

REVIEW OF SUZANNE METTLER'S *DEGREES OF INEQUALITY*

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This is a book concerning politics rather than law, but it is well worth reviewing in a journal devoted to the relationship between higher education and law. Suzanne Mettler, the author of *Degrees of Inequality*, is a distinguished young scholar at Cornell University, and one of the leading political scientists who study the politics of higher education.¹ She is an unabashedly liberal analyst of higher education policy who is also one of the resident higher education experts at the Century Foundation in New York City. This book is clearly based on serious scholarship, but it makes no pretense of policy neutrality—it is a *cri de coeur* against the direction that federal higher education policy has taken since about 1980. I confess that I am in agreement with Mettler's findings, so any reader who supports the for-profit higher education industry, state defunding of public higher education or the reinstatement of federal student aid funding through the banking industry might want to stop reading at this point.

Mettler's narrative of federal higher education policy is one of decline, but of course the downward course of the narrative does not really begin until, roughly, the election of Ronald Reagan. Starting with the Northwest Ordinance of 1787 and continuing through the 1862 Morrill Act that initiated the federal land grant university system, the nascent American system of national government identified education as a driver of democracy and found ways to provide significant material support for higher education. Despite the fact that the Framers bypassed education as a right (and as a function of the federal government), the states entrenched it as a right and slowly built the institutions of public elementary, secondary, and tertiary education that were considered fundamental to their democratic development.

The federal government over its first century and a half did relatively little for higher education, but in 1944 Congress enacted what was popularly

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1. SUZANNE METTLER, *DEGREES OF INEQUALITY* (2014).

called the "GI Bill,"² thus initiating a policy of federal financial support on the assumption that higher education should be available to all Americans. Previously, a very small percentage of the relevant age cohort was able to afford (and inclined to seek) post-secondary education, but since the GI Bill, the percentage of those attending colleges or universities of one sort or another has grown exponentially. More importantly for the book under review, the federal government has become a major player in education policy (mainly through its funding mechanisms), and higher education policy has become one of the most important (and controverted) areas of American politics.

Mettler knows what she is talking about when it comes to education data. Those of you who follow these matters will be familiar with the general picture, which shows a tremendous increase in the number of students in public higher education, starting with the era of the GI Bill. This process was accelerated by the first of the Higher Education Acts³ and the National Defense Education Act,⁴ both enacted in the mid-1960s, which used a Cold War rationale to justify federal investment in higher education. The result was a huge growth in the number of colleges and universities, especially in the public sector, with a corresponding significant increase in the percentage of the youth cohort seeking college degrees. The United States became the international leader in higher education, both in quality and quantity, at this time.

But the picture began to change dramatically in the 1980s, and it changed even more radically in the 1990s with respect to equality of access to higher education. A great many young Americans were still entering our colleges and universities, but they were too frequently those whose families could afford much of the cost of their tuition and fees. We were failing to attract first-generation college students since federal tuition support had not kept up with the costs of higher education. The irony was that it made even more economic sense for a high school graduate to attend college or university (and a higher proportion of the population was graduating from high school), but the neediest students were being shut out of economic opportunity because of the rising price of tuition. The key factor in this process was not so much declining federal financial support (although the relative level of support was declining) as the declining state investment in state colleges and universities, which caused (and is causing) them to raise tuition levels and increase the proportion of out-of-state students (who pay much higher tuition than in-state students). Mettler argues, convincingly,

2. The Servicemen's Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284 (1944).

3. Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (1965).

4. National Defense Education Act of 1958, Pub. L. No. 85-864, 72 Stat. 1580 (1958).

that “the vast majority of states have declined to uphold their end of the bargain” that the federal government and state had forged after World War II to combine and coordinate their support of public higher education.⁵

These developments are reasonably well-known, but Mettler effectively demonstrates a less-noticed but crucial phenomenon. This is what she terms the “privatization” of public higher education, which follows from the shifting of the cost of higher education to students and their families through rising tuition levels. “As a result, ‘public’ education has become, in reality, increasingly ‘private’ in its actual funding . . . through a system that is inherently regressive.”⁶

The problem is not that the public universities and colleges are shutting their doors; rather, they are becoming something different than what they have always been—they are being transformed into institutions that are, in reality, increasingly private. As state support atrophies and tuition escalates as a result, their inclusivity is becoming limited to those who can afford the rising costs.⁷

