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Citation Information

Paul Campos, The Economics of American Higher Education in the New Gilded Age, 2018 Utah L. Rev. 867, available at <https://scholar.law.colorado.edu/articles/1177/>.

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THE ECONOMICS OF AMERICAN HIGHER EDUCATION IN THE NEW GILDED AGE

Paul Campos*

Student debt is a function of three factors: the cost of higher education, the extent to which that cost is subsidized through sources other than students and their families, and the percentage of nonsubsidized revenue that is supplied via loans rather than out-of-pocket payments.

The first factor is a product of how much money colleges and universities choose to spend. The second is determined by total value of the many sources of subsidization upon which higher education draws. The third is a function of the relative wealth or poverty of the people who make up the student bodies at American higher education institutions.

This Article will focus on the first two factors, while addressing the increasingly common claim that, in recent years, higher education in America has been “defunded.” Here is a characteristic statement of that claim:

Years of cuts in state funding for public colleges and universities have driven up tuition and harmed students’ educational experiences by forcing faculty reductions, fewer course offerings, and campus closings. These choices have made college less affordable and less accessible for students who need degrees to succeed in today’s economy.¹

Here is another:

We can’t take the thriving economy of Texas for granted; it must be nourished and protected for future generations. If we continue divesting from public higher education, we won’t be counting the number of people moving here every day; we’ll be looking around and asking where everybody went.²

* © 2018 Paul Campos. Professor of Law, University of Colorado. This essay is based on a talk given at a symposium, “Financing the Future: The Law and Politics of Student Debt in American Higher Education,” held at the University of Utah S.J. Quinney College of Law, in October of 2017. I thank all the organizers of and the participants in the symposium, and in particular Thomas Lingard.

¹ MICHAEL MITCHELL ET AL., CTR. ON BUDGET & POLICY PRIORITIES, FUNDING DOWN, TUITION UP: STATE CUTS TO HIGHER EDUCATION THREATEN QUALITY AND AFFORDABILITY AT PUBLIC COLLEGES PRIORITIES 1 (2016), <https://www.cbpp.org/sites/default/files/atoms/files/5-19-16sfp.pdf> [<https://perma.cc/8GNQ-89ZA>].

² Todd Maclin & Will O’Hara, *Commentary: The Real Cost of Defunding Higher Education*, AUSTIN AM.-STATESMAN (May 10, 2017), <https://www.mystatesman.com/news/opinion/commentary-the-real-cost-defunding-higher-education/oBxoMNPRxpi9496byw9>

Most claims regarding the purported defunding of American higher education focus on state colleges and universities. It is true that, in the wake of the Great Recession of 2008–2009, state legislative appropriations to higher education have not yet recovered from their historical highs, in real-dollar, per-student terms.³ It is also true that many nonelite colleges and universities are struggling with serious financial problems; indeed, over the past few years several hundred for-profit colleges, along with a few dozen nonprofit institutions, have gone out of existence altogether.⁴

But is American higher education as a whole actually being “defunded” in any meaningful sense? This Article suggests that the most relevant statistics not only fail to support this claim: they forcefully contradict it. Again, this is not to deny that American higher education is free from serious financial problems. It certainly is not—and recent political developments may well make those problems considerably worse.⁵ But the real financial picture is far more complex than the simplistic tale of severe funding cutbacks, told over and over again by so many high-level (and highly compensated) university administrators.

Instead, over the past forty years the economics of American higher education have come to parallel those of America’s New Gilded Age as a whole. That is to say, the already-rich have grown astoundingly richer, the upper-middle class has done fairly well, and everyone else has had to struggle to varying extents with the consequences of both ever-growing wealth disparities, and a structural and systematic migration of resources from the public to the private sector.⁶

oMK/ [https://perma.cc/XY43-4Y4F].

