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The Disinvestment in Public Higher Education

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INTRODUCTION

American higher education is in a paradigm shift which threatens the future of the nation’s public universities and colleges, indeed the American dream.

The American success story has many explanations. High on any list are upward mobility and a large, affluent middle class. America is not limited by caste, class, ethnic background, national origin, religion, skin color, accent, race, or gender. The United States is by no means a discrimination-free society, but by both historical and modern world standards, we are an open society. The opportunity to succeed, to start anew, to cast aside old barriers, to assimilate, has drawn immigrants from every corner of the world for over two centuries. Their on-going story is first-generation poverty, followed by second-generation doctor, lawyer, engineer, accountant, scholar, or Senator.

Higher education, especially the nation’s public universities and colleges, plays the dominant role in the American success story.¹ Two-thirds of the students at four-year institutions attend public campuses. 80% of all students attending college, including community colleges, and 60% of the nation’s graduate and professional students are in public universities. A social compact developed between the states and their citizens; a quality college education would be offered to all qualified state residents at nominal tuition. The requisite qualifications were often minimal. The state then opened professional schools, especially business, dentistry, engineering, law, medicine, nursing and pharmacy. Higher education was as critical an investment in the state’s future as the other basic needs of public safety, public health, primary

¹ City College, founded in 1840, was the ladder up from poverty for generations of New Yorkers, as is CUNY today.
and secondary education, and infrastructure. Their great medical, engineering, law, and business schools have been at the forefront of higher education.

However, the social compact is breaking down today as our nation’s public universities are experiencing an unprecedented financial crisis, which is transforming their mission and academic profile. The fundamental change affects all levels of higher education as states disinvest in public higher education. The Department of Education reports that states covered 46% of the public university budgets in 1980, but only 36% in 2000. John V. Lombardi, Chancellor of the University of Massachusetts, commented: “No state in the country has maintained its commitment to public higher education.” The crisis affecting the state institutions is a national phenomenon, but the severity fluctuates from state to state, campus to campus, and program to program.

Higher education has survived cyclical state budget crises in the past, but this latest round reflects systemic changes in public finance. Higher education legally constitutes a privilege rather than a right or entitlement. Competing demands on limited state resources severely restrict the availability of state funding for higher education. Cyclical declines result in progressively deeper cuts.

Travis Reindel, policy analyst at the American Associations of the State Colleges and Universities expressed the budgetary reality: “Higher education is always the first neck on the chopping block.”

The effect is to limit accessibility and affordability as well as accelerate the decline in reputation of the nation’s great public institutions, which already suffer under the discriminatory

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2 Higher education is thereby a benefit not only to the individual but also to society as a whole and the public university is a public good. JAMES J. DUDERSTADT & FARRIS W. WOMACK, THE FUTURE OF THE PUBLIC UNIVERSITIES IN AMERICA: BEYOND THE CROSSROADS 7 (Johns Hopkins University Press 2003).
“objective” standards utilized by U.S. News & World Reports in ranking the nation’s institutions of higher education. A close look at two of the nation’s premier public universities and systems, California and Michigan, highlight the negative impacts on higher education.

Berkeley and Michigan became the national leaders of the public universities, as shown by the initial U.S. News & World Reports college rankings. Berkeley set the trend in the west and Michigan in the midwest.

The flagship, public research universities will survive, but often as quasi-private universities, mirroring many of the characteristics of their elite, private competitors. The need for fundraising will become paramount. As Chancellor Lombardi expressed, “We can do an ordinary university on what the state gives us. To do something beyond that, we have to have more money.” The decreases have been both at the nation’s most prestigious public universities, the “Public Ivy’s.” and less prestigious institutions. The masters and community colleges will have fewer resources, full-time faculty, and staff while the student population continues to grow.

DISINVESTMENT

As states struggle with recurrent and chronic budget crises in recent years, public higher education has borne a disproportionate share of the resulting budget cuts. Higher education received 14.6% of the states’ general funds in 1990, but slipped to 12.7% by 2002. The Illinois State University Center for Educational Policy reported that aggregate state higher education

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5 A detailed look at other flagship public universities will show the same general picture, but with individual variances. Both the Universities of California and Michigan, perhaps coincidentally, are the most independent public universities. Their boards of regents/trustees are constitutionally independent of the state legislatures, except for the power of the purse.

6 This thesis has previously been advanced by President Duderstadt and Executive Vice President Womack of the University of Michigan. See James J. Duderstadt & Farris W. Womack, The Future of the Public University in America: Beyond the Crossroads 127 (Johns Hopkins University Press 2003).

appropriations dropped 2.1% to $60.3 billion for 2003-04. The decrease was 4% from two years earlier. State funding decreased in 23 states, and did not keep up with inflation in most of the remaining states. The National Conference of State Legislatures also reported that some states reduced by 9% their funding on higher education. Conversely, tuition and fees have basically doubled over the last four years at the nation’s public institutions. 2003-04 probably represents the cyclical low in state budget.

The picture changed for 2004-05 with the state appropriations for colleges and universities rising 3.8% to $63 billion. Florida and Virginia led the way with 11% increases. The Virginia increase followed three straight years of cuts. The increases do not necessarily offset prior decreases. For example, increased funding for public education for colleges and student-aid programs was still lower in 15 states than two years earlier. A rise in state budgetary forecasts does not necessarily bode well for the public institutions with the change in paradigms to entitlement programs.

State appropriations rose 5.3% for 2005 – 06 to $66.6 billion. Appropriations increased 5% or more in 27 states, up from 14 the proceeding year. Four states though continued to reduce expenditures.

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8 Center for the Study of Education Policy, Illinois State University, Grapevine: An Annual Compilation of Data on State Tax Appropriations for the General Operation of Higher Education. Changes ranged from a 30.2% increase in Nevada to a 19.3% decrease in Massachusetts.
9 Id. at Table 1.
10 California (5.9%), Colorado (13.7%), Connecticut (.5%), Florida (2.8%), Illinois (2.2%), Iowa (2.1%), Maryland (6.3%), Massachusetts (19.3%), Michigan (3.3%), Minnesota (2.8%), Missouri (4.2%), Nebraska (4.2%), New York (4.5%), North Carolina (.1%), North Dakota (1.7%), Oklahoma (2.6%), Pennsylvania (3.2%), South Carolina (10.0%), Tennessee (5.5%), Virginia (5.7%), Washington (3.8%), West Virginia (5.7%), Wisconsin (7.8%). Id. at Table 2.
12 Anne Marie Chaker, States Increase College Funding, WALL STREET JOURNAL, December 22, 2004, at D2, col. 1.
13 Id.
Even level funding is effectively a funding decrease in times of inflation and rising costs inherent in academic institutions.

The long-term trend, regardless of short term fluctuations, is a decline in state financial assistance to public colleges and universities. From 1978 to 1988 “direct state appropriations as a proportion of the total revenue” of the public universities dropped by about 25%.\textsuperscript{16} Taxpayers covered about half the cost of a public education in 1980. That figure dropped to one-third by 2000, and is continuing to decrease.\textsuperscript{17}

The examples are almost infinite. Twenty percent of the members of the National Association of State Universities and Land Grant Colleges (NASULGC) made academic cuts during 2003, including eliminating majors. Universities merging or eliminating programs range from Bowling Green State University to the University of Virginia. Tuition increases ranged from 3% at Wyoming to 39% at Arizona. Arizona followed up with a 13.86 increase for 2004-05. The University of Texas, one of America’s academically and financially strongest universities cut 200 faculty and over 500 staff positions.\textsuperscript{18} In October 2002, Virginia cut the appropriation for Virginia Tech by 23%, or $62 million. Tuition rose 38% in two years, as well as eliminating 154 teaching positions and cutting almost 400 sections.\textsuperscript{19}

The University of Wisconsin at Madison similarly eliminated 90 administrative and 60 faculty positions, over 200 courses, dozens of upper level seminars, the Industrial Relations Research Institute, and the Land Tenure Center.\textsuperscript{20} The University of Wisconsin System incurred a $250 million reduction in state funding over 2 years, greater than any other major state

\textsuperscript{16} DUDERSTADT & WOMACK at 103.  
\textsuperscript{18} Stephanie Simon & Stuart Silverstein, Colleges Rethink Goals As They Cut, LOS ANGELES TIMES, October 12, 2003, at p. A1, col. 5, A28, col. 5-6.  
\textsuperscript{19} William C. Symond, Colleges in Crisis, Business Week, April 28, 2003 at 69, 70.  
\textsuperscript{20} Stephanie Simon & Stuart Silverstein, Colleges Rethink Goals As They Cut, LOS ANGELES TIMES, October 12, 2003, at p. A1, col. 5, A28, col. 5-6.; Mary Beth Marklein, Colleges Brace for Bigger Classes and Less Bank for More Bucks; Though Tuition Is Up, Schools Cut Services, USA TODAY, August 27, 2003, 2003 WL 5317731.
agency. Duplicative programs throughout the system will be consolidated into one or two regional campuses and at the flagship Madison campus. The Wisconsin System temporarily stopped admitting students and froze hiring during a budget dispute between the Legislature and Regents in 2002. Per capita spending in Wisconsin on higher education dropped to 28th nationally from 13th. State funding dropped to less than 30% of the system’s budget. Tuition and fees at the University of Wisconsin rose 15% in 2003-04, and 14.2% in 2004-05.

A similar impact occurred with the University of Illinois System. State appropriations dropped 8% ($58 million) in 2003-04. The University responded by cutting 2,000 positions, eliminating hundreds of courses, and launching a comprehensive review of administrative and support positions with a goal of cutting expenditures 25%. The flagship University of Illinois at Urbana-Champaign had its state appropriations cut 17% ($132 million) over two years.

The University of Minnesota faced a 10% decrease in state funding for the 2004-05 year. The budget for the University of Maryland dropped from an initial $867.8 million in 2002-03 to $746.2 million in fiscal year 2003-04. The University of Maryland System incurred 1/5 ($122 million) of the 18% cuts in the state’s general fund. It responded by eliminating 800 full-time equivalent positions, raising tuition and fees 14.6%, and freezing salaries for 2 ½ years. The University raised tuition 30% in the previous two years. State funding remained flat for

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23 Id. at 3.
24 Id. at 2.
25 NEW YORK TIMES, EDUCATION LIFE 22 (November 9, 2003).
26 June Kronholz, Tuition Rises 11% at Public Colleges: Increase Is Less than Last Year’s but Students Are Borrowing More; Private Universities Up 5.7%, WALL ST.J., October 20, 2004, at p. D1, col. 5, D2, col. 5.
28 Id.
2004-05. The University of South Carolina increased seminar size to 45 students from 25.\textsuperscript{30} Even the previous limit of 25, while not uncommon, is large for a seminar.

The five-campus University of Massachusetts System’s state funding for 2004-05 was $392.5 million, down 26% from $529 million in 2000.\textsuperscript{31} U Mass lost over 66 faculty positions to early retirement,\textsuperscript{32} and eliminated 7 of its 19 varsity sports programs to partially offset the budget cuts.\textsuperscript{33} The flagship Amherst campus lost over 2,000 employees during four years.

U Mass raised tuition 24% in 2003-04, while North Carolina went up 18%, and Iowa, Missouri and Texas 20%. The University of Iowa actually raised tuition 55% since 2001. The largest increase for 2004-05 was 36.9% at the University of Texas at Austin, followed by the University of Texas Medical Branch at 28.6% and UMass-Dartmouth at 27.3%.\textsuperscript{34} Even without layoffs, faculty and staff can be squeezed. For example, faculty at the University of South Alabama received no salary increases in 2 of 3 years from 200304 to 2005–06.\textsuperscript{35}

Some colleges and universities have done the previously unthinkable by raising tuition and fees during the academic year. The University of California led the way with four increases in tuition and fees during the 2003-04 academic year. The University of Cincinnati raised tuition 8% in June 2003, followed by two additional increases totaling 8% in the fall.

\textsuperscript{34}Four-year colleges have the largest tuition increases. \textit{CHRONICLE OF HIGHER EDUCATION}, October 29, 2004 at p. A1, A38, col. 3.
Many public institutions now receive more revenue from tuition and fees than state funding. 56% of the public institutions report receiving less than 40% of their funding from taxpayers. The University of Michigan receives 54% of its general funds from tuition and fees versus 33% from the state. California’s contribution to UCLA is now under 23%. Vermont and Penn State receive less than 10% of their budget from the state. Virginia is down to 9%.

Yet, the substantial increases in tuition and fees do not offset the losses in state support. For example, the Cal States increased tuition and fees by $101.5 million in 2003-04, but still fell $210 million short of the $311 million budget cuts. Similarly, tuition increases raised $150 million throughout the University of Wisconsin System, but the state cuts totaled $250 million.

**TUITION INCREASES**

For over three decades three major sectors of the economy consistently increased prices at rates substantially greater than inflation: construction, healthcare, and private higher education. Tuition increases averaged 53% over the past decade- twice the rate of inflation. The difference today is that the public institutions are raising tuition and fees even faster than the private schools. Increases for the public institutions averaged 7.9% for the 2002-03 academic year, and then increased at an even greater 9.9% for the 2003-2004 year. Another estimate, based on a College Board survey, is they raised tuition and fees an average of 14% in 2003 versus 6% at the private institutions. Over 30 states averaged tuition and fee increases

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38 I graduated from high school in January 1964 and immediately matriculated in February at the University of San Francisco, a Jesuit college. Tuition was then $25/credit hour. The figure for 2004 was $830, an increase of 3,220% in four decades.
39 James J. Kim, *Putting a Cap on Tuition Expenses*, WALL ST.J., July 27, 2004, at p. D2, col. 1, 3. Of course, the differential in percentage increases between public and private universities is deceptive because the smaller private increases are on a much larger base.
above 10% for the 2003-04 academic year.\textsuperscript{40} The community colleges also raised tuition an average of 14%\textsuperscript{41} and 8.7% in 2004-05.\textsuperscript{42} The AAUP reports that public four-year institutions raised tuition 29% above the rate of inflation over the past five years compared to 20% for their private rivals.\textsuperscript{43} The increases for public institutions for 2004-05 are nearly 11% versus 5.7% for private schools. Public higher education tuition is up 46% in three years.\textsuperscript{44} The public schools raised tuition another 7.1% for 2005 – 06.\textsuperscript{45}

One reason legislators have slashed funding for higher education is the premise that the universities and colleges can raise tuition and fees to make up the difference. Most beneficiaries of government largess lack that option. As long as only the private institutions substantially raised tuition annually, the outcry was somewhat muffled. Indeed, the elite universities are viewed as a luxury item. Therefore, standard cross-elasticity of demand theories are inapplicable. The assumption is that one gets what one pays for in private education. This premise was validated one year when Mount Holyoke College did not raise tuition nearly as much as its Seven Sisters competitors, such as Smith College. The impact was a decline in applications and yield at Mount Holyoke, which responded with substantial tuition increases from then on.\textsuperscript{46} University presidents learnt a major lesson in academic pricing from Mount Holyoke’s experience: do not directly undercut your rivals on the list price of tuition, but do so indirectly through scholarships, grants, and fellowships.

\textsuperscript{40}American Association of State Colleges and Universities & National Association of State Universities and Land-Grant Colleges, 2003-04 Student and Financial Aid Charges, (hereinafter referred to as NASULGC).
\textsuperscript{41}Greg Winters, Public College Tuition Rose 14\% in '03, Survey Finds, NEW YORK TIMES, November 22, 2003, at p. A16, col. 5.
\textsuperscript{42}June Kronholz, Tuition Rises 11\% at Public Colleges; Increase Is Less than Last Year’s but Students Are Borrowing More; Private Universities Up 5.7\%, WALL ST. J., October 20, 2004, at p. D1, col. 5.
\textsuperscript{44}June Kronholz, Tuition Rises 11\% at Public Colleges; Increase Is Less than Last Year’s but Students Are Borrowing More; Private Universities Up 5.7\%, WALL ST. J., October 20, 2004, at p. D1, col. 5.
\textsuperscript{45}College Board, Trends in College Pricing: 2005 at 4.
\textsuperscript{46}Barry Werth, Why Is College So Expensive? One Reason Only, Mr. and Mrs. America: You Want It That Way, NEW ENGLAND MONTHLY, Jan. 1988 at 35, 42-43.
Obviously, public universities are less restrained in raising tuition for non-residents, who, of course, cannot and do not vote in the state. Non-resident tuition reached $1,540 at the University of Michigan in 1968-69. 46 years was required for out-of-state tuition to reach $1,000. Only an additional six years was needed for this tuition to double to $2,140 by 1971-1972.47 By 2003-04 the University of Michigan had the highest non-resident tuition in the country at $24,695.48 The University of Vermont charged $22,688, Virginia $21,934, and Colorado $20,036. Non-resident tuition and fees at the UC’s rose from $2,625 in 1978-79 to $19,740 in 2003-04, and jumped to $23,186 in 2004-05. These figures are still lower than the elite private universities, but not such that educational publications can today proclaim Berkeley, Michigan, UCLA, North Carolina, and Virginia as bargains for east coast residents. Former Michigan President James Duderstadt has remarked that Michigan is the nation’s only privately funded public university.49

Conversely, the UC commitment to the state’s top 1/8 high school graduates in the California Master Plan for Higher Education to attend a UC, coupled with the burgeoning state population, results in the UC’s severely restricting enrollment of non-resident undergraduates. Berkeley has the highest non-resident undergraduate student body of the UC’s at 11%, followed by UCLA and UC Santa Cruz at 6%. UC Riverside has a 99% in-state resident population.

However, unless a public institution converts itself into a private university; non-resident tuition will not resolve all its budget problems. For example, to offset every $20 million reduction in state assistance, the University of Michigan has to replace about 1100 resident

49 Direct quotes include: “Some, like the University of Michigan, have already been forced to move quite far down the road to becoming a privately financed state university . . . .” DUDERSTADT & WOMACK at 125; “We restructured finances so that Michigan became, in effect, a privately supported public university.” Id. at 198.
students with non-residents, or increase enrollment by about 770 non-residents. The public universities must still educate a large number of state residents. An increasing reliance on non-residents will to some extent though improve the selectivity factors used in U.S. News & World Reports.

Tuition and fees increases at professional schools have often gotten away from affordable education for state residents. The average tuition at public law schools increased 234% from 1990 to 2003, from $3,236 to $10,820.\textsuperscript{50} The increases are even sharper at some of the nation’s most prestigious public law schools. For example, tuition and fees at the University of California at Berkeley Law School (Boalt Hall) in 1987 totaled $1500. Non-resident tuition was $5,796, a 50% savings over Harvard or Yale.\textsuperscript{51} Tuition and fees rose to $20,000 at the 4 UC law schools $22,943 for 2004-05. The University of Michigan imposed even greater increases such that resident tuition for 2004-05 is $29,170 with non-resident tuition an additional $5,000.\textsuperscript{52} The non-resident tuition is comparable to that of the most elite private law schools, and even the resident tuition is high up on the list. The 2003-04 entering class was slightly less than 25% Michigan residents. Obviously, the University of Michigan is financially a private law school in all but name. Similarly, the graduate MBA tuition and fees are $33,688 for residents and $38,688 for non-residents.\textsuperscript{53}

The University of Virginia has also privatized its law and graduate business schools. Resident tuition in 2003 at the law school was $23,798 and $29,201 for non-residents. 56% of

\textsuperscript{50} John A. Sebert, Cost and Financing of Legal Education, SYLLABUS at 1, 4 (vol. 35, no. 2, February 2004).
\textsuperscript{51} Brains For The Bar, U.S. News & World Reports, Nove. 2, 1987 at p. 72, 73, col. 2 . Tuition at Yale was $12,450.
\textsuperscript{52} University of Michigan, Office of the Registrar, Tuition and Fees for Academic Year 2004-05, at 6; http://www.umich.edu/~regoff/tuition/full.html (July 29, 2004).
the entering class was from out of state. The respective tuition rates for the graduate business school are $29,000 and $33,000.

