2019

Wealth Accumulation at Elite Colleges, Endowment Taxation, and the Unlikely Story of How Donald Trump Got One Thing Right

Mae C. Quinn
University of Florida Levin College of Law, mae.quinn@law.ufl.edu

Follow this and additional works at: https://scholarship.law.ufl.edu/facultypub
Part of the Tax Law Commons

Recommended Citation
Mae C. Quinn, Wealth Accumulation at Elite Colleges, Endowment Taxation, and the Unlikely Story of How Donald Trump Got One Thing Right, 54 Wake Forest L. Rev. 451 (2019)
WEALTH ACCUMULATION AT ELITE COLLEGES, ENDOWMENT TAXATION, AND THE UNLIKELY STORY OF HOW DONALD TRUMP GOT ONE THING RIGHT

Mae C. Quinn*

President Donald Trump has declared war on immigrants, diversity, and those who dare to dissent. Rooted in resentments about who people are, where they were born, and what they believe, these executive-led assaults are dangerous developments in the modern era. However, in the course of Trump's many retrograde tirades, he has somehow managed to get one thing right—too many elite private colleges in the United States, considered nonprofit entities, have amassed way too much wealth.

This Article recounts this unlikely story, including how the Trump Administration's 2017 endowment tax could work to advance diversity. The new endowment tax penalizes private colleges for stockpiling assets. In response, potentially impacted universities have argued they are victims of an unfair conservative conspiracy intended to target liberal ideology. But the data demonstrates that this is not true. And concerns about rich colleges hoarding their resources have come from both the right and the left.

Moreover, Trump's endowment tax could be seen as an opportunity and invitation to increase egalitarianism and equity in this country. If rich colleges simply utilize more of their massive savings to further social justice, impact poverty, and enhance public good—particularly in their own at-risk communities—they will not only avoid federal taxation but also begin to address critiques about their elitism and greed. In doing so such universities would not only thwart Trump and his tax but stand with vulnerable groups who are the true

* Visiting Professor of Law at University of Florida Levin College of Law. My thanks to the faculty and staff at the University of Florida Lawton Chiles Legal Information Center, including Jane O'Connell and Taryn Marks, for excellent research support. I am also grateful to Alice G. Abreu, Arthur Acevedo, Greg Buckley, Karen Decker, Jennifer Hendricks, Ruthann Robson, and my Research Assistants Caridad Dominguez and Joshua Lopes for their very helpful feedback and suggestions. All errors, of course, are my own.
victims of the Trump Administration's ever-expanding conservative attacks.

TABLE OF CONTENTS

I. INTRODUCTION ........................................... 452
II. HISTORY OF PRIVATE COLLEGES AS NONPROFITS COMMITTED TO PUBLIC GOOD ........................................... 456
III. EARLY EFFORTS TO UNDERSTAND WEALTH ACCUMULATION AT ELITE UNIVERSITIES ........................................... 458
IV. BIPARTISAN CALLS TO PREVENT PRIVATE COLLEGES FROM STOCKPILING WEALTH ........................................... 462
V. THE PARADISE PAPERS, FURTHER PUBLIC PROTEST, AND THE 2016 TRUMP UPSET ........................................... 468
VI. THE COLLEGE ENDOWMENT TAX AND RESPONSES BY RICH SCHOOLS ........................................... 477
VII. HOW TO TRUMP TRUMP: SHIFT PRIORITIES AND PRIVILEGE PUBLIC GOOD ........................................... 480
       A. General Takeaways ........................................... 481
       B. Some Specific Suggestions to Address the Status Quo ........................................... 486
VIII. CONCLUSION ........................................... 489

I. INTRODUCTION

When it comes to progressive causes, the current presidential administration is troubling on most fronts. From stepping up immigration enforcement,1 to dialing back antidiscrimination protections,2 to encouraging retaliation against demonstrators who dare to dissent,3 Donald Trump and his appointees have taken our country in a direction reminiscent of a bygone era. But as unlikely as it may seem, as a liberal academic and longtime civil rights advocate, I agree with the Trump Administration about one thing: many elite

2. Sherrilyn Ifill, President Trump's First Year Was an Affront to Civil Rights, TIME (Jan. 17, 2018), http://time.com/5106648/donald-trump-civil-rights-race/ (lamenting by the Executive Director of the NAACP Legal Defense Fund that civil rights policy changes under the Trump Administration hurt Black Americans).
3. Robert Patrick, St. Louis Man Sues Trump, Police for his Arrest at 2016 Rally, ST. LOUIS POST-DISPATCH (Mar. 9, 2018), https://www.stltoday.com/news/local/crime-and-courts/st-louis-man-sues-trump-police-for-his-arrest-at/article_64786062-ff87-53f2-b4a4-b6d31e4fb05c.html (reporting on litigation, some handled by this author, on behalf of Rodney Brown, a man who was forcibly arrested at a Donald Trump rally for allegedly laughing at Trump).
private colleges, considered nonprofit, tax-exempt entities, have amassed way too much wealth.\(^4\)

For decades such institutions have been allowed to accumulate overflowing asset portfolios while continuing to call for millions in tax-free donations.\(^5\) Yet, even while sitting on multibillion-dollar endowment accounts and perpetuating extreme privilege, they have benefitted from tax-exempt status not just on the federal level but locally too.\(^6\) This situation has resulted in the editorial board of one news outlet arguing that such schools should be seen and treated as NINOs—"Nonprofits in Name Only."\(^7\)

Trump’s Tax Cuts and Jobs Act (the "Act"),\(^8\) which went into effect in 2019, seeks to curtail such practices by imposing a 1.4% excise tax on the annual endowment income of the richest colleges in the country. The federal government would receive this cut from the coffers of schools with more than five hundred students who maintain more than $500,000 per student in endowment holdings.\(^9\)

Not surprisingly, potentially impacted universities protested the adoption of this legislation. In trying to maintain their riches, private college leaders painted Trump’s endowment tax penalty as a threat to the diversity of ideas, an attack on left-leaning institutions, and contrary to the intent of donors who gave their money to advance social good.\(^10\) And now, in addition to seeking to skirt the penalties

---


6. See Quinn, supra note 4.


10. See, e.g., George F. Will, Opinion, The Republicans Take Aim at Academic Excellence, WASH. POST (Nov. 8, 2017), https://www.washingtonpost.com/opinions/the-republicans-take-aim-at-academic-excellence/2017/11/08/eb8e9056-c4af-11e7-84bc-5e285c7f4512_story.html?utm_term=.4ce9c5821cf0 ("Great universities are great because philanthropic generations have borne the cost of sustaining private institutions that seed the nation with excellence. Donors have done this in the expectation that earnings accruing from their investments will be devoted solely to educational purposes, in perpetuity. This expectation will
through creative accounting, new tax code interpretations, and declaring confusion, these same schools have joined together to repeal the tax law\textsuperscript{11}—in part advancing the same arguments that did not work before.

But given the many progressive voices speaking out against elite private college endowment practices, the range of schools potentially impacted by the new tax, and the content-blind application of the law, the Act is not an attack solely on liberal academic institutions and left-leaning ideology. Similarly, assertions about donor restrictions on funds and an existing focus on public interest efforts ring hollow given prestigious colleges' ongoing risky investments,\textsuperscript{12} insufficient student support,\textsuperscript{13} and relative disregard for at-risk communities.\textsuperscript{14} Indeed, penalizing extreme financial privilege is less of an affront to the progressive program than the ongoing unchecked greed of rich colleges—particularly when such self-serving hoarding has occurred in some of the most crime-ridden and impoverished cities in the country.

This is not to say the federal excise tax is the best method for ending the extreme self-interest of elite academic institutions or more equitably distributing wealth. It is a blunt instrument to be sure. But Trump's new endowment excise tax should serve as a strong message to rich private colleges, that they must abandon their self-interested financial practices and relative disregard for at-risk communities—if not for altruistic reasons, then at least to avoid further critique. And if they do not want to pay endowment funds into federal coffers, which Trump will use for general expenses disappear, and the generosity that it has sustained will diminish . . . ."


\textsuperscript{13} Thomas Gilbert & Christopher Hrdlicka, \textit{Why Are University Endowments Large and Risky?}, 28 REV. FIN. STUD. 2643, 2644 (2015) ("[E]ndowments are heavily invested in risky assets, averaging about 75% of their assets in securities such as equities, hedge funds, real estate, private equity, and other alternative assets . . . .").


\textsuperscript{14} Quinn, \textit{supra} note 4.
disconnected from their own students and communities, they must make amends for past practice and alter the status quo.

Beginning to privilege public good over wealth accumulation can happen in any number of ways consistent with the individual missions of each school. For instance, universities can move towards the practice—already proposed by some legislators—of making sure that at least twenty-five percent of annual endowment income is directed towards scholarships and tuition waivers for students in need, including those from working-class families. Universities can further institute support beyond undergraduate years for those seeking advanced degrees, such as law students, who agree to go into public interest work and helping professions.

Looking for input from others—beyond the predominately white male elite who dominate the boards of trustees at the nation’s most prestigious colleges—would be another step towards rethinking college self-interest and stockpiling of wealth. Using participatory budgeting practices that take account of the actual expressed needs of students, families, and communities in need would go a long way towards breaking the cycle of inward focus and perpetuation of privilege. And seeking guidance from private nonprofit colleges—like Berea College—that have successfully prioritized public service over prestige and the myopic focus on financial portfolios could further inform reforms.

