standard aid numbers, which frequently overestimate a family's ability to pay and underestimate the true cost of attendance, provides a false sense of assurance that a full aid package (such as that offered by well-endowed private schools) truly takes money off the table for some students."); *see also infra* note 257.

179. Interview with New York Borrower Six (Oct. 17, 2017).

180. Interview with Illinois Borrower Three (Jan. 17, 2018).

181. Interview with New York Borrower Two (Oct. 16, 2017).

182. Interview with North Carolina Borrower One (Aug. 4, 2017).

183. *See* Interview with Illinois Borrower Eleven (Jan. 20, 2018) ("I remember signing stuff and not reading it."); Interview with Illinois Borrower Twelve (Jan. 20, 2018) ("I very

year student, I didn't know the different types of loans. That was not explained to me at all, like subsidized, unsubsidized, private, federal. Who the hell is Sallie [Mae]? Why do I hate her so much now?"[184] Our data are consistent with other data. One nationally-representative study of first-year college students holding federal loans found a "surprisingly large fraction of . . . students were unaware of how much they borrowed when asked less than a year after they signed the promissory notes for their loans."[185] It further found that no more than 25 percent of students could accurately state their total borrowing within 10 percent, with half underestimating their debt and the other quarter overestimating their debt.[186] The researchers found that more than one-quarter of the borrowers did not understand that they held federal loans and 14 percent did not understand that they had any debt at all.[187]

For several of the students interviewed, parents or other trusted adults took responsibility for the student's financial aid application, even though the loans were in the student's name.[188] Chelsea remarked, "Well, my dad told me about [a college] and I didn't realize it, but next thing I knew is I was here and I didn't really think about money or nothing."[189] Ebony recalled, "The finances were really my parents. . . . But I was oblivious to my finances for college until after when I found out I had [loans] in my name."[190] Tracey remembered that a family friend helped her mom understand how to finance college and apply for loans. Tracey recalled:

> I wouldn't know what was going on because the things were in my name and she would give me my password and login information, I rarely used it, though I had access to it. I feel like she was very involved, my mom was very involved, I wasn't very involved. Until it was time to start paying them

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much remember applying for loans and I just felt like I was signing something that I didn't really understand what that meant for me.").

184. Interview with California Borrower Eight (Apr. 15, 2018).

185. AKERS & CHINGOS, *supra* note 25, at 112 (citing ELIZABETH J. AKERS & MATTHEW M. CHINGOS, ARE COLLEGE STUDENTS BORROWING BLINDLY? 9 tbl.1 (2014), https://www.brookings.edu/wp-content/uploads/2016/06/Are-College-Students-Borrowing-Blindly_Dec-2014.pdf [https://perma.cc/32FJ-52V6]).

186. *Id.*

187. *Id.* at 113.

188. It is important to acknowledge that our sample skewed young. This would likely be different for the increasing number of students entering postsecondary education at a more advanced age.

189. Interview with Kansas Borrower Six (Aug. 31, 2017).

190. Interview with Texas Borrower Two (Feb. 17, 2018); *see also* Interview with Texas Borrower Four (February 17, 2018) (recalling being unaware of a loan his father had taken out in his name until his junior year of college).

> back, and then I found myself logging in more often to see what I needed to do.[191]

Luke had a similar experience:

> I can't remember, I honestly can't remember, but I took the thing that my dad was like, 'Take that.' And then he's like, 'I'll help you pay for it.' Which is kind of a funny thing because you take out a loan only in your name . . . . I've never had that conversation with him, it's just that I have all this debt in my name now . . . .[192]

Students who made college choices without considering the costs, borrowed indiscriminately, or failed to understand the costs they were accruing are not outliers.[193] Rather, they are the norm.[194] They have bought into the investment imperative and put their faith in higher education. Many have taken on significant debt. This paradigm is, of course, regulated and governed by the laws and policies discussed above—the laws and policies that were themselves influenced by the investment imperative. The confluence of the policy's and borrower's adoption of the investment imperative thus distorts students' decision-making about attending and financing their college education. The next Part identifies and explores those effects and their consequences.

IV. THE INVESTMENT IMPERATIVE DISTORTS CONSUMER DECISION-MAKING

It is possible to understand the investment imperative as a positive construct that leads to increased access to higher education and greater ultimate economic security for those who answer its call. In fact, there is great value in holding up a dream for which children and young adults can strive. This is especially true in today's economy, where a college degree is often the key to the labor market.[195] And even though there is discussion of a

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191. Interview with Texas Borrower Six (Feb. 17, 2018).

192. Interview with California Borrower Seven (Apr. 15 2018).

193. AKERS & CHINGOS, *supra* note 25, at 28 ("[T]here is strong evidence that most students do not have an accurate understanding of how much debt they have.").

194. *Id.*

195. *See* GOLDRICK-RAB, *supra* note 3, at 237–38 ("But college is now essential, and unfortunately there are no alternatives. . . . [I]f you cannot attend college, you're lost. You are systemically locked out of nearly every decent-paying job opportunity, every safe neighborhood, and every opportunity to create safe futures for your children."); LeMay & Cloud, *supra* note 95, at 79 ("For the 17,487,475 students enrolled in colleges and universities, access to postsecondary education is perhaps the one best hope for personal fulfillment, vocational success, social mobility, and economic security."); Sima J. Gandhi, *Understanding Students from a Behavioral Economics Perspective: How Accelerating Student Loan Subsidies Generates More Bang for the Buck*, 17 KAN. J.L. & PUB. POL'Y 130,

"student debt crisis,"[196] several scholars argue that, on average, borrowing for college is a wise investment.[197]

What has generally been ignored, however, are the ways that the investment imperative drives and distorts consumers' decisions about their higher education, especially with respect to financing. Building on the previous Part's discussion of indiscriminate borrowing, this Part identifies and explores two effects of the investment imperative on students and their families.

First, it argues that the investment imperative encourages an information ostrich effect, whereby student borrowers ignore and avoid information related to the costs and financing of their education and, thus, their education debt. This ostrich effect makes information campaigns ineffective and creates opportunities for bad actors to exploit the investment imperative to take advantage of vulnerable students.

Second, this Part argues that the investment imperative creates the conditions for a student debt cascade for certain borrowers who find that their financial reality post-graduation does not match what the investment imperative seems to promise. For those graduates (or nongraduates), who feel that their student debt outweighs the value they received from their education, feelings of shame or disappointment can lead to avoidance and, ultimately, default on their education debt. Aggressive collection techniques reinforce distress emotions, cost the taxpayer money, and do nothing to advance society.

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136 (2007–2008) (citing to a series of studies that establish the gap in economic security between college graduates and those without degrees).

196. *See, e.g.*, ANNE JOHNSON ET AL., THE STUDENT DEBT CRISIS 15 (2012), https://www.americanprogress.org/wp-content/uploads/2012/10/WhiteStudentDebt-5.pdf [https://perma.cc/7J3A-9YPS] (defining the current student debt situation as a "crisis"); Tom Lindsay, *New Report: The U.S. Student Loan Debt Crisis Is Even Worse than We Thought*, FORBES (May 24, 2018, 11:07 AM), https://www.forbes.com/sites/tomlindsay/2018/05/24/new-report-the-u-s-student-loan-debt-crisis-is-even-worse-than-we-thought/#12809284e438 [https://perma.cc/5HAX-KRAP] (defining the current student debt situation as a "crisis"). *But see* Baum, *supra* note 17, at 40–41 (arguing that aggregate debt numbers overestimate the level of "crisis" for the majority of student borrowers, for whom the decision to invest in higher education will have a sufficient financial return); Morgan Housel, *Student Loan Bubble: Not as Bad as It Looks*, MOTLEY FOOL, https://www.fool.com/investing/general/2012/06/01/student-loan-bubble-not-as-bad-as-it-looks.aspx [https://perma.cc/6ZVR-9G3A] (last updated Apr. 7, 2017); Tami Luhby, *There Is No Student Loan "Crisis"*, CNN MONEY (Mar. 30, 2012, 4:17 PM), http://money.cnn.com/2012/03/30/news/economy/student-loans/index.htm [https://perma.cc/SGZ2-Q82Y].

197. *See, e.g.*, Baum, *supra* note 17, at 38.