This process is also further stratifying public higher education as the “value of their offerings increasingly pales compared to those at private nonprofit institutions—for students who can afford them. Increasing costs, large classes taught by adjuncts, and limited enrollments also discourage students from completing their degrees.”⁸

Mettler’s subtitle is therefore “How the Politics of Higher Education Sabotaged the American Dream.” Her question is why, following the expansive initiatives of the Great Society, federal policy should have largely turned against Johnson’s dream of universal public higher education? How did we get from the point, only fifty years ago, in which millions of Americans believed that a college degree was the path to advancement and prosperity, to one in which that path seems distant or even unattainable?

The short answer to this question, according to Mettler, is that the increased polarization of partisan politics shifted what she calls the “polycscape” (I would call it the opportunity structure for political action) in national politics and shifted the incentives of the two political parties with respect to education policy.⁹ At the same time, for a variety of reasons, the political leverage of the country’s monied interests gave the “plutocracy” a dramatically enhanced influence over national policy formulation. Nowhere was this process more evident than in higher education policy. To demonstrate this point, Mettler focuses on two crucial policy areas—

5. METTLER, *supra* note 1, at 195.

6. *Id.* at 122.

7. *Id.* at 129.

8. *Id.* at 129–30.

9. *Id.* at 14.

federal student loans and for-profit higher education corporate interests. She sees these two policy areas as producing not only business-friendly environments, but outcomes that raised the cost and lowered the quality of higher education for the neediest Americans. It is in this sense that Mettler thinks that post-Reagan American politics have sabotaged the American dream.¹⁰

The history of federal student loans is complex, and readers of this journal will probably be familiar with it. The story begins with funding for veterans in 1944, but broadens exponentially with the emergence of the Pell grant program of grants for low-income students in 1972. But Ronald Reagan was determined to cut back on federal expenditures in education. His first budget introduced a number of restrictions that had the effect of limiting what nearly forty years of prior federal efforts had produced as national policy to aid poor students obtain a college education. The level of Pell grants was reduced and, equally important, student loans, subsidized through the nation's private banking system, became the fallback mode of education financing for most students.

By the 1990s, when bipartisan education funding policy was still possible, agreement was reached that the federal government should engage in "direct" lending, with the Treasury making loans to students' colleges and universities, eliminating subsidies to the banks. President Clinton proposed to change federal student loans to the direct lending model in 1993, but a concerted effort by the banking industry succeeded in limiting the range and slowing the introduction of the new process. Mettler sees this as the end of traditional education policy formulation, and the beginning of an era in which what she terms "the plutocracy" emerged as crucial in framing and enacting education policy.

[T]he lenders' powerful role in that struggle turned out to be a preview of what was to follow, as they came to dominate the debate over student aid policy—dictating developments concerning student loans and consuming so much of policymakers' attention that consideration of other policy alternatives could not even receive a hearing. With lenders setting the policy agenda, plutocracy flourished as the twenty-first century began.¹¹

The problem, according to Mettler, was not just that the private commercial sector influenced policy outcomes, but that the policies they favored were systematically biased in favor of "the privileged."¹²

Perhaps the best example of the out-of-control character of the loan program is the story of the Clinton administration's efforts to take Sallie Mae

10. *Id.* at 5.

11. METTLER, *supra* note 1, at 73 .

12. *Id.* at 75.

private—on the grounds that this government-created lending agency was in fact behaving like a large private bank, worth \$45 billion and listed on the New York Stock Exchange. Clinton did not require any public benefit from the newly private corporation, although (as Mettler does not note) it did in effect spin off the Lumina Foundation (with its \$770 million endowment, derived from Sally Mae profits), which has become a major factor in national education policy, supporting the Obama administration’s “college completion” agenda with its own well-funded programs. Obama has strenuously supported the direct loan policy, against the sturdy pressure of the banking industry. Sallie Mae created a political action committee in 1998 and has emerged “as the top donor within the entire finance and credit industry.”¹³ Further, Sally Mae became the nation’s largest student loan company, its stock rose well in excess of market averages, and its CEO (in 2006) was the highest paid American executive in terms of total compensation. Higher education policy was by now well worth fighting over if you were in the education “business.”