In addition to these methods for privileging equity and need over wealth accumulation, universities can satisfy their agreement to advance public good by embracing and fulfilling their commitments

15. Will, supra note 10 (noting the money raised from the endowment tax would make up “less than 0.005% of projected federal spending of $53 trillion”).
to local Payment in Lieu of Taxation ("PILOT") programs.\textsuperscript{19} PILOT programs, which involve universities voluntarily paying into local budgets to support education, housing, mental health, and criminal justice services,\textsuperscript{20} could help reduce the accumulated wealth of private colleges. At the same time, PILOT payments would advance both an equity-focused education agenda and intentions of private donors who want to support academic communities working in the public interest. In the end, perhaps ironically, by embracing such agreements in reaction to the new excise tax, elite private universities would be standing with vulnerable populations who really are under attack by the Trump Administration because of who they are, where they were born, what they believe, or how they express their ideas.\textsuperscript{21}

\section*{II. HISTORY OF PRIVATE COLLEGES AS NONPROFITS COMMITTED TO PUBLIC GOOD}

Colleges and universities in the United States have long enjoyed tax-exempt status because of their purported goal of advancing the public good.\textsuperscript{22} The idea of "public good" as it relates to higher education has shifted over time—moving away from the interests of a select few to promoting greater access and democratization.\textsuperscript{23} In this way, some argue there is "[s]ome degree of consensus" today that institutions of higher learning, beyond simply holding classes, should

\begin{footnotes}
\item[19.] Zack Huffman, Unctuous Pilot: Are Colleges in Boston Paying Their Fair Share?, DIGBOSTON (Oct. 31, 2018), https://digboston.com/unctuous-pilot-are-colleges-in-boston-paying-their-fair-share/ (explaining that colleges and universities enter into PILOT programs to contribute to government services from which they benefit).
\item[20.] Id.
\item[22.] See Michael Fricke, The Case Against Tax Exemption for Non-Profits, 89 ST. JOHN'S L. REV. 1129, 1140-42 (2015) (describing how the "public good theory" motivates tax-exempt status for institutions of higher education who step in to provide a "public good" that might otherwise need to be delivered by government); see also Osamudia James, Predatory Ed: The Conflict Between Public Good and For-Profit Higher Education, 38 J.C. & U.L. 45, 58 (2011) ([F]rom the establishment of the first colonies, through the twentieth century, American historical, cultural, and political understandings have framed higher education as a public good.).
\item[23.] See Rachel F. Moran, City on a Hill: The Democratic Promise of Higher Education, 7 U.C. IRVINE L. REV. 73, 73-84 (2017) (describing how higher education has supposedly moved from being an enterprise reserved for the wealthy elite to one that has helped promote "general economic prosperity," social mobility, and democratization); Omari Scott Simmons, Class Dismissed: Rethinking Socio-Economic Status and Higher Education Attainment, 46 ATL. ST. L.J. 231, 240 (2014).
\end{footnotes}
promote some version of "greater social cohesion, robust democratic participation, economic growth, reduced poverty rates, broad diffusion of information and technology, and the development of common values." Many of the original mottos of the most prestigious colleges in this country embrace these ideals, as do their more modern mission statements. And even if everyone does not agree on the exact definition of "public good" in the context of higher education, none would argue that it should center on college wealth accumulation. Rather, it is this commitment to prioritizing public good over profit concerns that has allowed private universities in the United States to be classified as not-for-profit entities and enjoy the benefits of operating without having to pay taxes.

As many other scholars have recounted, education-based tax exemption as a practice dates back to colonial times. Schools established during this period, including Brown, Dartmouth, Harvard, William and Mary, and Yale, were largely connected to religious entities or chartered by the states where they operated. As a result, early colleges and universities generally enjoyed the same treatment as churches, charities, and government when it came to local property and other taxes. Such state and local exemptions were largely carried forward over time, sometimes shaped or impacted by federal tax exemption standards.

On the federal level, starting in 1894, "companies or associations organized and conducted solely for charitable, religious or educational purposes" were also exempted from taxation under U. S. law. The

24. Simmons, supra note 23.
27. See Simmons, supra note 23, (“’[P]ublic good’ is admittedly an ambiguous term without simple definition.”).
29. See generally John D. Colombo, Why is Harvard Tax-Exempt? (And Other Mysteries of Tax Exemption for Private Educational Institutions), 35 ARIZ. L. REV. 841, 844–45 (1993); James, supra note 22, at 58.
31. Id.
32. Id. at 855–56.
33. Id. at 845 (quoting Revenue Act of 1894, ch. 349, § 32, 28 Stat. 556 (1894)).
federal tax exemption for higher education institutions continued into the modern era, folded into section 501(c)(3) of the Internal Revenue Code.34 Historically section 501 has been construed broadly both in terms of what counts as education and how far exempt institutions can go before becoming commercial enterprises rather than entities operating in the public good.35

Moreover, private universities operating as nonprofit entities have not been required to spend any particular amount from their endowment savings.36 In this way, they have stood in stark contrast to other private foundations,37 which are monitored annually to ensure they utilize investment income in a manner that advances their charitable purposes.38 Failure on the part of other private foundations to deploy investment returns results in a thirty percent excise tax by the Internal Revenue Service ("IRS") for improperly stockpiling money intended for the public good.39

III. EARLY EFFORTS TO UNDERSTAND WEALTH ACCUMULATION AT ELITE UNIVERSITIES

Against this backdrop, about a decade ago many began to criticize private for-profit colleges for fraudulent representations and finance-related improprieties that harmed poor youth, returning veterans, students of color, and other vulnerable groups.40 Such problematic

34. Id. at 845–47.
35. Id. at 847–51; see also James, supra note 22, at 60 (noting that the nation's founders believed university education could "prepare students to be good citizens, capable of thoughtful and responsible participation in a strong representative democracy"). Some modern commentators say that under federal law today, the concern is less about whether these entities meaningfully operate in the public good and more about whether they can check a box indicating they are not overtly paying out profits to private individuals. See, e.g., Robert Shireman, These Colleges Say They're Nonprofit — But are They?, CENTURY FOUND. (Aug. 23, 2018), https://tcf.org/content/commentary/colleges-say-theyre-nonprofit?agreed=1.
37. Id.
39. Id.
practices included everything from aggressively growing tuition income through exploitation of federal tax and student loans loopholes, to misleading the public generally about their outcomes, to failing to deliver on specific promises to the students they supposedly served.

As such these schools were contrasted with the ideal college model, which was supposed to be operating with a view towards assisting the public and improving society. And wide-spread criticism ultimately led to the closure of for-profit university locations and spurred a range of investigations and lawsuits against several for-profit colleges. Corinthian College, University of Phoenix, and Trump University—the latter an institution established and run by


42. Barry Yeoman, The High Price of For-Profit Colleges, AM. ASS’N U. PROFESSORS (May-June 2011), https://www.aaup.org/article/high-price-profit-colleges#XEYmCoXB3m0 (“The media and policy makers are taking notice of the low graduation rates, high debt loads, and deceptive recruiting practices at many for-profit colleges.”).


Donald Trump, the now President of the United States—all faced such sanctions and litigation.

Yet, during this same time the financial practices of elite, private universities enjoyed little critical scrutiny or consequential evaluation. For instance, Republican Senator Chuck Grassley and Democratic Representative Peter Welch convened a bipartisan congressional roundtable in 2008 entitled, “Maximizing the Use of Endowment Funds and Making Higher Education More Affordable.” The gathering was intended to “explore the relationship between endowment value and college cost, the legal and accounting definitions of what an endowment is, and the impact of legislation requiring a mandatory payout from endowment funds.” A range of experts were invited to help understand the issues and develop specific solutions. But the group’s goals, and any further efforts to change the financial practices of the nation’s most prestigious higher education entities, were set to the side during the Obama Administration following the 2008 Wall Street crash.


48. One early examination of wealth accumulation on the part of nonprofit universities came from law professor Johnny Rex Buckles, a frequent speaker for the Federalist Society, who warned “efforts to subject university endowments to a mandatory payout rule should be viewed with a critical eye.” Johnny Rex Buckles, Should the Private Foundation Excise Tax on Failure to Distribute Income Generally Apply to “Private Foundation Substitutes?” Evaluating the Taxation of Various Models of Charitable Entities, 44 NEW ENG. L. REV. 493, 539 (2010).


Thereafter, in 2010, the left-leaning Tellus Institute at the Center for Social Philanthropy also issued an in-depth investigative report entitled *Educational Endowments and the Financial Crisis: Social Costs and the Systemic Risks in the Shadow Banking System.* The report, authored by Joshua Humphreys and a team of researchers, raised grave concerns about modern investment methods of wealthy private colleges, indicating that “students, faculty, staff, alumni, and local communities are bearing the brunt” of the economic losses universities suffered as a result of the recent economic crisis. Indeed, some schools lost up to thirty percent of their endowments during the 2008 markets crash, negatively impacting the groups colleges were intended to serve.

The report went on to warn that such institutions had not only caused their own problems but likely contributed to the entire nation’s economic instability by “chasing speculative returns” and “high-risk investing” in the “weakly regulated ‘shadow banking system,’” under the advice of high-paid financial advisors. Using six elite colleges on the East Coast as detailed case studies, the report went on to warn about the new “Wall Street culture” at universities “focused on profitable investment returns as if they were central to colleges’ institutional missions,” rather than education and advancing the public’s interest. Thus, Humphreys and his colleagues urged more “transparency, accountability and investor responsibility” on the part of such colleges to ensure focus on sustainable philanthropic goals, advancement of educational mission, and responsible use of donated funds to further public good. But their detailed economic analyses and calls for action—little known by the public at large at the time—also went largely unheeded until a few years later.