³ MICHAEL MITCHELL ET AL., *CTR. ON BUDGET & POLICY PRIORITIES, A LOST DECADE IN HIGHER EDUCATION FUNDING: STATE CUTS HAVE DRIVEN UP TUITION AND REDUCED QUALITY 2* (2017), https://www.cbpp.org/sites/default/files/atoms/files/2017_higher_ed_8-22-17_final.pdf [https://perma.cc/7VA4-7K92].

⁴ Doug Lederman, *The Culling of Higher Ed Begins*, *INSIDE HIGHER ED* (July 19, 2017), <https://www.insidehighered.com/news/2017/07/19/number-colleges-and-universities-drops-sharply-amid-economic-turmoil> [https://perma.cc/2DME-DYNW].

⁵ For example, the Republican-controlled legislature is considering major changes to the Higher Education Act, including the elimination of various federal educational loan programs. *See* Douglas Belkin et al., *House GOP to Propose Sweeping Changes to Higher Education*, *WALL ST. J.* (Nov. 29, 2017), <https://www.wsj.com/articles/house-gop-to-propose-sweeping-changes-to-higher-education-1511956800> [https://perma.cc/GAG8-55AC].

⁶ *See generally* Thomas Piketty et al., *Distributional National Accounts: Methods and Estimates for the United States 4* (Wash. Ctr. for Equitable Growth, Working Paper Series 2016), <http://cdn.equitablegrowth.org/wp-content/uploads/2017/02/24163023/120716-WP-distributional-national-accounts.pdf> [https://perma.cc/QS7M-6VUC] (analyzing income inequality and computing inequality statistics in the United States). The disproportionate allocation of resources in the American economy to the private rather than the public sector was already a concern sixty years ago, when it was a major theme of John Kenneth Galbraith’s influential study. *See generally* JOHN KENNETH GALBRAITH, *THE AFFLUENT*

This Article takes a forty-year perspective on the economics of American higher education, from the mid-1970s up to the present day. It addresses the following questions:

- (1) What has the nation spent per year on post-high school education over this period?
- (2) What do these expenditures represent as a percentage of the national gross domestic product, and in per-student terms?
- (3) How much of this expenditure has been subsidized by sources of revenue other than the pocketbooks (or loan balances) of students and their families?

This Article then contextualizes the answers to these general questions by looking closely at the budgets of a few individual higher education institutions over time.

The questions of how much—ideally—America ought to spend on higher education, and what the sources of that spending ought to be, are beyond the scope of this Article. But to even begin to address such questions, it is crucial to understand how much we are spending, where that money is coming from and where it is going, and how that spending and its sources have changed over the course of the past forty years. Only then can the student loan crisis be understood in an appropriately contextualized way.

I. HOW MUCH DO AMERICANS SPEND ON HIGHER EDUCATION PER YEAR?

According to the National Center for Education Statistics, during the 2014–2015 academic year (the most recent year for which this figure is available) postsecondary institutions in the United States spent \$536 billion.⁷ How has this figure changed over time? If we convert the relevant figures into constant, inflation-adjusted 2015 dollars, the same source reports that, in 1995–1996, postsecondary institutions spent \$292 billion.⁸ Thus, higher education expenditures increased by 83.6 percent in real terms over this twenty-year period.

SOCIETY (2d ed. 1969) (discussing the value of a production-based economy and the nature of poverty).

⁷ *Fast Facts: Expenditures*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=75> [<https://perma.cc/3RZX-MZ7Z>] (last visited Feb. 6, 2018).

⁸ THOMAS D. SNYDER ET AL., NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., *DIGEST OF EDUCATION STATISTICS 1997 3* (1997), <http://www.finaid.org/educators/educstat.pdf> [<https://perma.cc/7D77-S6HZ>].

If we go back another two decades, we find that total expenditures in 1975–1976 were—again, in constant 2015 dollars—\$166 billion.⁹ In the middle of the present decade, higher education institutions in the United States were spending 222.9 percent more in real dollars than their predecessors were spending in the mid-1970s.