A. The Ostrich Effect

Borrowed from cognitive science and behavioral economics, the "ostrich effect" is the tendency for people to avoid negative information in favor of positive information.[198] In an oft-cited paper exploring whether investors seek out information about their stock portfolios, economists Niklas Karlsson, George Loewenstein, and Duane Seppi found that investors exhibited an "ostrich effect" when it came to their own stock portfolios. Given bad or ambiguous market information, investors avoided collecting information on their stock portfolios; given positive market information, the investors sought out updates on their stock portfolios.[199]

The investment imperative encourages a similar ostrich effect with respect to information about higher education quality and financing. It emphasizes the positive outcomes of higher education and ignores or discounts the costs. Even more obviously, the investment imperative implies that each individual person who attains higher education will see the socioeconomic bump that the aggregate data show, without accounting for individual deviation, clusters of vulnerable borrowers, or exploitation arising out of lax regulation. This "promise" encourages the ostrich effect in students, especially those reliant on credit-financed education. It becomes unnecessary to seek out information about instructional quality or loan financing terms because higher education is imperative, and loans are often the only means of accessing that education. The ostrich effect is evident both prior to college attendance and in repayment after graduation.

1. Pre-College. Ideally, prospective college students will engage in a cost-benefit analysis prior to beginning college. Those students might best assess the likely value of their education prior to accepting a spot at a college or university. Students rarely undertake this assessment, however, in part because the task is nearly impossible. And in the face of that near impossibility, the ostrich effect—driven by the investment imperative—justifies the borrower's choice to ignore information about her prospective education and related debt.

To accurately assess the financial benefit of a particular college choice, a student would need to accurately predict the value of her major and degree from a particular institution in a specific

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198. *See supra* note 23.

199. Niklas Karlsson et al., *The Ostrich Effect: Selective Attention to Information*, 38 J. RISK & UNCERTAINTY 95, 104–06 (2009).

geographic region, approximately five years into the future.[200] She would also need to accurately predict whether and how quickly she would attain that degree. To accurately assess the financial cost of a particular college choice, the student would need to understand and accurately predict her financial aid package, the tuition and costs of her college attendance, and account for any financial changes for a period of approximately five years.[201] These are nearly impossible tasks. Colleges make promises, but do not deliver. Students change majors or fail to graduate. Students and their families suffer financial emergencies. Financial aid packages change over time. Tuition and fees change over time. Life is messy, complicated, and difficult to predict.

No wonder prospective students ignore the cost of their education and focus instead on the investment in themselves. It is easier to rely on the investment imperative and the construct of education debt as "good debt."[202] In this way, the ostrich effect is connected to the related problem of hyperbolic discounting, a concept that explains why people generally choose a smaller benefit that they will realize sooner over a larger benefit that they will realize later.[203] The temporal distance of education debt repayment exacerbates the ostrich effect; it is easy to put the concern off for another day. Darryl recognized that he did not think about his loans during school, "just . . . studying, getting by, and . . . deal[ing] with [loans] later."[204] Christopher agreed:

> I remember applying for the loans and I remember thinking to myself, I'm not understanding very well what these loans mean with the interest rate and all of that. I remember

200. Assuming that the prospective student is making this decision in the fall of their senior year in high school and matriculating to a four-year college or university, from which she will graduate on time.

201. In fact, studies show that borrowers and their families have great anxiety about changes to the cost of education during the course of the student's education. GOLDRICK-RAB, *supra* note 3, at 159 (citing a 2014 national survey showing that nearly one-third of parents of low-income college students were seriously concerned about diminishing grant aid, increased tuition, and increased loan rates).

202. Unlike mortgage debt, which is also considered "good debt" or "investment debt," *see, e.g.*, Abbye Atkinson, *Modifying Mortgage Discrimination in Consumer Bankruptcy*, 57 ARIZ. L. REV. 1041, 1064 (2015) (recognizing that both education debt and mortgage debt are considered "good debt"), education debt is riskier because the debtor cannot mitigate losses, *see* Glater, *supra* note 4, at 1581 ("A student borrower cannot resell her education to reduce losses.").

203. *See* Gandhi, *supra* note 195, at 140–41 (arguing that the behavioral economics concepts of myopia and hyperbolic discounting occur in education lending because they explain how people value proximity over magnitude).

204. Interview with Illinois Borrower Eight (Jan. 20, 2018).

> thinking, "I'll worry about that later. You know I don't have to pay that for the next four years."[205]

Many borrowers are financially unprepared before they begin college.[206] When asked whether he received any guidance about applying for education loans, Riley lamented, "I wish I hadn't been so young and dumb." When the researcher mentioned, "[t]he person before you literally said young and dumb also," Riley replied, "[c]ause at the time, you're just like, 'Oh, I'm going to pay this back. I'll get a job. No big deal,' and you know, here we are."[207] Joseph described the moment during his senior year in college, when he and other graduating seniors went to a student loan counseling meeting and, for the first time, he realized the amount of education debt he had amassed.[208] He recalled getting an envelope and learning that he was expected to pay the loans beginning six months from graduation.[209] Joseph described the collective shock:

> And we had been living in fantasy land or something, you know. And I got my envelope, and literally this is last semester of senior year, and [I] had never thought about what this is actually costing me, or what it was costing my parents. I just knew I was there, I was doing good . . . . But then at the end, and the winner is, and it was like . . . $16,000.[210]

Darryl, Christopher, Riley, and Joseph shared common experiences.[211] Entering the education loan market for the first time and inundated with messages of the investment imperative, it was easy for them to ignore the effects of debt or put off the effects until later.[212] And when financial aid packages are hard to

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205. Interview with New York Borrower Two (Oct. 16, 2017) (also recalling, "[t]o be honest, I think my mindset was I'll worry about it later because I wasn't taught completely to worry about those things now and how those things impact me later").

206. *See, e.g.*, Interview with Illinois Borrower Two (Jan. 17, 2018) ("Definitely not financially prepared."); Interview with Illinois Borrower Thirteen (Jan. 20, 2018) ("I think money was a very abstract thing.").

207. Interview with Texas Borrower Three (Feb. 17, 2018).

208. Interview with Illinois Borrower Eleven (Jan. 20, 2018).

209. *Id.*

210. *Id.* (noting that one could look around the room and witness other people's similar reaction and shock).

211. *See supra* notes 204–10.

212. 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, 98 (2010) (arguing that a student-borrower is a "one-time participant in the higher education market" and "the party least equipped to make an accurate value judgment regarding educational options and costs").

understand,[213] but easy to sign, it is easy to put one's head in the sand and ignore the down-the-road effects of the debt.

2. Post-College. Six months after college graduation or dropping below half-time student status, most borrowers must begin repaying their federal loans.[214] Federal borrowers have many options, and various rights, during the repayment of their loans. For example, although a borrower is automatically enrolled in a standard ten-year fixed repayment plan, she can instead opt in to one of four income-driven repayment plans, which allow borrowers to pay 10 to 20 percent of their discretionary income toward their student loan over the course of twenty to twenty-five years, after which their remaining debt is forgiven.[215] She can also seek loan deferment or loan forbearance under certain circumstances.[216]

Data show, however, that borrowers are not taking advantage of their rights and options while in repayment.[217] Our respondents offer a clue as to why that is.

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213. *See* Interview with Illinois Borrower Two (Jan. 17, 2018) ("I feel like it's just . . . murky waters . . . I feel like I probably need to know a lot more, and figure out exactly what my debt is. . . . [T]he problem is that I don't even know where to start asking the right questions . . . .").

214. *Understanding Repayment*, FED. STUDENT AID, https://studentaid.ed.gov/sa/repay-loans/understand#when-begin [https://perma.cc/4XDD-EQJX] (last visited Sept. 12, 2019).

215. The income-driven repayment plans include Income-Based Repayment Plan, Pay As You Earn Repayment Plan, Revised Pay As You Earn Repayment Plan, and Income-Contingent Repayment Plan. *Income-Driven Plans*, FED. STUDENT AID, https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven [https://perma.cc/F7NC-5UK8] (last visited Sept. 12, 2019). For a full understanding of Income-Driven Repayment (IDR) plans and possibilities for IDR-based reform, see Brooks, *supra* note 24, at 849–56.