---

53. About The Institute, TELLUS INST., https://www.tellus.org/about (last visited Mar. 30, 2019) (explaining that the Tellus Institute’s mission is “advancing a just and sustainable planetary civilization”).


55. Id. at 5. New York University-educated historian, professor, and higher education expert Joshua Humphrey’s served as lead author of the report, which was further supported by the research findings of a range of policy and other experts. See Author Page for Joshua Humphreys, TELLUS INST., https://www.tellus.org/tellus/author/joshua-humphreys.

56. HUMPHREYS ET AL., supra note 54, at 3.

57. Id. at 3–4; see also id. at 22 (noting, for instance, that by “using derivatives to place bets” with university endowment money, universities were involved in creating “unexpected spillover risks within those markets”).

58. Boston College, Boston University, Brandeis University, Dartmouth College, Harvard University, and Massachusetts Institute of Technology were the schools examined. Id. at 3.

59. Id. at 5.

60. Id. at 6.
IV. BIPARTISAN CALLS TO PREVENT PRIVATE COLLEGES FROM STOCKPILING WEALTH

Starting in 2014, a range of individuals and organizations, perhaps otherwise unlikely to agree, again took up the cause of investigating and challenging wealth accumulation efforts of elite universities. Although not always working together, or even aware of activities on the other side, critics from across the political divide started to urge greater accountability on the part of these supposed nonprofit institutions—but now much more publicly. For instance, in 2014 Dave Camp, a Republican Congressman from Michigan, introduced the Tax Reform Act which, among other things, sought to impose a one percent tax on the investment earnings of private university endowments that held more than $100,000 per enrolled student.61 While the effort gained a fair amount of attention, in part given the public light it shed on the endowment wealth of elite private colleges,62 it failed at that time to pick up legislative steam or undergo meaningful scrutiny by tax policy experts.63

Next, well-known progressive public intellectual, Malcolm Gladwell, used NPR, Twitter, and his podcast to blast elite private universities for maintaining “obscene” levels of wealth while continuing to raise tuition in a manner that excluded needy students.64 Interestingly, Gladwell’s critiques relied largely upon the findings of the Nexus Group, which had issued a report in 2015 also calling for disgorgement of surplus funds from elite university coffers in an effort to try and level the playing field for financially struggling and at-risk students.65 The Nexus report surfaced disparities in


hidden taxpayer subsidies enjoyed at places like Princeton, Yale, and Harvard (between $48,000 to $105,000 per student a year) in contrast to state-run schools and community colleges (between $2,400 and $24,400 a year).\textsuperscript{66} What Gladwell may not have known was that the report was actually authored by University of Phoenix founding President, Jorge Klor de Alva—who himself presents a complicated picture as both a for-profit college capitalist and long-time advocate for equity and racial justice.\textsuperscript{67}

Gladwell further lifted up critiques offered by tax law scholar Victor Fleischer, former Democratic Chief Tax Counsel for the U.S. Senate Finance Committee.\textsuperscript{68} Fleisher placed an opinion piece in the \textit{New York Times} in August 2015 outing prestigious private colleges for both maintaining “endowments heaving with cash” and spending vast sums to manage and aggressively grow those portfolios.\textsuperscript{69} Based on his analysis of the situation, Fleisher urged schools with over $100 million in their endowments to spend down their savings by at least eight percent to better support the “tangible benefits” donors expected—such as educational programs, scholarships, and services such as “libraries, museums, hospitals and laboratories” for the greater good of the public.\textsuperscript{70}

In 2015, other progressive tax scholars turned their attention to the wealth accumulation practices of the country’s elite private colleges. In particular, Professors Norman Silber and John Wei wrote an important paper that surfaced the widespread use of offshore

\textsuperscript{66}. KLOR DE ALVA & SCHNEIDER, supra note 65, at 7–8.

\textsuperscript{67}. Jorge Klor de Alva, the former President of University of Phoenix whose organization had been the target of criticism by the Obama Administration, apparently left Phoenix to join Nexus. \textit{Id.} at i; see also Christopher Shea, \textit{Visionary or Operator? Jorge Klor de Alva and His Unusual Intellectual Journey}, CHRON. HIGHER EDUC. (Jul. 3, 1998), https://www.chronicle.com/article/Visionary-or-Operator-Jorge/99191 (describing how de Alva, an anthropologist and attorney, gave up a chair at University of California at Berkeley to become President of University of Phoenix, a largely online college). For additional background, see Jorge Klor de Alva & Cornell West, \textit{Black-Brown Relations: Are Alliances Possible?}, 24 SOC. JUST. 65, 79–81 (1997) (exploring marginalization of Black and Brown persons in the United States and calling for more radical rethinking to reform the hegemonic social order).


\textsuperscript{70}. \textit{Id.}
“blocker corporations” by nonprofits seeking to avoid tax payments.71 The essay, surprisingly to some, suggested that many of the nation’s most prestigious universities were likely taking advantage of these offshore tax havens to hide unrelated business income that would have otherwise been subject to domestic taxation (sometimes referred to as UBIT funds).72 And investigative journalists, including John Schoen at CNBC, dug into the issue further to begin to better educate the general public about the questionable “alternative investment” schemes being used by elite colleges to try to aggressively grow and squirrel away their wealth.73

Additional conservative politicians soon joined the fray. For instance, in October 2015, House Republicans held a public hearing that “sharply questioned how universities with billions of dollars in their endowments spend that money, with particular criticism directed at executive pay and administrative costs on campuses,” while student tuition continued to rise.74 In the end, the hearing generated suggestions for a range of legislative initiatives to correct the situation—including the possibility of a federal excise tax as a means of pressuring rich, prestigious private colleges to start spending their massive savings on needy students and families.75

Finally, in February 2016, Senator Orrin Hatch, as Chairman of the Senate Finance Committee, and Representative Kevin Brady, as Chairman of the House Ways and Means Committee, along with Representative Peter Roskam, Chairman of the House Ways and Means Oversight Committee, wrote to the fifty-six private colleges that maintained endowments of over $1 billion, seeking a range of information about their donations, assets, and investment practices.76

72. Id. at 358–59 (suggesting that many nonprofit universities were likely using offshore blocker corporations to avoid taxation on vast sums relating to income generated beyond their primary educational purpose and commitment to the public good). Professor Silber has also lamented that in the United States “the poor too often do pay more” than the rich for everything from loan interest rates to toilet paper. See Norman Silber, Discovering that the Poor Do Pay More: Race Riots, Poverty, and the Rise of Consumer Law, 44 FORDHAM URB. L.J. 1319, 1327–28 (2017).
73. See John W. Schoen, Why Does a College Degree Cost So Much? CNBC (Jun. 16, 2015, 10:22 AM), https://www.cnbc.com/2015/06/16/why-college-costs-are-so-high-and-rising.html (“Schools with the biggest endowments are able to attract the best investment advisers and tap alternative investments that may be riskier but generate higher returns [while also] capturing the bulk of charitable gifts flowing to higher education.”).
75. Id.
76. Michael Stratford, Billion Dollar Targets, INSIDE HIGHER ED (Feb. 16, 2016), https://www.insidehighered.com/news/2016/02/16/congress-returns-
To frame the inquiry, the letter noted that a recent study by the National Association of College and University Business Officers ("NACUBO") demonstrated those schools had an average return on their endowment investments of 15.5% during 2014. Yet, they maintained an average payout rate of only 4.4% and still "raised tuition far in excess of inflation."\footnote{See, e.g., Letter from Orrin G. Hatch, Kevin Brady, & Peter J. Roskam, Members of Congress, to Steven Knapp, President, George Washington University (Feb. 8, 2016), https://assets.documentcloud.org/documents/2711522 /Congressional-Letter-to-Colleges-Re-Endowments.pdf. The February 8, 2016 letter also cites to the 2014 NACUBO-Commonfund Study of Endowments for its claims regarding the investment returns for the nation's fifty-six richest colleges. For whatever reason, that report, while available online, costs $250 for members to access but $750 for non-member access. See 2014 NACUBO-Commonfund Study of Endowments, https://www.nacubo.org/Import/ProductDetails/2015/2 /2014-NACUBO-Commonfund-Study-of-Endowments (last visited Mar. 30, 2019).}

The Republican demand for information caused a great deal of consternation among the fifty-six targeted colleges. On the one hand, the schools worked hard to submit the requested data by the April 1, 2016, deadline, responding publicly with assertions that they were "pleased" to do so, "thankful" to be able to join with Congress in its efforts, and surely "sympathetic" to the concerns raised by Senator Hatch and his Republican colleagues.\footnote{See, e.g., Letter from Carolyn Martin, President of Amherst College, responding to Orrin G. Hatch, Kevin Brady, & Peter J. Roskam, Members of Congress (Apr. 1, 2016); Letter from Christina H. Paxson, President, Brown University, to Senator Orrin G. Hatch, Representative Kevin Brady, & Representative Peter J. Roskam, Members of Congress (Apr. 1, 2016) (on file at https://www.brown.edu/web/documents/nosearch/Brown-Response-Congress-April-1-2016.pdf) [hereinafter Brown University's Apr. 1, 2016 Response]; Letter from Kenneth P. Ruscio, President of Washington and Lee University, responding to Orrin G. Hatch, Kevin Brady, & Peter J. Roskam, Members of Congress (Mar. 31, 2016), https://www.wlu.edu/treasurers-office/about-the-treasurers-office/messages-from-the-treasurer/congressional-endowment-inquiry.} But on the other hand, more privately, they began to lobby to be left alone.\footnote{See, e.g., Matt Rocheleau, Federal Lawmakers Query Colleges on Endowments, BOS. GLOBE (Feb. 11, 2016), https://www.bostonglobe.com/metro /2016/02/11/lawmakers-ask-wealthy-colleges-for-details-their-billion-dollar-endowments/OsD8TXj4eyUi4UbcIyC6O/story.html (quoting Richard Doherty, President of the Association of Independent Colleges and Universities in Massachusetts, as stating, "There's not a need for a legislative fix . . . We've got a pretty good formula working, a lot of it driving by private dollars, and I think it would be unwise to tinker with that.").} Congressional Democrats, perhaps swayed by the pleas of the rich and influential institutions, declined to join with Republican colleagues as they had in 2008. Rather, they largely rejected calls to further monitor the
nation's leading academic institutions or force them to spend assets in their endowment coffers.\textsuperscript{80}