The social compact with the state hemorrhaging. Michigan, Virginia, and Boalt are among the premier law schools in the nation and can command premium tuition. Yet the effect is to betray the commitment to affordable education, including professional education, to the residents of the state.

It’s not just the premier public law schools raising tuition. The top 12 tuition increases for law schools in 2003-2004 were all at public institutions with the University of Arizona leading the way with an 81.5% increase for in-state residents to $10,604. Yet not all public professional schools have the cachet to charge tuition in the $20,000 range.

BRIEF HISTORY OF PUBLIC HIGHER EDUCATION: THE VISION

America has long believed in higher education. Education was viewed as one of the distinguishing features of the New World, from the earliest days of America’s settlement. The first steps were small, with colleges founded primarily to train ministers. Harvard University was initially funded by a grant of £480 by the General Court of the Massachusetts Bay Colony in 1636. John Harvard died in 1638 and left the school £780 and 400 books. The school adopted his name.

The nation’s founding fathers viewed education as critical to the success of the fledging republic. America led the world in mandating secondary education. Public universities have existed for over 200 years in the United States. Thomas Jefferson envisioned an America built

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upon a widely educated population. He founded the University of Virginia.\textsuperscript{55} The University of North Carolina was chartered in 1789 as the first public university, although several universities established earlier as private colleges, including William and Mary (1693), the University of Delaware (1743), and Rutgers (1766), subsequently became public institutions. The Universities of Georgia, Tennessee and Vermont were established in the late 1700’s. Two of the nation’s premier public universities, Michigan (1817) and Virginia (1819) were founded in the early 1800’s. Other public universities established prior to the Civil War are South Carolina, Indiana, Alabama, Minnesota, Mississippi, Missouri, City College, Florida, Penn State, Maryland, LSU, and Wisconsin.

The concept of land grants to fund education originated with the Northwest Ordinance of 1787.\textsuperscript{56} The major national impetus to public higher education was the enactment of the Morrill Act in 1862, which created the public land grant universities.\textsuperscript{57} The land grants historically promoted agriculture and engineering. These state universities were initially funded by the sale or lease of federal lands. Some of our major public universities, including Arizona, Arkansas, Auburn, Connecticut, Georgia, Illinois, Kentucky, Massachusetts, Michigan State, Nebraska, Ohio State, Purdue, Texas A&M, and the University of California, are land grant institutions. Some public universities founded before the Civil War became land-grant colleges. Even Cornell and MIT are partially land grant universities, although they are legally private institutions. Congress subsequently amended the Morrill Act on many occasions, including the creation in 1890 of 17 historically black land grant colleges, and 29 tribal land grant institutions in 1994. The land grant universities became the core of the public higher education system in

\textsuperscript{55} Similarly, Benjamin Franklin founded the University of Pennsylvania.
\textsuperscript{56} The Northwest Ordinance of 1787 declared: “Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”
\textsuperscript{57} They were needed for the nation’s farmers and developing industries.
many states. In other states they rivaled existing public universities, such as Michigan State University versus the University of Michigan,\(^5^8\) or Purdue and Indiana. The combination of existing public institutions and the land grant schools marked the ascendancy of public higher education outside the Northeast and Mid–Atlantic – the heart of private university primacy. Indeed, in many states public education was preferred to private education- the opposite of the east coast preference. Public universities spread like prairie fires though the Plains states. The great public institutions of the Midwest represented the rise of democracy, the prairie populist antipathy to the east, opportunity for the waves of immigrants who settled much of America in the aftermath of the Civil War, and opening the doors of higher education to all classes rather than a narrow elite. They led the country in integration and diversity.\(^5^9\) The South and West echoed the call for quality public universities. The public universities are the premier institutions of higher education in most states outside the East Coast.

Clearly, states made the commitment by the end of the 1800’s to offer their residents a quality education comparable to that of the private universities. State residents would pay an artificially low tuition, heavily subsidized by the taxpayers. The working rule of thumb established for the public institutions later in the Twentieth Century was that the student share of an education should not exceed 1/3 of the actual cost.

\(^5^8\) Ironically, the University of Michigan was established in Detroit in 1817 having received 1,920 acres of land from the Chippewa, Ottawa, and Pottawatomie Indians, and thus in a sense is also a “land grant” university. The fledgling university moved to Ann Arbor in 1837.

\(^5^9\) The University of Michigan graduated its first African-American law student in 1870. Sophia Bethena Jones received a medical degree in 1889, the first African – American woman to graduate from a medical school in the United States.\(^5^9\) Henry Fitzbutler, an African – American male received a medical degree in 1872. The UC board of regents voted in 1870 that “women would be admitted… equally with men.” Patricia A. Pelfrey, A Brief History of the University of California 10 (2nd ed. 2004). The university was established in 1868. When Clark Kerr’s Presidency was terminated in 1967, Dr. Martin Meyerson was named the interim president, thereby becoming “The first Jew to head a major American research campus.” Clark Kerr, The Gold and the Blue 56 (Vol. 2, The University of California Press 2003). The University of California and the University of Michigan have been the subject of the two Supreme Court decisions on affirmative action, Regents of the University of California v. Bakke, 438 U.S. 265 (1978) and Grutter v. Bollinger, 539 U.S. 306 (2003).
A college education was rare during the Great Depression of the 1930’s. The aftermath of World War II changed the paradigm from one of exclusion to one of universal access. The Servicemen’s Readjustment Act of 1944, commonly referred to as the GI Bill, provided the means for veterans, often the poor children of the Great Depression, to pursue a college education. 2.3 million Veterans attended college under the act, which covered full tuition. The resulting post-war boom benefited all forms of higher education. Scores of public universities, especially the master’s colleges, and community colleges, opened their doors. In addition, the federal government subsidized the construction of classrooms and dormitories.

Higher education would be inclusive, rather than exclusive. The door was open to universal access. World War II also pioneered the extensive reliance by the federal government on science and technology research by the major public and private universities, thereby providing them additional sums of money, creating the great research universities. Indeed, the University of Michigan’s budget for 2003-04 includes $528 million in federal research funding; i.e. $200 million more than the state’s support through the general fund. Significantly, six of the top ten research universities, and 13 of the top 20, reporting the largest R&D expenditures in science and engineering in the 2002 fiscal year were public institutions.60

The rise of the research institutions and shift to prominence based on scholarly reputation marked a paradigm shift away from teaching by senior, distinguished faculty in the undergraduate programs. Undergraduate teaching, especially in the large, lower level courses, was left to junior faculty and teaching assistants.

The state supported universities grew the most, financed by public revenues. The large public institutions became just that: large. For example, the average undergraduate enrollment in

60 Washington (2), Michigan (3), UCLA (6), UCSD (7), Wisconsin (9), Colorado (10), UCSF (13), Pittsburgh (14), Minnesota (16), Penn State (17), CHRONICLE OF HIGHER EDUCATION, August 6, 2004, at p. A23, col. 2.
the eight private Ivy League schools in 2003-04 is 7,066 versus 29,400 for the 10 public Big Ten universities.\textsuperscript{61} The difference in the average size of the entering classes is similar- 1,638 for the Ivy’s and 5,858 for the Big Ten.

The 1950’s witnessed the breaking of the private monopoly on quality higher education and the availability of affordable, high-quality education for the masses- a key to the stability of a democracy and the growth of the middle class. Every state, from large to small, rich to poor, old or new, east to west, north to south, established at least one public university campus. The elite east coast universities were still geared to educating the affluent during this period, and in many cases, the Protestant establishment.\textsuperscript{62} The well-earned academic reputation of the state universities became a source of state pride. Many of the nation’s great research institutions are public universities. Their success allowed many of the brightest high school graduates to obtain a quality education at the state university, and then remain in the state as productive citizens, instead of moving to Boston/Cambridge, New Haven, New York City, Philadelphia, or Chicago. Graduates are proud of their degrees from the flagship public universities. The public universities offered a broad array of services to the public, including extension services, cultural events, and large medical complexes.

A degree of equality existed throughout the 1960’s into the 1970’s between the flagship public universities and elite private universities. The publics offset the high tuition and endowment income of the privates with substantial state financial support. Both could compete relatively equally for students and distinguished faculty. State funds paid for capital improvements on the public campuses.

\textsuperscript{61} Northwestern of the Big Ten is a private university.

\textsuperscript{62} For a history of the discrimination practiced by the elite Eastern Universities, see Jerome Karabel, The Chosen: The Hidden History of Admission and Exclusion at Harvard, Yale, and Princeton (Houghton Mifflin 2005).
The American Council on Higher Education released in 1966 a survey which rated the University of California at Berkeley in 1964 as “the best balanced distinguished university in the United States.”63 Just a short time earlier, California had surpassed New York as the nation’s most populous state. Earl Warren, a graduate of Berkeley and its law school Boat Hall, served as the Chief Justice of the United States Supreme Court. The sun was truly shining on California, the west and public higher education led by Berkeley.

The public Ivy’s rivaled the private Ivy’s in prestige. By 1985 several of the great public universities, especially Berkeley, UCLA, Michigan, North Carolina, and Virginia were referred to as the “Public Ivy’s.” By the middle of the twentieth century, the nation’s system of public higher education set the standard for the world. This period marked the high point of public higher education. Once U.S. News & World Reports turned to “objective” criteria in rating the nation’s universities, the reputation of the flagship public institutions was destined to fall.

The situation is different four decades later. The elite private universities turned to their strength, assiduous fund raising from loyal alumni while the financing of the public institutions periodically suffered from state budget crises. Sharp increases in faculty salaries and the rating system of U.S. News & World Reports changed the competitive picture. The last third of the twentieth century witnessed the limitations of public financing of higher education. The 1970’s witnessed the beginning of sharply rising faculty salaries, setting off a salary war, which the public universities lacked the resources to win.

63 Kerr, supra n. _ at 117–18.
ACADEMIC REPUTATION

Assessing the quality and image of an institution is difficult, if not impossible. So much is based on intangibles. A look at such traditional rivals as Harvard-Yale, Penn-Princeton, Berkeley-Stanford, UCLA-USC, or Duke-North Carolina illustrates how subjective such a decision is. Academics are not decided on a sports field where the winner takes all and achieves bragging rights until the next game.

Objective evaluative criteria can be developed, such as student-faculty ratios, average class sizes, acceptance and matriculation rates, graduation rate, endowment size, alumni contribution percentage and fund raising, placement success, alumni prominence, SAT/ACT medians and 25-75 percentiles, library size, entering GPAs, valedictorians and salutatorians, accreditations, Nobel laureates, Guggenheim Fellows, research grants, faculty scholarship, faculty salaries, graduate and professional programs, location, and general reputation. None though, either singly or in combination, can capture the true essence of an institution, including the ambience of college towns. Indeed, many factors can be manipulated.

U.S. News & World Reports unleashed a bombshell in its November 28, 1983 issue: a seven page article “Rating the Colleges.” The ratings were based solely on the subjective responses of 662 of the surveyed 1,308 four-year college and university presidents. The survey cautioned that few public institutions were ranked among the nation’s best: “Educators point to conditions found at many taxpayer-supported institutions- among them larger class sizes, more graduate students serving as instructors for undergraduates and less selective admissions standards based more on serving state residents than on attracting the nation’s top students….“

Stanford led the list, followed by Harvard, Yale, and Princeton. The University of California at Berkeley was fifth with Chicago sixth, and Michigan seventh. Cornell and the University of

Illinois tied for eighth. Dartmouth and MIT shared tenth, followed by Cal Tech. Carnegie-Mellon and the University of Wisconsin vied for thirteenth. This initial list of fourteen included four of the nation’s premier public institutions.

For better or worse, we are increasingly looking to U.S. News and World Report for guidance. Parents, high school guidance counselors, and prospective applicants rely on its annual rankings. The annual issue and its accompanying special issues on undergraduate and graduate programs are best sellers. Trustees, Regents, Presidents, Provosts, and Deans await the annual numbers with baited breath. They may praise or decry this annual ritual, but the reality is that a rise in the rankings is cause for celebration, while a drop results in great angst, if not the resignation of academic leaders.

The 1988 survey refined the ranking system by adding “objective” criteria. The new factors included selectivity, strength of faculty and teaching, financial resources, alumni contributions, and the ability to retain students. These factors inherently disadvantage the public universities. Berkeley dropped to 24th from fifth a few years earlier and Michigan was now number 25 instead of 7. Nine of the top 15 schools were the eight private Ivy’s and Stanford. Yet Berkeley was sixth and Michigan eighth when only academic reputation was assessed.

While we can look at these rankings for guidance, we need to keep two propositions in mind. First, the criteria are not constant; U.S. News and World Reports regularly change its evaluative criteria. A famous example occurred in the 2000 edition, which ranked Cal Tech as the number one undergraduate university in America, breaking the traditional Ivy League grasp

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65 Id. at 42.  
66 U.S. News & World Reports has rivals in its rankings in some disciplines. For example, while it ranks the University of Pennsylvania (Wharton) as the best undergraduate business program and Harvard as the best MBA program, the Wall Street Journal ranks Michigan as the top business program and Business Week gives the same MBA ranking to Northwestern (Kellogg).  
68 Id. at C12.
on the top spot. Speculation existed that the criteria would be changed for the 2001 rankings. Sure enough, Cal Tech dropped to fourth, trailing Princeton, Harvard, and Yale. It slipped to eighth in the 2005 edition.

U.S. News dropped yield as a factor for the 2003-04 year and reduced the weight accorded college acceptance. Although the yield rate only counted 1.5% of the total, even such a small factor may have a substantial effect considering how tightly ranked many of the universities are.

Secondly, many of the criteria are inherently biased against public institutions. It is reported that U.S. News chooses methodology design to maintain Harvard, Princeton, and Yale on top.69

For example, the public schools will consistently have lower SAT/ACT medians and ranges than their private rivals because of the social compact requiring them to admit a high percent of state residents, who may possess lower numerical criteria than the non-resident applicant pool. Some universities, such as North Carolina and Virginia, historically admitted a small non-resident population. The public universities trail in selectivity ratings because they must admit a higher percentage of applicants to fill their large enrollments. The public institutions will consistently accept good students who might not meet the higher admissions standards of the elite private institutions. For example, UCLA admits a large number of Southern California residents rejected by the University of Southern California, as USC increasingly becomes a national, and international, university in its student body. Similarly, the acceptance/rejection selectivity ratios will not be as good. In addition, graduates of public

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institutions have not traditionally been as accustomed to contribute to their alma mater (a 5% weight) as at the private institutions.

U.S. News allocates 5% to alumni contribution rates, which is used as a proxy for student satisfaction. The premise is that unhappy students will be unhappy alumni, and hence unwilling to contribute. Conversely, satisfied students will be more receptive as alumni to requests for contributions.

This statistic again favors the private universities. Students at elite private universities understand the expectation of alumni contributions whereas no such expectation is created in public university students.

All universities have schools and majors from which alumni contributions may not be heavily expected. Public universities, in fulfilling their role of offering a wide variety of majors to satisfy the public need, will have more of them. For example, schools of education, government, natural resources, public health, and social work educate students who will be highly productive members of society, but not necessarily in an economic sense.

The University of California at Berkeley, either alone or sometimes tied with the University of Virginia, continues to be ranked as the best public university in America, but its rankings for the past six years have hovered in the low 20’s.

THE RISE AND SLIDE OF THE UNIVERSITY OF CALIFORNIA

At first glance the University of California at Berkeley variously referred to as UC, Cal, or Berkeley, is still perched at the pinnacle of higher education. Eight Nobel laureates, 125 members of the National Academy of Sciences, 83 members of the National Academy of

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70 The University of Virginia, while a public university, has traditionally been run as a private university with high selectivity for a relatively small entering class.
71 We will use “Berkeley” to refer to the campus and “UC” for the system.
Engineering, 139 Guggenheim fellows, 3 Pulitzer Prize Winners, 15 MacArthur Fellows, and 83 Fulbright Scholars call Berkeley home.\textsuperscript{72} Admissions standards at Berkeley are among the nation’s highest. Its 1200 acres in the sunny hills of Berkeley and reputation emit a siren call to scholars from around the world.\textsuperscript{73} The UC System has led the nation for ten straight years for universities receiving patents. The most recent (1995) study by the National Research Council found that Berkeley continued to have more graduate programs ranked in the top ten in their fields than any other university.\textsuperscript{74}

Most great cities will have equally great universities. That Boston, New York, Philadelphia, Washington D.C., Chicago and Los Angeles developed at least one magnificent university each is not surprising. That equally distinguished institutions would emerge in Ann Arbor, Berkeley, Boulder, Durham, or South Bend is not inevitable.

That a public university in the far west would rise to academic primacy might initially seem preposterous. California is 3,000 miles from the historic east coast center of higher education. Its disadvantages though became its strength.

California and the west were geographically isolated from the rest of America. If California wished for its citizens to be educated, it would have to do so itself. Geographic isolation necessitated self – sufficiency; California would have to look to itself.

California was a young state uninhibited by tradition or inertia as successive waves of immigrants moved to California. No competition existed by long – established private

\textsuperscript{72} See http://www.berkeley.edu/about/honors/ (July 28, 2004)
\textsuperscript{73} Not only does Berkeley have great weather, but housing was relatively inexpensive until recently.
\textsuperscript{74} Stephen L. Cohen, \textit{He Shoots, He Scores, He Studies}, LOS ANGELES TIMES MAGAZINE, September 5, 2004 at 10, 12.
universities the absence of major, private universities created a vacuum filled by public education.  

California possessed the natural resources, first in the form of gold and other minerals, and then the natural bounty of the land through agriculture to fund the university. A burgeoning population provided UC with a rising class of high school seniors.

Today, California crowns over the Pacific Rim with Silicon Valley in the San Francisco Bay Area the high tech engine of the world.

More recently UC San Diego has been rising rapidly as the third great public university campus in California, barely trailed by campuses in Davis, Santa Barbara, and Irvine.

Berkeley’s rise to academic prominence was not an overnight success. According to Clark Kerr’s memoir, Berkeley was already one of The Big Six in 1906. Even though “membership” changed by 1952, Berkeley remained in it.