216. Only certain loans (direct subsidized loans and federal Perkins loans) are eligible for deferment, during which time interest does not continue to accrue. *Deferment and Forbearance*, FED. STUDENT AID, https://studentaid.ed.gov/sa/repay-loans/deferment-forbearance#what-are [https://perma.cc/W2W8-2629] (last visited Sept. 12, 2019). For the majority of loans, a borrower can only seek forbearance, during which time payments are not due, but interest continues to accrue and is capitalized into the principal of the loan at the close of the forbearance period. *Id.*

217. For example, regulators alleged that loan servicers have steered borrowers into forbearance without explaining the financial consequences, even when the borrower may be eligible for an income-driven repayment plan at a low- or no-cost monthly payment. *See CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment*, CONSUMER FIN. PROTECTION BUREAU, https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/ [https://perma.cc/UNB4-Z2XR] (last visited Sept. 12, 2019). *But see* U.S. DEP'T OF EDUC. OFFICE OF INSPECTOR GEN., THE DEPARTMENT'S COMMUNICATION REGARDING THE COSTS OF INCOME-DRIVEN REPAYMENT PLANS AND LOAN FORGIVENESS PROGRAMS 3, https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf [https://perma.cc/4R6B-ZYJJ] (finding a six-fold increase in the number of borrowers taking advantage of IDR plans between 2011 and 2015).

First, they remain confused about their loans even after they leave college.[218] Cheryl explained, "I didn't even know where to pay it when I graduated. I had no idea. Then I kept getting letters from a program, or some company, but I didn't recognize the company name so I thought it was a scam."[219] And Chrystal explained:

> So when I graduated, it was like, I had a hell of a time figuring out who owned all of my loans, and I had no idea how much I had in all. It wasn't until I started getting the bills in that I was able to put together how much I owed, who owned what, where all the payments needed to go, [and] how much they were going to be.[220]

Second, they do not believe that they are entitled to advocacy with respect to their student debt. Although education debt is governed by statute and regulation, borrowers generally do not see student debt problems as legal problems or problems for which they are entitled to advocacy. When asked whether they might seek legal assistance for a student debt issue, the majority of our respondents answered in the negative.[221] Respondents told researchers that they would not seek legal assistance because "I wouldn't know what I would be seeking it for,"[222] "I didn't think I had a case,"[223] and "I don't know if that's even possible."[224] Josh, who was seeking forgiveness through the Public Service Loan Forgiveness Program, which is a program governed by law and regulation, engaged in the following exchange:

> INT: And if you hit some snag in getting [your loans] forgiven, would you consider seeking legal assistance?
>
> RES: Probably not. I'd probably again, just being like, "[y]ou should have been on top of this," Right? Like I should have been checking on my payment plans, I should have been paying more attention. I felt like that would have been on me.[225]

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218. *See* AKERS & CHINGOS, *supra* note 25, at 28 ("[T]here is strong evidence that most students do not have an accurate understanding of how much debt they have.").

219. Interview with New York Borrower One (Oct. 15, 2017).

220. Interview with New York Borrower Six (Oct. 17, 2017).

221. This is consistent with bankruptcy research. *See* Foohey, *supra* note 23, at 1322 (finding that faith leaders were hesitant to turn to the bankruptcy system to deal with their institutions' financial concerns, unwilling to see them as a "legal problem").

222. Interview with Illinois Borrower Ten (Jan. 20, 2018); *see also* Interview with Illinois Borrower Twelve (Jan. 20, 2018) ("I wouldn't know what I would seek legal assistance for.").

223. Interview with California Borrower Three (Apr. 14, 2018).

224. Interview with North Carolina Borrower Seven (Apr. 5, 2018).

225. Interview with Texas Borrower Eleven (Feb. 19, 2018).

Similar studies establish that, in general, low- and moderate-income people hesitate to turn to the legal system, even when they have a legal claim.[226]

I suggest that both the confusion and the timidity is related to the investment imperative and the ostrich effect. In much the same way that the investment imperative distorts prospective students' view of higher education as disconnected from cost, upon reflection, students justify their decisions through the lens of the investment imperative. It is possible that shame and fear underlie that reflection, an issue that is further explored in Section IV.B.

3. The Ostrich Effect Leads to Exploitation. The ostrich effect is problematic because it discourages prospective students from assessing the potential benefits and actual costs of their education. It also discourages post-college debtors from taking full advantage of their rights and responsibilities under the law, making it more likely that they will have bad financial outcomes. Perhaps most importantly, bad actors can—and do—exploit the combination of the investment imperative and the ostrich effect.

In the education debt context, exploitation arises primarily in two contexts: recruitment and repayment. In recruiting students, institutions can exploit the investment imperative and information gap to encourage students to attend ineffective institutions. The for-profit-college industry most clearly illustrates this dynamic. The for-profit-college industry has been plagued with allegations of fraud, corruption, and provision of ineffective educational services.[227] Tressie McMillan Cottom defines the problem as "Lower Ed": "Lower Ed is the subsector of high-risk [postsecondary] schools and colleges . . . . Lower Ed encompasses all credential expansion that leverages our faith in education without challenging its market imperatives and that preserves the status quo of race, class, and gender inequalities in education and work."[228] Exploiting the investment imperative, Lower Ed colleges recruit vulnerable students (and their federal loan dollars). Those institutions exploit the investment imperative and information asymmetry in recruitment, preying on vulnerable prospective

226. Foohey, *supra* note 23, at 1325 (citing studies). Student borrowers might, for example, have a legal claim against the Department of Education for failing to follow its regulations, against a lender for unfair debt collection practices, or against a debt consolidation company for unfair or deceptive practices. Even in the absence of a litigable legal claim, lawyers regularly help clients understand their rights and navigate administrative processes.

227. *See* SENATE COMM. ON HEALTH, EDUC., LABOR AND PENSIONS, *supra* note 118, at 1–6.

228. COTTOM, *supra* note 2, at 11–12.

students. Such institutions, for example, train recruiters to identify and "'poke the pain points' of wavering prospective students to remind them of why they need a degree."[229] One for-profit marketing executive explained how his college recruited women who had been traumatized: they hired female recruiters to play the "good-enough mother" to recruits, offering them absolution (in the form of college attendance) to move past the trauma.[230] In other words, they explicitly and expressly exploited the prospective student's traumatic history to convince her to enroll in the institution. Cottom likens for-profit recruiters to television evangelists posing as priests, "sell[ing] prayer cloths that promise to solve all of a believer's problems."[231] The investment imperative and the ostrich effect thus create a loop of vulnerability. Recruiters best exploit the investment imperative when the recruit has less information; recruits buy into the investment imperative, which itself justifies a student's lack of information.

This vulnerability loop does not break when the student graduates or otherwise leaves full-time higher education. Scams and exploitation also flourish during repayment. Debt settlement and debt consolidation companies seek out vulnerable debtors and sell them services that promise to lower monthly payments or forgive education debt altogether.[232] Some companies charge for services that can be accomplished by the borrower for free at the Department of Education's StudentLoans.gov website or through the borrower's loan servicer.[233] When they charge an up-front fee

229. *Id.* at 129; *see also* SENATE COMM. ON HEALTH, EDUC., LABOR & PENSIONS, *supra* note 118, at 3 (discussing the recruiting process for for-profit education companies as being a sales process).

230. COTTOM, *supra* note 2, at 107.

231. *Id.* at 6.

232. See, for example, the Federal Trade Commission's "Operation Game of Loans," a "coordinated federal-state law enforcement initiative targeting deceptive student loan debt relief scams." Press Release, Fed. Trade Comm'n, FTC, State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams (Oct. 13, 2007), https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown [https://perma.cc/5XXT-PQ5S].

233. For example, borrowers can consolidate their loans, change their repayment plan, or seek a deferment or forbearance at no cost by calling their servicer or applying through the Department of Education website. *See Loan Consolidation*, FED. STUDENT AID, https://studentaid.ed.gov/sa/repay-loans/consolidation [https://perma.cc/2QF8-Q8MK] (last visited Sept. 12, 2019) ("There is no application fee to consolidate your federal education loans into a Direct Consolidation Loan. You may be contacted by private companies that offer to help you apply for a Direct Consolidation Loan, for a fee. These companies have no affiliation with the U.S. Department of Education (ED) or ED's consolidation loan servicers. There's no need to pay anyone for assistance in getting a Direct Consolidation Loan. The application process is easy and free.").

for those services, debt-settlement companies often violate state and federal law.[234] Some companies charge for services that promise impossible outcomes, like loan forgiveness. Those charges and misstatements violate state and federal law.[235] Together, these companies have taken almost $100 million in illegal upfront fees from American borrowers.[236] Fraudulent debt settlement and consolidation scams are enticing because student borrowers are overwhelmed by their debt and lack proper information about their rights and responsibilities as a debtor. These scams similarly exploit the intersection of the investment imperative and the ostrich effect because they bank on debtors who are too overwhelmed, embarrassed, ashamed, or otherwise unable to seek out information about their rights and responsibilities in repayment.[237]

4. *Is More Information the Easy Answer?* Some might argue that the information gap has an easy fix—provide students with more information or make information more accessible. In fact, several organizations, including the Consumer Financial Protection Bureau (CFPB) and various nonprofits, have tried to fill the information gap.[238] Proposed legislation to overhaul the Higher Education Act proposes a college dashboard website that would provide information to students on institution type, enrollment, student/faculty ratio, graduation rates, average net price, average student loan debt, and median earnings of graduates.[239] Some also argue that the information is already

234. *See* Fed. Trade Comm'n, *supra* note 232.