Perhaps surprisingly, given Donald Trump's own massive wealth and troubles with his namesake university that ultimately agreed to a $25 million settlement with former students,\textsuperscript{81} Trump added critiques of wealthy colleges into his 2016 presidential campaign platform.\textsuperscript{82} For instance, at a campaign rally in Pennsylvania in September 2016, seemingly in response to Hillary Clinton's calls for free in-state tuition for working class families, he took aim at the multibillion-dollar endowments maintained by more prestigious universities.\textsuperscript{83} He told the crowd, perhaps drawing from the 2014 proposals of Congressman Camp and the data gathered by Senator Orrin Hatch and his colleagues, that colleges with large endowments "use the money to pay their administrators, to put donors names on their buildings, or just store the money, keep it and invest it. In fact, many universities spend more on private equity fund managers than on tuition programs."\textsuperscript{84}

Trump continued: "But they should be using the money on students, for tuition, for student life, and for student housing. That's what it's supposed to be for."\textsuperscript{85} He further promised:

I'm going to work with Congress on reforms to make sure that if universities want access to all of these special federal tax breaks and tax dollars, paid for by you, that they are going to

\textsuperscript{80} See Stratford, \textit{supra} note 76 (noting congressional Democrats' claims that focus on university endowments was really a "side issue from more pressing concerns on student loan debt"); see also Stratford, \textit{supra} note 73 (describing Democrats on the hill as "uninterested in joining the fray to criticize college and university endowments and executive pay" and unwilling to pass legislation to address such issues).

\textsuperscript{81} See Howard, \textit{supra} note 46 and accompanying text; Tom Winter & Dartunorro Clark, \textit{Federal Court Approves $25 Million Trump University Settlement}, NBC (Feb. 6, 2018, 3:49 PM), https://www.nbcnews.com/politics/white-house/federal-court-approves-25-million-trump-university-settlement-n845181; see also Scott Jaschik, \textit{Trump Targets Colleges with Large Endowments}, \textit{INSIDE HIGHER ED} (Sept. 23, 2016) https://www.insidehighered.com/news/2016/09/23/trump-questions-spending-decisions-colleges-large-endowments (noting a group of Hilary Clinton supporters responded that such campaign claims were "ironic coming from the man behind the student-swindling Trump University and Trump Institute. He has no credibility to speak about affordable and high-quality education.").

\textsuperscript{82} Jaschik, \textit{supra} note 81.


\textsuperscript{85} Id.
make good-faith efforts to reduce the cost of college and student
debt and to spend their endowments on their students, rather
than other things that don’t matter.\textsuperscript{86}

Meanwhile, congressional Republicans considered further
legislative remedies, including a bill by Representative Tom Reed of
New York called the Reducing Excessive Debt and Unfair Costs of
Education ("REDUCE") Act.\textsuperscript{87} Under the REDUCE Act, colleges with
endowments of more than one billion dollars would be required to
spend at least twenty-five percent of their endowment earnings
annually on student financial aid.\textsuperscript{88} For schools that did not comply,
Reed suggested a penalty of a tax of thirty percent of those
undistributed endowment earnings, which would be increased for
each subsequent period of non-compliance.\textsuperscript{89} Thus they would be
treated like private nonprofit foundations. Reed acknowledged his
bill was not a “silver bullet” but “a step to take along with other
measures” to tap the wealth of schools that had been stockpiling tax-
free money, put it to use, and assist otherwise qualified students who
do not qualify for Pell grants but cannot afford tuition at the nation’s
best colleges.\textsuperscript{90}

With such concrete proposals making the rounds, potentially
impacted universities and congressional Democrats more
affirmatively tried to derail legislative efforts. For instance, Cornell
University, which sits in Representative Reed’s district, told media
outlets:

He doesn’t seem to understand the Endowment is not one
amorphous thing. It is largely a set of gifts that has been given
to the University for specific purposes. Some of the things are
financial aid. But some of them are for things like supporting
faculty positions and supporting programs.\textsuperscript{91}

Other elite colleges joined with Cornell to declare endowment funds
could only be used for earmarked purposes, like addressing student

\begin{itemize}
\item \textsuperscript{86} See Jagoda, supra note 83.
\item \textsuperscript{87} Press Release, Office of Congressman Tom Reed, Congressman Tom
Reed Introduces Bill to Tackle Student Loan Debt for Working-Class Students
=1442.
\item \textsuperscript{88} Rick Seltzer, Lawmaker with the Idea Higher Education Leaders Hate,
/05/12/congressman-discusses-plan-force-colleges-spend-large-endowments.
\item \textsuperscript{89} Id.
\item \textsuperscript{90} Id.
\item \textsuperscript{91} Id.
\end{itemize}
and community need.\textsuperscript{92} Most offered these messages in a somewhat subtler manner,\textsuperscript{93} however, in order to avoid further negative press.

V. THE PARADISE PAPERS, FURTHER PUBLIC PROTEST, AND THE 2016 TRUMP UPSET

Once Donald Trump emerged as the largely unexpected winner of the 2016 presidential election,\textsuperscript{94} the nation's richest colleges became even more stalwart and strategic in their efforts to protect their wealth and use it as they wished. Many retained the services of costly Washington D.C. lobbying firms for behind-the-scenes assistance or deployed influential alums and advocacy organizations to advance their cause with Congress.\textsuperscript{95} All came together to try to stop the college endowment tax.\textsuperscript{96}

Beyond reiterating claims that their endowments were filled with specially-designated funds that could be used for the limited and specific desires of their donors, the country's richest schools directly and indirectly painted themselves as unwitting victims of an unwarranted right-wing attack on liberal ideology and progressive nonprofits.\textsuperscript{97} The schools also suggested they were simply


\textsuperscript{95} See Lorin, supra note 93; Wolff-Mann, supra note 93 ("Instead of venting in the public square, universities are hard at work focusing efforts via government relations officials, leveraging alumni who might have influence — especially in Congress.").

\textsuperscript{96} See Andy Segedin, \textit{Federal Tax Bill Targets Deductions, Endowments, Lobbying}, \textit{Nonprofit Times} (Nov. 2, 2017), http://www.thenonprofittimes.com/news-articles/federal-tax-bill-targets-deductions-endowments-lobbying; see also Wolff-Mann, supra note 93 (reporting that the potentially impacted universities "[a]cross the board" opposed the tax based upon similar rationale but would not speak publicly on the issue).

\textsuperscript{97} See Abigail Hess, \textit{GOP College Endowment Tax Won't Just Hurt the Ivy League}, \textit{CNBC} (Nov. 30, 2017, 12:11 PM), https://www.cnbc.com/2017/11/30/gop-college-endowment-tax-wont-just-hurt-the-ivy-league.html (reporting on the American Enterprise Institute's claims of "growing resentment of universities perceived as liberal and elitist."); Wolff-Mann, supra note 93 (noting it was
misunderstood benefactors who were already meeting the needs of financially disadvantaged students and communities—operating as charities engaged in activities “essential to the country’s well-being.”98 But there were—and are—several problems with these claims.

The first problem, of course, is that many liberals outside of politics—and even within the very institutions of higher education under scrutiny—were among those calling for change. For example, The Nation, a well-known progressive weekly news source, described Harvard as continuing to operate “at the troubling intersection between higher education and high finance.”99 Left-leaning university faculty like Georgetown Law Professor Brian Galle, a tax law scholar, agreed that it was time for Congress to at least “gently pressure universities to consider their policies with more of an eye to the general social good.”100 Thus, many actually known for embracing progressive ideology—and not just appropriating it when convenient—did not appear particularly threatened by the possibility of the Trump Administration tapping bulging private college endowments. Instead, as reported by The Atlantic magazine in October 2017, outside the hallowed halls of Congress and elite college Chancellors’ suites, many believed rich colleges had become myopic in their efforts to amass money while doing little to help at-risk

98. See, e.g., Abby Jackson, Princeton Explains Why it Charges Tuition Despite its Multibillion-Dollar Endowment, BUS. INSIDER (Apr. 4, 2016, 4:45 AM), https://www.businessinsider.com.au/harvard-and-princeton-respond-to-endowment-criticism-2016-4 (reporting that Princeton’s President Christopher Eisgruber declared “the purpose supported by the largest number of accounts” within its endowment are financial aid packages to students and that “[o]ther accounts support faculty positions, research and teaching programs, library resources, and many other purposes”); see also Hess, supra note 97 (reporting on claims that “[T]axing endowment earnings would make these efforts more difficult, and would probably raise tuition for students from families that would struggle to pay it”); W. Raymond Ollwerther, University “Very Disappointed” that Tax Legislation Retains Endowment Tax, PRINCETON ALUMNI WKLY. (Dec. 21, 2017), https://paw.princeton.edu/article/university-very-disappointed-tax-legislation-retains-endowment-tax (lamenting that the tax undermined the role of universities as “charities” engaged in educational and philanthropic activities essential to the “country’s well-being.”).


