Who’s responsible for student debt? The One Percent deserve much of the blame

The U.S. has a $1.7 trillion dollar student debt problem, and counting

By JEFFREY J. WILLIAMS PUBLISHED AUGUST 14, 2021 10:00AM (EDT)

Engraved Wall Street sign, New York, USA (Doug Armand/Getty Images)

One way to avoid the crowds is to build your own golf course. That's what Albert Lord did in Harwood, near the Chesapeake Bay in Maryland, about 30 miles east of Washington, DC.

Lord built his course around a 1831 plantation house, which he restored and stands near the 11th and 12th holes. It is also within driving distance of the Capitol, convenient for doing student loan business.

Lord made his fortune as an executive for Sallie Mae, taking home more than $200 million from 1999 through 2004. That doesn't include stock options, which were estimated at nearly $400 million in

2007. As CEO, chairman, and in other roles at the company, he was a prime mover in taking Sallie Mae private and making it the predominant college student loan company, handling about a quarter of all federal student loans. Since its founding in the late 1960s, Sallie Mae had been a government-run enterprise to administer student loans; but through the 1990s, with the wave of deregulation and privatization of governmental services under the Bill Clinton presidency, it became a privately-held corporation. Since then, it has spawned a web of interlocking entities, such as SLM Corp., General Revenue Corp., Navient, and other spin-offs.

Sallie Mae first handled federal student loans, but spun off Navient in the early 2000s to continue that contract, with Sallie Mae focusing on private loans and SLM handling collections. From the early 2000s through 2019, SLM Corp. averaged around $2 billion gross profit and $347 million net income a year, and from 2014-2019 Navient averaged $2.6 billion in gross profits and $683 million net income and Sallie Mae $350 million in net income per year. After overseeing the expansion of the company, Lord retired as chairman in 2013, although he has continued on the board, and also is a partner in a private equity company and a new student loan company.

By most conventional measures, Albert Lord is an American success story, and he has led a productive life. He was not born with a silver spoon but attended a land-grant university, Penn State, to which he has given significant donations and served as trustee (although he had to step down after making insensitive remarks about the victims of the Sandusky child abuse case becoming millionaires). After college he worked as an accountant, coming to Sallie Mae in 1981, first as controller and moving up through the ranks. The exact amount of his total wealth is obscure, but it is not unreasonable to assume that he is a centi-millionaire—or his family is. Despite his wealth, he is reportedly plain-spoken and without pretense, and just goes by "Al" to people he meets.

From the late 1990s through the early 2000s, another Al, Alan from Washington state, had a very different experience with Sallie Mae. He had originally borrowed $38,000 while earning degrees as an aerospace and an industrial engineer, but even with a job at a prestigious institute, he had to take a second job to pay his monthly debt. Then after 9/11 he had trouble getting a job that paid well enough to cover his loans, so he sold most of his belongings and moved to Alaska, working 92 hours a week in food service in an effort to pay down the debt, which had grown exponentially. Because he had missed a payment early on, Sallie Mae had regularly added fees and penalties so that, by 2003, the total debt had ballooned to $80,000, even though he had paid off about $4000 of the principal. He sums it up: "Sallie Mae—who had already profited at least $25,000 (this doesn't include interest subsidies paid to them by the federal government while I was in school)—was demanding more than double what I originally borrowed." "My life has been paralyzed," Al says, listing other travails that he has suffered as a consequence of his debt. For instance, he struggled to obtain a good job that required a security clearance because of his poor credit.

There are a lot of other Als. Or Ellens. Ellen from South Dakota, for instance, tells of her student debt (originally $27,000) nearly doubling due to fees. Ellen subsequently received a cascade of threatening telephone calls from collection companies put on the trail by Sallie Mae — not only to her but to her grandmother and other relatives. "There have been times when I've thought that I should just kill myself so my family can have some peace," she confesses.

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Because of federal laws uniquely applying to student loans, none of these debts could be absolved in bankruptcy, and lenders can charge substantial fees and raise interest rates with any missed payment. These cases, among more than 500 accounts gathered by an archive from studentloanjustice.org, show the other side of the balance sheet of Sallie Mae. (It was founded by Alan Collinge, who tells his own story in his book, "The Student Loan Scam") They offer testimony to the harm that student loan debt has caused.