If most great universities are the products of visionary leaders, then Berkeley had three over a century. Clark Kerr passed away on December 1, 2003. While not widely known to the public, he was one of the great university presidents of the Twentieth Century. He was an advocate of public higher education. Kerr was neither the father of the University of California at Berkeley, founded in 1868, nor of the University of California System. He was the third in a series of great leaders of the University of California. The first was Benjamin Ide Wheeler starting in 1899, who not only developed Berkeley into one of the largest research universities in

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75 Berkeley’s great rival, Stanford, was not founded until 1891. The friendly rivalry of the two great institutions resulted in parallel climbs to greatness., USC, especially with its professional schools, played a major role in the greater Los Angeles area. Northern California though outshined Southern California until World War II at which point the rise of USC and UCLA paralleled that of Berkeley and Stanford. The shift to Southern California resulted from the production of oil, the rise of Hollywood, tourism, and the large military – industrial complex, especially aerospace, based in Southern California in the aftermath of World War II.


77 Id. at 18 (Harvard, Yale, Columbia, Chicago, Michigan and Berkeley).
America, but also opened its southern branch in 1919, which subsequently became known as UCLA. The University of California thereby became the nation’s first multi-campus system.

Robert Gordon Sproul took over Berkeley in 1930 during the Great Depression and proceeded to build it into a world renowned institution over three decades, as well as pinch-hitting on several occasions at the fledging UCLA. The 1930’s witnessed extensive research in nuclear physics, chemistry, and biology. Berkeley, Chicago and MIT were the three major research universities during World War II.

President Kerr built up Berkeley in the social sciences, presided over Berkeley’s coronation as the nation’s premier university, and designed the California Master Plan of Higher Education. Indeed, he was the visionary architect of public higher education in California. His California Plan in turn served as a model for public higher education throughout America.

He served as the first Chancellor of Berkeley from 1952-1958 and then as President of the University of California System from 1958-1967. Under his tutelage, Berkeley was ranked the “best balanced distinguished university” in America in 1964 - a singular honor for a public university. All of Berkeley’s 28 departments ranked in the top 6. Harvard was second with 23. Princeton and Yale tied for third with 13 each, while MIT and Stanford followed with 6 each.

Only a year earlier California had become the nation’s most populous state. California, the west, and public higher education seemed the wave of the future. The Pac Eight, Big Ten, SEC, Virginia, North Carolina, and Texas were on the rise.

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78 Berkeley appointed the prominent physicists, Ernest Lawrence (father of the cyclotron) and J. Robert Oppenheimer to its faculty in 1928.
79 Six faculty members won Nobel prizes during Sproul’s Administration. Five others, hired during his administration, subsequently won Nobels. Clark Kerr, supra n. at 18.
80 Clark Kerr, supra n. at 57.
81 Kerr, supra n. at 58, Table I, 68.
The Ivy’s were seemingly fading in allure. The nation’s “public Ivy’s” were glorified. Such a view neglected the strengths of the elite private universities, especially but not limited to the private Ivy’s history, tradition, and heritage, exclusivity, location, alumni, and especially fund – raising prowess.

The University of California benefited from the population and economic growth of the state. California had the resources to invest in higher education. UCLA soon rivaled Berkeley for prominence in the UC System. Three new UC’s were created at Irvine, San Diego, and Santa Cruz during the period. Kerr doubled enrollment in the UC system to 87,000 students.

The success of Berkeley and UCLA, accompanied by substantial public investments in higher education, served as an umbrella under which the newer UC’s achieved academic success. The University of California became the premier university system not only in America, but also throughout the world. Six of the eight UC undergraduate campuses currently rank in the top 13 of all public universities, and are members of the Association of American Universities (AAU). All eight existing UC undergraduate campuses rank in the top 40 public universities. While many states have systems modeled on California’s, only Virginia has as many as three public institutions in the top 40. Most state university systems consist of several branch campuses surrounding a flagship university.

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82 UC Santa Barbara faculty have received five Nobel Prizes in the past six years and UC Irvine just received its third. The more prestigious Berkeley and UCLA received just three and two respectively over the past decade. CNN, Nobel Prizes Shine on California Schools: Lower-Profile Universities Gaining Academic Glory, http://cnnf.printthis.clickability.com/pt/cpt?action=cpt&title=cnn.com+-+nobel+prize, October 18, 2004.
84 The AAU is comprised of the top 62 research universities (34 public, 26 private, and 2 Canadian) in America. Membership is a sign of academic recognition. Berkeley was one of the 14 founding members of the American Association of Universities. Clark Kerr, supra n. 1 at 60.
85 This statement does not include the new University of California Merced, which opened its doors in 2005.
86 Id.; Virginia (2); William & Mary (6); Virginia Tech (32).
Under the California plan, the top 1/8 of the state’s students are eligible to attend the University of California, the top 1/3 a state college, and the rest a community college, with the possibility of subsequently transferring to a UC or Cal State. Only the UC’s could offer doctorates, and professional degrees, such as law, medicine, and pharmacy. All three levels of higher education were initially tuition free to California residents. The goal was affordable higher education for all state residents. California was the first state to expressly make the commitment to universal higher education.\footnote{Clark Kerr, The Uses of the University 202 (5th ed., Harvard University Press 2001).}

Kerr’s 1963 book, The Uses of the University, introduced the concept of the multiversity to America.\footnote{Id. at 14-15.} The university will educate the public, engage in research, and provide service to the community, all to an expanding multitude of constituencies, such as undergrad students, graduate students, alumni, athletes, and the surrounding community.\footnote{The multiversity built upon the earlier Wisconsin plan. President Charles Van Hise of Wisconsin in 1904 articulated the need to provide “the beneficent influence of the university . . . to every home in the state.” The University of Wisconsin-Madison, Campus in Profile 2, http://www.uc.wisc.edu/profile/view.php?get=history (July 29, 2004). The university was therefore to serve the entire state. Also included were extension services and university presses.} The nucleus was usually the large public research university.\footnote{Obviously, some of the larger private universities have also assumed these roles.} His new approach was neither the old residential college (English model) nor the core graduate school model with solid professional schools (German model). Instead, research, teaching and service are the natural purposes of the public multiversities. The modern multiuniversity is pluralistic instead of singular in its purposes, centers of power, goals, clientele, and community.\footnote{Kerr, supra \textsuperscript{n} at 103.} The modern university looks forward, and not just backwards through a historical prism. So successful was his vision, that we take this approach for granted today.
Clark Kerr’s apogee coincided with the governorship of Edmund G. (“Pat”) Brown, who signed the California Master Plan of Higher Education on April 26, 1960. Governor Brown was in turn the last master-builder governor of California, investing not only in higher education, but also in the basic infrastructure of civilization: transportation and water supplies. He spawned the freeway system and championed the California Aqueduct to bring “surplus” water from Northern California to the parched Southern California, where the population and votes are.

Governor Brown’s projects could never be built today because of fiscal and environmental constraints. As for Clark Kerr, for all his skills and vision, he was never tested by budget cuts, nor forced to raise billions in private philanthropy. He could build a university based on the academics, whereas too many university presidents today are measured by their fund raising prowess.

Unrecognized in 1964 at Berkeley’s shining moment of glory, a famous 1962 decision of the Warren Court, Baker v. Carr, had the long term effect of fundamentally changing the legislative support for the University of California. Prior to Baker v. Carr, apportionment for the California state senate was by county rather than by population. Thus, a rural country with only a population in the thousands had the same number of state senators as the multi-million Los Angeles County one. The rural legislators were strongly supportive of the University of California and its agricultural research operations.

A number of examples illustrate the decline both of Berkeley and the University of California. One key measurement is faculty salaries. UC’s goal is to maintain faculty salaries at

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92 President Kerr shares political credit for these accomplishments with Governor Edmund G. (“Pat”) Brown of California. A new biography of Governor Brown is Ethan Rarick California Rising: The Life and Times of Pat Brown (University of California Press 2004).

93 369 U.S. 186 (1962).

least equal to the average of its eight comparison universities. The reality is that the UC faculty has lagged the peer group in ten of the past 16 years. For the one brief year of 1997-98 UC salaries rose above the comparison institutions, but by 2000-01 they precipitously dropped below the average. They were 12.5% below the peer institutions in the 1994-95 year. They are now 9% below the average. Since California is also a high cost, high tax state, and most of the UC’s are located in prime real estate areas, the net differential can be even greater.

Another objective criterion of instructional quality is the student-faculty ratio, which roughly distinguishes between personalized and mass education. Many private schools boast of a low student-faculty ratio to highlight their commitment to personalized teaching. The UC student-faculty ratios rose from 14.5:1 in 1967-68 to about 19.5:1 in 2003-04 with the possibility of a further rise to 21:1. By way of comparison the average student-faculty ratio at the eight private Ivy’s is 7.3:1. In addition, Stanford, Washington University, and Northwestern are at 7:1 while the University of Chicago has a very low 4:1. The University of Washington has the most favorable student-faculty ratio of the prestigious national public doctoral universities at 11:1. The University of Michigan is 15:1.

The fabled Physics Department at Berkeley exemplifies the problems Berkeley faces. Physics was one of the graduate programs upon which the university built its reputation. UC has run three of the nation’s most famous nuclear labs since the early days of the Cold War: Los Alamos, Livermore, and Lawrence Berkeley National Laboratories.

95 UC compares itself to the four publics of Illinois, Michigan, Virginia, and SUNY Buffalo, and the four privates of Harvard, MIT, Stanford, and Yale.
97 California State Budget Highlights 17.
98 University of California 2004-05 Budget Presentation at Display 31 (November 2003).
99 Id. at Display 17 (November 2003).
100 Professor Ernest Lawrence invented the cyclotron and J. Robert Oppenheimer headed the Manhattan Project.
The newest Physics building at Berkeley is over 40 years old. A March 2003 Report of an outside committee noted the “crumbling physical plant,” aging facilities, low faculty morale, high turnover, and the exodus of young professors. A 42 year old physicist left for Cornell. He had become increasingly frustrated with his basement lab at Berkeley— a lab that routinely incurred flooding, power failures, and minute building vibrations, which can throw off critical experiments. Cornell offered him $4 million in quarters and equipment. Six of the 50 tenured faculty have left over the past four years for Harvard, Cornell, and Cal Tech— all private universities. Nine newly tenured physics professors left Berkeley in 17 years, of which 7 departed from 1999–2003. Similarly, UC Davis lost scientists to Cornell and USC, and a UCLA professor left for Cal Tech.

The brain drain exists throughout the UC System. UCLA lost 15 professors to rival institutions in 2001-02 - not an especially large number out of 1800 professors. However, it failed to retain 21 professors that it fought to keep the next year. The trend is threatening to accelerate. A labor economics professor left for the University of Chicago, explaining: “There is this question about the extent to which California values a high-quality research university. It’s hard to say the future looks really bright right now.” Similarly, a 36 year old political science professor moved to Stanford, noting “the state’s commitment to top-quality higher education might be waning.”

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102 Id. at 2.
103 Robert F. Service, Physics – Is Berkeley Past it’s Prime? Science, May 16, 2003 at 1063. See also, Stuart Silverstein, Physics Program’s Star Dims at Berkeley: US Department Has Lost Stature and Some Top Faculty Members Due to its Declining Facilities, Los Angeles Times, July 14, 2003 at P. A1, Col. 3.
104 Id. at 1, 4.
106 Id.
107 Id.
Particularly hard hit is UCLA’s Political Science Department. Three professors left for Stanford in five years and one for Harvard. As one departee for Stanford stated: “There’s questions about the commitment of the state to fully fund it.”\textsuperscript{108} He also noted that the graduate students at Stanford teach less and receive more financial support.\textsuperscript{109}

Deferred maintenance for high priority projects at the UC’s exceeds $600 million for “priority one” projects.\textsuperscript{110} $200 million is required annually for “systemic capital renewal of existing facilities and utilities.”

Berkeley, UCLA, and the other UC’s will survive as prestigious institutions, but they run the risk of declines in statute. The burgeoning California population will continue to produce a steady flow of bright students to fill the undergraduate campuses. UC remains the dream for many California residents. The quality of their education, and the cachet attached to the degree, may not be as great.

The long-term risk is that the UC’s will no longer be the destination for the nation’s most prominent professors, but merely a starting point to launch an academic career, and then move to a prestigious private institution after establishing a reputation. The slide will start slowly, but then rapidly increase. Difficulty may even be experienced in hiring exceptional entry-level faculty.

In the four decades since Berkeley reached the pinnacle of higher education, undergraduate enrollment in the University of California system grew from 49,000 in 1965–66 to 160,000 in 2005–06. Graduate enrollments grew less, from 20,000 to 33,000.\textsuperscript{111}

\textsuperscript{109} \textit{Id.} at col. 3-4.
\textsuperscript{110} UC Budget, supra n. \_ at 290.
\textsuperscript{111} UC Budget, supra n. \_ at 41.
The UC’s have to accomplish significantly more on substantially reduced resources. The state contributed, measured by constant dollars, dropped from $15,000 per general campus student 35 years ago to $9,500 for the 2005–06 year.112

UCLA

UCLA is a Twentieth Century academic success. It grew in less than fifty years from a small institution into one of the world’s great universities, riding the growth of the Los Angeles Basin.113 The first graduating class in 1925 numbered 300. From this small step it has become the largest university in California and has educated more California residents than any other university. UCLA’s Chancellors struggled for equality with Berkeley from the 1950’s through the 1970’s. UCLA has essentially matched Berkeley in the past two decades. It receives more applications than Berkeley, indeed the largest number of applications of any university in America. Its median SAT’s and GPA’s approximate Berkeley’s. UCLA offered its first Masters degrees in 1933 followed by doctorates in 1936. It has several prestigious business, professional, undergraduate, and graduate programs. The medical school, opened in 1946, has been the top ranked hospital complex on the West Coast. The law school, started in 1947, is consistently one of the top public law schools in the nation. UCLA is one of the nation’s top recipients of research funding.114

It has become the most aggressive of the UC’s in fundraising. UCLA instituted a $2.4 billion fund-raising campaign to be completed in 2005. By January 2006, it had raised over $3 billion.115 UCLA further responded in June 2004 to the rising loss of both faculty and talented

112 Id at 12.
113 Its athletic teams have also received more NCAA championships than any other university, with special success in basketball, volleyball, baseball and gymnastics.
114 For 2002, it was the sixth largest recipient of federal research and development funds. CHRONICLE OF HIGHER EDUCATION, August 6, 2004 at p. 23, col. 2.
graduate students by launching a separate $250 million fund raising effort.\textsuperscript{116} The goal is to endow 100 faculty chairs, provide $100 million in fellowships and scholarships in the College and an additional $50 million in fellowships and scholarships in the professional schools.\textsuperscript{117} The announcement recognized the widening financial gap between the public and elite private universities. Chancellor Carnesdale also recognized that in light of the declining state support, UCLA “will not be able to match the elite private universities.”\textsuperscript{118} Budget cuts hinder UCLA in recruiting and retaining top faculty and graduate students. He proposed over a period of years to substantially increase tuition and fees to between $15,000 - $20,000 per year, accompanied by substantial increases in financial aid,\textsuperscript{119} in essence charging market - priced tuition, but discounting it to the economically disadvantaged. The Chancellor stated UCLA might need to double its tuition to remain a top-quality university. He stated what is increasingly obvious; the nation’s public universities, even the most prominent, are in danger of slipping in quality.

The earlier, highly successful fund-raising campaign by UCLA was mainly for buildings (90%),\textsuperscript{120} especially in the medical school. It thereby has not provided UCLA much of a buffer to cope with the current funding crisis. However, UCLA has both a loyal alumni and a great physical location in the center of a highly affluent population.

THE UC BUDGET

1964 represents, in hindsight, the high point for Berkeley and, indeed, public higher education in prestige. More significantly for Berkeley and the entire UC system is the subsequent

\begin{thebibliography}{9}
\bibitem{116} Stuart Silverstein, \textit{UCLA Seeks to Keep Top Faculty}, \textit{LOS ANGELES TIMES} at p. B4, col. 1 (June 3, 2004).
\bibitem{117} UCLA, Campaign News: Ensuring Academic Excellence, at 1, \url{http://www.campaign.ucla.edu/spotlight1.asp}.
\bibitem{118} Peter Y. Hong, \textit{Big UCLA Fee Boost Advocated}, \textit{LOS ANGELES TIMES}, October 8, 2004, at p. B1, col. 5.
\bibitem{119} \textit{Id.} at p. B8, col. 1, col. 3; Albert Carnesale, Point of View, \textit{Chronicle of Higher Education}, Jan. 6, 2006 at p B 20.
\bibitem{120} \textit{Id.}
\end{thebibliography}
budgetary roller – coaster ride, while has had a progressively negative effect on Berkeley and the other UC’s.

The late 1960’s and early 1970’s witnessed a 20% drop in the budget as measured in real dollars. Faculty positions and research funding were cut while the student – faculty ratio deteriorated by 20%.121

More budget cuts occurred a decade later, accompanied by lagging faculty salaries, deteriorating facilities, and the departure of many faculty.122

The state of California was historically recession proof, unlike the East Coast and the industrial heartland of America. It lacked the automobile, steel, tire, and glass factories that were periodically subject to inventory recessions. Instead, California relied upon a steady inflow of federal government money centered upon the military-industrial complex. Large military bases and the aerospace industry fueled California’s growth coming out of World War II. The post-war population surge unleashed a real estate boom.

1990 was the beginning of a deep financial crisis for California and the UC’s. California’s first major recession since the Great Depression. Hundreds of thousands of aerospace workers lost their jobs with the end of the Cold War. Plants closed, consolidated, or were merged out of existence. The booming real estate market collapsed.

From 1991-92 to 1993-94 state appropriations for public colleges and universities in California fell 29%.123 State funding for UC dropped $341 million over three years.124 By 1993-94 state funding was $433 million lower than six years125 earlier even though the student

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122 Id. at 22.
123 KERR at 172.
124 Executive Summary at 2.
125 2003-04 Budget at 15.
population grew by 6,500 students and inflation amounted to 25%.126 UC reduced its workforce by 6,500 employees, mostly through early retirement. The purchase of scholarly journals was severely curtailed.127 The remaining faculty and staff received no cost of living salary increases for three years.128 1991-92 also witnessed no merit raises for the staff while faculty merit raises were delayed for a year.

The recovery period from 1994-95 to 2001-02 was deceptive. Students at the UC’s and Cal States benefited from seven years without tuition or fee increases. Indeed, fees were twice reduced by 5%.129 From 1999-2000 to 2000-01, the height of the dot.com boom, the state raised its general fund expenditures for the UC’s by $503.6 million (13.6%). Total higher education expenditures rose by 11.6%, but still lagged the overall general fund expenditure increase of 15.1%. However, enrollment grew rapidly from 116,176 students in 1995-96 to 159,242 in 2003-04,130 creating large demands on the UC’s. The Cal States also witnessed a surge in enrollment during this recovery period from 218,529 students to 279,611.131 From 1998-99 to 2003-04, enrollment grew 24% while general fund growth only rose 18%.132

By way of comparison with the current budget problems, the 1983-84 budget for higher education in California was $2.93 billion, or 11.1% of the entire state budget of $26 billion. The UC budget was $1.057 billion (4%), the Cal States received $906 million, and the community colleges $967 million.133 Higher education received 12.8% of the 1980-81 state budget.