100. See, e.g., Rocheleau, supra note 79.
students or communities. This included both conservatives and progressives.

What is more, both historically conservative and liberal colleges stood to be impacted by a private university endowment excise tax. Neither Senator Hatch's February 2016 request for information, nor any legislative proposal, singled out the most liberal colleges for reform. Legislative proposals targeted rich private schools across the board—causing concern even among some conservatives. In fact, Representative Reed's 2016 REDUCE Act proposal ultimately gave way to a 2017 House bill introduced during the Trump Administration. It sought to impose a 1.4% tax on the net investment income of all universities that maintained more than \( \$100,000 \) in their endowment per enrolled student—regardless of ideology or commitments. That draft was further amended in the House to raise the per-student ceiling to \( \$250,000 \), while the Senate advanced a similar bill that raised the cap to permit private universities to hold a half a million dollars in their endowments for each student without federal excise tax penalty.

In the end, the list of potentially covered schools ran the gamut from what might be considered some of the most left-leaning institutions in the country, like Smith College, to the most conservative, like the University of Chicago. And Chicago was not an outlier. Indeed, under the final version of the Senate bill, many of the nation's most traditional institutions would face endowment


102. Id.

103. See supra notes 76, 87–90 and accompanying text.

104. See Kim, supra note 101; see also Hess, supra note 97 ("50 percent of the colleges with the 20 largest endowments are located in states that went for Trump in the 2016 election.").


107. Id.

108. Id.; see also Wolff-Mann, supra note 93 (reporting that the bill had changed at least five times during its legislative history).
excise taxation. When schools like Rice, Washington and Lee, and the University of Richmond all stood to be impacted, it is surely hard to frame such tax proposals as a Trump attack against left-leaning institutions.

A second major problem for the defensive claims of elite colleges emerged by way of a damning raft of evidence that flooded international airwaves in November 2017. Millions of pages of leaked materials from an overseas investment firm demonstrated that the schools were hardly unwitting victims, vanguards of generosity, or careful stewards of allegedly earmarked donations. The document dump, which came to be known as the Paradise Papers, outed many elite universities for putting their cash into shadow markets in places like the Cayman Islands and British Virgin Islands to avoid United States taxation.

As The New York Times reported domestically, the Paradise Papers proved once and for all that Silber and Wei’s earlier suspicions

109. See Myers & Read, supra note 106 (explaining the final version of the proposed legislation also restricted itself to schools with over five hundred students enrolled).

110. See id. (providing a list of schools likely to be covered by the Senate bill, which included Rice University, Washington and Lee University, and University of Richmond).


113. See Stephanie Saul, Endowments Boom as Colleges Bury Earnings Overseas, N.Y. TIMES (Nov. 8, 2017), https://www.nytimes.com/2017/11/08/world/universities-offshore-investments.html?_r=0&module=inline. As Saul notes, some public universities were also outed by the Paradise Papers for being involved in blocker corporation practices. Id. But because Trump’s 2017 Tax Code and Jobs Act does not impact state schools, and because individually they do not maintain the wealth of the nation’s individual elite private colleges, they are beyond the scope of this Article. See generally SHERLOCK ET AL., supra note 50, at i (providing in a Congressional Research Service report summary that “Endowment assets are concentrated, with 12% of institutions holding 75% of all endowment assets in 2017.”).
about university activities were true: countless rich colleges had been hiding their assets by way of offshore blocker corporations.\textsuperscript{114} Columbia, Dartmouth, and Johns Hopkins University, for instance, all had become partners in a Bermuda-based group called H&F Investors Blocker, which successfully invested vast sums overseas and then paid no domestic taxes on the sizeable returns.\textsuperscript{115}

More than this, some of the overseas investments were placed with controversial entities whose interests conflicted not only with public interest goals generally but also with the specifically articulated altruistic and “green” commitments of many nonprofit universities.\textsuperscript{116} By way of example, the Paradise Papers showed that Columbia and Duke Universities owned millions of shares in iron mining efforts in Brazil that had been vigorously protested by environmental activists.\textsuperscript{117} Others, such as Northeastern University, quietly placed their money with hydrocarbon, oil, and gas ventures, while supposedly fighting climate change globally.\textsuperscript{118} In these ways, \textit{The New York Times} also provided specific and concrete examples of what the Tellus Institution’s report warned about in 2010.\textsuperscript{119} And the nation’s richest colleges were quickly placed in an exceptionally shrewd and self-seeking—if not sneaky and deceptive—light.

These somewhat shocking revelations prompted further public calls for accountability—again, not just from conservatives, but from liberals connected to the academy—faculty and students alike. Professor Silber, whose theories were now proven true, lamented the lack of transparency on the part of supposed nonprofit institutions of higher learning.\textsuperscript{120} He went on to note there should be “a higher duty owed by publicly supported institutions to make their investments evident. If not to the public generally, certainly make it absolutely clear to stakeholders of the institution.”\textsuperscript{121}

\textsuperscript{114} Saul, \textit{supra} note 113 (reporting on the many elite colleges using offshore blocker corporations to avoid taxation).
\textsuperscript{115} \textit{Id.}
\textsuperscript{116} \textit{Id.}
\textsuperscript{117} \textit{Id.}
\textsuperscript{118} \textit{Id.; see also} Ed Pilkington, \textit{Top US Universities Use Offshore Funds to Grow Their Huge Endowments}, \textit{GUARDIAN} (Nov. 8, 2017, 1:00 PM), https://www.theguardian.com/news/2017/nov/08/us-universities-offshore-funds-endowments-fossil-fuels-paradise-papers (“Most contentiously, some of the offshore funds are invested in carbon-polluting industries, despite leading US universities playing a key role in the fight against climate change.”).
\textsuperscript{119} \textit{See supra} notes 54–60 and accompanying text.
\textsuperscript{121} \textit{Id.; see generally} Laura E. Deeks, \textit{Discourse and Duty: University Endowments, Fiduciary Law, and the Cultural Politics of Fossil Fuel Divestment}, 47 \textit{LEWIS & CLARK ENVTL. L.} 335 (2017) (calling for fiduciary duty requirements to apply to university endowment administration, even before the publication of the Paradise Paper).
The Paradise Papers fed further critical academic analyses. For instance, sociology professor Charlie Eaton wrote a *New York Times* piece that criticized the “trio of tax breaks” at play in elite academic institutions—tax benefits to wealthy donors, municipal tax breaks to the universities, and now overseas investing without taxation on vast returns.\(^{122}\) Based upon his research, he opined these benefits were costing federal taxpayers nearly $20 billion a year\(^ {123}\)—an amount that could be used to double Pell grant amounts nationwide for needy students.\(^ {124}\) And again, rather than seeing endowment reform as a challenge to autonomy or freedom to express liberal academic ideas, Professor Eaton urged fundamental rethinking around the way the country’s elite colleges—supposed nonprofit entities—were allowed to do business.\(^ {125}\)

Students publicly shared their outrage, too, through campus newspaper articles, stepped-up protest activities,\(^ {126}\) and by joining efforts with nonprofit groups, like the Responsible Endowment Coalition, to press for fiscal integrity and financial reforms at supposed nonprofit universities.\(^ {127}\) Many expressed disgust with their prestigious colleges for carrying on what seemed like immoral investment practices that ran contrary to the very mottos of their schools.\(^ {128}\) Others objected that secret overseas investments and

\(^{122}\) Saul, supra note 113.


\(^{124}\) Id.

\(^{125}\) See id.; see also Saul, supra note 113.


\(^{127}\) Taylor, supra note 99 (quoting the executive director of the Responsible Endowment Coalition, Marcie Smith, as saying the Paradise Papers presented as “rage-inducing picture” of universities); see also RESPONSIBLE ENDOWMENT COALITION WEBSITE, BOARD OF DIRECTORS WEBPAGE, http://www.endowmentethics.org/board (last visited Mar. 30, 2019).

\(^{128}\) Pilkington, supra note 118 (reporting that a Northeastern University student affiliated with DivestNU lamented: “The university’s motto is ‘light, truth and virtue.’ . . . Now we learn that the leadership team has been operating in darkness, violating their own green principles by investing in oil and gas, and
stockpiling returns felt especially unjust in face of reduced services to students following the economic downturn and a lack of financial aid for all in need. Such testimony powerfully contradicted elite university assertions that their endowments were already all tied up with supporting struggling students and underserved communities—and an excise tax would cause private colleges to become unaffordable.

Finally, the Paradise Papers and its related fallout demonstrated the somewhat misleading nature of another one of the elite colleges’ claims—that their endowment funds were restricted through special instructions by donors that prevented them from being used for anything other than educational support and specific projects. It was confirmed these same universities had long been paying high-priced investment firms with endowment money to set up and run blocker corporations, oversee international financial portfolios, and undertake other activities far removed from course offerings and going offshore to pay less taxes.”; Spencer Swanson, Penn’s Inclusion in the Paradise Papers is Shameful, DAILY PENNSYLVANIAN (Nov. 22, 2017, 2:42 AM), https://www.thedp.com/article/2017/11/spencer-swanson-penns-inclusion-in-the-paradise-papers-is-shameful (“Penn’s motto is the Latin phrase, ‘Leges sine moribus vanae,’ which translates to ‘Laws without morals are useless.’ After the recent revelations of the Paradise Papers, it is obvious that Penn hasn’t been entirely practicing what it preaches.”).