A related policy development, one that also emerged in the Clinton years, was that of tax credits to offset family tuition payments. The appeal of this policy in a period of budget tightening was obvious, since it did not require new appropriations by the Congress. It not only created a situation in which the federal government lost revenues (\$5.4 trillion in 2000), but it also created a situation in which the beneficiaries are not the poorer students who were originally intended to benefit from federal tuition aid, but rather those families wealthy enough to take advantage of the tax credits. Mettler cites this as another example of how education policy lost its relationship to its long-standing political objectives. It was increasingly determined by both the political necessities of a polarized and paralyzed national political system and the political clout of entrenched plutocratic interests (in this case the banking and financial industry).¹⁴

The emergence of the current for-profit higher education industry is an even better example of how political dysfunction and the political influence of money have combined to subvert the original intentions of higher education law, and produce benefits for private sector investors rather than needy students. There has been a significant for-profit segment of higher education ever since World War II, though it was for decades relatively small in terms of the market segment served, based on traditional educational technologies. The sector was strongly supported by the Democratic Party as the champion of working people. But everything changed for these “trade schools” in the 1990s, as the Internet and information technology made possible the commercialization and massification of on-line learning. The for-profits quickly expanded exponentially as businesses, and soon became

13. *Id.* at 79.

14. *Id.* at 85.

a special concern of the market-oriented Republican Party. Many Democrats continued to support the sector since so many of its students were blue collar and/or minorities.

This part of the story really begins with the 1972 reauthorization of the Higher Education Act, when Democrats expanded student aid institutional eligibility to proprietary schools (just as the GI Bill had). The aim was to broaden access to higher education, and Congress required that proprietary institutions be able to demonstrate that they were preparing students for “gainful employment in a recognized occupation”¹⁵ in order to qualify for federal aid. This language was not seriously enforced, however, and only in the Obama administration have there been efforts (strenuously opposed by the industry) to give it teeth. The result has been that an increasing percentage of Pell grant dollars has flowed to the for-profit sector over the past couple of decades, as enrollments in their institutions has mushroomed. A number of political action committees have been formed, beginning with one created by the Apollo Group (think the University of Phoenix) in 1998, since the overwhelming source of funding for the sector is now the federal government. Almost all restrictions on for-profit eligibility for federal student aid were lobbied out of legislation. The direction in which things were headed was clearly indicated by the decision of George W. Bush’s administration to appoint a lobbyist for the for-profits as Assistant Secretary for Postsecondary Education. And the industry spent more and more to protect its investment in favorable legislation:

During the 2007-2008 election season . . . the Apollo Group played a prominent role. Not only did it lead the for-profit colleges in campaign contributions, but by donating over \$11 million, it ranked twenty-eighth among *all* organizations and businesses nationwide. It spent approximately twice as much as Goldman Sachs, JP Morgan Chase, Bank of America, Time Warner and Walmart . . . and three times as much as the US Chamber of Commerce.¹⁶

The taxpayer, in other words, now footed the bill for proprietary online education, the sector which has by far the lowest completion rates and the highest loan default rates in higher education. From Mettler’s point of view, the fox was now in charge of the hen house.

Degrees of Inequality argues forcefully, and with considerable evidence, that American higher education has moved dramatically away from the egalitarian direction in which it was headed in the aftermath of World War II and the legislation of the Great Society. Mettler considers the system in

15. Education Amendments of 1972, Pub. L. No. 92-318, § 417B(c)(3)(a), 86 Stat. 236, 260 (1972).

16. METTLER, *supra* note 1, at 110.

crisis, but hers is not the crisis perceived in the press (“high tuition, high student loan debt, and weak employment prospects for graduates”).¹⁷ Rather, the fact is that:

[F]ew students who attend elite private nonprofit schools and flagship publics . . . pay full fare and even if they do, what they pay and borrow in student loans usually amounts to a valuable investment . . . Despite considerably lower price tags at the public universities and colleges that three out of four American students attend, there soaring tuition is a dire problem. . . . The worst problems of tuition and student loan debt occur at for-profit colleges, which charge far more than the publics and at which nearly all students borrow and, on average borrow far higher amounts than those in other sectors.¹⁸

The result has been to create what Mettler calls a “caste system,”¹⁹ with the benefits of higher education flowing mostly to those who can afford them financially, and the disadvantages accruing to those who can least afford them.