A number of factors have driven this remarkable growth rate. America is a bigger and richer country than it was twenty to forty years ago, and a larger percentage of the population participates in higher education. Total enrollment in postsecondary education increased by 23.3 percent between 1975–76 and 1995–96, and then by 47 percent between 1995–96 and 2014–15. Thus, enrollment totals are 81 percent higher now than they were four decades ago.¹⁰

Translating all this into expenditures per full-time equivalent (“FTE”) student, we find that American higher education spent an average, in constant 2015 dollars, of \$19,350 per FTE student in 1975–76, \$27,597 in 1995–96, and \$34,458 in 2014–15.

In short, the more than tripling of real-dollar expenditures by American postsecondary institutions over the past forty years has been driven in almost equal parts by increases in enrollment (up 81 percent) and in spending per student (up 78 percent).

One reason America spends so much more on higher education now than it did a generation ago is that, in standard economic terms at least, we are a much wealthier nation today. As a percentage of the total gross domestic product, higher-education spending has increased from 2.2 percent of gross domestic product (“GDP”) in 1975–76, to 2.4 percent of GDP in 1995–96, and to 3.1 percent of GDP in 2014–15.¹¹ A 41 percent increase in the percentage of GDP taken up by a particular sector of the economy is of course notable in and of itself, and it does put the 223 percent increase in absolute constant dollar terms into a broader economic and social perspective.

How is this tremendous increase in expenditure being paid for? The most obvious source of increased revenue—and the most controversial—has been increased tuition. Published tuition rates have gone up far faster than inflation, at both the undergraduate and—especially—the graduate and professional school levels.¹² But it is important to note the difference between changes in published tuition rates from changes in net tuition: that is, the actual tuition paid by students

⁹ *Id.*

¹⁰ See *Table 303.10*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/digest/d15/tables/dt15_303.10.asp?current=yes [<https://perma.cc/5JNN-U5GM>] (last visited Feb. 6, 2018).

¹¹ THOMAS D. SNYDER ET AL., NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., *DIGEST OF EDUCATION STATISTICS 2015* 63 (2016), <https://nces.ed.gov/pubs2016/2016014.pdf>.

¹² *Fast Facts: Tuition Costs of Colleges and Universities*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=76> [<https://perma.cc/B85P-EYFK>] (last visited April 10, 2018).

and their families, after accounting for scholarships, grants, and other forms of subsidization, such as tuition tax credits. Because of such factors, tuition revenue collected by colleges and universities has gone up considerably faster than the rate at which actual payments made by students and their families has increased.¹³

For example, consider the changes in net tuition paid by students over that time at various institutions. At public two-year institutions, net tuition paid by students went from \$780 per year in 1995–96 (in 2015 dollars) to negative \$620 per year in 2014–15 (that is, in the latter year, the average community college student was paid to attend, rather than paying any tuition). At public four-year institutions, undergraduate net tuition rose, in constant dollars, from \$2,320 in 1995–96 to \$3,430 in 2014–15. And at private four-year colleges, undergraduate net tuition rose from \$11,360 to \$13,050 in constant dollars over this time frame.¹⁴

The modest growth rate over the past two decades (or, in the case of community colleges, the actual decline) in the amount of tuition students are paying bears little relation to the massive increase in total spending by educational institutions over this same time. As described above, about half of that growth is due to increased enrollment. Yet comparatively little of the rest is accounted for by higher tuition payments on the part of students and their families.

The main reason colleges and universities are spending so much more today per student than they were twenty and forty years ago has nothing to do with enrollment increases. Such increases are accounted for by definition in a per capita analysis, and, if anything, greatly increased enrollment should create at least some economies of scale. And it has relatively little to do with increased effective or net tuition rates since those have climbed much more slowly than per capita operating costs.

The main reason higher education in America is so much more expensive on a per capita basis now than it was in the 1970s or even the 1990s is because the total amount of subsidization of that education by third parties has increased so dramatically.

II. WHO SUBSIDIZES AMERICAN HIGHER EDUCATION?

Higher education in America is subsidized in many ways. This Article focuses on five forms in particular and on the changes of the rate of subsidization via these sources over the past twenty and forty years. (Again, all monetary figures are presented in constant, inflation-adjusted dollars).