129. See, e.g., Swanson, supra note 128 (calling on University of Pennsylvania to “find ways to increase its distributions from its monumental endowment rather than focusing solely on increasing its size” to better support things such as “the American American Studies Program and Counseling and Psychological Services and a general increase in financial aid.”); see also Taylor, supra note 99 (Explaining that throughout the Responsible Endowment Coalition’s protests, universities were “raking in a record $40 billion in 2015, Wall Street stacked boards of directors approving self-dealing investments, all while tuition continues to rise, student debt continues to mount, and value of a college degree declines . . . .”).

130. See, e.g., Letter from Mark S. Wrighton, Chancellor, Wash. U. St. Louis., to Senator Orrin G. Hatch, Representative Kevin Brady, & Representative Peter J. Roskam, Members of Congress (Mar. 31, 2016) (on file at https://www.stltoday.com/washington-university-response/pdf_b32a20d7-a96b-5623-8ab7-54dd0c6547ce.html) [hereinafter Washington University’s March 31, 2016 Response] (“[O]ur highest priorities are investments in scholarships, professorships, academic programs, research and patient care.”); Letter from Mark S. Wrighton, Chancellor, Wash. U. St. Louis, to Senator Roy D. Blunt (Nov. 17, 2017) (on file at https://source.wustl.edu/wp-content/uploads/2017/11/The-Honorable-Roy-D.-Blunt.pdf) (arguing an excise tax would hurt students and families because it would decrease the amount of endowment money available for financial aid); see also Hess, supra note 97 (reporting that the American Enterprise Institute claimed elite universities were already using their endowments to support needy students such that an endowment tax would negatively impact such awards); Andrew Kreighbaum, Final GOP Deal Would Tax Large Endowments, INSIDE HIGHER ED (Dec. 18, 2017), https://www.insidehighered.com/news/2017/12/18/large-endowments-would-be-taxed-under-final-gop-tax-plan (quoting an advocate from the American Council on Education as arguing the tax was a “step in the wrong direction” would “make higher education more expensive and less accessible . . . .”).
services to the community. And they were now hiring expensive Washington D.C. lobbyists and public relations professionals to try to fight the endowment tax’s passage—further evidence that university endowment funds were not solely restricted to academic endeavors or solving pressing problems facing the general public.

These developments, especially when coupled with the April 2016 written responses to Senator Hatch and his team, provided substantial proof that endowment gift restrictions were mostly overblown canards. In fact, setting aside their niceties, lengthy preambles outlining their rich histories, and distracting attachments, the disclosures of the targeted universities show that most elite universities have a great deal of discretion over a great deal of money in their financial portfolios. For example, even if the written 2016 disclosures are taken at face value, Harvard University admitted that only eighty-four percent of its $37.6 billion endowment consisted of funds that had to be “carefully managed to meet the terms of the gift.” That left sixteen percent—over $6

131. See supra note 54 and accompanying text.
132. See Benjamin Gonzalez, Trinity Awaits Endowment Tax Regulations, TRINITONIAN (Nov. 29, 2018), https://www.trinitonian.com/trinity-awaits-endowment-tax-regulations/ (disclosing that Trinity University hired a former congressman to lobby on its behalf to try to prevent the passage of an endowment tax); see also Lisa Lambert, Universities to U.S. Senate, Endowment Tax Idea is “Fundamentally Flawed,” REUTERS (Nov. 14, 2017, 4:41 PM), https://www.reuters.com/article/us-usa-tax-colleges/universities-to-u-s-senate-endowment-tax-idea-fundamentally-flawed-idUSKBN1DE2Y4 (reporting that “more than three-dozen higher education lobbying groups” had been hired by the nation’s richest private colleges, and these lobbying groups were being led by the American Council on Education, in an effort to prevent an endowment tax from becoming law).
133. While some schools, like Brown University, provided relatively straightforward responses of less than twenty pages that directly answered questions posed, others, such as Washington and Lee University, submitted 50+ page packets that failed to provide certain specific expenditure amounts and surprisingly suggested that not a single endowment dollar was unrestricted. Compare Letter from Kenneth Ruscio, President, Wash. & Lee. U., to Senator Orrin G. Hatch, Representative Kevin Brady, Representative Peter J. Roskam, Members of Congress (Mar. 31, 2016) (on file at https://www.wlu.edu/treasurers-office/about-the-treasurers-office/messages-from-the-treasurer/congressional-endowment-inquiry) with Brown University’s Apr. 1, 2016 Response, supra note 78.
134. See, e.g., Jackson, supra note 98.
135. Given that I do not have an accounting background, I have not attempted to in any way audit the claims set forth in the reports. However, as suggested supra note 111, some disclosures, like that of Washington and Lee claiming none of its endowment wealth is unrestricted, may raise questions worthy of further examination and explanation. Others’ disclosures, like Princeton’s, seem to have disappeared from online public view. See Jackson, supra note 98 (providing a now dead link to Princeton’s response to Congress).
136. Jackson, supra note 98; see Letter from Drew Gilpin Faust, President, Harv. U., to Senator Orrin G. Hatch, Representative Kevin Brady, and Representative Peter J. Roskam, Members of Congress (Mar. 31, 2016) at 3, (on
billion—in unrestricted funds. Apparentlly, only sixty-two percent of the $6.9 billion endowment held by Washington University at St. Louis was restricted based upon donor directives. And even Brown University, with its much smaller student population and endowment size as compared to Harvard and Washington University, had over $1.5 billion in its portfolio that could be deployed without concern for gift restrictions.

Beyond this, most of the colleges admitted that a large percentage of the alleged restrictions on endowment holdings were not attributable to donors at all. Amherst and Wellesley Colleges explained in their filings that some restrictions are temporary and open to change. They merely reflect the preferences of existing university trustees or boards of directors. Similarly, one of the largest donors to Washington University in St. Louis, Andrew Taylor, with family businesses such as Enterprise rental cars and Keefe prison commissary goods, apparently serves as a “life trustee” and helps to decide how the school manages and deploys its otherwise unrestricted assets.
VI. THE COLLEGE ENDOWMENT TAX AND RESPONSES BY RICH SCHOOLS

For all these reasons, it is not surprising that Congress ultimately passed a private university endowment tax over the proffered objections of the country’s elite colleges. On December 22, 2017, before leaving for a holiday vacation at his Mar-A-Lago Resort, President Trump signed the Senate version of the bill into law as part of the sweeping Tax Cuts and Jobs Act. Since then the potentially impacted schools have been trying to obtain temporary relief from the tax—as well as seek its permanent removal from the books. Quite remarkably they are doing both by advancing many of the very same arguments that proved unpersuasive before—and while maintaining some of the very same practices that drew public and lawmaker ire in the first place.

As noted, the private college endowment tax that was ultimately signed into law impacts private colleges with over five hundred students and that maintain more than $500,000 per student in their endowments. Under the new law, only those schools holding such sizeable savings need to pay 1.4% of their annual endowment investment income into federal coffers. As compared to Senator Hatch’s original hit list of about fifty-six schools—and earlier versions of the bill that might have taxed over a hundred schools—most commentators have speculated that the law currently extends
to only between twenty-five to thirty-five schools nation-wide.\textsuperscript{151} This is based upon the schools’ public financial statements and endowment disclosures.\textsuperscript{152}

But even this smaller group of elite schools is looking for ways to avoid or limit their liability.\textsuperscript{153} Previously, rich universities wore their massive endowments on their sleeves as badges of honor and recruitment tools.\textsuperscript{154} Now, however, some are saying they are not quite sure how much endowment money they have or how to count it for purposes of the new tax.\textsuperscript{155} The University of Chicago, for instance, suggests that depending upon how it defines “full-time students” and characterizes different parts of the university—including its “South Side Campus”—it may be exempt from paying the tax despite its $7.82 billion endowment.\textsuperscript{156} Trinity University says it is still not sure if it will owe taxes because it believes funds held in trust should be excluded from endowment computations.\textsuperscript{157}

Another group of schools, including Emory University, argued the whole situation was so confusing and overwhelming that the United States Treasury Department should impose a one-year

\textsuperscript{151} Id. (speculating that twenty-seven schools would face a 1.4\% penalty under the endowment tax); see also Andrew Kreighbaum, Final GOP Deal Would Tax Large Endowments, HILL (Dec. 18, 2017), https://www.insidehighered.com/news/2017/12/18/large-endowments-would-be-taxed-under-final-gop-tax-plan (providing a list of thirty-two potentially impacted universities).

\textsuperscript{152} See Myers & Read, supra note 106.


\textsuperscript{154} See Holly Hacker, $1.15B Raised by SMU Is Largest Total for a Private Texas University, DALL. NEWS (Feb. 25, 2016), https://www.dallasnews.com/news/education/2016/02/25/1.15b-raised-by-smu-is-largest-total-for-a-private-texas-university (noting increased endowments can assist a school in recruiting new faculty).


\textsuperscript{157} Gonzalez, supra note 132; see also Myers & Read, supra note 106 (estimating Washington University’s endowment holdings at $530,596 per student before the tax became law); Rick Seltzer, Estimating the Endowment Tax’s Future, INSIDE HIGHER ED (Jan. 4, 2018), https://www.insidehighered.com/news/2018/01/04/dozens-more-colleges-will-pay-endowment-taxes-if-growth-rates-continue (reporting that Washington University falls just slightly below the endowment cap threshold since the tax law went into effect).
Following an April 2018 meeting with Treasury staff, the President of Emory, Claire Sterk, wrote a letter explaining why more time was needed to deal with the “unbudgeted multimillion-dollar tax liability.” Sterk argued an extra twelve months would “enable our organization to more accurately estimate our new tax burden, budget for this dramatic tax increase, submit timely estimated tax payments, and communicate and implement new policies and processes to our employees.”