If we go back to the 1964-65 budget, the time when Berkeley was accorded the honor of being the best university in America, we discover that the entire state budget, including special

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126 Executive Summary at 3.
127 Id. at 17.
128 Id. at 15.
129 Id. at 12.
130 Summary of the 2003-04 Budget at 74.
131 Id.
132 Governor’s Budget Summary 2004-05 at 78.
funds and bond programs, was $3,670,891,953.134 The largest item in the budget was higher education at $290,988,173, or 7.9%.135 An additional $2,976,150 was earmarked for capital expenditures.136 If though we look at the revised general budget of $2,371,469,716, then higher education was 12.27% (government accounting is a very arcane area to figure out).137 UC’s share of the California General Funds dropped from 7% in 1970-71 to 4.1% in 2003-04.138 The State of California supported 53% of the UC budget during 1962-63. By 1971-72, the figure dropped to 41%.

These budgetary pressures represented issues in the state budget, but not weaknesses in the underlying state economy. The post-war California economy did not experience the boom bust inventory recessions of industrial America.

In 1990 though California suffered a large recession. The Cold War ended, resulting in the shuttering of aerospace faculties and the layoffs of hundreds of thousands of California workers. The impact on the state budget was draconian.

From 1990–91 to 1994–95 the general fund appropriation for UC dropped by $433 million, that is, 20% from the 1989–90 allocation. No cost of living increases were awarded for 3 years. The UC general fund workforce dropped by 5,000 FTE, all at a time of a 4.3% increase in students (6,200) and inflation.139

The 2002-03 California State budget deficit was $23.5 billion.140 Obviously, severe belt-tightening would be necessary. $410 million was cut from the UC budget, impacting all non-

135 Id. at Schedule 6.
136 Id. at Schedule 7.
137 Id. at Schedule 1.
138 University of California 2004-05 Budget Presentation at display 7 (November 2003).
139 Id. at 23.
140 UC Budget, supra n. _ at 28.
instructional programs. The net-funded state budget was 8% less than the prior year’s final budget, and 10% less than the initial 2002-03 budget.  

The 2004-05 California State budget illustrates the pressures on public higher education. The roughly $105.4 billion budget has a structural $17 billion deficit over two years. $15.6 billion is in borrowing. $29 billion is in special funding and bond obligations while another $34 billion goes to K-12 education. A voter referendum mandates that 40% of all new revenues go to K-12 education. An additional $17.5 billion complies with federally mandated entitlements.

The remaining $21.5 billion can be viewed as discretionary. Instead of being a core element of a limited state budget, as it was in Clark Kerr’s time, higher education has simply become another discretionary line. Warnings were present two years earlier. The 2002-03 state budget showed expenditures of $98.9 billion, but revenues of only $93 billion.

Governor Davis’ successor, Governor Schwarzenegger, was faced with a cumulative $30 billion deficit. He proposed substantial budget cuts in January 2004, including 10% fee increases for the UC’s and Cal States- the fourth increase in a year. Fee increases already totaled 50% for residents over the preceding two years. The Governor also recommended cutting $225 million from the UC budget, representing four straight years of cuts. The state appropriation for UC for 2004-05 declined 7.9% to $2.69 billion from $2.968 billion in 2003-04. The initial 2002-03 budget, prior to midyear cuts, was $3.2 billion. The opening of a new UC campus in Merced was pushed back a year to 2005. The 2003-04 budget included $47.5 million in borrowings to cover operating expenses. State appropriations to UC were essentially cut by $490 million since

142 California State Budget Highlights 2002-03 at 69.
143 California State Budget Highlights 2002-03 at 17.
2001, while tuition and fees increases offset an additional $420 million in cuts.\textsuperscript{144} Similarly, the Cal State appropriation will drop 9% to $2.649 billion.

The Governor suggested though that the UC’s could in the future increase fees by 10% annually. The resulting budget cuts will total $530 million over four years (16% cut in state funding) while student enrollment rose 16%.\textsuperscript{145} The total cuts for the UC’s and Cal States in 2003 were $540 million, while fees were raised 30%. The impact of these cuts will be to reduce student enrollment, student financial aid, increase tuition and fees, and reduce spending for faculty.

Governor Schwarzenegger announced on May 11, 2004, a budget compromise with the state’s universities. This agreement will run through 2010-11. The UC’s and Cal States beginning in 2005-06 could budget for an annual 2.5% increase in enrollment.\textsuperscript{146} Enrollment at the UC’s will thereby grow by about 5,000 students annually, and at the Cal States by 8,000 students. State funding will increase at least 3% annually to cover salary and other cost increases.\textsuperscript{147} An additional 1% annual increase will begin in 2008-09 for core needs, such as instructional equipment, technology, building maintenance, and library materials.\textsuperscript{148} These increases in state funding though are based on the reduced 2004-05 funding levels. Student fees will increase by 14% for 2004-05, followed by 8% annually for the next two years, and up to 10% annually thereafter.\textsuperscript{149} The reality is that 10% compounded annually results in a doubling in roughly 7 years.\textsuperscript{150}

\textsuperscript{144} UC budget at 16.
\textsuperscript{145} Id.
\textsuperscript{146} Higher Education Compact, Agreement Between Governor Schwarzenegger, the University of California, and the California State University, 2005-06 through 2010-11, at 2 (hereinafter referred to as “Higher Education Compact”).
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} Id. At 3.
\textsuperscript{150} NASULGC, Changes in Annual Tuition and Fee Changes at NASULGC Institutions, Academic Year 2004/2005, at 1-2.
The expectation that the state cuts represent only temporary rollbacks to be restored when state budget surpluses again materialize ignores several realities. The first is that even if restorations are made, the public universities will fall further behind their successful private competitors.

Second, no one really expects the large tuition and fee increases to be rolled back. Nor can professors who retire early or move to private universities be expected to return to a public university. The 42 year old physics professor who left Berkeley for Cornell will probably spend the rest of his professional career basking in the Ivy rather than in the sunshine.

In addition, even when states start accruing substantial revenues and emerge from this cyclical downturn, the growing demands of entitlements and mandates ensures that higher education will receive an increasingly smaller share of the budget pie. The reality is that in many states, public higher education is on the same progressively declining, budgetary roller coaster ride as the University of California.

A longer term look shows that each series of recoveries is weaker. The UC’s have been on a declining, budgetary roller coaster ride in which the highs are progressively lower while the dips are increasingly sharper.

THE UNIVERSITY OF MICHIGAN

Michigan is the eighth largest state by population and ninth largest in economic output, but has an almost two century commitment to higher education. The state of Michigan developed

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151 The University of Michigan has separate campuses in Dearborn and Flint, but the Ann Arbor campus is the one generally referred to as the University of Michigan. The Ann Arbor campus commands the overwhelming share of the University’s budget. For example, of the $4.24 billion budget approved by the Board of Regents on July 17, 2003, slightly over $4 billion was for Ann Arbor versus $89.5 million for Dearborn and $67.1 million for Flint. The University of Michigan FY 2003-2004 Budget at 2, July 2003.
one of the most successful public higher education systems in the country. Long before the state of Michigan became an industrial powerhouse, the leaders of the fledging University of Michigan envisioned a national university. Their legacy is one of the world’s great universities. Michigan ranks seventh in the nation for research patents. It had become by the dawn of the twentieth century one of the nation’s foremost universities. More undergraduates from Berkeley and Michigan go on to receive Ph.D.’s than from any other American universities.

Michigan was one of the first institutions to add science to the curriculum. President Henry Phillip Tappen in his inaugural speech in December, 1852, proposed adding a scientific curriculum to the classical curriculum, leading to a Bachelor of Science degree. He also advanced the now-standard idea that university professors “should engage in research as well as teaching.” An observatory was soon built on campus. The University awarded its first Bachelor of Science degree in June 1855, being only the second institution in the country to do so. The School of Engineering traces its roots to 1853.

The University of Michigan is the only university whose schools of business, engineering, law, and medicine rank in the top ten. Michigan and Stanford are the only two

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154 The top three undergraduate degrees for Ph.D. recipients from 1999 to 2003 were Berkeley, Seoul National University, and Michigan, followed by Cornell, Illinois, Texas, Harvard, UCLA, Penn State, and Wisconsin. Thus, seven of the ten are public universities. John Gravois, Number of doctorates edges up slightly, *Chronicle of Higher Education*, Jan. 7, 2005 at p. A24.
155 Henry Phillip Tappen assumed the presidency of the University of Michigan in 1852 with the goal of creating the first true university in America. The University of Michigan would follow the German model of graduate schools. Professors were encouraged to engage in research as well as teaching.
157 Id. at 37.
158 Id. at 38.
159 The School of Engineering was the first in America to offer programs in Naval and Marine Engineering, Electrical Engineering, Chemical Engineering, Aerospace Engineering, Nuclear Engineering, and Computer Science.
universities with engineering and medical schools in the top ten. Indeed, Michigan has 14 schools and colleges ranked in the top ten - more than any other university, private or public. UM is a national leader in receiving research grants- currently about $750 million annually.\footnote{The University of California receives billions for managing three nuclear labs and Johns Hopkins also has a large...}

The University flag was carried on Apollo 15 by the all-Michigan alumni crew of three astronauts.\footnote{They left a charter of the University of Michigan alumni club on the moon.} Michigan’s presidents and deans in recent years have subsequently served as presidents of Columbia, Cornell, MIT, and Princeton.\footnote{Jerry S. Lehman, President, Cornell University (Dean Michigan Law School); Lee Bollinger, President, Columbia University (President, University of Michigan, Dean, Michigan Law School); Charles Vest, President of MIT (Dean, Michigan College of Engineering). Howard Shapiro, President, Princeton University (President, University of Michigan).}

Often lost in its academic success is its consistent prominence in intercollegiate athletics.

However, what has taken almost 200 years to academically build is at great risk. As President Mary Sue Coleman of the University of Michigan stated on April 28, 2004 to the Michigan Legislature: “In the matter of a very few years we could lose the magnificent asset that our partnership has taken almost two centuries to build.”\footnote{President Mary Sue Coleman, testimony to the House Higher Education Subcommittee of the House Appropriations Committee, http://www.umich.edu/pres/speeches/040428budgettest.html at 2 (June 14, 2004).} President Coleman similarly warned the University of Michigan Board of Regents on March 18, 2004: “If our quality begins to decline, it will take far longer to rebuild than to lose it.”\footnote{Remarks by President Mary Sue Coleman to the Regents concerning the University Budget, March 18, 2004, http://www.umich.edu/pres/speeches/040318regents.html at 2 (April 19, 2004).}

A visit to the Ann Arbor campus shows a number of construction cranes, seemingly a sign of success. An impressive $900 million in new construction, including a $220 million biomedical research center, is underway.\footnote{Terlep Sharu, \textit{New Buildings: No Budget}, LANSING STATE JOURNAL, November 9, 2003, at 1, 2003 WL 63335329.} The state has appropriated only $160.1 million to UM for capital improvements since 1993\footnote{\textit{Id.} at 7.} -- the rest is through private funding, research
overhead, or operations. The Michigan Legislature in 1994 enacted legislation that requires the state universities and colleges to cover ¼ of the cost of state-funded buildings. The 15 public universities in Michigan spent $1.8 billion on construction from 1993-2003. The funds came either from the state or private donors. The state appropriated $529.3 million to the universities in 1993, but only $94.1 million in 2002 and zero in 2003. The legislature appropriated $300 million for 2005.

The University of Michigan is suffering financially. Even including years in which state appropriations increased over the past decade, the net effect on the University of Michigan is a ten percent drop in state funding. Tuition for in-state residents rose 68.2% over the decade, but per capita income only increased 35.2%.

The budget cut backs in the new millennium came fast and furious. After additional budget rescissions in December 2003, the 2003-04 appropriation for the University of Michigan was $321 million or $43 million less than 18 months earlier. By July 1, 2004 the baseline state appropriation for the UM was reduced by $43 million in 2 years. An additional $20 million in one-time budget cuts was also incurred. The total reduction for the 15 Michigan public universities in December was $73 million, totaling $240 million over two years. Community colleges were reduced an additional $12.4 million. Higher education therefore accounted for 42.5% of the December rescissions of $200,937,582. State funding of higher education in

168 *Id.* at 3. *Shara*, supra n. at 3.
169 *Id.* at 6.
170 *Id.* at 2.
171 Pursuant to emergency powers granted the governor, the governor ordered rescissions of $200,937,582 in the Michigan General Fund in December 2002. The largest hit was to higher education, including community colleges, totaling $85,506,500, or 42.58% all the cuts. The University of Michigan in Ann Arbor was cut $16,360,000 while Michigan State was reduced $16,669,200.
172 The 2005 allocations to Michigan was $320.6 million, but it was cut to $315 million in mid – year. The $5.6 million was restored in January 2006. Justin Miller, *State Restores Last Year’s Budget Cuts*, Michigan Daily, Jan. 10, 2006.
Michigan had been rolled back to 1998 levels. The universities responded by eliminating 1400 jobs, including 300 at Michigan State.

The state now covers only 27.9% of the University’s General Fund, down from 36.5% a year earlier, and 70% in 1974. State funding actually comprises less than 10% of the total University budget. The sources of revenue for Michigan’s general fund for the 2004 – 05 fiscal year was 58% tuition and fees, state funding 28%, and indirect cost recovery 13%.\textsuperscript{173}

The University of Michigan turned to financial cutbacks and over enrollments. It emphasizes administrative reductions in the cutbacks. It eliminated 275 staff and 50 faculty positions through attrition and layoffs in 2002-03, followed by additional 122 staff positions in 2003-04.\textsuperscript{174} Janitorial services have been shifted to the day shift coupled with fewer office cleanings for an annual savings of $881,000.\textsuperscript{175} An additional 60 administrative positions will be cut in fiscal year 2005.\textsuperscript{176} Another $150,000 will be saved by reducing postage.\textsuperscript{177} Library hours have been cut.

However, academic programs have also suffered. All units supported by the general fund will face cuts.\textsuperscript{178} 40 additional faculty positions are earmarked for elimination through attrition.\textsuperscript{179} The University reduced funds for visiting scholars and distinguished lecturers in the

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\textsuperscript{173} University of Michigan Budget Update, University Budget Information, HTTP://www.umich.edu/~urel/budget/understanding.html
\textsuperscript{175} Id.
\textsuperscript{177} Id.
\textsuperscript{178} University of Michigan Budget Update: Frequently Asked Questions, at 2, http://www.umich.edu/~urel/budget/faq.html, October 13, 2004. Courses and majors will be consolidated, average class sizes increase, and offerings of less popular courses reduced. \textit{Id}.
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Schools of Engineering, Information, and the Gerald R. Ford School of Public Policy.\textsuperscript{180} Funding for internships were cut in the Law School while workshops have been reduced in Engineering, the Center for the Education of Women, and the Division of Kinesiology.\textsuperscript{181}

Replacement cycles for technology have lengthened in the Taubman College of Architecture and Urban Planning, the Schools of Art and Design, Law, Medicine, Pharmacy, and in the Offices of the Registrar, Financial Aid, New Student Programs, Evaluation and Examination, as well as the Media Union Chief Financial Officer.\textsuperscript{182} It reduced the hours of the library\textsuperscript{183} and computer center, and eliminated freshmen seminar courses. The School of Medicine has delayed patient simulators for clinical training.\textsuperscript{184} Special funds for faculty research have been reduced in the Schools of Business, Medicine, Information, Nursing, Engineering, and Literature, Sciences and the Arts (LSA).\textsuperscript{185} Courses have been cut and enrollment caps lifted in many programs in the business school.\textsuperscript{186} The University Library reduced new title acquisitions by 45,000 titles, and expects to cut journal subscriptions by 1,000 titles.\textsuperscript{187} Note that many of the impacted schools, such as Business, Engineering, Law, and Medicine, are ranked in the top ten nationally.

The University overenrolled in the entering classes of 2004 and 2005 by about 500 in 2004 and 750 in 2005, the vast majority of which were non–residents. The practical effect has been to offset to a large extent the state budget cuts. From 2002 to 2005 state appropriations

\textsuperscript{181} Id.
\textsuperscript{182} Id.
\textsuperscript{183} Id.
\textsuperscript{184} Id.
\textsuperscript{185} Id.
\textsuperscript{186} Id.
decreased 7% ($26 million) to $375 million. Conversely, net student tuition and fees rose 11%, or $61 million, over the same period.\textsuperscript{188}

The financial squeeze on the University of Michigan is not a new phenomenon. The state has weathered almost a century of the vicissitudes of the automobile industry. As the result of a major recession in the early 1980’s, UM lost 1/3 of its state funding. It responded by initiating an on-going process of quasi - privatization. It increased the percentage of non-resident students to about one-third and charges them private tuition rates.

\textbf{THE IMPACT ON MASTERS AND COMMUNITY COLLEGES}

The dramatic impacts on the flagship public institutions are fairly well understood. The effects of the recent wave of cuts can be even more devastating on the state college systems and community colleges. The community colleges in America are the door to higher education for most of the high school graduates from low-income families. About 60% of low-income college students start out as freshmen at the community colleges.

Community colleges traditionally received their financial support from three sources: state funding, local property taxes, and tuition. Limitations imposed in many states limit property taxes so the community colleges increasingly turned to state funding in recent years. Thus, in 2003 they received 61.3\% of their revenue from state and local government, up from 56\% in 1998-99.

Unfortunately, the state financial constraints also affected the community colleges. The only initial recourse for these colleges was to raise tuition 11.5\% in 2003.\textsuperscript{189}

\textsuperscript{188} University of Michigan, 2005 Final Report: Year Ended June 30, 2005 at 50.
The short-term solution of raising tuition and fees has a detrimental effect on the goal of public access to higher education. The American Association of Community Colleges reported tuition rose about 12% in 2003-04. Tuition rose another 8.7% for the 2004-05 academic year. Enrollment has grown 20% to 6.5 million students over the three years from 2001 to 2004 at the nation’s community colleges.

Community colleges are also turning to fundraising, emulating their four-year rivals. Some are also bidding for management contracts, utilizing their expertise. Others seek government grants. Fundraising, contracts, and grant efforts are more of a long-term solution to their funding problems though.

These schools lack the endowments and fund-raising abilities of the more prestigious state universities. For example, private gifts account for 12.5% of private and public university and college budgets but only 2.6% of community college budgets. The community colleges “reaped 5% of total giving to higher education, up from 2% in 1993.” They have a long way to go though.

A look at California’s community college system provides a stark example of the budget cuts, especially in light of the realization that under the California Master Plan of Higher Education, the community colleges educate 2/3 of the public college students in California. Population growth in California is such that demand for higher education is expected to grow by

\[\text{References}\]

192 Elizabeth Shooren, Community Colleges Strained by Demand, LOS ANGELES TIMES, October 23, 2004, at p. A13, col. 3.
193 [Id.](http://cnnfyi.printthis.clickability.com/pt/cpt?action=cpt\&title=cnn.com\+-\+report\%3a+coll)
195 [Id.](http://cnnfyi.printthis.clickability.com/pt/cpt?action=cpt\&title=cnn.com\+-\+report\%3a+coll)
over 714,000 students by the end of this decade. Pursuant to existing patterns, about 2/3 will initially matriculate in community colleges. In turn, most of the growth will be in 15 community college districts in five Southern California counties. The economic prospects for quality education are not bright under current conditions.