¹³ *Trends in Higher Education: Net Price*, COLL. BOARD, <https://trends.collegeboard.org/college-pricing/figures-tables/net-price> [<https://perma.cc/N458-H2JQ>] (last visited Feb. 6, 2018).

¹⁴ *Id.*

A. State Tax Appropriations

For many years, the majority of American higher-education subsidies came in the form of state tax appropriations for public colleges and universities. While this remains an important source of revenue, state tax money is no longer as dominant a factor in the economics of American postsecondary education as it once was. This is in part because such subsidies have declined somewhat from their per capita peak, but in larger part because other forms of subsidization have increased so dramatically.

State tax appropriations increased, in constant dollars, from \$53.4 billion in 1975–76, to \$67.1 billion in 1995–96, to \$79.0 billion in 2014–15.¹⁵ This represents expenditures of \$6,045 per enrolled student in 1975–76, exactly the same figure in 1995–96, and \$5,389 in 2014–15.

So, in constant dollars, state expenditures in the middle of the present decade were 10.9 percent lower per student than they were in the mid-1990s and the mid-1970s. This is not a trivial decline, especially when one considers that seven of ten postsecondary students are enrolled in public institutions, and that the United States as a whole is a much richer country than it was forty years ago.¹⁶ It is this decline that is invariably cited, often to the exclusion of any other factors, when claims are made that higher education in America is being “defunded.”¹⁷

But the actual economic situation, in regard to the subsidization of both public and private higher education in America, is considerably more complicated than such claims make it out to be. This is because other sources of subsidization for higher education have grown far faster—on a real-dollar per-capita basis—than state appropriations have declined.

B. Pell Grants

The Federal Pell Grant Program is the federal government’s primary tool for subsidizing higher education on the basis of demonstrated financial need.¹⁸ In

¹⁵ *Grapevine Project: Historical Data*, ILL. STATE UNIV. C. EDUC., <https://education.illinoisstate.edu/grapevine/historical/> [https://perma.cc/VBH7-CUYT] (last visited Feb. 6, 2018).

¹⁶ For relative enrollment percentages, see *Table 303.10*, *supra* note 10. Measured by per capita GDP, the overall wealth of the United States population more than doubled between 1975 and 2015, going from \$24,935 to \$51,286 in constant 2009 dollars. See Louis Johnston & Samuel H. Williamson, *What Was the U.S. GDP Then?*, MEASURING WORTH, <https://www.measuringworth.com/usgdp/> [https://perma.cc/9RFE-JUBP] (last visited Feb. 6, 2018).

¹⁷ See MITCHELL ET AL., *supra* note 1, and accompanying text for representative examples.

¹⁸ U.S. DEP’T OF EDUC., *Types of Aid*, FED. STUDENT AID, <https://studentaid.ed.gov/sa/types> [https://perma.cc/G3KU-TBN2] (last visited Feb. 6, 2018).

2014–15, 74 percent of Pell grant recipients who qualified as being dependents for the purposes of financial aid belonged to households with incomes of \$40,000 or less.¹⁹ Pell grants are almost always distributed to undergraduate students, although a few graduate students qualify to receive them as well.

The Federal Pell Grant Program has expanded enormously over the past four decades. In 1975–76, the federal government distributed \$3.9 billion in Pell grants, in 2015 dollars. By 1995–96, that figure had more than doubled, to \$8.6 billion. Over the next two decades, the program grew by three and a half times in constant dollars, so that by 2014–15 the federal government distributed \$30.7 billion.²⁰ Because the maximum Pell grant in the latter year was \$5,730—much less than the cost of tuition at the vast majority of institutions—the great bulk of this money was distributed directly to schools, rather than to students themselves.

C. Federal Tax Credits and Other Favorable Federal Tax Treatment

In recent years, federal tax policy has become much more favorable to taxpayers who are paying for the higher education of their children or other dependents. The most important change in tax policy has been the creation of various federal tax credits, which allow taxpayers to in effect pass on certain college costs directly from themselves to the federal treasury. This is practically a direct subsidy to higher education institutions.