Others successfully lobbied for rules from the IRS to help limit the reach of the tax law as written. As a result of this administrative guidance, released in June 2018, schools potentially impacted by the new tax have been provided with a “stepped up basis” that will allow them to exclude endowment earnings from before December 2017 when they calculate taxes owed to the federal government for the first time. And going forward, at least for the short term, it appears some schools may be turning to building projects, capital improvements, or non-endowment-based instruments in an effort to avoid taxation.

While various maneuvers have taken place, impacted schools and those that may be impacted in the future have also banded together to urge the endowment tax’s repeal. In March of 2018, a consortium of nearly fifty private colleges wrote to congressional leadership urging reconsideration. At the same time, a group of legislators


159. See id.; see also Letter from Claire E. Sterk, President, Emory U. to The Honorable Steve Mnuchin, U.S. Treasury Sec’y (May 24, 2018) (on file at http://src.bna.com/zdR) [hereinafter Letter from Claire E. Sterk].


162. See Seltzer, supra note 155. Washington University in St. Louis just completed a multi-year giving campaign that brought in over $3.3 billion in new gifts and commitments. Apparently only $1.6 billion of those funds will be placed into the endowment while a great deal of the monies are being used for new physical facilities. See Susan Kinnelbert McGinn, Record $3.378 Billion in Gifts, Commitments Raised in Washington University’s Leading Together Campaign, SOURCE (Aug. 31, 2018), https://source.wustl.edu/2018/08/record-3-378-billion-in-gifts-commitments-raised-in-washington-universitys-leading-together-campaign/.

from across the aisle, all alumni of elite schools facing the endowment tax, introduced a bill to accomplish the goals of their alma maters—The Don’t Tax Higher Education Act.164

But it does not seem likely that this bill will move forward anytime soon. This is in part because, despite the intellectual firing power at our nation’s elite colleges, they are not doing a particularly good job of providing new—or even slightly more convincing—arguments to advance their cause. Based on their March 2018 letter to Congress, elite universities seem to have abdicated their relatively dubious prior claims about their endowment hands being tied by gift restrictions.165 But they persist in asserting the endowment tax poses a dangerous threat to financial and other assistance to students, families, and communities in need.166

Specifically, the schools asserted that because of the tax: “We will each have less to give in aid, less for research and less to support public engagement in the lives of our communities.”167 And yet, at the same time, they now complain the tax actually does not go far enough—because it merely benefits the general federal fund and not university constituents—including the at-risk students or groups they claim to be concerned about.168

VII. HOW TO TRUMP TRUMP: SHIFT PRIORITIES AND PRIVILEGE PUBLIC GOOD

To be sure, the Trump endowment tax is an imperfect response to the problem of massive wealth accumulation on the part of elite colleges that purport to be running nonprofit educational enterprises with charitable goals.169 Impacted schools are correct that the excise

164. Harris, supra note 11.
165. See Letter of Coll. Consortium to Cong. Leadership, supra note 163. Universities seem to have replaced this argument with a “slippery slope” claim—suggesting that leaving the college endowment tax on the books sets a troubling precedent because other nonprofit, charitable, and philanthropic enterprises might soon find their savings subject to taxation. See id. Since this legal staple is hardly ever a persuasive assertion and such concerns are beyond the scope of this essay, I will not further analyze these supposed altruistic assertions on behalf of unknown and unnamed nonprofits that may find themselves under future attack.
166. Letter of Coll. Consortium to Cong. Leadership, supra note 163; see, e.g., Gonzalez, supra note 131 (reporting that Trinity University, despite having over $1 billion dollars on hand for less than 2,500 students, says paying the endowment tax from its endowment revenue will take away from student scholarships); Harris, supra note 11 (providing comments of the bill’s sponsor, Representative John Delaney, suggesting the endowment tax posed a threat to the ability of elite schools to provide financial aid to needy students).
168. Id. (“[T]his tax will not address the cost of college or student indebtedness, as some have tried to suggest.”).
169. See, e.g., BENJAMIN HARRIS & ADAM LOONEY, URBAN INST. & BROOKINGS INST., THE TAX CUTS AND JOBS ACT WAS A MISSED OPPORTUNITY TO ESTABLISH A SUSTAINABLE TAX CODE 17 (2018), https://www.brookings.edu/research/the-tax-
tax will be placed in the federal government's general revenue fund. Therefore it will not directly address the problem of needy students and communities by redirecting university wealth. And there were likely smarter and more meaningful ways to capture and deploy accumulated college wealth.

A. General Takeaways

The university endowment tax should serve as an incentive for wealthy colleges to spend down their massive savings and take other actions to address student and other needs. One would hope school administrators, complaining that they do not want university dollars to be dumped into general revenue funds, would behave as rational actors and take action to avoid what amounts to a penalty for undue privilege. Instead, most elite private colleges seem to have largely ignored that message—pressing on with their prior self-interested financial practices without due regard for the interests of those they are intended to serve. Thus, as the conservative National Review has correctly pointed out, it is disingenuous to keep sounding alarms about the federal endowment tax being the problem.

Many have argued there are other problems with Trump's Tax Cut and Jobs Act. Such issues are beyond the scope of this Article.


171. See Aaron Klein & Richard V. Reeves, New College Endowment Tax Won't Help Low-Income Students, Here's How It Could, BROOKINGS INST. (Feb. 22, 2018), https://www.brookings.edu/blog/social-mobility-memos/2018/02/22/new-college-endowment-tax-wont-help-low-income-students-heres-how-it-could/ ("They have simply gone for the money ... [t]o the GOP, college endowments are an ATM, with the money taken out given straight to corporations and the rich.").

172. See id. For instance, Representative Tom Reed's REDUCE Act, a version of which he has reintroduced this year, likely would have provided a more effective remedy for directly addressing unmet financial needs of students. It also would place tax revenue collected from violating schools into Pell Grant funding; see Reducing Excessive Debt and Unfair Costs of Education Act of 2018 (REDUCE) Summary, AM. COUNCIL EDUC., www.acenet.edu/news-room/Pages/Summary-of-2018-REDUCE-Act.aspx (last visited Mar. 30, 2019).

173. See Lorin, supra note 153 (noting that some “argue the tax gives schools an incentive to spend endowment funds on research and teaching,” rather than continuing with current financial practices); cf. Klein & Reeves, supra note 171 (arguing schools may not see the incentives as strong enough without some further affirmative rewards for compliance).

174. See generally Leo Martinez, Tax Policy, Rational Actors, and Other Myths, 40 LOYOLA U. CHI. L.J. 297 (2009) (detailing the limits of rational behavior with respect to tax choices).

175. See Klein & Reeves, supra note 171 ("There is more dream hoarding than dream sharing going on in most of our top colleges, whether they like to admit it or not.").

For instance, as noted above, in August 2018 Washington University in St. Louis completed yet another “major multiyear fundraising initiative” that had “an initial goal of $2.2 billion in funding toward university priorities.”177 Those “priorities,” set forth in the school’s “Plan for Excellence,” covered four key areas: “preparing the leaders of tomorrow; advancing human health; inspiring innovation and entrepreneurship; and enhancing the quality of life for all.”178 In the end, the fundraising campaign far surpassed the target amount, pulling in “a record-breaking $3.378 billion in gifts and commitments.”179

However, while the campaign initially declared a scholarship support need of $1 billion to assist with student financial aid, somehow it appears only $591 million of the billions raised wound up specifically designated for scholarships to enhance affordability and student accessibility.180 The rest of the funds were dedicated to such things as construction of additional “state-of-the-art facilities,” “153 new endowed deanships, professorships, and other positions,” and “$297 million for the Annual Fund to provide deans and the chancellor with flexible funds to address urgent needs.”181

Thus, it hardly seems that elite private schools are currently strapped for cash or that the possibility of a federal endowment tax—which seeks to tap just 1.4% of earnings endowment investments—is what is keeping them from meeting the needs of financially struggling students or the greater community.182 Rather, it would appear parsimony and a desire to perpetuate privilege for a few is what drives decision-making at too many of these schools.183

And, of course, many elite schools continue to maintain a culture that places a high premium on wealth accumulation and increased income over other considerations. In fact, 2018 fiscal returns demonstrate that the nation’s private Ivy League colleges—including Princeton University and the University of Pennsylvania—enjoyed endowment investment returns of between nine and thirteen

177. McGinn, supra note 162.
178. Id.
179. Id.
180. Id.
181. Id.
182. See Shea, supra note 176 (calling such assertions a “scare tactic” and a “duplicitous . . . suggestion that this tax would compel administrators to cut financial aid, professor salaries and research funding from their budgets . . .”).
183. See Koran Addo, Wash U Boosts Low-Income Enrollment, But Not Enough for Its Critics, ST. LOUIS POST-DISPATCH (Aug. 16, 2016), https://www.stltoday.com/news/local/education/wash-u-boosts-low-income-enrollment-but-not-enough-for/article_59c136b2-7cdf-5d5b-915b-998b9d9f79a3.html (reporting that only seven percent of Washington University students were Pell Grant recipients but that its administration hoped to admit and support more poor students in the future).
Thus their endowments increased significantly in size after the endowment tax was passed. Yet it is hard to see how those in need are enjoying the bulk of the benefits from these hefty returns. Instead, contrary to lamentations of Princeton University, the endowment tax does not really “threaten[] these institutions’ ability to put their values into practice.”

For instance, before the endowment tax went into effect, Princeton University began the laudable effort of admitting more students from disadvantaged backgrounds. And at this point, approximately twenty percent of its incoming freshman class receive Pell Grants—up from just seven percent ten years ago, which is surely an improvement. However, it is also important to note that Princeton’s endowment investment income rose from eight percent to fourteen percent this year, resulting in its endowment fund growing from $23.8 billion at the time of the passage of the endowment tax to $25.9 billion in 2018.