235. *Id.*

236. *Id.*

237. For a further discussion of shame and distress emotions related to student debt, see *infra* Section IV.B and also Greene, *supra* note 131, at 275–76 (arguing that debt settlement and debt consolidation services are consistent with a "self-sufficiency narrative" and "a moral alternative to bankruptcy and government 'handouts'").

238. *Student Loans*, CONSUMER FIN. PROTECTION BUREAU, https://www.consumerfinance.gov/consumer-tools/student-loans/ [https://perma.cc/2UGX-QWLZ] (last visited Sept. 12, 2019); *Project on Student Debt*, INST. FOR C. ACCESS & SUCCESS, https://ticas.org/posd/home [https://perma.cc/5M7S-2GDJ] (last visited Sept. 12, 2019). In fact, the CFPB's supervisory authority broadly permits it to document, oversee enforce, and regulate issues related to student loans. Laurie A. Lucas & Christopher L. Peterson, *Developments in Federal Student-Lending Law: Harbingers of Change?*, 72 BUS. LAW. 465, 466–68 (2017). Recently, however, moves at the CFPB suggest that information campaigns may be the Bureau's primary goal with respect to student loans in the near future. *See* Zack Friedman, *CFPB Makes Major Changes to Student Loans Office*, FORBES (May 10, 2018, 8:17 AM), https://www.forbes.com/sites/zackfriedman/2018/05/10/student-loans-changes-consumer/#671b3ba91a4c [https://perma.cc/5EVP-FTW6] (noting that the CFPB recently decided to fold its student loan office into the financial education office).

239. *See* PROSPER Act, H.R. 4508, 115th Cong. § 121(d) (2017).

available, and it is the borrower's responsibility to seek out and utilize the information.[240]

While providing more information to borrowers is a valuable goal, it will only be useful if done correctly.[241] Bridging the information gap will only affect behavior if prospective, current, and former students can receive, process, and understand the information. Further, more information will only be helpful if prospective students have better or varied choices. Because college matriculation and financing are driven by the investment imperative, providing additional information alone is unlikely to alter behavior—or the vulnerability that stems from the information asymmetry—significantly. This is not to say that information campaigns are not useful; rather, information campaigns are not, by themselves, sufficient.

Our data suggest that information before matriculation is not sticky for new college students in large part because of the investment imperative.[242] LaToya recalled:

> So, I always thought I was going to college. I think it was more of my parents pushing me towards that direction. At some point it wasn't even a question of whether I would go to college or not, I just knew I was going. As far as figuring out how to pay for college, there was no discussion within the home. We just kind of assumed that you were just going to go, it didn't matter how you got there, you were going to go.[243]

Jeffrey explained:

> It was just always sort of assumed that I would probably get some form of scholarship and that we would take out student loans to take care of the rest, which I really wasn't worried about at the time because I thought, "oh, I'm going to medical

240. *See* Kraiem, *supra* note 11, at 713 (arguing that the current higher education financing scheme adopts a consumer law mentality of caveat emptor, or "buyer beware").

241. *See* D. James Greiner et al., *Self-Help, Reimagined*, 92 IND. L.J. 1119, 1135–36 (2017) (recognizing the difficulty in providing low- and moderate-income pro se plaintiffs with useful self-help guides and proposing approaches, including plain-language, illustrations and cartoon graphics, to better connect with unrepresented civil parties).

242. *Cf.* Jonathan D. Glater, *The Unsupportable Cost of Variable Pricing of Student Loans*, 70 WASH. & LEE L. REV. 2137, 2142–46 (2013) (critiquing the suggestion that implementing variable interest rate education loans based on expected return-on-investment will change student behavior). More and creative thinking in financial literacy might be able to make inroads on this problem.

243. Interview with North Carolina Borrower Two (Aug. 4, 2017); *see also* Interview with California Borrower Six (Apr. 14, 2018) ("[M]y dad was always like, 'We'll do whatever it takes, it doesn't matter where you want to go.' You know, just kind of like as long as you went it doesn't really matter.").

school, I'm going to have a high paying career eventually, I'll be able to take care of this."[244]

Thus, more information would not have changed these students' behavior,[245] either because the information did not seem relevant[246] or because additional information would not have changed their limited choices.[247] While additional information about rights and responsibilities in repayment may offer some debtors relief or the ability to avoid scams, the investment imperative runs strong and deep. For many debtors, the sadness and shame associated with their failed investment in self exacerbates the ostrich effect and increases long-term negative financial repercussions. The next Section takes up this idea further.

B. The Student Debt Cascade

The investment imperative messages that college is a key to socioeconomic advancement, with little limitation and disconnected from the cost to the individual student. For many graduates, the promise of the investment lives up to the reality.[248] But for many others the promise of the investment does not line up with the reality of their college experience or their post-college financial lives.[249] Thus, the investment imperative risks

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244. Interview with Illinois Borrower Six (Jan. 20, 2018).

245. *See, e.g.*, AKERS & CHINGOS, *supra* note 25, at 111 ("It's clear that a lack of information has severely compromised students' ability to make smart college-going and borrowing decisions. Students haven't been able to make cost-benefit calculations with non-existent information on benefits and difficult-to-obtain information on costs. But as more information becomes available, will it be enough to solve the broader decision-making problem? The available evidence from education and other fields indicates that individuals too often do not understand, much less make use of, the information that is available to them. This means that simply providing more information to students is unlikely to change their behavior.").

246. *See* Interview with Illinois Borrower Thirteen (Jan. 20, 2018) ("I'm not really sure [I would have taken advantage of information about student loans]. I guess it would help with budgeting, but I think in terms of student debt, I wasn't too worried about it because there's a 0% interest until I'm not a student anymore. And so, I didn't really think about it that much.").

247. *See* Interview with Kansas Borrower Four (Aug. 31, 2017) ("So, if they could have given me the exit counseling when they gave me the loans instead of after they'd already disbursed all the loans to me, it might have changed my point of view a little bit. Probably not, but maybe. I still needed the money, you know, at the end of the day."); *see also* COTTOM, *supra* note 2, at 170–73 (arguing that the credential-driven labor market, which offers declining investment in workers, drives Lower Ed and that pointing to information asymmetry as the problem ignores the fact that many students have no "rational educational choice" in this new economy).

248. *See infra* notes 291–94 and accompanying text.

249. *See* AKERS & CHINGOS, *supra* note 25, at 104 (recognizing that some individuals' investments in higher education pay off better than others, but that "good decision making

overpromising students certain financial outcomes from seeking a college certification or degree, encouraging overconfidence in the ability to repay education debt. It distorts both the input and the output.

This distortion can lead to distress emotions[250] and avoidance of both information about the debt and of the debt itself. Avoidance can then lead to nonpayment and, ultimately, default. At the end of the day, the debt remains, and neither the borrower nor the lender—the American taxpayer—is in any better situation.[251] This path—disconnect, distress emotions, avoidance, and default—is the "student debt cascade,"[252] and it is connected to the investment imperative.

1. In School. The investment imperative maintains that access to higher education is all that is necessary for a student to be able to achieve success on her own merits. The concept is this: once a student has access to enough loans—public, private,or both—to attend a college or university, she is then on the same level playing field as her peers and thus has the same opportunity for success.[253] If she fails, it is because of her own shortcomings.

But access to and enrollment in higher education do not even the playing field for students from different backgrounds. Our

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is made nearly impossible by the lack of information available to potential college students"); GOLDRICK-RAB, *supra* note 3, at 185 ("Students can enter college with great expectations that are sometimes unrealistic. Ideally, colleges would help students realize their ambitions, while also helping them understand reality—including the specific requirements needed for graduation and the [post-college] implications of their choices. That does not always happen.").

250. *See* Austin, *supra* note 86, at 401–02 (citing studies that show that high debt burdens can be associated with migraines, headaches, stomachaches, back pains, increased risk of cardiovascular disease, hypertension, depression, higher mortality, including from suicide, delayed medical and dental care, low self-esteem, social isolation, chronic tension, and family problems, including higher rates of divorce).