At the end of 2001 and into 2002 all 108 of the community colleges in California were considered financially sound. However, in January 2004 over 12 California community college districts were placed on a state fiscal watch because of precarious financial conditions. These districts include Compton, Glendale, Marin, San Francisco, Santa Monica, and Ventura County. They face shrinking budgets and rising costs. The California Legislature cut $161 million from the community colleges budget in 2003. Course offerings dropped 8.7% at the California community colleges between fall 2002 and fall 2003. If the community colleges overenroll above enrollment caps, they receive no extra funds from the state. The effect is to offer more courses on fewer resources. Quality and access are both compromised.

In two years the Ventura District witnessed tuition rising 60%, classes cut 10%, dozens of faculty and staff positions eliminated, and classified employees working reduced hours. It lost 26 full time faculty and seven of its 13 administrators. Faculty at the Ventura Community

197 Gerald C. Hayward, Dennis P. Jones, Aims C. McGuiness, Jr., Allene Timar & Nancy Shulock, Ensuring Access with Quality to California’s Community Colleges at 1 (National Center for Public Policy and Higher Education 1004), hereinafter referred to as “Ensuring Access”). The five counties are Los Angeles, Orange, Riverside, San Bernardino and San Diego.

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201 Ensuring Access, supra n. 157 at 20. Most of the community colleges were above their enrollment caps when the first budget cuts hit in Spring 2003. Id. at 52.

202 Id. at 21. Similarly, Sinclair Community College in Dayton, Ohio, state aid dropped 20% over four years while enrollment has grown 10%. Elizabeth Shooren, Community Colleges Strained by Demand, LOS ANGELES TIMES, October 23, 2004, at p. A13, col. 3.
College District agreed to 4% salary cuts. It turned away 5,000 students. LA City College cancelled basic courses that are prerequisites for upper level courses. It dropped 350 courses in Spring 2003. 31 full-time faculty members retired, but only two were replaced. The campus library is closed on Saturdays at East Los Angeles College. The Coast Community College District in Orange County lost $15 million in state funding over 2 years, and responded by canceling hundreds of classes. Sixty professors either took early retirement or were released. The class size of the average freshman English course increased to 42 from 35. It would have gone higher except that the seating capacity of the classrooms was limited to 42. Santa Monica College reduced its course offerings by 26%. The South Orange County Community College District now receives only 4% of its revenue from the state, but is able to rely on property taxes for survival. Other cuts and eliminations by California community colleges included child care centers, job placement centers, workforce preparation centers, athletic teams, and learning communities. Reductions were made in equipment purchases and professional/academic development.

205 Jamilah Evelyn, Community College Faculty Members Take Pay Cuts to Avoid Layoffs, CHRONICLE OF HIGHER EDUCATION, May 9, 2003.
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211 Jeff Gottlieb, Strapped College District Weighs Leasing Out Parcel, LOS ANGELES TIMES, January 12, 2004, at B3, col. 1, 2.
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214 Ensuring Access, supra n. 157 at 52.
The status of one community college district, Compton Community College, is currently precarious as the Accrediting Commission for Community and Junior Colleges announced the termination of its accreditation for financial and administrative problems.\textsuperscript{215}

Many of the California community colleges lack the money to offer sufficient biology, anatomy, and physiology classes to satisfy student demand. Several students in both the Los Angeles region and San Francisco Bay Area are commuting between campuses to enroll in the necessary classes.\textsuperscript{216} The California schools received an average of $4,132/ student for 2003-04, compared to K-12 spending of $6,940.\textsuperscript{217} The state ranked 45\textsuperscript{th} nationally in 1999-2000 in community college spending per student.\textsuperscript{218}

In addition, tuition at the community colleges will rise to $26/credit hour, a 48% increase from the current $18/credit hour. The fee was only $11/hour a few years ago. While the $26/credit hour appears a bargain compared to the effective tuition rate of $1000/credit hour at the elite private schools and the $200 fee at many public universities, the reality is that many community college students either do not qualify for the state colleges and universities or lack the financial means to attend them.\textsuperscript{219} For example, 60% of the students at LA City College have their fees waived because of low income. Many of the students are single parents on tight schedules. In California, a large percentage of the community college students do not speak English as a first language.\textsuperscript{220} Many, regardless of innate ability, have difficulty on standardized tests, such as the SAT or ACT.

\textsuperscript{215} Peter Y. Hong & Rebecca Trouson, \textit{College to Lose Stamp of Approval}, Los Angeles Times, June 21, 2005 at p. B4, col.5.
\textsuperscript{218} \textit{Id.}
\textsuperscript{219} Over half of California’s college students are minorities. \textit{Ensuring Access}, supra n. at 2.
\textsuperscript{220} \textit{Id.} at 1.
Governor Schwarzenegger proposed offsetting the UC and Cal State enrollment cuts by raising enrollment at the community colleges by 3%. An additional $125 million would be allocated to the community colleges. However, this increase is still less than the previous reductions. The result is that the community colleges will be educating more students with less resources.

The California experience with community colleges is not unique. At Sinclair Community College in Dayton, Ohio, enrollment increased 10% in four years to 23,000 while state support dropped 20%. Cutbacks have resulted in students waiting up to two years to get into selected programs.\(^221\) Springfield Technical Community College saw its support from Massachusetts drop 14% from $21.9 million in 2000 to $18.8 million in 2004-05, while tuition and fees per semester rose 48% from $979 to $1,302.\(^222\)

The 63,000 student Dallas Community College District experienced a 20% increase in enrollment accompanied by a 12% budget cut.\(^223\)

The picture is better for 2004-05. 63% of 47 state directors of community colleges reported increases in state funding.\(^224\) However, 94% reported tuition increases, which in 40 states exceeded the underlying 1.9% rate of inflation.\(^225\)

The impacts on the state colleges are similar. The Cal State System is the largest higher education system in the country, with an enrollment of 350,000 students. Enrollment at the Cal States rose 24% from 1998 to 2003, but general fund expenditures only increased 18%.\(^226\) Then the budget for the Cal States was cut $345.2 million (13%) in 2003-04. The Cal State System

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\(^223\) William C. Symonds, Colleges in Crisis, Business Week, April 28, 2003 at 20, 73-74.
\(^225\) *Id.* at col. 4.
\(^226\) Summary of the 2003-04 Budget at 78.
responded by eliminating 2300 faculty and staff positions as well as 1300 class sections during the 2003-04 year even though enrollment rose by 15,000 students. The resulting student-faculty ratio is now 28.4:1, up from 27.7 a year earlier.\textsuperscript{227} The cuts for 2004-05 are a further $213 million (8\%).

The Board of Trustees of the Cal State System ratified the same compact as the UC’s with Governor Schwarzenegger. Tuition for 2004-05 was accordingly raised by 14\% to $2,300, following a 10\% increase in December 2002 and 30\% in July 2003.\textsuperscript{228}

Many Cal States in Southern California are only accepting students from their geographic area. For example, Cal State Fullerton was limited to mostly Orange county residents for the first time.\textsuperscript{229} Long Beach State, which is only a few miles from Orange County, accepts relatively few from Orange County today.\textsuperscript{230} Cal State San Marcos in San Diego County is accepting students from San Diego and Imperial Counties.\textsuperscript{231}

THE BUDGET CONUNDRUM

The budget process no longer provides governors and legislators much discretion. Unlike the post-World War II economic boom in which Clark Kerr thrived, much of the state budgets today are prescribed by federal and state statutes, often in the form of entitlement programs and mandates. Discretionary funding must bear the brunt of any budget cuts because that is where the governors and legislatures have freedom to act. When budgetary pressures necessitate budget cuts, they fall disproportionately on the discretionary accounts.
More accurately, higher education has become the largest discretionary account in many states, such as Washington, and hence the most visible target for budget cutters. Theo Yu, the governor’s higher education, budget assistant in Washington, explained: “It’s not mandated in the state Constitution. It’s the final thing that is decided. Once all the other decisions are made, the legislature will look at the table, see what change is left, and that’s what goes to higher education.”\(^{232}\) Similarly, the University of Wisconsin System accounts for only 9% of the state’s budget, but it incurred 23% of the budget cuts in 2003-04.\(^{233}\)

However, while the actual amount and percentage of discretionary funds are greatly limited, they must cover a wide range of public needs. These demands include higher education, some K – 12 education, public safety including prison systems,\(^{234}\) public health, parks and recreation, environmental protection measures, infrastructure improvements (roads, bridges, dams, water, sewage, etc.), and employee benefits, such as pensions and health care. Many are now facing draconian drops in appropriations.

Higher education is also a relatively easy cut for legislators and governors because, unlike many of the other discretionary accounts, the colleges and universities may partially offset the reductions by imposing user fees in the form of tuition and fees. In addition, college students do not vote in large numbers, thereby yielding their public institutions little political leverage during budget negotiations. Conversely, the beneficiaries of many entitlement programs have a high voter turnout. Another factor is that alumni and friends may contribute to a university, which is certainly not the situation with entitlement beneficiaries.


\(^{233}\) *Id.* at 5.

\(^{234}\) California and Massachusetts spend more on the public prisons than they do on public higher education. Medical expenses for state prisoners in California are approaching $1 billion annually out of the $6 billion prison budget. Evan Halper, *Lawmakers Scrutinize Inmate’s Medical Bills*, LOS ANGELES TIMES, June 2, 2004, at p. B1, col. 5.
The budget problem for public universities is compounded by the vast competition for the scarce, discretionary resources available for higher education. For example, the schools, colleges, departments, institutes, and centers at Harvard may engage in internal conflicts for a share of the Harvard budget, but the fight is only within Harvard, a free-standing institution. However, the public institutions must also confront external budgetary demands for the discretionary funds, often from other institutions. Within the shrinking higher education budget are competing public institutions, a state college system, and a community college system. For example, the University of Michigan in Ann Arbor must compete with its sister campuses in Flint and Dearborn, as well as with Michigan State University, Wayne State University, Western Michigan, Central Michigan, Eastern Michigan, Northern Michigan, Michigan Tech, Oakland College, Saginaw Valley, Grand Valley, Ferris State, and Lake Superior State and the community colleges. The internecine political battles before the legislature can be brutal.

**MEDICAID**

Medicaid is the entitlement program posing the greatest threat to public higher education. Indeed, the stealth rise of Medicaid threatens to consume all state discretionary spending and eventually compel large tax increases unless modified. Medicaid is rapidly becoming the Pac Man of state budgets, swallowing every dollar in sight.

Medicaid became effective in 1965 as a cooperative venture between the states and federal government to provide medical assistance to low income persons. The federal government establishes broad national guidelines within which states establish their eligibility standards, the types, amounts, duration and scope of services, and payment scales. The federal share varies between 50% and 83% of the total expenditures.
Like many entitlement programs, Medicaid started out small, but the subsequent growth has been exponential. The total expenditure in 1967 was $1.9 billion, rising to $3.3 billion in 1968, and only $25.8 billion by 1980. Medicaid was $72.5 billion in 1990, but then the great growth commenced. By 1999, Medicaid was consuming $180.4 billion. Medicaid currently accounts for 20% of all state spending. Medicaid provided health coverage in fiscal year 2002 for 51 million low-income Americans. Total expenditures approximated $244 billion, of which the federal share was $139 billion, leaving $105 billion for the states to provide. The total state and federal Medicaid spending in 2003 was $286 billion. The estimated budget for 2004 is $311 billion, of which the state share is $134 billion.

A look at several states is revealing. North Carolina estimates for example, that the Medicaid spending in the state will increase by $1 billion annually for the remainder of the decade. It covers 45% of all births in North Carolina. Conversely, North Carolina’s contribution to the University of North Carolina System budget dropped 10% to 35% in 2003 from 45% in 1990. Sharply escalating costs in Medicaid are also responsible in states like Colorado and Michigan for the tightening pressures on discretionary spending.

Michigan is especially hard hit by Medicaid. Roughly a quarter of Michigan’s general fund goes for Medicaid coverage. Even though tax revenues dropped the past four years, the

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236 Association for Health Center Affiliated Health Plans, State Budget Overview: Continuing Budget Crisis 2.
237 U.S. General Accounting Office, Medicaid Program Integrity: State and Federal Efforts to prevent and Detect Improper Payments 1 (GAO-04-707). The federal share is determined by a formula which provides a greater allowance to states with lower per capita income.
238 Association for Health Center Affiliated Health Plans, State Budget Overview: Continuing Budget Crisis 2.
Medicaid caseload rose 27% and expenditures 40% during this period. Spending rose a compound 12% annually to $7.3 billion in 2004 from an initial expenditure of $67 million in 1967. Its Medicaid budget in 2001 was $4.4 billion, of which the state government paid 25%. The current budget in Michigan is $7.9 billion, of which the state’s share is $1.68 billion. The projected budget deficit for Michigan is $1 billion for 2005. Medicaid covers 1/3 of the births in Michigan and 70% of nursing home costs. The Governor acknowledges that the current budget problems would be resolvable without Medicaid, whose accounts in 2004 exceed projections. Michigan’s problem is a harbinger of the future. The state has a shrinking manufacturing force coupled with a steadily rising retired population, many of whom are on fixed incomes. Medicaid now consumes 44% of New York’s state budget, or roughly $44.5 billion, up from $24 billion in 1995. It amounts to $33.8 billion in California, or about 1/3 of the budget.

What Medicaid does not cover is higher education, which spending is down 14% from 2002. The problem with Medicaid is not its present cost, however great, but the exponential increases in spending. California’s program, Medi-Cal, is a $31 billion program compared to $9.4 billion for higher education. About half of Medi-Cal is funded by the federal government. It has grown 73% from 1994 to 2004. The state growth rate in 2002 was 13%, followed by an additional 8% in 2003. The estimate for 2004 is 4.9%.

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244 Jordan Rau, Governor’s Plan Calls for Cuts in Social Service for the Poor, Los Angeles Times, Jan. 11, 2005 at p. A21, col. 1, 3.
245 Id.
247 Association for Health Center Affiliated Health Plans, State Budget Overview: Continuing Budget Crisis 2.
In Ohio, for example, Medicaid grew an average 3% annually between 1994 and 1999, increased to 6% in fiscal year 2000, and then rose 18.1% for fiscal year 2004 to a total of $6.5 billion, of which the federal government pays 58%.\textsuperscript{248}

Cutting Medicaid spending is not easy. Legislatures do not readily cut health care for the poor, elderly, and disabled. Every one dollar decreases in a discretionary account, such as in university spending, is simply a one dollar decrease. However, the federal co-share which initially made Medicaid so attractive to states renders it almost politically impossible to cut. If, for example, the federal government reimburses 2/3 of a state’s spending, then for every $100 million the state cuts, the federal share will decrease by $200 million, resulting in an effective cut of $300 million in health care for the poor and elderly.

Many states over the past 15 years engaged in creative accounting schemes to maximize federal reimbursements, i.e. profit off the grants. Congress closed the loopholes, but the states were locked into higher spending levels.

ENDOWMENTS AND DEVELOPMENT

Gifts can underwrite the construction of buildings and facilities as well as cover operating expenses. Endowment income provides fellowships for graduate students, scholarships for undergraduates, faculty development funds for research equipment, grants, travel, research assistants, as well as salary supplements for selected faculty members. Large endowments may also offer critical support during economic down turns. Even the most elite private universities are not immune to budgetary pressures and recessions. As recently as 2003, Stanford University faced a 25 million deficit and proposed to freeze salaries for most of the faculty and staff. Duke

and Dartmouth also faced budget pressures.\textsuperscript{249} Most public universities lack these options because they did not aggressively engage in fundraising or build a strong endowment. State funding historically substituted for endowment income.

Many universities rely extensively upon their endowments to facilitate academic success. Money buys buildings, faculty, students, financial aid, academic support, prestige and renown, housing, research assistants, travel and development, secretarial and support assistance, programs, centers and institutes. Academic support, such as through research grants, will raise a university’s profile. Universities aim to spend about 3-5\% of their endowment for these purposes.

Money buys both quality and reputation through the recruitment of high quality students and the appointment of distinguished faculty members. Prestigious universities must compete not only nationally, but also internationally to attract the top scholars and graduate students. For example, UCLA’s faculty and student body come from 125 countries.\textsuperscript{250} The recruitment and retention of distinguished (“star”) faculty is essential to raising an institution’s profile in U.S. News & World Reports, attracting students, and impressing alumni and donors.\textsuperscript{251} Harvard, under President Charles Eliot, pioneered lateral hirings over a century ago. Stanford pursued that route in the middle of the Twentieth Century. Three private universities have similarly improved

\begin{footnotesize}
\begin{enumerate}
\item Rebeca Trounson, \textit{Stanford Puts a Freeze on Faculty Pay}, Los Angeles Times, March 3, 2003 at P. B 8, Col. 5-6.
\item UCLA, Why Support UCLA, \texttt{http://www.campaign.ucla.edu/why_support_campaign.asp} (June 30, 2004).
\end{enumerate}
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their standing in recent years: Washington University of St. Louis, the University of Southern California, and New York University.

Washington University ranked #20 in U.S. News in 1993 while both USC and NYU lagged in the second tier. In the 2005 rankings, Washington University had moved up to #11. USC was 30 and NYU placed at #32.

NYU and USC had been safety schools until recently. The combination of favorable locations, dynamic leadership, and aggressive fundraising dramatically raised their academic profiles. These institutions’ growth in academic stature came at the expense of public institutions. All three institutions have raised prodigious sums of money. Much of these funds have not gone into endowment funds, but have been funneled directly into recruiting academic stars to the faculty, merit scholarships for outstanding applicants and substantial fellowships for graduate and professional students. NYU raised $200 million for 125 new faculty members in the arts and sciences. USC’s goal is to dedicate $100 million out of a $2.85 billion fundraising campaign to recruit 100 “luminaries” over three years.

Distinguished faculty are often recruited today at salaries exceeding $200,000 for teaching as little as one class a week, which may be a seminar, tutorial, or directed research. Harvard, which tenures 2/3 of the Arts and Sciences faculty from outside the university,

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256 Stuart Silverstein, *USC Spends Big to Boost a Weak Academic Link*, LOS ANGELES TIMES, March 19, 2004, at p. A1, col. 2. USC also has 6,647 foreign students enrolled in it, the largest number of any American university. Sam Dillon, *Foreign Enrollment Declines at Universities, Surveys Say*, NEW YORK TIMES, November 10, 2004, at p. A15, col. 1, 2.
acknowledges that star faculty salaries average between $150,000 and $225,000. These salary figures are substantially above the figures for the public universities. Columbia is rumored to have unsuccessfully offered $500,000 to an economics professor at Harvard.

NYU is willing to pay hundreds of thousands of dollars each to lure star professors, and then house them in subsidized apartments. Indeed, both NYU and its cross-town rival, Columbia, provide valuable housing perks in the form of apartments and townhouses in the city. Private Universities are rumored to offer an especially valuable perk to prospective faculty members: guaranteed admission to their children.