By now we all know the basic data about college student loan debt —that it totals more than $1.7 trillion, encumbers around 40 million people at present, and cannot be absolved in bankruptcy. And we probably know about it anecdotally, hearing stories from a son or daughter, niece or nephew, friend, friend's child, or someone behind the counter making our coffee. Or we may have experienced it ourselves. (For myself, I joined the debt club in the late 1980s while in graduate school, and only paid it off in 2008, struggling to make the monthly nut while working as a professor since 1990.) Though college student loan debt began its precipitous rise in the 1980s, it only became an everyday news item after the 2007-8 financial crisis and impetuses like the Occupy movement and Bernie Sanders' presidential campaigns.

Despite being a familiar issue in contemporary American life and politics, we don't tend to think about where all the money has gone, who has profited, and how they have done so. Obviously much of the money has gone to colleges: tuitions and fees have risen at three times the rate of inflation since the 1980s. Sometimes people blame colleges for that, but in many cases those raises replaced state funding, as higher education was reconceived more as an individual good for one's private benefit and thus to be paid individually, rather than a public good for societal benefit and paid from public coffers. (For instance, Al Lord paid only around $500 tuition per year, or $3900 in current dollars, as the state footed a large part of the bill.) Beyond tuition, a substantial portion of student loan debt money has gone to profit Sallie Mae, Navient, and the web of other financial institutions and services that handle student loans—or more exactly, to those who own and control them. Humble Al Lord's hundreds of millions of dollars came, fairly directly, from those debtors, enabled by the system of policy, law, regulations, and banking that he helped develop.

In my own case, for nearly twenty years I filled out a check for $660 each month to Sallie Mae. It would require a forensic accountant to adduce the amount extracted, but how much did Al Lord make from my payments? $.10 a month? $50 total? $20? It wasn't nothing. You'd think I might at least have gotten to play a hole of golf at his golf course.

Al Lord likes to say that he wanted to help people go to college and have the same chance he had. As he put it to his Alumni Association, "Penn State was one of the few schools that I could afford…. Today, I help others gain their education…. giving every teenager a shot at the American Dream—even kids from the humblest circumstances." If questioned about the problems befalling those with student debt, he blames the federal government and colleges themselves, rather than loan companies. That fits the framework of economic thinking prevalent now: those who take loans make a rational choice to go to college, presumably to advance their careers and financial prospects. And they make a fair deal: they sign their student loan forms freely, so are rightly responsible for their loans, and the market operates without prejudice, according to the simple rule of supply and demand.

But is the deal really fair? Student loans are hardly a natural entity or unbiased exchange; rather, the arrangement through which Lord got his money was created deliberately through a web of policies, regulations, and laws, which he and Sallie Mae lobbied heavily to enact, paying millions a year to officeholders. For instance, Lord had a close relation with Congressman John Boehner, taking him on golf outings to Florida on a Sallie Mae jet and contributing heavily to his campaigns. The policies and laws that gave us SLM and the quagmire of college student loan debt were put in place by the conscious planning and maintenance of people like Lord and Boehner. And, while benefiting some, they have harmed many people. As the subheading of an article in Fortune, not known to be a leftist magazine, puts it, "Sallie Mae's buyers may make a ton of profit. But taxpayers and students will be paying the bill."

How do we finally adjudicate this harm? One way to think of student debt is in terms of liability. Ironically, as an opulently remunerated CEO and chairman of the board responsible for many decisions, Lord had no personal liability for the actions of Sallie Mae, which is a "limited liability" corporation, whereas the other Al had full liability for his student debt, indeed for the length of his life if he cannot pay, with no ordinary recourse to declare bankruptcy, as a corporation has. Furthermore, he has no power to negotiate better rates, as companies often do and banks accommodate when necessary. Instead, he has been subjected to exorbitant penalties and fees, accruing yet more debt.

So, rather than a fair exchange moderated by the Invisible Hand of the market, wasn't the scale tilted by the hands of people like Al Lord and Boehner? According to free market principles, shouldn't debtors be able to absolve their debt through bankruptcy as other kinds of debtors are, or companies are? Or if loans are a governmentally subsidized service, shouldn't there be regulations to prevent exorbitant fees, loan-shark level rates, and extraordinary profits? Or simply they be zero profit?