In 2015, I described how these tax credits work:

Tax credits reduce the amount of income tax an individual has to pay. Currently, taxpayers (and schools) benefit from two major programs: the Lifetime Learning Credit and the American Opportunity Credit. The former allows a taxpayer to receive a credit of up to \$2,000 for qualifying higher-education expenses if the person meets a few other qualifications. The latter is a slightly more generous version of the Lifetime Learning Credit that can only be claimed for college expenses for the first four years of a student's postsecondary education. The maximum amount taxpayers can claim via the American Opportunity Credit on their 2014 return [was] \$2,500.

Here's how the credits work: Suppose the Smiths pay their child's tuition at State University (a hypothetical institution). If in 2014 the Smiths paid \$2,000 or more in federal income tax and \$10,000 or more in tuition

¹⁹ *Trends in Higher Education: Distribution of Pell Grant Recipients by Dependency Status and Family Income, 2015–16*, COLL. BOARD, <https://trends.collegeboard.org/student-aid/figures-tables/distribution-pell-grant-recipients-dependency-status-and-family-income-2015-16> [<https://perma.cc/LX3E-GMW4>] (last visited Feb. 6, 2018).

²⁰ *Trends in Higher Education: Total Pell Grant Expenditures and Number of Recipients over Time*, COLL. BOARD, <https://trends.collegeboard.org/student-aid/figures-tables/pell-grants-total-expenditures-maximum-and-average-grant-and-number-recipients-over-time> [<https://perma.cc/4EF2-EESW>] (last visited Feb. 6, 2018).

charges, they would be eligible for a \$2,500 refund via the American Opportunity Credit or \$2,000 through the Lifetime Learning Credit.

These tax credits are, in effect, direct subsidies to colleges and universities: It's as if the federal government had sent \$2,500 or \$2,000 to State U rather than to the Smiths because the [U]niversity ends up getting the discount. Federal tax-credit programs for educational expenses, which were first introduced in 1998, have grown enormously over the last few years—from \$3 billion in 2007 to \$23 billion in 2014.²¹

Many other federal tax policies have also greatly increased the amount of federal subsidization that higher education in America has received in recent years. These include various tax deductions, exemptions, and exclusions. The most important of these are the student loan deduction and the parental exemption for eighteen- to twenty-three-year-old dependent students. Collectively, the cost to the federal government of these three tax policies rose, in inflation-adjusted dollars, from \$1.2 billion in 1995–96 to \$29.4 billion in 2014–15.²²

D. Federal Government Research Grants

Another important source of subsidization for postsecondary education in America is federal government money in the form of research grants. The total amount of such grants increased by 73.5 percent in constant dollars between 1975–76 and 1995–96, from \$9.05 billion to \$15.70 billion, and then by 141.4 percent between 1995–96 and 2014–15.²³

E. Expendable Endowment Income

Finally, a significant source of subsidization for various colleges and universities comes not from state or federal government appropriations, but from expendable endowment income. (Of course, this income is indirectly subsidized by the federal government, because gifts to nonprofit educational institutions are tax deductible.) The collective endowments of America's colleges and universities have exploded in size over the past generation. I estimate that, in constant 2015 dollars,

²¹ Paul Campos, *The Real Cost of College*, ATLANTIC (May 13, 2015), <https://www.theatlantic.com/education/archive/2015/05/the-real-cost-of-college/393086/> [<https://perma.cc/U7ZS-M5H7>].

²² *Publications Listed by Year*, JOINT COMMITTEE ON TAX'N, <https://www.jct.gov/publications.html?func=startdown&id=4663> [<https://perma.cc/25UV-5T9A>] (last visited Feb. 6, 2018).