Public institutions today lack the resources to engage in across the board recruiting battles, although they may compete to retain or attract individual professors. In the long run a research university must compete for distinguished faculty members or atrophy. A prestigious university should be viewed as a “destination” rather than a starting point or steppingstone. The prestigious public universities were destination institutions through the 1980’s into the 1990’s, but are in danger of losing that cachet. Whether Ann Arbor, Berkeley, Boulder, Chapel Hill, Charlottesville, Madison, or Westwood remain destination sites remains to be seen.

Most universities build their senior faculty ranks from within, hiring a young faculty member with promise and then providing support as the budding scholar progresses to a tenured, full-professorship. More recently, though, several elite private universities are building their senior faculties by raiding other universities. The salary differentials between private and public research institutions were fairly small throughout the 1970’s, but rose sharply beginning

258 Id. at 8.
259 Id.
260 See Matt Krupnick, Private Colleges, UC’s Fight for Faculty: Big offers eat away at UC’s faculty, Contra Costa Times, Oct. 3, 2005, 2005 WL 15994303. Many of these institutions offer tuition remission to the families of faculty and staff.
261 See DUDERSTADT & WOMACK at 26. Indeed in some business schools the expectancy is that assistant professors will not be tenured at the hiring institutions but will move elsewhere.
in the 1980’s, reaching over $27,552 by 2003.\textsuperscript{262} The risk is that the private institutions will view many of the public schools as a minor league for developing faculty. For example, the University of Arizona lost 60 faculty members in 2003, up from 49 in 2002.\textsuperscript{263}

Top quality students, especially through the lens of SAT scores, also raise a university’s profile. USC offered full tuition scholarships to National Merit Scholars from 1993 to 2003 and raised its median SAT’s from 1095 to 1341 in this period. Applications increased to 29,000 from 12,000, making USC a highly selective university. USC’s entering SAT scores surpassed rival UCLA’s a few years ago.\textsuperscript{264}

Of the twenty-five largest university endowments, only six belong to public universities: the University of Texas System, the University of California System, the Texas A&M System, the University of Michigan, the University of Virginia, and the University of Minnesota.\textsuperscript{265} The current endowment of Harvard ($25.5 billion) almost equals the combined endowments of the top four public universities ($26.7 billion).\textsuperscript{266}

Other factors are just as critical as the size of an endowment, for example the relationship of the endowment to the size of the student body is important. A one billion dollar endowment covering 2,000 students is better than a two billion dollar endowment spread out over 10,000


\textsuperscript{264} Kate Zernike, What a Deal! NEW YORK TIMES, EDUCATION LIFE 23, 38 (November 9, 2003). State colleges can compete to some extent. For example, Cal State, Long Beach has about 365 President’s Scholars, who receive full tuition, housing, book stipends, and free parking for being class valedictorians or ranking within the top 1% in the National Merit Scholar competitions. The average SAT score for 2004-05 incoming scholars is 1355. Stuart Silverstein, University Gains Prestige by Giving Perks to Scholars, LOS ANGELES TIMES, July 7, 2004, at p. B2, col. 1.


\textsuperscript{266} Texas System ($11,610,997,000), UC System ($5,221,916,000), Texas A&M System ($4,963,879,000), Michigan ($4,931,338,000). Id.
students. For example, Michigan’s endowment equaled $87,811 per student in 2004 while Virginia’s smaller endowment was worth $133,195 per student.\(^{267}\)

If the funds are restricted, as many large gifts are, then the availability of the funds may not provide a great benefit to the operations of the institution. For example, an endowment in Canon Law may be of limited utility in helping public universities through a funding crisis.

Public institutions have not historically engaged in aggressive fundraising activities. The state was always there, both for operating expenses and capital improvements, including buildings. In some cases, the universities benefited from favorable locations, such as the University of Michigan and Michigan State University, which drew upon the Detroit automobile fortunes of a century ago, or the University of Texas and Texas A & M University, which had oil royalties flowing into their endowments. Thus, the University of Texas system, consisting of 18 institutions and six agencies, has an $11.6 billion endowment.

Similarly today, the University of Washington is the beneficiary of the Microsoft fortunes. The UW is in the midst of a $2 billion fundraising campaign. The funds will be used for implementing new programs, constructing new buildings, adding faculty programs and providing student scholarships. A $105 million business school will be built entirely with private funds.\(^{268}\) The chair of the campaign is Bill Gates, Sr., whose wife had served on the Board of Regents prior to her death. The UW already has the Paul G. Allen Center for Computer Sciences and Engineering.\(^{269}\)

\(^{267}\) [CHRONICLE OF HIGHER EDUCATION, August 26, 2005, at page A32. Similarly, Princeton’s endowment of $1,475,654 per student exceeded Harvard’s of $1,161,786. Id.]

\(^{268}\) [Sharon Pian Chan, $2 Billion Fund-Raiser May Lift UW into Elite; Donor Drives First Stage Achieves Nearly Half of Goal, SEATTLE TIMES, January 5, 2004, 2004 WL 58919818.]

\(^{269}\) [Bill Gates, Jr. and Paul Allen, the co-founders of Microsoft, grew up in Seattle. Bill Gates, Jr. dropped out of Harvard while Paul Allen graduated from the University of Washington. Bill Gates, Sr. has been a highly prominent attorney in Seattle for decades before the birth of Microsoft. The Bill & Melinda Gates foundation gave $33.3 million to the law school for full scholarships for law students who plan to enter public service law. Christine Frey, UW Law School Gets $33.3 Million Gift From Gates Foundation, Seattle Post – Intelligencer, Dec. 1, 2005.]
Even successful campaigns like the University of Washington’s do not solve all the financial problems. Most of the funds are earmarked for specific purposes, especially the traditional brick and mortar, faculty chairs, and financial aid. Little goes into the operating expenses of a university.

Some public universities saw the writing on the wall earlier than others. The University of Michigan, otherwise dependent upon the vicissitudes of the shrinking American auto industry, turned to private fund raising a quarter century ago. Its first formal fundraising campaign was in the aftermath of World War II. It is now undertaking its fifth formal campaign, at a time when many public institutions are only in their first or second campaign. On May 14, 2004 it unveiled “The Michigan Difference,” a $2.5 billion dollar campaign, of which 51% had been raised in the quiet phase. It will support scholarships, endowed professorships, academic programs, facilities, and other programs.

The University of Michigan Law School has essentially been run as a private law school for over a decade. The Law School receives one percent of its budget from the state, but 28% from alumni. As of fall 2003, the Law School had eleven employees engaged in development and fund raising.

The flagship public institutions have advantages. They can draw upon hundreds of thousands of proud, loyal, successful alumni.\(^2\) Many have successful athletic programs which instill school spirit. They can undertake large fund raising campaigns. Michigan raised a then record $1.4 billion for a public university between 1992 and 1997. UCLA surpassed that drive with a $2.4 billion campaign, which actually raised $3 billion. Ohio State rang in with $1.2 billion, while Michigan State is starting a similar campaign. The University of Minnesota raised

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\(^2\) For example, the University of Michigan has over 450,000 living alumni.
$1.6 billion. North Carolina is seeking $1.8 billion and has raised $1.4 billion to date.\textsuperscript{271} North Carolina’s campaign seeks to endow 200 faculty positions and 1,000 scholarships and fellowships. The University of Wisconsin is soliciting $1.5 billion. 13 public and ten private universities have recently launched billion dollar campaigns.

Some flagship universities essentially lack an endowment. For example, UMass has only a $70 million endowment. UMass-Amherst only receives 2% of its operating budget from gifts and endowment income. It is initiating a $350 million, 7-year fund-raising campaign.\textsuperscript{272}

The real endowment, fund raising problem lies with the state and community colleges. They lack the resources of their more prestigious cousins. For example, while the University of Michigan in Ann Arbor has an endowment of $4,931,338,000, its next door neighbor in Ypsilanti, Eastern Michigan University, has only $38,239,000 (.008%) of Michigan’s endowment.\textsuperscript{273} EMU has a student population of 24,287 (18,660 undergraduates) compares to Michigan’s 38,103 (24,412 undergrads).

Similarly, while The Michigan Difference seeks $2.5 billion, the goals for the Dearborn and Flint campuses are only $35 million each.\textsuperscript{274} The rest is earmarked for Ann Arbor. The University of California System has a $5,221,916,000 endowment, whereas the combined endowments of Cal State East Bay (Hayward State) and San Francisco State are $35,250,000.

\textsuperscript{273} Chronicle of higher education, Jan. 27, 2006 at P. A31.
Similarly, UCLA’s endowment\textsuperscript{275} is roughly $1.4 billion dollars,\textsuperscript{276} while Long Beach State’s is $27.9 million. Many prep schools have substantially larger endowments than most state colleges.

The multi-million dollar gift is greatly appreciated by any university, but fundraising drives ultimately depend upon the collection of thousands of smaller contributions usually raised through annual campaigns and alumni reunions.

A 1999 National Bureau of Economic Research survey concluded that where one goes to college is immaterial in predicting success. Ambition, drive, ability, and even good fortune may be more important than pedigree.\textsuperscript{277}

State colleges have successes in fundraising. However, the elite private and public universities have an inherent fund-raising advantage over the state colleges. The graduates of the state colleges will often pursue graduate and professional degrees at the research universities since the state colleges are often proscribed from offering doctorate and professional degrees. These graduates upon achieving success will often be more generous to their graduate and professional alma maters than to their undergraduate institutions.

Fund raising activities in legal education show both the strengths and weaknesses of the public institutions. Legal education can be expensive, but not nearly as costly to deliver as medical or dental schools.

William Hines recently retired as Dean of the University of Iowa School of Law after 28 distinguished years of service. His many accomplishments included raising the Law School’s endowment to $50 million from one million.\textsuperscript{278}

\textsuperscript{275} Determining the endowments of each individual UC campus is difficult because some of their endowment funds are blended in the combined UC system endowment under the Regents of the University of California whereas other funds are in separate “foundations” dedicated to the individual campuses.

\textsuperscript{276} *Rich College, Poor College*, BUSINESS WEEK, December 20, 2004, at 89.


By way of comparison, Harvard Law School announced in June 2003 a $400 million fund raising and endowment campaign, of which $170.1 million had been committed in the quiet, pre-announcement phase. The Harvard funds will be used to hire professors, cut class sizes, increase financial aid to students, provide housing assistance and loans, research aid and travel funds, and funding for graduate students.279

Harvard Law School’s endowment was already $840 million, which in and of itself, is larger than the endowments of all but 51 colleges and universities. It had earlier raised $183 million in a campaign that ended in 1995.280

EFFICIENCY/COST-CUTTING

Higher education, both public and private, faces escalating costs, which in private education consistently reflects itself in tuition increases that exceed the underlying rate of inflation. The universal areas of substantial cost increases are health insurance, utilities, and technology. Financial aid obligations, whether legal or self-imposed, are also rapidly escalating.

Unfortunately, higher education is not good at belt-tightening. Public institutions have engaged in traditional cost-cutting measures such as reducing expenditures on energy and entering into joint purchasing pools. Some schools do not accept credit cards for the payment of tuition and fees, thereby saving the credit card discounts. Similarly, tuition bills and registration materials may be sent by email, eliminating postage. The resulting savings, while substantial in dollar terms, represent but a small percentage of the schools’ budgets. Universities are large economic enterprises with high fixed costs in the form of plant, equipment, and tenured

279 Martin Finucane, Associated Press Newswires, June 14, 2003, 6/14/03 APWIRES 16:41:00.
280 Id.
Education is a labor-intensive service in which the primary expenditure is the cost of labor, especially full-time faculty. Major cost savings cannot be culled from staff salaries. For example, the 18,000 UC clerical employees average $30,000 in earnings.

A major cost problem is the escalation in indirect costs. Base salary figures tell an incomplete picture of the real costs to an employer. For example, the average salary for full professors at the University of Michigan was $117,800 in 2004. The overall compensation package, including social security, health and dental, and retirement, is 21% higher at $142,000.

The underlying cost pressures on the nation’s colleges and universities mirror those of the larger work force. Higher education is subject to the same inflationary pressures in healthcare, disability, energy, unemployment compensation, workers compensation, and payroll tax increases as the rest of society, not to mention technology purchases and campus safety. Many of the indirect payroll costs are determined by applying an often-increasing percentage to the base salary. For example, medical and dental insurance costs averaged 8.1% of faculty salaries in 2003-04, up from 7.6% the preceding year.

Short term solutions include salary freezes, leaving positions unfilled, early retirements, encouraging senior faculty to leave to be replaced by junior, lower paid replacements, deferring capital improvements and deferred maintenance, and cuts in financial aid.

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281 The funds available to UC during 2003-04 were $13.8 billion, but only $4.5 billion went to the core instructional and research-related operations. Governor’s Budget Summary, 2004-05 at 76. The University of Michigan’s budget for fiscal year 2003 was $3.8 billion.


The only way to substantially increase productivity in a traditional university environment is to increase the teaching load of each professor, both in terms of class size and in the number of courses taught by each professor. As we have seen, the student-faculty ratio at the UC’s is steadily rising. Large classes, up to 500 students, already exist with some of the entry level courses, but are impractical in Ph.D. programs, which often involve intensive tutorials. In addition, the tradeoff with large teaching loads is reduced faculty productivity in scholarship and other creative activity- the *raison d’etre* of research institutions. The effect will be to accelerate the flow of top scholars to the private institutions since “star” faculty often receive “light” teaching loads.

A century ago universities were teaching institutions. The post – war shift to research universities marked a change in the ethos of universities, both private and public. Professors were now judged on scholarly prominence and research grants. No longer would the top professors teach large, undergraduate classes. Their course load would often consist of a few upper level or graduate course a semester, perhaps in the form of a seminar. It’s no secret that many distinguished professors do not like to teach undergraduate courses.

Universities then have to hire additional faculty members to teach the undergraduate curriculum. Even if done in the form of graduate assistants, such as TA’s, GSI’s, etc., in teaching smaller breakout sections of large enrollment foundation courses, the cost is high.

In other words, the teaching at the prestigious research universities is not “productive” in a traditional economic sense. To try to increase teacher productivity has two adverse impacts. First, scholarly production will drop. Second, these professors will decamp to institutions more appreciative of their scholarly efforts.
State colleges are reducing faculty, both in full time and adjunct positions. While saving money in the short term, the result is fewer courses being offered to the students. The reality is that many state college students can no longer graduate in four years.

The phrase “deferred maintenance” goes back to the days of the railroads who boosted short-term results by failing to maintain their track and rolling stock. It appears throughout the public educational system. Even in elementary schools, such basic facilities as bathrooms can be a disgrace. It now exists in universities both in the failure to maintain, much less upgrade or replace, facilities, and by letting programs slowly deteriorate, as Berkeley has done with Physics. Estimates of deferred maintenance nationally at public colleges range from $26 to $50 billion.284

The Chronicle of Higher Education reports that the public colleges and universities in Ohio have $2 billion in deferred maintenance on their campuses.285 The UC system had over $380 million in deferred maintenance by 1997-98.286 The figure had risen to $600 million eight years later.287

The University of Colorado at Boulder has gone without roof repairs or new buildings because of three straight years of budget cuts.288 Kansas State needs $209 million to catch up with deferred maintenance and public institutions in Illinois are down $1.9 billion.289 Deferred maintenance at the University of North Carolina system is approaching $1 billion.290

287 UC Budget, supra n. _ at 290.
FACULTY SALARIES AND FACULTY DEVELOPMENT

Faculty salaries have certainly increased over the past four decades. I currently earn about 11 times my fall 1972 starting salary as an assistant professor of law. Dramatic rises in faculty salaries fueled the sharply escalating costs of higher education over the past three decades.291

The salary increases work to the benefit of each college professor, but increasingly place the public institutions at an economic disadvantage. Either state support, tuition and fees, or fundraising would have to rise correspondingly to cover these increases. Escalating salaries would sooner or later reach a point that states could not fund out of tax revenue. State support became even more problematic because of state budget cuts.

Figures from the University of Michigan illustrate the inflation in faculty salaries. The median salary of 364 full professors’ in the Literature, Science, and the Arts College (LSA) was $26,064 in 1976–77. Ten years later the corresponding figure had almost doubled to $50,000. By 1996–97, the median salary rose to $76, 649.292

However, faculty salaries are no longer driving tuition increases at the public universities. The American Association of University Professors (AAUP) reported that salary increases averaged 2.1% from 2002-03 to 2003-04, the lowest average increase in three decades. When adjusted for inflation, the average faculty salary rose only .2%.293 Faculty salaries rose 3.4% annually at public institutions and 2.1% at private universities from 1990-01 to 2002-03. Both figures trail the increases in tuition and fees, so something else is driving up tuition and fees. It is the substantial reduction in state funding.

291 By way of comparison with today’s faculty salaries, and administration salaries, Clark Kerr’s highest salary as Chancellor at Berkeley was $24,000 and $45,000 as President of the University of California. Clark Kerr, Supra n. _ at 33.
A short term, but inevitably unsuccessful solution, is to freeze faculty and staff salaries, which some public institutions have done. However, salary freezes only reduce the increase in costs; they do not and cannot result in level spending. They may though result in the loss of excellent faculty members to other, especially elite private, institutions.

Professional schools have to offer salaries, which do not have to be directly competitive with the private market (academia has advantages which offset salary differentials for many professors), but must be higher than the humanities, for example, to attract quality professors. Other disciplines, such as math, physics, engineering, and computer sciences also offer high salaries to attract and retain professors away from private industry. Accountants and Ph.D.’s in business have a high market value, yet business schools need a large number of businesses Ph.D.’s to receive full accreditation.

Science professors, who consistently receive large research grants, have high market value in higher education, as do the other academic stars, upon which a school or department can build its reputation. Indeed, the ability to attract research grants is often the critical factor in tenure decisions at the research universities. The University of Michigan has eight faculty members who have each garnered between $50 million and $87 million in federal grants over the past 15 years. Professors with a proven track record of this nature are highly valued in the academic profession. Purdue University hopes to double its research portfolio from the $355 million over

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294 One study showed for 2001-02 that average salaries for full professors, relative to those in English language and literature, were 34.3% higher in business management and administrative services, 19.1% in computer science, 17.4% in economics, 16.5% in engineering, and 44.5% in law and legal studies; foreign language and literature, home economics, and visual and performing arts earned less than English. AAUP, Don’t Blame Faculty for High Tuition: the Annual Report on the Economic Status of the Profession, at 6, http://www.aaup.org/surveys/042/2rep.htm, April 23, 2004.

295 A shortage in accounting Ph.D.’s (110 awarded in 2004) has resulted in starting salaries as high as $140,000 at some universities. D. Gullapalli, Crunch This! CPA’s Become the New BMOCS, WALL ST. J., July 29, 2004, at p. C1, col. 2, C4, col. 2.

296 April 4, 2004 Testimony of President Mary Sue Coleman at 3.
4-5 years. The University of Pittsburgh offers bonuses up to $50,000 annually to scientists who receive NIH grants.

Faculty salaries have to be competitive at the elite institutions to attract and retain quality faculty. If public institutions can no longer compete in the academic market place for quality professors, they, and especially their students, will lose out. Many reasons exist for faculty to change institutions. Not many professors will leave a campus to earn a few thousand dollars elsewhere. The real impact will be in recruiting new faculty. A young rising star will now prefer the elite private institution to the public university. Salaries at public and private universities were essentially competitive until the 1980’s.