251. The reason that the American taxpayer is harmed is because 90 percent of student loans are currently made by the United States, through the Department of Education. Brooks, *supra* note 24, at 851. The Department then contracts with servicers and debt collectors to service and collect on those loans. *Loan Servicing Contracts*, FED. STUDENT AID, https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing [https://perma.cc/3LE3-L29A] (last visited Sept. 12, 2019).

252. This Article introduces the "student debt cascade" theory as it emerged out of the qualitative data. It ties the theory to the literature on student debt and financial insecurity and uses the qualitative data to provide insight. It does not, however, fully flesh out the theory or argue causality. Rather, it is an initial theory that should be expanded and tested with additional scholarly and empirical work.

253. In this way, the investment imperative is deeply connected to the meritocracy myth, a concept that has been heavily and thoroughly critiqued. *See* Anne Lawton, *The Meritocracy Myth and the Illusion of Equal Employment Opportunity*, 85 MINN. L. REV. 587, 591 (2000) (critiquing the meritocracy myth as it has been applied in employment law); Deborah L. Rhode, *Myths of Meritocracy*, 65 FORDHAM L. REV. 585, 586 (1996) (discussing

data made clear that, for many students, they must balance their educational aspirations against work and family requirements. Contrary to popular belief, for many students, taking on the maximum amount of subsidized and unsubsidized loans is not sufficient to make financial ends meet while in college.[254] Cheryl, for example, explained how she worked multiple jobs while she was in college:

> To give you a sense of my schedule, I would maybe wake up at four in the morning every day to go to my catering job in the morning. And then right after I might have a class at like ten or something and then I went to my afternoon job from, maybe, eleven to two or three or maybe four. And then maybe another class, like an evening class. And then I'd go straight to my job at the restaurant until they closed maybe at like ten. Cleaning up maybe at like eleven. Then I'd go to the library after maybe until like one. And then I'd come home. So it was just exhausting.[255]

Cheryl maintained that schedule for two years, averaging approximately three hours of sleep per night.[256]

Laura told a similar story. She worked three jobs for three years as an undergraduate, working in a research lab and as a tour guide during the day and at SafeWalk from 11:00 p.m. to 3:00 a.m. When she lived off-campus in her junior and senior year, Laura explained,

> I slept in the library, so from about 3:30 until 7:30, about three nights a week 'cause I didn't have a car, and I didn't want to pay for a car, and the buses don't run. Nothing runs

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the meritocracy myth as it relates to women in the legal profession and arguing that the myth relies on the assumptions that female lawyers are close to achieving proportionate representation in the legal field and that any "lingering disparities" are the result of the women's "'different' choices and capabilities"); Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE & FREEDOM MAG., July/Aug. 1989 (identifying the privileges attendant to whiteness and recognizing that "this is not such a free country; one's life is not what one makes it; many doors open for certain people through no virtues of their own").

254. GOLDRICK-RAB, *supra* note 3, at 9 ("Financial aid often falls short—in terms of both how much it pays for and how it is delivered."). At first glance, this Section may appear to be in tension with the "ostrich effect" argument. Yet, financial aid is insufficient, poorly understood, bureaucratically complex, and based on a broken reliance on Estimated Family Contribution (EFC); *See also* Brooks, *supra* note 24, at 858 ("The available [Federal Direct Loan] debt is not sufficient to pay the average out of pocket costs of higher education."). So, both things can coexist. Students can be uninformed about their loans or even borrow blindly for college and simultaneously be in a financially precarious situation while in college.

255. Interview with New York Borrower One (Oct. 15, 2017).

256. *Id.*

> at that time. . . . Or I would go to the gym and go swimming for a little bit, and then I would shower.[257]

In her book, *Paying the Price*, Sara Goldrick-Rab introduces readers to Alicia, an African American single mother from Milwaukee who dreamt of being a teacher or social worker.[258] Alicia described her schedule during her first semester: she spent seven and a half hours in class and four hours caring for her child. On top of that, Alicia worked thirty hours a week and took out a subsidized loan to pay for her college.[259]

Students also discussed family responsibilities; some had to take care of family or had siblings come to live with them.[260] Felix explained:

> My mother has schizoaffective disorder. She's been a struggle all of my life. She lived with my grandmother . . . . She didn't have the patience to deal with my mother[']s crazy in the way that was most useful, so I was back in [my hometown] frequently with doctors appointments, with filling out forms. I spent a lot of my college experience crying on a phone with my mother getting her through her moments of crazy. That was very present. That was very, very, very present.[261]

Sarah also recalled providing a lot of emotional caretaking for her sisters while she was in college, providing support for her family after her mother died and while her father grieved.[262] And William's sister lived with him his junior and senior year of college, requiring emotional and financial support.[263]

Other respondents remembered having difficulty getting enough to eat while in college.[264] Cheryl noted that she chose a

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257. Interview with North Carolina Borrower Five (Apr. 4, 2018). Laura continued, "I would make an excellent homeless person." *Id.*

258. GOLDRICK-RAB, *supra* note 3, at 195.

259. *Id.* at 196.

260. *See also id.* at 44 (citing Peter Kinsley's study showing that 13 percent of the students surveyed regularly provided financial support to family while in college).

261. Interview with Kansas Borrower One (Aug. 30, 2017).

262. Interview with Illinois Borrower Twelve (Jan. 20, 2018).

263. Interview with Illinois Borrower Thirteen (Jan. 20, 2018).

264. This is consistent with other studies. *See* GOLDRICK-RAB, *supra* note 3, at 128 (showing that 24 percent of students surveyed indicated that in the past month they did not have enough money to buy food, ate less then they felt they should, or cut the size of their meals because there was not enough money); KIM DANCY & BEN BARRETT, LIVING ON CREDIT? AN OVERVIEW OF STUDENT BORROWING FOR NON-TUITION EXPENSES 10 (2018) (citing a study showing that 11 percent of students at four-year colleges and 14 percent of students at two-year colleges were food insecure); SARA GOLDRICK-RAB ET AL., COLLEGE AND UNIVERSITY BASIC NEEDS INSECURITY: A NATIONAL #REALCOLLEGE SURVEY REPORT 2, https://hope4college.com/wp-content/uploads/2019/04/HOPE_realcollege_National_report_

restaurant job "mostly so I could get extra food so I didn't have to pay for food."[265] Others mentioned seeking emergency food aid[266] or remembered "not quite knowing how I was going to eat."[267] Sarah explained:

> Having enough food to eat was always a huge thing, but I always found a way to make it work. Like, I would go to campus events where there would be pizza, or something. Or, I had friends that had extra dining dollars, and so I would make sure to set up times to hang out with them and they didn't mind. So, it was always a nervousness, especially when, of course, it came down to the beginning or the end of the month, but I always found ways to make it work.[268]

While Laura said that her grades did not suffer from her packed schedule, her quality of life suffered.[269] And she was a lucky one. For many others, working multiple jobs, dealing with family obligations, or worrying about their next meal negatively affected their ability to succeed in college.[270] Sean lamented his mediocre GPA, remembering, "[y]ou're running from class to work, or you're running from work to class, or you're just tired from all the things that you're doing."[271] Several respondents stated that they worked forty or more hours per week, on top of their school schedule, making it difficult to take full advantage of the educational, social, and professional experiences available to college students. Students who work multiple jobs while enrolled in college lack time to network, attend professor office hours, study, and sleep. Cheryl told researchers that having multiple jobs

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digital.pdf [https://perma.cc/2AL7-SCLS] (of the 86,000 student survey respondents, 45 percent reported food insecurity, 56 percent reported housing insecurity, and 17 percent reported homelessness in the prior year). For a thorough and complete understanding of food insecurity for college students, see GOLDRICK-RAB, *supra* note 3, and Sara Goldrick-Rab's continued work.

265. Interview with New York Borrower One (Oct. 15, 2017).

266. *See* Interview with Illinois Borrower Seven (Jan. 20, 2018); Interview with Kansas Borrower Six (Aug. 31, 2017); Interview with Texas Borrower Eight (Feb. 18, 2018); Interview with Texas Borrower Fourteen (Feb. 20, 2018).

267. Interview with Illinois Borrower Two (Jan. 17, 2018); *see also* Interview with New York Borrower Seven (Oct. 17, 2017) ("There were times when I did worry about food or like at the end of a semester like when your meal plan starts to run out . . . . There was some pressure around those times so I was like what [am] I going to eat, what can I afford to eat.").