Moreover, shouldn't those who rigged the scale be liable for the harms that result from their actions?

At first it might seem a stretch to think of student loans in terms of liability for companies who issue and handle them, but consider a few analogies. One comes from medicine: the case of OxyContin and other problematic pharmaceuticals. Medicine is presumably a good addressing a human need, parallel to education in that regard, rather than a conventional consumer good or luxury service. Like loans, drugs often have good uses but as recently has become known, OxyContin was exploited by Purdue Pharma for the sake of their own profit and the personal gain of the Sackler family. Even if what they did was not illegal at the time, did it cause harm? Are they responsible for the harm they caused, morally if not legally?

Granted, with student loans not all borrowers have experienced harm, or they have simply experienced the unpleasant effects of a necessary bill, like paying taxes. No doubt many graduates benefitted from student loans and paid their amounts in a timely way. Still, is it not a wrong if some experience difficulty causing undue harm? And the issuer extracts undue benefit?

Liability is a central issue in civil law, particularly in torts (from the Latin tortum, a tort simply means a wrong). Criminal law obviously addresses wrongs as well, but those wrongs, like murder or robbery, are conceived of as offenses to the body politic, so the state prosecutes them, whereas civil law instead adjudicates other wrongs, which often bear on property damage or personal injury. And they have different ends: criminal cases assess guilt and mete out punishment, whereas civil cases usually assess liability and mete out compensation in a corrective or reparative judgment. As the *Stanford Encyclopedia of Philosophy* defines it: "the underlying concern of tort law is to address the costs, suffering, or more generally, the losses that victims suffer as a result."

Judgments take into account several criteria to establish the degree of liability, notably intention, reasonable care and foresight, and negligence. Actual consequence is more determinative than conscious intention; even if an act is unintentional in the everyday sense, one might still have liability, for instance if a tree on one's property falls on a neighbor's fence and damages it. Another factor is foreseeing a consequence or risk, and taking, or not taking, precautions. Thus, one might be responsible not only for an action, but for lack of action, and negligent.

In the philosophy of law, this taps into an economic rationale: "In order for injurers to have an incentive to take appropriate precautions, each must face costs of his activity in full" ("Theories"). Negligence is judged on a spectrum, the most extreme form being recklessness, although one still has responsibility for reasonable attention or "duty of care." As Alan R. White explains in his standard text, "Grounds of Liability," "failure to give attention to, to look out for, or even to notice—and hence take precautions against—the risks and dangers inherent in one's conduct" (105) constitutes "carelessness."

This, I think, bears most on college student lenders like Sallie Mae and their creators like Al Lord: they should have known foreseen the results better. Or maybe they did, and ignored the possible harms, or calculated them as a risk worth taking. Even if they would protest that they did not personally wish for the bad consequences that many experienced, they were careless and showed indifference to them.

Much of the current debate about student loans rightly focuses on making college free or tuition minimal, thus eliminating most loans. That would no doubt help protect future generations, but would not redress the harm many have already experienced. Some proposals focus on forgiving loan debt, which would alleviate much of the burden for current debtors. In addition to those proposals, we should also consider liability and how to repair the harm that many, over several generations by now, have experienced.

The people who brought us college student loan debt did so legally at the time, but gamed the laws, despite the harmful results for some. How might those responsible compensate for the harm they caused? Those who exhibited carelessness and indifference to the consequences of their machinations? Civil cases aim less at punishment than repair. Now is the time to talk about a reparative policy that aims for corrective justice for those who have suffered, as well as mandating restitution from those who so carelessly gained.

JEFFREY J. WILLIAMS

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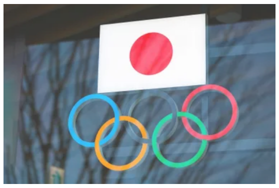

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· 14 August, 2021

Student loans are a classic case of how wealth is transferred to the upper crust in this country. This is what happens when you privatize what should be considered a public function. And this is why conservatives want to privatize everything they touch.

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Ryan Velez
10 Points
· 24 August, 2021

Excellent article. This article sums up my experience with student loans very well. The phrase "My life has been paralyzed" is EXACTLYYYYYYYYYY RIGHT. That is exactly right, total and complete financial paralysis that gets worse, day by day, as I age. Less retirement, less ability to ever retire, le...**See more**

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