While public universities often compare their salaries to each other, public institutions are at an increasing disadvantage with the elite private universities. Indeed, AAUP reported that the average salary of full professors at public doctoral universities is now only 77.4% of the average salary of full professors at the private doctoral universities. The average for full professors at private-independent doctoral institutions in 2003-04 was $122,158, compared to $103,475 at religious institutions, and $94,606 at public doctoral universities. Five years earlier this differential was only 20% at $98,906 versus $79,284.

297 Dave Gershman, U-M’s Research Guru is Heading to Purdue, ANN ARBOR NEWS, p. A3, col. 5.
299 For example, a Purdue study shows that the average salary for full professors at Berkeley was $121.8 thousand, $120.2 thousand at Michigan, followed by Georgia Tech ($119.0), Penn State ($112.6), Illinois ($111.8), Texas ($109.9), Cornell ($109.7), UC Davis ($103.3), and Purdue at 100,000. Purdue University Data Digest 2005 – 06: Comparison of Average Faculty Salaries at Peer Universities, http://www.purdue.edu/datadigest/pages_university/peer_faculty_salary.htm (Feb. 16,2006)
301 Id. at Table 4.
The AAUP also reported that average salaries at Harvard, Princeton, and Yale (the top three undergraduate doctoral universities in U.S. News & World Reports) are $157,000, $145,600, and $138,800 respectively. The comparable figure for the University of Michigan is $117,800.\footnote{Sarah Kellogg, \textit{Average U-M Prof’s Salary is $117,800}, ANN ARBOR NEWS, April 16, 2004, at p. 1, col. 2, 4.} Salaries at the University of North Carolina for full professors averaged $103,000, but neighboring Duke was $15,000 higher at $118,000. Salaries at Rice, in income-tax free Texas, are $114,000,\footnote{Jeffrey Selingo, \textit{The Disappearing State in Public Higher Education}, CHRONICLE OF HIGHER EDUCATION, February 28, 2003, at 3.} compared to $103,000 for the University of Texas.\footnote{Berkeley was listed at $123,000, Georgia Tech at $117,000, and UC San Diego at $112,000. AUSTIN AMERICAN-STATESMAN, May 22, 2004, 2004 WL 57659827 at 2.}

The challenge for all universities is to replace the post–war faculty generation, especially these of the 1950’s–1970’s who are rapidly passing from academia.\footnote{For example Berkeley made 1,000 faculty appointments in the decade from 1952-53 to 1962-63, comprising ⅔ of its faculty by 1962. \textit{Clark Kerr, supra} n. \_ at 62. These appointments formed the cadre that lifted Berkeley to decades of academic primacy, Id.} They formed the heart and soul of many an university, and were often responsible for the reputation of many public universities.

The challenge for the flagship public universities is not only to appoint worthy successors, but more significantly, retain them as they achieve academic prominences.

Salary figures in the abstract do not tell the whole story. Salaries may, or may not, reflect differences in the cost of living, housing, tax rates, and even faculty development support. For example, the cost of housing in Ann Arbor and many similar communities is a bargain compared to Berkeley, Boston, Los Angeles, and New York. What might initially appear to be a higher salary may, in fact, result in less free – cash flow. Quality of life factors, such as the quality of the local education system, crime rates, etc. may also be significant to faculty and their families.
The competitive environment at the elite private and public institutions is such that professors at these universities earn substantially larger salaries than at the less prestigious institutions. The national average salary for full professors at the large, doctoral schools in 2003-04 was $100,682 compared to $76,112 at the Masters level institutions. For example, professors at the University of Michigan average about $48,000 more than those at Ferris State University, and $42,000 than Eastern Michigan. Similarly, the differential between the University of Maryland at College Park and Towson State is $31,000. Prestige and the multiversity carry a price.

Even the elite public universities have to carefully allocate their resources and cannot engage in across the board bidding wars for faculty. One example occurred at the University of Michigan. John Duderstadt, former President of the University of Michigan, reported that at one point Harvard hurt Michigan in anthropology and other departments: It is “so rich and we couldn’t compete.” Michigan’s provost reported in 1999 that professors in LSA (Literature, Science, and the Arts) received offers from other institutions about 40% higher than their existing Michigan salaries.

Adjuncts are a pervasive means of keeping faculty salaries low. Some adjuncts are hired because of their expertise in an area. Many though are hired simply as a cost-savings measure since they are often paid $750-1500 per credit hour taught. Some of these instructors, often

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307 AAUP, Don’t Blame Faculty for High Tuition: the Annual Report on the Economic Status of the Profession, at 4, http://www.aaup.org/surveys/042/2rep.htm, April 23, 2004, at Table 4. The average faculty salaries for full professors at private universities was $111,500 for 2004-05 versus $93,664 for public universities, a difference of $17,836, or 19.1%. NEA, Higher Education Advocate, Faculty Pay Doldrums at 7, table 6 (winter 2006).
309 Mike Bowler, Faculty Salary Pecking Order, BALTIMORE SUN, April 25, 2004, at p. 2B, col. 1.
310 Healy, supra n. ___ at 7.
referred to as “freeway flyers,” teach at multiple campuses to earn a living. With loyalty to none, and no scholarship/creative expectations, they may bring little to the campus environ. Teaching is inconsistent, and the pressure often exists to maximize enrollment in a class by being easy; that is, having low expectations for the workload in a course accompanied by grade inflation. In essence, they are often paid poorly for teaching a large number of students. These adjuncts are common at the state and community colleges, but are rare at the research universities. One of the criteria in U.S. News and World Reports is the percentage of full time faculty teaching at an institution.

Often overlooked in any discussion are funds for faculty development and support. Gross salary figures contribute taxable income, but usually with the exception of sabbaticals and paid leaves, most faculty development is tax-free.

Faculty development support may consist of research assistants, administrative and secretarial support, travel budgets for conferences and presentations, and acquisition of equipment, technology, software, treatises, periodicals and other research materials. Faculty members do not like being “nickled and dimed,” which is a major issue when budgets are limited.

Institutions also hire distinguished visitors as professors, and lecturers for a semester or year, and the sponsoring of professional conferences. Money can also be spent on public relations, publicizing the school, programs and faculty members.

Cutbacks occur in most of these accounts when schools have to tighten their belts.

TECHNOLOGY AND PUBLICATIONS

Both public and private universities incur the same cost increases in technology and scholarly publications. They often experience annual double-digit increases in the costs of
periodicals and journals. The Association of Research Libraries reports that college library budgets rose 113% from 1986 to 2003; that is, twice the rate of inflation. Many of the costs are not in the initial purchases, but in the periodic and annual updates, which can run into the thousands of dollars for a single journal. Publishers are not shy about raising prices since they feel they have a captive audience for these specialized journals.\footnote{The large publisher, Reed-Elsevier, through its on-line subsidiary, Science Direct, had been raising prices 7% annually. Charles Goldsmith, \textit{Reed Elsevier Feels Resistance to Web Pricing}, \textit{WALL ST. J.}, January 1, 2004, at p. B1, col. 6, B3, col. 5.} If not maintained, many of these publications will rapidly become dated and, often, worthless. A research university, which does not keep current in the literature, will soon cease to be a research institution. These increases also exist with on-line publications.\footnote{For example, the University of California recently signed a five-year contract with the large publishing company of Reed Elsevier for $7.3 million annually for on-line access to 1200 medical and scientific journals. The 2003 system wide budget for online journals was $16 million. Andrea L. Foster, \textit{Faculty Pressure Helps U. of California Cut a Deal with Major Journal Publisher}, \textit{CHRONICLE OF HIGHER EDUCATION}, January 22, 2004, at p. A34, col. 4.}

Costs are also steadily rising for technology. NASULGC estimates that member institutions spend 5% of their budgets on technology. The days of building three story brick or wood structures containing Spartan chairs and desks, chalkboards, clocks, and maybe a primitive A/V system are history. By way of example, a new $50 million health professions classroom building was recently competed at Central Michigan University. Roughly 10% of the cost was computer hardware. Much of a classroom’s technology is controllable by the professor with a touch-screen system on the podium. The technology also includes computer links, video screens, cameras, mikes, and digital pens.\footnote{Scott Carlson, \textit{The Next-Generation Classroom}, \textit{CHRONICLE OF HIGHER EDUCATION}, February 27, 2004, at p. A26.}

New structures should offer, even if not all the faculty will utilize, the latest technology. In addition, older buildings must be retrofitted, which is usually an expensive proposition.
ACCESSIBILITY AND AFFORDABILITY

Our initial premise, that the nation’s public institutions of higher education are the means of upper mobility in our society, is now in question. The states provided their residents with high quality higher education at nominal tuition rates. The federal government provides assistance through Pell Grants, federal guaranteed loans, Stafford Loans, work study funds, and tax breaks. States also provide varying degrees of support in the form of grants and loans. Colleges have substantially increased financial aid. Scholarships and loans totaled $105.1 billion for 2002-03, of which 45% was in subsidized student loans and 11% in Pell Grants. Student aid rose in 2003 to $122 billion, but over half was in loans.315 Students borrowed almost $10.5 billion in private college loans in 2003-04, up 43% from 2002-03, and nearly 70% from 1995.316

Yet, a change in financial aid paradigms has quietly occurred. From one of low tuition and large grants, we now have high tuition coupled with large loans.317 The effective result is that higher education at the nation’s prestigious universities, both public and private, is increasingly unavailable to low income and lower middle class students, who are being squeezed out of the nation’s top universities by students from affluent families.

In a Business Week interview, President Lawrence Summers of Harvard University recognized: “Inequality between those in the high-income groups and those in the low-income groups is widening. In the last two decades, for the first time probably in the country’s history, the gap in life prospects . . . is growing. One of the reasons is that the gap in the college enrollment rate between [those groups] is growing.”318

315 June Kronholz, Tuition Rises 11% at Public Colleges, WALL ST.J., October 20, 2004, at p. D1, col. 5-6.
316 Sandra Block, The ABC’s of Student Loans, USA TODAY, November 12, 2004, at p. 3B, col. 1.
317 For example, in 1990-91 grants constituted 49.3% of financial aid versus 48.1% in loans, but in 2002-03 grants were down to 40% and loans up to 54%. NASULGC at 5, figure 7.
318 BUSINESS WEEK, November 5, 2004, at 73, 74, col. 3.
Theodore Spencer, Director of Undergraduate Admissions at the University of Michigan, explained the problem: “We were founded on the principle of allowing larger numbers of students to go to college in an affordable way. But having said that, the price of college has gone up, and many of the truly needed will not bother to apply.”

The Wall Street Journal reported that a Department of Education advisory study found that 170,000 qualified students could not even afford to attend a community college, and that 43% of qualified middle-class children were financially unable to attend a four-year institution.

The New York Times similarly reported that recent studies show that students from upper-income families are increasingly edging out middle-class students at the nation’s prestige universities. For example, the 2003-04 freshman class at the University of Michigan had more students with their parents earning at least $200,000 a year than those making less than $53,000—the national median income. 40% of the entering classes at the 42 most selective public universities come from families earning over $100,000, up 8% in just four years. The Educational Testing Service reports that only 3% of the entering classes this year at the top 146 colleges and universities are from families in the lowest quarter of wage earners. For example, 54% of the students at Miami University of Ohio are from families with median incomes exceeding $100,000. The median income at Harvard is about $150,000. However, about half the students at Michigan are from families earning less than $100,000.

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322 Id. at p. A22, col. 1.
323 Id.
324 Id. at col. 2.
Similar conclusions were reached by the Higher Education Research Institute at UCLA, which found that 55% of the entering students at the most selective four year colleges came from the highest earning quarter of households in America, up from 46% in 1985.325

The limited access is caused by the combination of rapidly rising tuition and other costs coupled with the surge of the Baby Boomer II Generation— the sons and daughters of the Baby Boomers. The successful college graduates of the 1960’s, 1970’s and 1980’s live in affluent school districts, seek the best education available for their children, push AP and SAT prep courses on their children, and direct them into extracurricular public service activities. The result is that the Baby Boomers II are better prepared for college, and have substantially higher entering credentials than most inner city high school graduates. The numerical indicia are against the economically disadvantaged students.

The financial problem of accessibility actually begins prior to college. If we look at the junior and senior years of high school, we find cumulative high costs for AP, SAT, ACT tests, prep courses, tutoring, and college applications. The children of the affluent have access to test prep courses, AP courses, private tutors (often charging over $2,000) and private academic counselors. Some private counselors have been charging up to $36,000 for their assistance.326 Although many of the and application test charges may be waived, they are an obstacle to economically disadvantaged students, who often attend resource poor, public schools.

AP exams disadvantage inner city students in two ways. First, grade points get a boost in AP courses. The affluent high schools, both public and private, gear their curriculum to these

326 Anne Tergesen, What Price College Admission? Parents are Spending Tens of Thousands on Advisors to Shape Their Kids! Game Plan, Business Week, June 19, 2006 at 82
courses. Conversely, a 1999 California committee found 100,000 rural and inner city students lacked access to AP courses.\(^{327}\)

We also know that many public high school counselors have large counseling loads and cannot devote the personalized attention available to students at private high schools. The baby-boomer parents in affluent school districts can often knowledgeably fill the gaps. Unfortunately, many inner city parents lack the requisite knowledge.\(^{328}\)

The demands for student aid through scholarships, loans, work-study, grants, in state-tuition to non-residents, and tuition remission are also rising rapidly. The perverse impact of rising tuition, fees, and the other costs of higher education is to substantially increase the need for financial aid, especially if the universities, both public and private, are to provide upward mobility in America. The effect is that a substantial percent of tuition increases go to subsidize the costs of higher education for the economically disadvantaged rather than into the bolstering academic program. Private universities have engaged in this form of income redistribution for decades. Some of the flagship public universities, including Arizona, Berkeley, Illinois, Michigan and North Carolina, are now joining them. The public universities, in spite of their current financial constraints, still heed the compelling public need to provide a quality education to qualified low income state residents. Indeed, the Universities of Maryland, North Carolina, and Virginia have replaced loans with grants for low income students.

The University of Michigan has guaranteed to meet 100% of the demonstrated financial need of admitted Michigan residents. That amount came to $96 million in 2003, averaging out to $8,700 for 11,000 students. Tuition for resident students rose 6.5% in 2003-04, but financial aid

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\(^{328}\) I encounter a similar dichotomy when I recruit students for law school. Many students at the Masters level institutions have limited knowledge even of the LSAC/LSAT process.
increased 8.3%.\textsuperscript{329} However, the grants are not necessarily in the form of full tuition scholarships; they may include loans and work study funds.

The picture at the UC’s is different, as they consistently strive to maintain the American Dream for California residents from low-income families. They traditionally dedicated 1/3 of new fee revenue to financial aid. This percent dropped to 20% because of the state budget cutbacks.\textsuperscript{330} Yet, 30% of UC students are low-income. The figure is scheduled to go back up to ⅓ for 2006–07.\textsuperscript{331}

Pell Grants are a significant measure of upper mobility in universities. The top-six ranked UC’s led the nation in Pell Grants among the nation’s top 50 universities in 2003-04. UCLA is number 1 with 35.1% of its undergraduates receiving Pell Grants, followed by Berkeley at 32.4%. The next four universities on the list are UCI (31.5%), UC Davis (28.5%), UCSD (28.3%), and UCSB (24.8%).\textsuperscript{332} UC Berkeley has more undergraduates from families with income less than $35,000 than all Ivy League universities combined.\textsuperscript{333} UC funded $180,700,000 in financial aid during the 1995-96 academic year, of which $62,644,000 came from the general fund and the reminder from fee revenues. Financial aid for the current year rose to $388,758,000. Only $52,199,000 came from the general fund- $10,400,000 less than eight years earlier. The reminder was from fee income. The May 2004 budget compromise proposes that 20 to 33 ⅓ percent of all new fee revenue be reserved for financial aid.

\textsuperscript{329} Donn M. Fresard & Alison Go, Budget to Lead to Tough Choices over Summer, MICHIGAN DAILY, April 16, 2004, at p. 1, col. 1.
\textsuperscript{330} Summary of the 2003-04 Budget at 73.
\textsuperscript{331} UC.Budget, supra n._ at 66.
\textsuperscript{332} Michelle Maitre, UC Leads U.S. in Low-Income Admissions, OAKLAND TRIBUNE, April 29, 2004, at p. Local 1, col. 1-2. UC Riverside was at 40% and UC Santa Cruz was at 26.7%. Id. at p. Local 2, col. 1.
The U.C. system has a 33% enrollment of low income student. By way of comparison, figures for other public institutions are: Virginia (8%), Wisconsin (14%), Michigan (14%), and North Carolina (15%).

UC is in the conundrum of sharply raising tuition and fees, while having less funds available to assist its substantial low-income student body. Less is not more when it comes to financial aid.

The access problem is compounded not just by rising tuition, fees, and other costs, but a shift in financial aid from grants to loans. Grants are down to an average of 1/3 of a student’s federal aid award. Income tax credits and deductions are potentially of great value to middle class families, but of little value to low-income families.

The effect of U.S. News & and World Reports is shown in the distribution of financial aid. Institutions increasingly award non-need based aid to recruit top students. From 1995-1996 need-based grants increased from $2.46 billion to $4.7 billion, a 91% increase. However, non-need based grants (merit grants) rose 323% from $411.1 million to $1.74 billion, i.e. from 14.3% of all grants to 27%.

State budget cuts may not only be made in college appropriations, but also in financial aid. The effect can be a trifecta blow on low-income residents. For example, from 1993-94 to 2004-05, the percent of low income students in Massachusetts rose to 28% from 24% while annual appropriations for financial aid dropped to $78 million from $85 million, and the institutions substantially raised tuition and fees.

334 U.C. Budget, supra n. at 63. 334 Duderstadt & Womack at 39.
335 Duderstadt & Womack at 39.
337 Holly Angelo, Study Urges More Aid for Poor College Students, Springfield Republican, Nov. 19, 2005, 2005 WLNR 18871232.
In 1973 40.5% of all Pell Grant recipients were at four year institutions. Pell Grants covered ½ of the costs of tuition, room and board at a public institution in 1976, down from 84% when first enacted. Today’s cap of $4,050 covers only 1/5 of college costs. In 1984 Pell Grants covered roughly 84% of the cost of public universities, including tuition, room and board. By 2002 the figure had dropped to 42%. By 2001, only 31% of Pell Grant recipients were at four year institutions. An increasing number of recipients are at community colleges. As it is, the existing Pell Grant program, which covered 5.1 million students in 2003-04, is in the red financially.

About 6.2 million college students received federal student loans in 2003. The maximum for a freshman has been frozen at $2,625 since 1986. Like Pell grants, the available amounts are inadequate to finance the education of an economically disadvantaged student. The combined effect of the limits on the Cal Grants, Pell Grants, and student loans will often fall short of the combined tuition, fees and room and board at the UC’s. A similar story exists throughout the country.