268. Interview with Illinois Borrower Twelve (Jan. 20, 2018).

269. *Id.*

270. *See, e.*g, Interview with North Carolina Borrower Eight (Apr. 20, 2018); Interview with North Carolina Borrower Five (Apr. 4, 2018). Studies also show that financially insecure students regularly neglected to purchase a course textbook, negatively affecting their ability to learn and succeed in college. *See* DANCY & BARRETT, *supra* note 264, at 10.

271. Interview with Illinois Borrower One (Jan. 17, 2018).

while in college negatively affected her mental health and her grades.[272] It also limited her ability to make connections with professors, making it more difficult to ask for letters of recommendation for law school.[273] Cheryl had access to higher education. The investment imperative would have us believe that success was hers to win or lose. But Cheryl's transcript, and her professors' recommendations, are unlikely to evidence her hard work, undertaken against high odds. Alicia, from *Paying the Price*, after facing personal crises and decreasing family support, took on more childcare responsibilities, sought more hours at work, got less sleep, and spent less time on schoolwork.[274] By the end of her sophomore year, Alicia had dropped out of school and stopped responding to the researchers.[275]

It is impossible to ignore structural and institutional barriers in discussing why certain individuals or groups more successfully advance or maintain their socioeconomic standing. Yet the investment imperative does not account for those barriers. And when those barriers combine with the effects of student debt, they are aggravated, especially for borrowers, like Alicia, who drop out of college, borrowers like Cheryl, who were unable to compete on an equal level, and other vulnerable borrowers. The next Section pursues that further.

2. After School. For many, including some of our respondents, the promise of the investment imperative did not pan out in their financial lives post-college. Many questioned whether the financial investment in their higher education provided a sufficient financial return and several explicitly stated that it did not. Even after recognizing that college changed his life for the better, Felix admitted, "[i]t was more expensive than it should've been. It was an incredibly valuable product and maybe not as valuable as I paid, maybe not as valuable as the price."[276] Cheryl would counsel prospective students to "[g]o to the place that you can afford. It does have to have a good name, but don't worry yourself too much about getting into the biggest name because I think you might be wasting your money, especially if you're taking

272. Interview with New York Borrower One (Oct. 15, 2017); *see also* GOLDRICK-RAB, *supra* note 3, at 99–101 (arguing that financial insecurity can have a profound effect on students' mental health, physical health, and graduation rates).

273. Interview with New York Borrower One (Oct. 15, 2017).

274. GOLDRICK-RAB, *supra* note 3, at 197.

275. *Id.* at 198.

276. Interview with Kansas Borrower One (Aug. 30, 2017).

loans."[277] Others had similar reactions, noting that "schooling was very rewarding, [but] when I think of the finances it's more of confusion and regret too,"[278] calling the promise of higher income after college a "misconception,"[279] and noting that "[c]ollege is not worth it."[280]

For several respondents, that disconnect was specifically connected to their student debt. In other words, it was the burden of education debt that limited their sense of post-graduation financial stability.[281] Matt commented, with respect to one of his three degrees, "it was basically a waste of time, a waste of money."[282] Georgia noted:

> Honestly, a bachelor's degree really doesn't do that much anymore. When I was looking for jobs, that was really disheartening to me, because I was making these payments and I wasn't having any income. I was like, "I have this degree, and I can't even get a job to pay for my tuition that got me this degree." So I felt like it was kind of a waste.[283]

Although our study did not include students who dropped out of school, the connection is worth considering carefully. Studies show that there is a correlation between financial insecurity in college, student debt, lower grades, and higher drop-out rates.[284] This is particularly true for students of color.[285] Some studies specifically correlate working more than twenty hours a week during college with dropping out.[286] When students drop out of college, however, their debt does not disappear. Federal data showed that nearly four million undergraduates dropped out of

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277. Interview with New York Borrower One (Oct. 15, 2017).

278. Interview with Kansas Borrower Seven (Aug. 31, 2017). *But see infra* note 296 and accompanying text. Although the intrinsic benefits of higher education are outside the scope of this project, it is important to recognize that many of our respondents recognized benefits to their higher education experience that stood apart from their frustration with the failed economic investment. The author plans to explore this further in future scholarship.

279. Interview with New York Borrower Three (Oct. 16, 2017).

280. Interview with California Borrower Five (Apr. 14, 2018).

281. *See* HUELSMAN, *supra* note 17, at 2–3 (finding that graduates with student debt report a lower level of job satisfaction upon entering the workforce).

282. Interview with Illinois Borrower Four (Jan. 18, 2018).

283. Interview with California Borrower Nine (Apr. 15, 2018). This Article focuses primarily on the investment imperative for college, but it will be interesting to follow whether the same imperative emerges for graduate and professional school.

284. Brooks, *supra* note 24, at 859; Glater, *supra* note 4, at 1591.

285. Scholars have found a disproportionate relationship between financial insecurity and drop-out rates for Black and Latino borrowers. HUELSMAN, *supra* note 17, at 14–16 (finding that approximately 70 percent of Black college dropouts cite student debt as a primary reason for leaving school).

286. GOLDRICK-RAB, *supra* note 3, at 104 (citing studies).

college from mid-2014 to mid-2016, all carrying federal student debt.[287] The emotional and financial effect can be dramatic; according to Robert Lowe, an education professor at Marquette University, "[i]f students end up in debt, end up without a degree, they end up damaged by the experience rather than expanded by it."[288]

Even for those who graduated, many find that student debt limits their major adult choices. That was particularly true in our sample. Ken eloquently explained:

> There's this wonderful writer named John Scalzi who wrote an essay some years ago about being poor, about what it means to be poor. And he says one of the defining elements of being poor is paying for decisions you didn't know you made years ago. That's basically what I'm doing. I had no idea what I was getting myself into when I borrowed all of this money, that I was basically kind of determining my legacy in the United States, and here we are.[289]

Approximately one-third of our sample recognized that their student debt affected their housing decisions and almost one in five commented that their student debt affected family decisions, like whether or when to get married or have children.[290]

Of course, for many respondents, the financial cost of their higher education was well worth its value. For example, one asserted, "I've loaned my way up to an upper middle-class lifestyle,"[291] another noted that the debt was "worth every penny,"[292] and yet another recognized that the degree "increased my earning potential."[293] And for those who had negative feelings

287. Jill Barshay, *Federal Data Shows 3.9 Million Students Dropped Out of College with Debt in 2015 and 2016*, HECHINGER REP. (Nov. 6, 2017), https://hechingerreport.org/federal-data-shows-3-9-million-students-dropped-college-debt-2015-2016/ [https://perma.cc/WAT8-AGHU] (citing data from the U.S. Department of Education's College Scorecard).

288. Jamaal Abdul-Alim, *Dropouts Tell No Tales*, WASH. MONTHLY, Sept./Oct. 2013, at 38, 39; *Cf.* Melissa B. Jacoby, *Home Ownership Risk Beyond a Subprime Crisis: The Role of Delinquency Management*, 76 FORDHAM L. REV. 2261, 2262 (2008) (recognizing that home ownership does not inherently foster wealth development, positive social-psychological states, or stable neighborhoods and communities; rising delinquency rates suggest that home ownership and mortgage obligations can "undermine these objectives").

289. Interview with Texas Borrower Fifteen (Feb. 20, 2018).

290. Cheryl, Sarah, and Felix—highlighted in Section IV.B.1—are all included in those numbers. *See also* Kelchen, *supra* note 59, at 190–91 (cataloguing studies suggesting that there is at least a modest negative relationship between student loan debt and delayed adult outcomes, such as starting a family or buying a home).

