

## Colleges: To Endow or Not to Endow?

George R. La Noue

When persons of means contemplate death, the question of where to leave their financial assets becomes acute. The question is often not easy to answer and there are innumerable options. If they are higher education graduates, their former campuses have “advancement teams” ready to answer questions, provide forms, and urge investments in their institutions. Sometimes they will appeal to altruism, sometimes ideology, and sometimes ego. Would you like to have your name on this activity or building? The saying among these administrators is that “Where there is a Will, there is a way.”

In the long history of higher education, there have been many endowment gifts that have strengthened institutions and brought about profound public benefits, but there are sometimes disappointment and controversy. Savvy donors need to think carefully before entering into endowment agreements which are difficult to change before death and virtually impossible after death. Several questions need to be answered first. One, since money is fungible, will the donor’s gift simply replace a routine institutional expenditure, creating no net gain in the program being supported? Two, is the activity likely to be preserved in the long term as programs, student interest, and curriculum constantly change? And three, most importantly, will the institutional values once known and cherished endure?

Sometimes institutional change is rapid and dramatic. The Boy Scouts of America now enrolls girls, but the organization is hemorrhaging membership, filing for bankruptcy, and reeling under charges of ignoring pedophilia by scout leaders.<sup>1</sup> If you gave money to the American Civil Liberties Union believing it would always be used to defend free speech and fight discrimination, you will be disappointed to learn that now it uses a social justice filter to determine which

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1 Becky Yerak, Soma Biswas, “Boy Scouts Draw Plans to Settle with Sex-Abuse Victims, Exit Bankruptcy,” *Wall Street Journal*, August 2, 2021.

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speech is progressive and which kind of discrimination may make society more representative.<sup>2</sup> Now defending those former values is left to the Foundation for Individual Rights in Education, Speech First, The James G. Martin Center for Academic Renewal, the National Association of Scholars, and litigation agencies such as the Wisconsin Institute for Law & Liberty, among others.

Higher education has gone through periods of enormous change on many fronts. Some of the changes have been in the public interest, such as increased access to veterans after World War II. But some newer changes are the result of institutional capture by elites who are not actually accountable to anyone but themselves.

Institutions that once had attractive distinctive characteristics, now may be unrecognizable, if you go beneath campus public relations statements. In Connecticut, if you believed your endowment gift would further the values reflected in the names of Wesleyan University or Trinity College, you would be quite out of date. Church related campuses all over the country are shedding their religious identities in the search for more diverse student bodies and secular values. Campuses that once believed in shared governance and that investment in faculty was their most important priority, now have greatly increased bureaucracies who naturally seek to expand and become the source and enforcer of all campus policy decisions.

Campuses that once focused on and rewarded undergraduate teaching may have shifted most such instruction to adjunct faculty or teaching assistants, while tenured professors concentrate on the “real” work of the institution in research and grant acquisitions. Campuses can far more easily report the size of their research budget and the overhead it produces, than any hard information about what students actually learn in the classes taught. Campuses which once treasured the highest achievements of western civilization are now set on decolonizing the curriculum.<sup>3</sup> Campuses that once were careful not to admit students who were underprepared or insufficiently motivated will now admit anybody who can pay full tuition or bring a government subsidy, and then blame student dropout and failure rates on faculty with overly high expectations or who are not themselves culturally appropriate.

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2 Michael Powell, “Once a Bastion of Free Speech, the A.C.L.U Faces an Identity Crisis,” *New York Times*, June 6, 2021.

3 George A. Pieler, “When Money Doesn’t Talk: Yale’s never-ending story,” *Philanthropy*, (November/December 1998).

Campuses that once had a variety of ideological and methodological viewpoints among faculty and visiting speakers are now often quite politically monolithic and have given up sponsoring public debates on important policy questions.<sup>4</sup> Campuses which once were committed to academic freedom now require faculty to submit to regular required indoctrination sessions on Diversity, Equity, and Inclusion by persons who brook no dissent. Diversity is now defined almost exclusively in affirmative action categories and there is a de facto burden of proof when persons from “overrepresented” groups are proposed for employment, leadership, or honors. Campuses which once prided themselves on attempting to hire the best scholar/teachers available without regard to their innate characteristics, now suggest that their faculty should mirror the demographics of their student body or surrounding community. Search committees will be reconstituted or their recommendations overturned if this sort of demographic diversity does not result. Campuses that once believed in integration as a student life goal, now vigorously encourage students to see themselves as members of racial, ethnic, sexual, or gender identity groups and create funded resources, separate spaces, and graduation events for these groups.<sup>5</sup> Campuses that once encouraged a sense of national pride in American unity, in our people’s efforts to overcome historical defects and defeat overseas tyrannies are now awash with Critical Race Theory, which argues such defects are uniquely systemic and cannot be overcome without reverse discrimination and censoring speech. Some elite campuses which have a history of contributing substantially to United States economic and military prowess now see themselves as global institutions whose announced American identity manifests itself solely when defending their tax exempt status.