Several universities, private and public, are attempting to alleviate the financial problems of low income students by substantially increasing financial aid. For example Harvard now requires no contributions from parents whose family income is less than $60,000. Stanford sets the ceiling at $45,000 and Pennsylvania at $50,000. In raising the ceiling to $60,000, President Summers stated: “There is no more important mission for Harvard and higher education than

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339 The current deficit is $3.7 billion. Stephen Burd, Playing with the Pell Grant, CHRONICLE OF HIGHER EDUCATION, February 27, 2004, at 19.
340 June Kronholz, Student Loans Take Political Stage, WALL ST. J., __________, 2004, at p. A4, col. 3.
341 California, like many states, provides scholarship funds, “Cal Grants,” to low-income residents. The current level is $_________ per year.
promoting equality of opportunity for all.”343 However, the reality is that only 8.1% of Harvard’s undergrads are from families with incomes of $40,000 or less.344 Indeed, only 14% of the undergraduates at the 59 wealthiest private colleges receive Pell Grants.345 Princeton lags at 7.5% while Yale is 10.4%.346 Stanford is up to 13%.347

Many of the flagship public universities are not much better. Only 7.6% of the students at the University of Virginia receive Pell Grants. Wisconsin is at 13.1%, Michigan at 13.5% and North Carolina 14.7%.348

RESOURCE ALLOCATION ISSUES

Many of the public universities, representing the diversity of a democracy, have tried to be all things to all students; i.e. seemingly offering every conceivable major, discipline, professional, and graduate program to tens of thousands of students. Private universities, including the most prestigious with more limited enrollments, are more focused and selective in their offerings.

Basic resource allocation issues will have to be addressed institution by institution, including which programs and schools to merge, reduce or eliminate, and which to privatize. The adverse impacts will vary from major to major, department to department, and school to school. The flagship public universities have built much of their reputations on their graduate and professional schools. For example, the professional programs, especially law and business, are

343 Id.
345 Id. at col. 2.
346 Id. at P. A12, col. 3.
347 Id. at col. 2.
348 Id. at P. A12 col.1.
better able to protect themselves through high tuition for both resident and non-resident students. Many universities, such as Michigan and Virginia, have thereby shifted the shrinking state funding from these programs to other schools and colleges.

Engineering and science departments that receive extensive research grants and alumni support have greater leverage in budget negotiations than the humanities. We can assume therefore that the humanities, and low enrollment-low income generating programs, will incur a disproportionate share of the cuts. Decisions could include, for example, should resources be funneled into an undergraduate or graduate business program? A common issue will be should retiring professors be replaced if their specialty has few majors? As we saw earlier, many public institutions have started the process of making wrenching resource allocation decisions. The decisions will become progressively more difficult until budget stasis can be achieved.

ADMISSIONS

Some public institutions often emulate their private rivals in another way. They are increasingly, and aggressively, recruiting geographical diversity, which in fact means non-resident tuition. They are also, with some prominent exceptions such as Texas A&M, utilizing legacy admissions. On the private side, twenty-three percent of Notre Dame’s undergraduates are the children of alumni and Harvard accepts 40% of its legacy applications compared to 11% overall.349

Legacy admissions raise issues of fairness, equity, and discrimination because the alumni children are predominately Caucasian. However, they are also a fundamental source of revenue when every additional revenue dollar is needed. As the public dollars shrink, the universities

349 Similarly, 14% of Yale’s 2003 entering class were legacies. Maura Reynolds, The Race to the White House; Bush Opposes ‘Legacy’ Edge in College Admissions, LOS ANGELES TIMES, August 7, 2004, at p. A19, col. 1.
must turn elsewhere for revenue, increasingly relying upon tuition increases and fundraising, which in turn is heavily dependant upon the generosity of alumni. The University of Virginia has found that students admitted as legacies are more generous donors than non-legacy alums. The legacy contribution rate is 65.4%, averaging $34,880 each versus 41.8% @ $4,100 for the non-legacy alums.

Yale provides an interesting vignette on the role of legacy admissions. In 1966 freshman legacy matriculates to Yale College dropped to 12.7% from 15.7%. In 1967 the percent dropped still further to 10.6%. In 6 years the percent of legacies declined from 28 to 14 percent. The sharp reduction in legacy admissions was accompanied by an increase in admittances from public high school and decreases from private high school. The alumni rebelled.

NON – RESIDENT STUDENTS

The other major impact on admissions policies is to reduce the preference for instate applicants. The pressure to enroll non-residents rises as states reduce financial support for the public institutions. Indeed, the admission of non-residents may be inversely proportional to state support. As state funding drops, the legislative power of the purse weakens; institutions have greater leverage to matriculate non-residents. They can be charged substantially higher tuition, thereby subsidizing state residents. They also do not vote, thereby minimizing a political backlash at the ballot box.

For example, the 2003 freshman class at the University of Michigan was 32% non-resident, up from 28% just a few years earlier. The shift to non-residents is even more pronounced with professional schools. The entering class of the University of Michigan Law School is now less than 25% Michigan residents. Three quarters of the students are non-residents- brilliant, but non-residents of Michigan never the less. An unofficial agreement with the legislature in the late 1960’s- early 1970’s limited non-residents to roughly 30% of the student body. That legislative leverage no longer exists with state funding providing only about 1-4% of the Law School’s budget.

This reliance on non-resident tuition is not a novel paradigm for the University of Michigan. It became the largest university in the country at the end of the Civil War. Two-thirds of its students in 1866-67 came from 28 other states. President Haven justified the enrollment to the legislature by noting that the University was founded not by a legislative appropriation, but by a grant of land, and that the out-of-state students provided most of the University’s student generated revenue.

Other major universities will increasingly turn to non-resident tuition, first with the graduate and professional schools, and then with the undergraduate programs. This change will be made out of economic necessity. For example, UMass intends to expand to 30,000 students from 24,000 and increase the non-resident percentage to 25%.

Unless a university increases its size, the tradeoff in admitting non-resident students is to reduce the resident student population. The competition for in-state admissions will necessarily intensify, placing the economically disadvantaged minorities and inner city residents at an even greater disadvantage.

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352 Thus, 72% of the tuition revenue at the University of Colorado comes from the 30% non-resident students. William C. Symonds, Should Public Universities Behave Like Private Colleges? BUSINESS WEEK, November 15, 2004, at 97, 100.
Several issues of accessibility and affordability arise with non-resident students. First, quite often the matriculation of non-residents may reduce resident admissions and create a highly competitive process for state residents. The less academically qualified state residents may now be denied admissions to a school they normally would have been admitted to. Implicit in this profile are many inner city students who lack the advantages (AP courses, SAT prep courses, counselors, etc.) available in the more affluent school districts and private high schools.

In addition, the non-residents will normally come from an affluent background. Since the goal of the institution is to maximize cash flow, financial aid will be limited. As expressed by John Barnhill, Director of Admissions and Records at Florida State University: “If mobility is tied to socioeconomic ability, fewer and fewer lower- and middle- income students will be able to go to a different state.”

Thus, the institution may be greeting scores of high qualified, full tuition payees, who also do not vote in the state. However, using non-residents to solve the budget conundrum collides with basic laws of economics: the supply/demand curve and cross elastically of demand. Parents who might be willing to pay full tuition for their children to attend the most prestigious flagship public universities may balk at paying high tuition for “West Podunk State College.” The higher the tuition, the more attractive private institutions look.

Economics tells to expect demand to fall as costs rise. Substantial rises in non-resident tuition have indeed resulted in a corresponding drop in non-resident matriculants. The University of Colorado experienced a 6.5% drop in non-resident matriculates in 2005 and a

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353 *Id.* at p. A22, col. 2,3.
12% drop among freshmen.\textsuperscript{354} Even the University of California has experienced a 15% decline in non–resident applications over the past four years.\textsuperscript{355}

A different long–term political risk arises out of the short–term financial gains from non–residents. As a state university increasingly becomes non–resident, especially in its undergraduate student body, public support may fade for the institution.\textsuperscript{356}

By the way of contrast, Robert Gordon Sproul was appointed president of the University of California in 1930, the onset of the Great Depression. When the legislature proposed drastic budget cuts in 1933, Sproul made radio broadcasts, resulting in students and the public successfully pressuring the legislature to rescind much of the cuts.\textsuperscript{357}

Unlike universities such as Michigan, the University of California campuses have not responded to non–resident students to offset the state’s budget cuts. The large population growth of California fills the campuses, leaving little room for non–residents.

Non–residents comprise 11% of Berkeley’s students, one–third of those at Michigan. UCLA and UC Santa Barbara are next, but only at 5%. UC Santa Cruz has 4% and UCI 3%. Davis and San Diego only have 2% and Riverside barely 1%.

**POLITICAL RESPONSE**

Once the public university tuition increases started impacting the middle class, the politicians, the same politicians who forced the publics to raise tuition, became aroused. Rhetoric

\textsuperscript{354} Id. at col. 2-4. Florida universities has lost over 2800 non–residents since Fall 2001 as tuition rose 64% from 2000 to 2006. Id. at p. A 23, col.1.
\textsuperscript{355} U.C. Budget, supra n. supra at 62.
\textsuperscript{356} For example, a proposal by the University of Illinois at Urbana–Champaign to increase non–residents to 15% from 11% met with such opposition the university formally dropped it. Sam Kean, Backlash Over Enrollment Proposal at U. of Illinois Leads to Quick Retraction, Chronicle of Higher Education, June 16, 2006 at P. A27, Col. 1.
\textsuperscript{357} Ethan Patrick, California Rising: The Life and Times of Pat Brown 139 (University of California Press 2005).
and demagoguery are entering the arena along with serious discussions at both the state and federal level.

A simple approach would be, in essence, to place price controls on tuition. For example, from 1993 to 2002 Ohio had a 6% cap on tuition increases. The lifting of the cap was analogous to opening the lid on a pressure cooker. Tuition at the various state universities rose about 10%. The legislature then reimposed the cap. President Robert B. Glidden of Ohio University commented that his institution had not raised tuition to the highest possible level in the past in an attempt to keep the university affordable. He now realized that the failure to raise tuition was a mistake because “by keeping it down, we could never make it back up.” He recognized that university presidents will now use whatever means are available to get around caps, including raising non-resident tuition at much higher levels, and admitting more non-residents.

Representative Howard P. (Bud) McKeon (R-Ca.), Chair of the House Subcommittee on Higher Education, introduced a bill, HR 3311, which would have prevented universities and colleges from participating in federal student-loan programs if they increased tuition and fees by over twice the rate of inflation for two successive years. About a quarter of the nation’s 1300 public universities would qualify. The real penalty would have in fact fallen on economically disadvantaged and middle class students. The proposal met with bipartisan opposition and was

358 Alyson Klein, States Move to Limit Increases in Tuition, CHRONICLE OF HIGHER EDUCATION, March 5, 2004, at A1, col. 1, A21, col. 2.
359 Id.
360 Greg Winter, Lawmaker Proposes a Measure to Restrain Tuition Increases, NEW YORK TIMES, March 7, 2003, at p. A18, col. 3.
withdrawn in March 2004, but it has engendered political discussions over the cost of higher education.362

Several states are experimenting with methods of controlling tuition increases. For example, Illinois has enacted legislation that would essentially freeze tuition for incoming students for four years after initial enrollment.363 Proposals in Maryland and Michigan aim to cap increases at the rate of inflation.

The latest reduction for the University of Michigan was 5%, or $16.4 million, in December 2003 as the state wrestled with a billion dollar hole in its budget. Other Michigan universities and colleges suffered proportionately. Governor Jennifer Granholm announced she would restore a substantial portion of the December funds in exchange for a pledge not to raise in-state tuition above the rate of inflation.

The initial response of Mike Boulus, Executive Director of the Presidents Council, State Universities of Michigan to the Governor’s proposal was a succinct: “If they want the University of Michigan to be South Dakota State, they need to tell us that. Then we’ll have a different discussion.”364

In fact, the colleges and universities in Michigan subsequently acceded to the governor’s request. As public institutions they are ultimately subject to the will of the political representatives of the public.365 A subsequent, more temperate response by Boulas was: “We’re

363 Of course, the initial increase in tuition for incoming freshmen will be high. The increase at the University of Illinois at Urbana-Champaign is 12.8%. NASULGC; Changes in Annual Tuition and Fee Charges at NASULGC Institutions: Academic Year 2004/2005.
365 The University of Michigan is constitutionally independent of the state political process, with the Board of Regents theoretically free to make its own decisions. However, the legislature in fact exerts tremendous influence through the power of the purse.
working very creatively and very efficiently to keep our costs down, and our tuition increases were below the Midwest and national averages.”

The University of Michigan agreed on March 18, 2004 to limit tuition increases to residents to 2.4% for 2004-05, and thereby receive back $20 million in state aid ($321 million versus $301 million if it didn’t comply). The resulting tuition increase will be the lowest in at least 15 years. No such restraint on tuition increases for non-residents exist. Nor is there an express limit on the number of non-resident students the University of Michigan can admit.

Artificial caps on tuition create distortions, as is true throughout the economy. The public institutions will increasingly, as with the University of Michigan, turn to high, uncapped, non-resident tuition. They will also, as stated by Ohio University’s President Glidden, raise tuition annually to the max to avoid being disadvantaged by future budget cuts.

What the politicians are not offering is a new source of revenue.

An alternative means of financial support, of a dedicated revenue stream, must be adopted to provide a stable revenue stream to the nation’s public colleges and universities. Otherwise, not only will the flagship public universities and their professional schools, increasingly become more elitist than egalitarian, but so too will all the institutions of higher education.

For example, for much of its existence, until the Great Depression in 1935, the University of Michigan received state support through a mill tax. A modern equivalent might be a percent of the state sales tax. The key is that state financing must move from the discretionary to mandate category.

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CONCLUSION

The passing of Clark Kerr on December 1, 2003 marked the end of the Era of the Public Ivy’s, who rose to greatness in the postwar decades. The new millennium has not been good to public higher education, as the flagship public institutions are transforming themselves into quasi-private institutions, mirroring their private rivals. The nation’s public universities are increasingly subject to the vicissitudes of public finance and the inexorable rise of mandates and entitlement. The greatest educational system in the history of the world is at risk because of the shift to entitlement programs.

We need to recognize that the elite private universities lack the capacity to meet the demand for a quality education by highly qualified students. Even in the Northeast, the bastion of private higher education, the demand for higher education exceeds the capacity of private institutions.

Five main, separate but overlapping causes have led to the disinvestment in public higher education: the rise of entitlements, escalating salaries, budgetary roller coasters, the shift to fund raising for academic prominence, and the impact of U.S. News & World Reports.

Recent years have especially been an economic nightmare for public higher education. President Katherine C. Lyall of the University of Wisconsin System succinctly stated the paradox:

“They want high access, low tuition, top quality, and no tax increases to pay for it. We have to get real about what realistically can be accomplished with the dollars we have.”

However, many institutions, such as the UC’s and Michigan, have been on a roller coaster ride for decades with respect to state funding. No immutable law of nature, science, politics, law, or

Nor does any principle mandate their continued success. Visionary leadership coupled with state support provided the foundation for a century climb to success in the highly competitive environment of higher education. The challenge is now for these great institutions to survive with rapidly shrinking state support.

The challenge is their increasing inability to compete for distinguished professors with the large endowment private universities. UCLA has publicly acknowledged its problems with retaining faculty and enrolling the top graduate students. The flagship public universities are responding in ways they are able to. Some public institutions will emerge stronger from the current crisis. Many will not. The public Ivy’s will survive as prestigious national universities, but in a different form than they are today.

They will follow different paths. Michigan, for example, is well on its way to becoming a quasi-private institution. The UC’s though are more closely connected to the burgeoning California population. The UC System continues to fulfill the social obligation of educating lower income students to a greater extent than any other public higher education system.

The hallowed phrase “public research university” may become an oxymoron as many of the prestigious public institutions may de facto, if not de jure, become private universities. They are also becoming more national than state universities. Many flagship public universities will increasingly mirror their private competitors, including high tuition even for state residents, legacy admissions, discounting tuition to preferred admissions profiles, income redistribution, and geographical diversity.

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369 The public universities do not wish to totally cut their ties to the state. For example, to do so would cut off access to low interest, tax exempt state bonds, secured by the state.

370 To the extent that state policies and demographics allow the public institutions to admit non-residents.
The Michigans, North Carolinas, UC’s, and Virginias will also emulate their private rivals by rushing to privately endow faculty chairs, thereby freeing them from state budget constraints and making them more resistant to raiding by other institutions. Deans and presidents will grapple with raising money rather than academic programs and profiles.

They may maintain the façade of being a public institution, just as many private Catholic universities have in theory become secular institutions. The flagship schools have resources: growing endowments, loyal alumni, and increasing experience in fundraising. They also are among the largest recipients of federal research funds.

The public institutions are increasingly in an untenable position not of their making. Substantially increased state subsidies are unlikely in the new paradigm of entitlements. If they are to continue to fulfill their mission of educating qualified state residents, they must aggressively seek additional revenues. Fund raising is a long term, uncertain proposition. Cost-cutting soon becomes counter-productive. Raising tuition and fees becomes the default short term remedy.

To do so imperils the mission, the social compact, of offering quality education to all the state’s residents who qualify for admissions, regardless of need. The flagship universities are better able to fulfill that mission by emulating their private competitors.

The flagships can fund – raise, and are doing so at a furious pace. Left in their lurch are the masters and community colleges. They will have to educate more students on less resources. The state colleges and community colleges lack the financial resources to provide full scholarships to all the economically disadvantaged qualified applicants. The flagship universities are increasingly stratified by high tuition non-residents, wealthy and upper middle class residents, and subsidized economically disadvantaged students. The student surge of Baby Boom
II will allow the elite public universities to charge private tuition rates to non-residents. It remains to be seen though if a public university, even one as great as Michigan, can consistently charge private tuition rates over the long term for a public undergraduate education. If so, then Michigan will set the tone for many flagship public universities.

The transformation from public to quasi-private institutions has tremendous social consequences. The public universities exist to serve the public interest. The social contract between the university and the legislature and between the state and the public has been shattered. Since legislatures will no longer extensively subsidize in-state residents, the schools will increasingly turn to non-residents for revenue. Education for the elite rather than the masses will become more of the norm at the flagship public institutions. The trend is already under way with the privatization of some of the nation’s most prestigious public business and law schools. Medicaid is effectively the new social compact.

Economic stratification is increasingly apparent in higher education. Universities, such as Michigan, will attempt to maintain the historic social compact, but in a different form. They will increasingly rely on high non-resident tuition and endowment income to discount tuition to state residents. The ladder to upward mobility will still exist for some of a state’s brightest high school graduates. However, these institutions will lack the resources to aggressively discount tuition to non-residents. Of course, only a few of the private universities can afford to admit all students on a need-free basis. In reality, many of their doors will be closed to almost the state’s lower income residents; the state universities will increasingly become a bastion of the upper middle and wealthy classes to the detriment of all but a few select poor and lower middle classes.

Under current circumstances, the less prestigious state colleges and community colleges will not be as fortunate. Graduation in 4 years, once the norm, becomes increasingly difficult.

371 DUDERSTADT & WOMACK at 6.
because of mass course cancellations. Students are paying substantially more, and increasingly receiving less for their money. Tuition is increasingly viewed as a user fee rather than the historic social compact that existed between the state and its residents.

The long-term consequences for America from the change in paradigms are momentous. The prevailing model of public higher education risks becoming elitist rather than egalitarian.