291. Interview with Kansas Borrower Four (Aug. 31, 2017).

292. Interview with Kansas Borrower Five (Aug. 30, 2017).

293. Interview with Kansas Borrower Nine (Sept. 3, 2017).

about their financial investment in higher education, many remained positive about the intrinsic value of their education.[294]

It is impossible to know what the students' financial lives would have been like absent a college degree. One cannot test that. One can only rely on the borrowers' perceptions. It is those perceptions, however, that are critical to the student debt cascade because perception is what leads to distress emotions and avoidance. And several respondents perceived a clear and unfair disconnect between the investment they were promised and their financial reality. Ebony stated, "I don't think education guarantees anything nowadays, unfortunately. Not like we thought it would. Not like we were told it would."[295] Shelly lamented:

> If I'm being honest, I think I'd have been better off going to trade school, and not going this route. Because you have, like I said, we have these illusions of what a bachelor's degree would mean. And I don't know, I don't know if the payout now is worth, did I really get my money's worth? Am I really capitalizing on anything that I got from this degree? And the answer would probably be no.[296]

And Ken stated, "[o]ne of the reasons I freely borrowed so much money on behalf of school is because I believed, ultimately, it was for the greater good, and it turns out it's actually been probably the most defining great evil of my life."[297]

Unsurprisingly, there is considerable evidence of distress emotions, including anxiety, fear, or shame[298] in graduates and noncompleters who feel that their investment was, in some way,

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294. *See, e.g.*, Interview with Illinois Borrower Eleven (Jan. 20, 2018) ("[T]hat was the great value for me of going away [to college] . . . . Just meeting people different from me, and going to see more of the world."); Interview with Illinois Borrower Twelve (Jan. 20, 2018) ("I think that [college] has been worth it. Like, ideologically and in terms of shaping my values. . . . And then, learning how to be engaged in the community. I feel like those are all important things."); Interview with Kansas Borrower One (Aug. 30, 2017) ("Just the experience, incredible. [College] changed my life. It did exactly what I needed it to do. I was looking for an escape from the crazy, it gave me the escape from the crazy. I was looking for a group of people who would push me, and I found that in spades. I looked to create a family and I created all kinds of family in this [college] community.").

295. Interview with Texas Borrower Two (Feb. 17, 2018).

296. Interview with Texas Borrower Thirteen (Feb. 20, 2018).

297. Interview with Texas Borrower Fifteen (Feb. 20, 2018). One respondent who went to law school described the outcome: "Investment wise, it's a very bad investment." Interview with California Borrower Four (Apr. 14, 2018).

298. *See* Pamela Foohey, *Calling on the CFPB for Help: Telling Stories and Consumer Protection*, 80 LAW & CONTEMP. PROBS., no. 3, 2017, at 178, 195 (measuring emotions, including frustration, anger, sadness, fear, disgust, shame, and guilt in consumers who had filed narrative complaints with the Consumer Financial Protection Bureau).

lacking.[299] For example, Carrie made the explicit connection between the sacrifices required by her education debt and distress emotions:

> I've definitely had those times in my life where I've been feeling like I'm not really even . . . like I'm trying to pay and I'm not living my life. I'm not able to go anywhere, or do [anything], because it's like . . . I have to pay for this, and I'm stressed out about it, so I'm not very fun because I'm anxious about it.[300]

Felix noted, "I think my experience with debt is probably very similar to a lot of folks. Again, as I read more I find that . . . crippling fear created by debt is incredibly commonplace."[301] Ken had a similar sentiment: "I think [my experience with education debt is] typical for millennials. Every millennial I know, or most of them, are working too hard, they're stressed out, they're angry, frustrated. They may or may not have substance abuse problems or mental health issues that are exacerbated by all of this."[302] Others referenced sadness related to their education debt. Lindsey explained:

> I am making that kind of salary that should be going to retirement, and instead I'm paying down debt. That seems weird. That feels scary, and not great. And thinking about . . . anytime I think about just cooling down on the number of clients that I take or any of that, it's just like this giant . . . it's a tidal wave. It's like, slow that down and this is just gonna completely consume you.[303]

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299. *See* AKERS & CHINGOS, *supra* note 25, at 96 (citing a 2015 study finding that student loan debtors reported "lower levels of psychological health, controlling for other factors such as occupation, income, education, and family wealth"); Kristy L. Archuleta et al., *College Students and Financial Distress: Exploring Debt, Financial Satisfaction, and Financial Anxiety*, 24 J. FIN. COUNSELING & PLAN. 50, 50–51 (2013) (finding that debt was not a statistically significant factor in students' financial anxiety, but recognizing that "financial anxiety may not occur until after graduation when recent graduates face the realization of their debt and its impact on their financial situation."); LeMay & Cloud, *supra* note 95, at 102 ("As one can see an endless cycle of despair and hopelessness can be created for those not prepared to repay their student loans."). *But cf.* Dwyer et al., *supra* note 27, at 733–34 (longitudinal study of young adults on the relationship between accumulated debt, including education debt, and feelings of mastery and self-esteem, finding that (1) debt contributes to a greater sense of mastery and self-esteem for young adults because it represents reasoned investment in status attainment; (2) results are stronger for low- and middle-income borrowers and blunted for upper-income borrowers; and (3) positive attribution of debt decreases with age as the burdens of repayment begin to outweigh the positive feelings associated with consumption).

300. Interview with Illinois Borrower Two (Jan. 17, 2018).

301. Interview with Kansas Borrower One (Aug. 30, 2017).

302. Interview with Texas Borrower Fifteen (Feb. 20, 2018).

303. Interview with Texas Borrower Twelve (Feb. 19, 2018). Others share the same

Shame was also a connective tissue in the interviews. Sarah did not want to expose her student debt to her friends because she "would feel ashamed because I feel like they know me as somebody who works really, really hard. And then, if they knew . . . I wouldn't want to make them feel sorry for me."[304] And at least three others talked about the shame of having debt and needing financial advice.[305]

Distress emotions and shame can exacerbate the information ostrich effect.[306] Approximately one in five respondents in our sample mentioned either: (1) that they would prefer not to think about their education debt; (2) that they did not feel comfortable discussing their debt or finances with others; or (3) both.[307] Distress emotions and related avoidance can lead borrowers to avoid dealing with the debt itself. A few comments are illustrative. Felix recalled, "the amount of debt was so much and so overwhelming I stopped checking my mail. I stopped engaging my e-mail. The bills, sometimes I had the money to pay and it was so overwhelming to engage that I just avoided it."[308] Andrew admitted, "[f]or a while I was trying to escape it. Basically, it's been like this 800[-]pound gorilla on my back."[309] For many of our

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sentiment. *See* Interview with New York Borrower Two (Oct. 16, 2017); Interview with Texas Borrower Thirteen (Feb. 20, 2018).

304. Interview with Illinois Borrower Twelve (Jan. 20, 2018).

305. Interview with Kansas Borrower One (Aug. 30, 2017); Interview with Kansas Borrower Four (Aug. 31, 2017); Interview with Kansas Borrower Nine (Sept. 3, 2017).

306. There has been a significant amount of research on stigma and avoidance in the bankruptcy field. *See* Alycia Chin et al., *Consumer Bankruptcy Stigma: Understanding Relationships with Familiarity and Perceived Control*, 53 J. CONSUMER AFF. 600, 613–14 (2019) (finding that attitudes about bankruptcy and bankruptcy filers are affected by first-hand experience, feelings of morality, warmth, and competence, and filer's control of her financial circumstances); Sousa, *supra* note 130, at 460, 464–65 (interviews with debtors who filed bankruptcy showed a link between the stigma and shame of a debtor's inability to pay her debt and a debtor's decision to put off or avoid filing for bankruptcy); Deborah Thorne & Leon Anderson, *Managing the Stigma of Personal Bankruptcy*, 39 SOC. FOCUS 77, 83 (2006) (interviews with couples who filed bankruptcy evidenced a link between the shame of financial insecurity and avoiding filing for bankruptcy).

307. Interview with California Borrower Five (Apr. 14, 2018); Interview with Illinois Borrower One (Jan. 17, 2018); Interview with Illinois Borrower Two (Jan. 17, 2018); Interview with Illinois Borrower Three (Jan. 17, 2018); Interview with Illinois Borrower Six (Jan. 20, 2018); Interview with Illinois Borrower Twelve (Jan. 20, 2018); Interview with Kansas Borrower One (Aug. 30, 2017); Interview with Kansas Borrower Two (Aug. 30, 2017); Interview with Kansas Borrower Four (Aug. 31, 2017); Interview with Kansas Borrower Five (Aug. 30, 2017); Interview with Kansas Borrower Six (Aug. 31, 2017); Interview with New York Borrower One (Oct. 15, 2017); Interview with Texas Borrower Six (Feb. 17, 2018); Interview with Texas Borrower Fifteen (Feb. 20, 2018).

308. Interview with Kansas Borrower One (Aug. 30, 2017). Another respondent echoed this sentiment. *See* Interview with Illinois Borrower Two (Jan. 17, 2018) ("Yeah, we're dodging phone calls.").