Not all campuses suffer from these transformations, but many do and it is hard to predict which campuses will be transfigured next. A donor may actually like some of these changes, but the point is that endowment donors will have little or no influence in these new policies. It can be argued, after all, that any accumulation of financial assets is inevitably the result of an exploitative capitalist or racist system.<sup>6</sup> In the pursuit of equity therefore, new blood values should reconfigure old blood money.

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4 George R. La Noue, *Silenced Stages: The Loss of Academic Freedom and Campus Policy Debates* (Carolina Academic Press, 2019).

5 Dion J. Pierre, Peter W. Wood, “Separate, but Equal Again: Neo-Segregation in American Higher Education,” *National Association of Scholars*, April 24, 2019.

6 Edgar Villanueva, *Decolonizing Wealth: Indigenous Wisdom to Heal Divides and Restore Balance* (Berrett-Koehler Publishers, 2018).

A masterful recounting of the struggles over institutional capture can be found in Martin Morse Wooster, *How the Great Philanthropists Failed and You Can Succeed in Protecting Your Legacy*.<sup>7</sup> In this book, the authors recount the transformation of the Carnegie, Ford, MacArthur, Packard, Pew, and Rockefeller Foundations, and how a few such as Bradley, Duke, and Hilton resisted change. A common, but not definitive, trajectory of these foundations sees the magnate in charge getting besieged by supplicants and designating an intermediary to handle funding requests. That step leads to a large, well-paid staff which eventually edges out the deceased donor's family, so that managerial professionals could redirect the foundation funds to fit their social vision, influence public policy, and get invited to all the right parties. Who would argue with Washington D.C. insider McGeorge Bundy as he was transforming the Ford Foundation between 1966-1979, when he was its president?

The key to this capture was taking over the foundation boards. Nonprofit institutional boards are particularly vulnerable to such strategies, since they usually meet infrequently, have vague selection standards for membership, depend on administrators for their information, operate with little transparency, and report decisions as though there were complete consensus, even if that is not the reality.

A new organization, the Alumni Free Speech Alliance, has been formed to oppose some of the abrupt transformations of their campuses, but it is far too soon to know what effect it will have.<sup>8</sup> The possibility that boards might be held more accountable to larger constituencies may be resisted fiercely. Faced with an independent alumni petition candidate for its Corporation Board in 2020, Yale University abolished the single slot on its nineteen-member board that could be accessed by alumni petition candidates. Now Yale alumni input is confined to choosing between two Board-chosen candidates who offer only an abbreviated statement of their accomplishments and nothing about their goals for the University. Despite many public objections,<sup>9</sup> sitting securely on its \$31 billion endowment, Yale can afford to silence alumni voices who want to understand and have a say in the University's policies.

7 Martin Morse Wooster, *How Great Philanthropists Failed & How You Can Succeed at Protecting Your Legacy* (Washington, D.C. Capitol Research Center, 2017).

8 Stuart Taylor Jr., Edward Yingling, "Alumni Unite For Freedom of Speech," *Wall Street Journal*, October 17, 2021; Jay Schalin, "Sheep No More: the Alumni Rise," *The James G. Martin Center*, October 27, 2021.

9 Emma Whitford, "The Alumni Are Ready For War," *Inside Higher Education*, June 23, 2021.

Still what to do if a donor is committed to supporting higher education but fearful of these relatively recent campus value shifts or those to come that cannot be predicted? If these value transformations concern a donor, should the gift be to a campus with stipulations or to organizations that are critical of these trends?

The American Council of Trustees and Alumni has produced a valuable book titled *The Intelligent Donor's Guide to College Giving*.<sup>10</sup> The Guide begins by describing campuses “as complicated and often insular, requiring a great deal of patience” for both giver and recipient. Donor assistance can be provided by joining the Philanthropy Roundtable or Exponent Philanthropy, a membership association. ACTA has created its own Fund for Academic Renewal to help guide donors.