Her argument is that the crisis is “fundamentally political”:

We have plenty of higher education policies created in the past but they function less well than they once did, generating unintended consequences or deteriorating due to their own design features or the impact of other policies on them. In short, they require updating and maintenance. Public officials should be fully capable of these tasks. The problem is that the political system today has grown dysfunctional. It is paralyzed by polarization that inhibits even these routine activities. In the rare instances when government functions, it takes on the character of a plutocracy . . .²⁰

Mettler’s (very well-informed) view is that the basic elements of higher education policy were legislated in what was then the normal partisan political environment of the post-war era. They were compromises between the two major policies that shared a great deal in their approach toward post-secondary education. The larger environment for education policy was jerry-built in such a manner that it was never fully a “system,” but it functioned in such a way that the larger goal of extending educational opportunity for most Americans was realistic (if unfulfilled). However, with the dramatic polarization of our politics in the 1980s, and especially after 1994, it became impossible for the two congressional political parties to converge

17. *Id.* at 189.

18. *Id.*

19. *Id.* at 190.

20. *Id.*

on policy goals. At the same time, for a variety of reasons, money and lobbyists came to influence the policy process to such an extent that education policy became just another example of “industry capture” of the legislative and administrative process. The result, which we have to live with today, is a set of policies that work to the advantage of those institutions and groups that stand most to benefit from them. The traditional beneficiaries of federal support of higher education are thus not only left out in the cold, but placed at an even greater disadvantage than in the post-war period.

The only good news in Mettler’s account²¹ is that the Obama administration has improved the federal student aid situation. The Post-9/11 GI Bill increases indexing of benefits and direct lending in Pell grants. But, given her underlying political analysis, it is hard to understand why such successes should have taken place. Mettler herself makes clear that she does not think they have changed the underlying flaws in federal policy:

Yet even during this momentous period when reformers triumphed over decades of legislative paralysis, polarization still made policy maintenance and development less effective than they could have been otherwise.²²

Still, the Obama successes are examples of situations in which the plutocrats did not prevail, and in which egalitarian policy goals were at least partially achieved. That doesn’t give liberals much to brag about, but perhaps it is grounds for mild optimism.

In the last chapter of *Degrees of Inequality*, “Restoring the Public Purposes of Higher Education,”²³ Mettler makes a series of suggestions as to how the country can “make a top priority of enabling the least advantaged Americans who wish to attend college and are qualified applicants to enroll and emerge better off as a result.”²⁴ She has a number of plausible directions in which education policy could move: we can build on earlier regulatory platforms, limit the profits that the proprietary institutions can receive from the federal government and limit the for-profits in other ways. But it is very hard to see why any of these proposals are likely to be legislated in the near term. Anticipating my objection, she suggests changing the Senate’s filibuster rule, instituting reforms to “limit the advantage that powerful interests have over ordinary Americans” and finding ways “to amplify the voice of ordinary Americans in the policymaking process and bring it to the attention of lawmakers.”²⁵ Wouldn’t it be nice to see those changes take place? Everyone who thinks they will, please raise your hand. . . .

I find *Degrees of Inequality* compelling as a critique of how federal edu-

21. METTLER, *supra* note 1, at 158–59.

22. *Id.* at 160.

23. *Id.* at 189.

24. *Id.* at 193.

25. *Id.* at 198–99.

cation policy has gone wrong. Mettler provides convincing data on the extent to which those policies that in the 1960s plausibly sustained the dream of upward socio-economic mobility through higher education now have perversely reinforced existing social privilege, thereby undermining the basis for that noble dream. It must surely be true that political polarization and the re-emergence of political plutocracy (money has always spoken in American politics) have undermined traditional federal education policies. But Mettler's analysis uses an ax rather than a scalpel, and surely oversimplifies a complex and multi-causal process. Further, she does not really explain why the Obama administration has had some success in bucking the negative trends she describes. More disappointing, the analysis really does not provide a single plausible ground for optimism that we can achieve better policy outcomes going forward. However, if she succeeds in convincing Americans of good will that the egalitarian dream of public education is disappearing, perhaps we can muster the political will to seriously engage the problem. That alone makes me happy to recommend this deeply serious book to those who care about public higher education.