309. Interview with California Borrower Five (Apr. 14, 2018).

respondents, avoidance meant trying to defer or forbear their loans for as long as possible. At least twenty-nine of our sixty-five respondents mentioned placing their loans in deferment[310] or forbearance,[311] or otherwise failing to pay them.[312] Sasha noted, "my biggest skill in life learning, in how to manage these loans is just to go back to school and avoid them. Because the longer I'm in school, the more I can defer them . . . . And I like being in school, so maybe I could just do this till I die."[313] At least eight of our respondents defaulted on their loans.[314]

The student debt cascade, for these borrowers, ends with significant financial repercussions. For those who enter forbearance, interest continues to accrue and is capitalized into the principal of the loan at the end of the forbearance period.[315]

310. Interview with California Borrower Three (Apr. 14, 2018); Interview with California Borrower Ten (Apr. 15, 2018); Interview with Illinois Borrower Two (Jan. 17, 2018); Interview with Illinois Borrower Seven (Jan. 20, 2018); Interview with Illinois Borrower Ten (Jan. 20, 2018); Interview with Illinois Borrower Thirteen (Jan. 20, 2018); Interview with Kansas Borrower Three (Aug. 30, 2017); Interview with Kansas Borrower Four (Aug. 31, 2017); Interview with Kansas Borrower Five (Aug. 30, 2017); Interview with Kansas Borrower Six (Aug. 31, 2017); Interview with New York Borrower Five (Oct. 16, 2017); Interview with North Carolina Borrower One (Aug. 4, 2017); Interview with North Carolina Borrower Two (Aug. 4, 2017); Interview with North Carolina Borrower Five (Apr. 4, 2018); Interview with North Carolina Borrower Seven (Apr. 5, 2018); Interview with Texas Borrower Five (Feb. 17, 2018).

311. Interview with California Borrower One (Apr. 13, 2018); Interview with California Borrower Four (Apr. 14, 2018); Interview with California Borrower Five (Apr. 14, 2018); Interview with Kansas Borrower Nine (Sept. 3, 2017); Interview with New York Borrower Two (Oct. 16, 2017); Interview with New York Borrower Seven (Oct. 17, 2017); Interview with North Carolina Borrower Six (Apr. 4, 2018); Interview with Texas Borrower Two (Feb. 17, 2018); Interview with Texas Borrower Eleven (Feb. 19, 2018); Interview with Texas Borrower Fifteen (Feb. 20, 2018). It was clear from the context of the interviews that the respondents were not clear about the difference between deferment and forbearance and of which program they had taken advantage.

312. Interview with California Borrower Two (Apr. 14, 2018); Interview with California Borrower Five (Apr. 14, 2018).

313. Interview with Illinois Borrower Ten (Jan. 20, 2018).

314. Although neither the survey nor the interviewers specifically asked about default, it became clear in certain interviews. *See* Interview with California Borrower Three (Apr. 14, 2018); Interview with California Borrower Four (Apr. 14, 2018); Interview with California Borrower Five (Apr. 14, 2018); Interview with Illinois Borrower Two (Jan. 17, 2018); Interview with Illinois Borrower Six (Jan. 20, 2018); Interview with Illinois Borrower Seven (Jan. 20, 2018); Interview with Texas Borrower Three (Feb. 17, 2018); Interview with Texas Borrower Thirteen (Feb. 20, 2018); Interview with Texas Borrower Fifteen (Feb. 20, 2018).

315. *Forbearance*, FED. STUDENT AID (Aug. 19, 2015, 1:09 PM), https://studentaidhelp.ed.gov/app/answers/detail/a_id/295/~/forbearance [https://perma.cc/HQ27-F9CS] ("Unpaid interest that accrues during the forbearance will be added to the principal balance (capitalized) of your loan(s), increasing the total amount you owe"); *see also* AKERS & CHINGOS, *supra* note 25, at 119–20 (discussing allegations that student loan servicers have engaged in wrongdoing to the detriment of borrowers, and otherwise failed borrowers when it comes to navigating repayment).

For many, this leads to a ballooning debt. Ken described his experience:

> I exhausted all of my deferments, forbearance, benefits. When I graduated the total amount of money owed was only like [forty-five] thousand dollars, but everything kept gaining interest for the next four years. By the time I was making payments, the total of everything was about [seventy-two] thousand, [seventy-four] thousand dollars.[316]

For those who are more than ninety days delinquent on their loans, their credit rating suffers.[317] And for those who do default, the financial toll of the collections process can be massive—the federal government can seize tax returns, social security payments, or earned income tax credits, garnish wages, or put a freeze on additional loan money or transcripts.[318] According to one borrower who experienced such collection measures, they are "ugly, it's disgusting" and "kind of like being treated like a second[-]class citizen."[319] A borrower's credit can be destroyed, which can affect her ability to seek additional credit, buy or rent a home, or get a job.[320] Especially in light of the fact that data have shown that the federal government expends more money collecting debt than it recovers,[321] it is difficult to see the value in the punitive policies. Punitive and stigmatizing collection tools punish borrowers and may lead to further stigmatization and exacerbation of the student debt cascade.[322] But the devastating individual outcomes are masked by the investment imperative, which prioritizes higher education above all else—even a lifetime of debt collection, stress, and shame.

V. CONCLUSION

The investment imperative is alive and well in America. It is baked in to federal higher education policy and woven into the fabric of higher education institutions. It drives prospective

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316. Interview with Texas Borrower Fifteen (Feb. 20, 2018).

317. *What is Delinquency?*, FED. STUDENT AID, https://studentaid.ed.gov/sa/repay-loans/default#delinquency [https://perma.cc/JMM3-RREW] (last visited Sept. 12, 2019).

318. Rendleman & Weingart, *supra* note 121, at 247–51.

319. Interview with Texas Borrower Thirteen (Feb. 20, 2018).

320. Greene, *supra* note 131, at 260–62 (discussing the increasing use of credit score and credit report as a gatekeeper for jobs, rental units, car insurance, and utility security deposits).

321. Shahien Nasiripour, *Americans Are Paying $38 to Collect $1 of Student Debt*, BLOOMBERG (May 19, 2017, 8:39 AM), https://www.bloomberg.com/news/articles/2017-05-19/americans-are-paying-38-to-collect-1-of-student-debt.

322. Like the scholarly work around stigma in bankruptcy, *see supra* note 306, it is necessary to engage in more quantitative, qualitative, and interdisciplinary work to understand the role of shame and stigma in higher education financing and debt collection.

students toward higher education and justifies the current credit-based financing of higher education. And it drives and distorts consumer decision-making around higher education and student debt. The way that the investment imperative has driven higher education policy and distorted consumers' decisions has consequences, the negative effects of which are disproportionally experienced by vulnerable communities that have historically had less equal access to higher education and other avenues to financial and social mobility. Those consequences and effects are not simply theoretical; they have a real effect on real people. By combining theoretical and empirical research with qualitative data, this Article sheds light on how the investment imperative affects individuals on the ground.[323]

This contribution is just a beginning, adding a legal perspective to an interdisciplinary conversation; scholars from across disciplines are newly engaged in the project of exploring how the legal requirements and structures of higher education affect students, particularly those who rely on credit to finance their education. As higher education becomes more expensive, less regulated, and more critical to success in the labor market, it is more important than ever to understand the full implications of the investment imperative.[324] If policymakers want to deal with the student debt crisis, they must understand how the current framework drives and distorts decisions on both the supply and demand side. Thus, the data and arguments presented in this Article offer an important, and underrepresented, perspective.

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323. Greene, *supra* note 131, at 242 ("What is often absent from [theoretical] accounts, however, is what we can glean only by engaging in in-depth interviews with those directly affected by the legal rules, systems, and processes we study: an understanding of how, in their actual social contexts, these actors experience, understand, and internalize the relevant legal rules and structures, and how these structures become sources of personal meaning and determinants of behavior.").

324. There is much more work to be done to understand the full effects of the investment imperative. Query, for example, whether the investment imperative provides justification for constricting the social safety net or otherwise limiting programs that aid the poor and middle-class. The argument would proceed as follows: Through education debt, the government makes higher education accessible to the majority of Americans. Higher education is the key to upward socioeconomic mobility. Therefore, individual Americans simply need to take advantage of the access to achieve socioeconomic success. Thus, there is no need for a strong social safety net. Of course, for the reasons explained herein—information asymmetry, exploitation of vulnerable borrowers, illegal or unethical conduct by lenders or servicers, systemic and institutional barriers, lack of equal or fair access, unequal debt loads, and labor market changes—we know that access to higher education is insufficient to level the economic playing field. Yet, until we recognize the full effects of the investment imperative, access to higher education will be stymied in its efforts to displace systemic or institutional inequalities.