The ACTA Guide also has a series of cautionary case studies about what went right or wrong with various donations. At Trinity College, the campus sought to change part of a gift by Shelby Cullom Davis from an endowed professorship of American Business and Economic Enterprise to financial aid for foreign students. When Davis heard about the proposal, he categorically rejected it. Later an investigation by the Connecticut Attorney General found that the campus had been using some of the endowment money for internships, and the College reimbursed the endowed professorship fund \$193,000. More recently, Yale found itself in controversy over a 2006 \$17.6 million gift to fund a Brady-Johnson Grand Strategy Program intended to expose students to the classic texts of history and statecraft, while introducing them to decision makers in government, the military, and the media. The two donors, Charles B. Johnson and Nicholas F. Brady, had given more than \$250 million to the University and they thought they had an agreement that the program would have a Board of Visitors to which they might suggest names. Fifteen years after the program was created no board was appointed, however, and when the donors expressed displeasure and suggested some names, Beverly Gage, program director resigned on the principle that only faculty should determine the curriculum.<sup>11</sup>

Other endowed programs have happier stories. The Pizzagalli Chair of Free Enterprise at the University of Vermont seems to have found the right professor,

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10 *Intelligent Donor's Guide to College Giving*, ACTA, <https://www.goacta.org/wp-content/uploads/2020/10/Intelligent-Donors-Guide-Third-Edition.pdf>.

11 Len Gutkin, “Right-Wing Donor Interference at Yale?,” *The Chronicle of Higher Education*, October 4, 2021; Jennifer Schuessler “Leader of Prestigious Yale Program Resigns: Citing Donor Pressure,” *New York Times*, September 30, 2021.

but the gift agreement terms have a reverter or “clawback” provision, which would require the return of the money to the family if the University failed to live up to the initial agreement. The Herbert W. Vaughan Lecture at Harvard Law School has a provision that in the years where the lecture is not given, the funds are to be given to an activity sponsored by the School’s Federalist Society chapter. Thus both the School and the Society have to cooperate to make the program work.

For their part, institutions should set clear boundaries about the type of gifts they will accept. That is difficult to do because one of the most visible leadership success metrics is endowment growth, even if it was caused by market increases that no single institution could control. Campuses cannot predict the future behavior of donors such as a Jeffrey Epstein or the Sackler family and avoid the embarrassment of being in possession of their gifts. They can, however, seek good legal advice about whether a particular gift, if implemented, would violate civil rights law by creating programmatic or scholarship preferences based on race or sex.

Campuses should also create a specific office, a sort of endowment ombudsperson, where someone is charged with seeing that endowment terms are honored, making annual reports to that donor about whether endowment goals are achieved, and evaluating whether breeches of the terms of a gift can be resolved without litigation. If such a process does not exist, ask why. On the other hand, donors could designate a person with power of attorney to negotiate repurposing of funds that can no longer be expended for their intended goals (i.e. when an academic program or sport is discontinued).

Investing in higher education is a worthy goal, but it should be done with both eyes open. As the ACTA guide urges “Give well, give often, and give with strings attached.”<sup>12</sup> Don’t just add your bit to the annual fund drive or mix your donation with the millions or even billions in the existing endowment. Don’t just play defense with your money by trying to create unenforceable stipulations for irrevocable endowment grants. Play offence, instead, by investing wisely for short term goals, while you are alive and can monitor regularly whether those goals are met. That strategy may create tax benefits and the likelihood of more personal satisfaction about your gift. When Tom and Cathy Tinsley first thought about giving money to higher education, they considered endowment

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12 *Intelligent Donor’s Guide*, 1.

contributions to one of Tom's alma maters, Notre Dame (\$12 billion endowment) or Stanford (\$29 billion). Instead, they turned to Colby College, where they had some family ties and made a short-term gift of \$100,000 to each of its six newly tenured professors to increase their future research options. The Tinsleys consider this a pilot project that could be extended at Colby or other campuses.<sup>13</sup> If you have to allocate some of your money after death, require that it be spent by the beneficiary within five years, so there will be a living memory about its purposes.

If you decide not to bequeath money for uncertain causes or institutions, take the hard next step and explain your thinking to those who might expect to be recipients. Otherwise your silence will be the sound of one hand clapping, and there will be no awareness that at least some donors no longer regard that recipient as congruent with their values or as trustworthy.

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13 Colleen Flaherty, "Dream Grant," *Inside Higher Education*, October 11, 2021.