But despite this over $2 billion return on investment, Princeton only increased its overall financial aid budget from $161.2 million in 2017 to $174.2 million in 2018. While to regular people this sounds like a lot of money, quick analysis of these figures shows that the additional $13 million dollars in financial aid reflects an increase of just 7.7% from the year before—less than the percentage by which it was increased in 2017 (8.7%).

On top of all of this, Princeton raised its tuition and fees this year by 4.9%—the largest increase in attendance costs at the school in twelve years—and noted it would be hiring twenty-five more people to help with further fundraising efforts. Similarly, the University of Pennsylvania raised both its tuition and student fees this year, driving the cost of undergraduate attendance up over $70,000 a

---


187. See id; see also Ollwerther, supra note 98 (placing the Princeton endowment at $23.8 billion on June 30, 2017).


year.\textsuperscript{190} While it says it remains committed to meeting costs for first-generation, low income ("FGLI") students in the days ahead, many believe the stated sticker price alone will scare away modest-means students from applying in the future.\textsuperscript{191} And students who are not FGLI students will likely have a hard time meeting the increased cost of tuition.\textsuperscript{192}

In fact, it seems that most elite private universities have done relatively little to fundamentally address many of the underlying critiques that drove implementation of the endowment tax in the first place.\textsuperscript{193} This has occurred not just through their continued wealth accumulation practices in the face of rising tuition costs. Too many elite schools remain unduly focused on prestige and how to increase their reputations by way of endowed professorships and teaching chairs when some on campus, community members who carry much educational water for students, are made to fight for basic benefits such as health insurance and salary sufficient to pay rent each month.\textsuperscript{194} The same holds true for many janitors and food service workers at the nation’s elite schools,\textsuperscript{195} with Harvard apparently serving as an outlier in its expressed commitment to ensure a living wage for all on campus.\textsuperscript{196}

This problem can also be seen in the ways such institutions still disregard the very communities where they are located. Here too, in trying to fight the endowment tax—and again in their March 7 letter trying to have it repealed—the nation’s private colleges declared they needed their money not just to serve individual students but take on a wide range of problems in our world, including actually working on

\begin{itemize}
\item \textsuperscript{191} See id.
\item \textsuperscript{192} See id.
\item \textsuperscript{193} See Shea, supra note 176 (describing elite colleges as “tone-deaf to the concerns many Americans have regarding troubling trends in higher education today”).
\item \textsuperscript{194} Steve Dubb, \textit{Unions Gain Among Adjunct Faculty and Graduate Instructors on Campuses}, \textit{Nonprofit Q.} (June 12, 2008), https://nonprofitquarterly.org/2018/06/12/unions-gain-among-adjunct-faculty-and-graduate-instructors-on-campuses/ (reporting that at Washington University at St. Louis, adjuncts had to unionize to win a twenty-six percent pay increase this year from a previously “low base” and those at Northeastern did not receive health benefits until organizing).
\end{itemize}
"enhancing the quality of life for all. But many of the country's most highly endowed institutions of higher learning are situated in regions that have some of the highest crime, poverty, and segregation rates in the country. These social issues would seem to be the kind of "urgent needs" university leadership might want to try to help address.

Some endowment tax-impacted schools seem to have turned their attention to better assessing regional needs and figuring out how their educational offerings and services may empower local communities. Yet relative to their wealth and financial ability, far too many wealthy private universities still fail to do enough to address life-threatening problems in their own backyard. If they did they might help more local at-risk youth to find their way into such institutions as students—rather than having such youth experience the schools as off-limits castles in their otherwise struggling communities.

This may be why, rather than succeeding in convincing Congress to overturn the existing endowment tax, some elite colleges find themselves facing calls for further taxes, financial penalties, and even citizen lawsuits on the local level. In Massachusetts, for instance, Democratic gubernatorial candidate Jay Gonzalez is calling for a state-level endowment tax to tap the jurisdiction's wealthiest colleges—including Harvard, Massachusetts Institute of Technology,
WAKE FOREST LAW REVIEW

and Boston College—203—which continue to amass tremendous wealth even in the face of the federal endowment tax. The City of Boston is similarly criticizing the many wealthy colleges within its confines for failing to live up to past promises to voluntarily contribute to local coffers with Payments in Lieu of Taxation, given their vast untaxed property holdings. That is, since these universities utilize local government services and support but are not required to pay property tax on their vast real property holdings in the city, all voluntarily contribute a significant amount of money each year to the city treasury. But none, it seems, have been satisfying their agreements. All of this has resulted in the Boston Herald questioning whether such institutions should retain their tax-exempt status at all—critically referring to the colleges as NINOs: “Nonprofit in Name Only.”

B. Some Specific Suggestions to Address the Status Quo

The solution here seems relatively simple—resist the Trump endowment tax and address the critiques of rich private colleges that are coming from all corners, conservative and progressive alike. Elite private universities need to start worrying more about their public reputation and actually earn their tax-exempt status by privileging public good over prestige and stockpiled income. As the Brookings Institute recently noted, Trump’s “small tax on endowments” will not solve problems of wealth disparity on its own, but it should “serve as a wake-up call to higher education leaders: time to return to their core values of providing opportunity and enrichment for students.”

And wealthy private colleges can do this in a wide range of ways without endangering the corpora of existing endowment accounts, the likelihood of future donations, or the longevity of their institutions. There is no single right way for higher education entities to increase


204. See Caroline Connelly, Boston Officials: Universities Aren’t Paying Enough to City, NECN (May 8, 2018, 6:05 PM), https://www.necn.com/news/new-england/Boston-Officials-Universities-Arent-Paying-Enough-to-City-482109981.html; Huffman, supra note 19 (noting that this year Boston’s private universities paid less than half of what they had promised to pay under PILOT agreements with the City).

205. Connelly, supra note 204.

206. Id.

207. See Colleges Owe a Lot to City Editorial, supra note 7 (describing how the elite universities in Boston benefit from tax breaks without providing sufficient benefit in return through PILOTs or otherwise).

208. Klein & Reeves, supra note 171.
opportunity, work to level the playing field, or intentionally produce social good. But here are some thoughts:

(1) Show good faith by at least meeting the goals suggested by Representative Reed's REDUCE Act, which calls on all private colleges with at least five hundred students and endowment assets of at least $500,000 per student to spend an amount equal to twenty-five percent of its annual endowment investment income on undergraduate tuition for students who come from poor, low-income, and middle-income families—a large percentage of whom will be students of color, immigrant youth, and otherwise under-representative communities.

(2) Extend robust financial aid awards beyond the undergraduate years for those going into helping professions such as social work, public interest law, K-12 teaching, and community medicine, as New York University recently did with its medical school, to ensure at-risk communities, immigrant populations, and communities of color are truly well served by elite university educational outcomes.

(3) Look to educational public good leaders like Berea College, which seems to have figured out how to not only survive—but to financially thrive while maintaining its integrity, deep commitment to racial justice, and promise of free tuition for all students (most of whom are Appalachian residents with tremendous financial need). And if other rich, private

209. Id. (offering additional higher education policy proposals for consideration that might help prevent "reproduction of inequality across generations").


universities are providing similar far-reaching, full-tuition scholarships for students in need or vulnerable groups, they should rethink the ways in which they advertise and explain their “sticker prices.” Higher education should not promote an exclusionary economy, but instead elite schools should offer sliding-scale rates based entirely on ability to pay. This might help encourage a broader application pool of first-generation and other underrepresented students.

(4) Engage in participatory budgeting processes that include voices of students, staff, and local community members, not just wealthy white male trustees disconnected from problems of the poor or people of color, to help drive research priorities and educational offerings at wealthy colleges. After all, how can schools claim to be taking on the nation’s leading problems without directly asking their neighbors what problems they are facing daily and how they might best help?

(5) Create more research centers and experiential learning offerings that both teach students real-world skills and really serve communities. Beyond free medical services, vulnerable populations—often a stone’s throw from the richest colleges in the country—can benefit from enhanced support, including English as Second Language services, trauma-informed social work assistance, and free legal representation. These, and other services can be embedded in university programs and course offerings in ways that will aid at-risk youth and families.

(6) Assist local governments that can benefit from PILOT Programs to offset the many millions of dollars in property tax breaks being provided to universities and their well-paid leaders who may be living in tax-exempt, university-owned


mansions. Such monies, if they are actually paid as promised, can be used to improve public safety, public schools, mental health support and other services to better facilitate leveling the playing field locally.

VIII. CONCLUSION

Following at least some of these steps will help elite private colleges begin to meaningfully deploy their stockpiled assets and potentially avoid the Trump endowment tax in the days ahead. It will also assist in moving them from being seen as public pariahs and NINOs to serving an important role in society as real sources of enlightenment and public good. But more than this, it will also ensure such institutions stop pretending they are victims of a right-wing conspiracy—and instead provide actual assistance to those who actually are victims of President Donald Trump and his Administration, as it continues to attack vulnerable populations based upon who they are, where they were born, or what they believe.

217. Klein & Reeves, supra note 171 (highlighting the Ivy League and other elite colleges for their lack-luster reactions to the Trump endowment tax); Shea, supra note 177 (referring to wealthy university reactions to the endowment tax as “self-congratulatory” and “tone-deaf”).
218. Einbinder, supra note 1 (attack on immigrants); Ifill, supra note 2 (attack on civil rights of communities of color); Patrick, supra note 3 (attack on dissension and protest).