²³ *Federal Funds for R&D*, NAT'L SCI. FOUND., https://ncesdata.nsf.gov/fedfunds/2014/html/FFS2014_DST_002.html [<https://perma.cc/CZ69-RBBB>] (last updated June 3, 2013); <https://wayback.archive-it.org/5902/20160210230111/http://www.nsf.gov/statistics/nsf03325/pdf/hist8.pdf>.

the total annual expendable endowment income of American higher education institutions rose from \$2.9 billion in 1975–76, to \$9.3 billion in 1995–96, to \$26.8 billion in 2014–15.²⁴

These five major sources of subsidization constitute a far-from-exhaustive list of the ways in which third parties pay for higher education in America. But looking at how the total income they generate has changed, especially relative to the total rate of expenditure on postsecondary education in the United States, helps give a more nuanced response to the claim that the nation's higher education system is being "defunded."

The bottom line looks something like this: the total annual subsidization of American higher education from state appropriations; pell grants; federal tax credits, deductions, and exemptions; federal research grants; and expendable endowment income has grown, in 2015 dollars, from \$70.6 billion in 1975–76, to \$101.5 billion in 1995–96, to \$200.6 billion in 2014–15.

Translated into a percentage of total expenditures by postsecondary institutions, these five major sources of subsidization accounted for 42.5 percent of total expenditures in 1975–76, 34.8 percent of total expenditures in 1995–96, and 37.4 percent of total expenditures in 2014–15.

Translated into the total subsidization rate per FTE student, these five sources provided—in 2015 dollars—\$8,224 per FTE student in 1975–76, \$9,593 per FTE student in 1995–96, and \$12,896 per FTE student in 2014–15. That is, these major sources of subsidy increased by 16.6 percent per FTE student between the mid-1970s and the mid-1990s, and by another 34.4 percent between the mid-1990s and the middle of the present decade. In other words, the rate at which American higher education is being subsidized has clearly outstripped the rate at which enrollment in postsecondary education has been increasing. As a result, subsidies per student are much higher now than they were twenty and forty years ago.

Yet because spending per student, in constant dollars, has increased even faster than the increasing rate of subsidization, American higher education appears to be, from the perspective of people who must pay tuition, *less* heavily subsidized than it was twenty and forty years ago. The purported defunding of higher education is really a story of the greatly increased sums being spent on subsidizing colleges; universities being unable to keep pace with the combined effects of the greatly increased rate of enrollment; and the greatly increased amount of money that higher education institutions are spending per student. The two latter factors have been equally important: about half of the explosion in spending on higher education is accounted for by increased enrollment, but the other half is due to increasing per-capita spending per student.

²⁴ Estimates are based on the assumption that 4.5% of the corpus of endowment income is expendable per year. Endowment totals are available at *Public NCSE Tables*, NAT'L ASS'N COLL. & UNIV. BUS. OFFICERS (Apr. 5, 2018), <https://www.nacubo.org/Research/2009/Public-NCSE-Tables> [<https://perma.cc/546F-EM73>].

III. THE ECONOMICS OF AMERICAN HIGHER EDUCATION IN THE NEW GILDED AGE

While the claim that in recent decades higher education in America has been defunded is, on average, the precise opposite of the truth, averages can be deceiving. As the nineteenth century polymath Francis Galton once pointed out, on average Switzerland is flat.²⁵ What the finances of higher education in America over the past generation reveal is a pattern that will be familiar to all students of our New Gilded Age: the rich grow richer, at both the institutional and personal level, while the wealth gap between the haves and the have-nots becomes ever-more extreme. Another familiar pattern is a massive relative shift of resources from public to private institutions.

Let us examine what has happened, at a more granular level, to each of the major sources of subsidy for postsecondary education over the past generation.

A. State Appropriations

While state appropriations are down by an average of 10.9 percent, on a per-student real-dollar basis, from their levels in the mid-1970s and mid-1990s, this average masks huge variations among individual states. For example, the fiscal crises in Illinois and Louisiana have led to drastic cuts to the public higher education systems in those jurisdictions.²⁶ While declines in legislative subsidies have been on the whole relatively modest, at least in absolute terms, they have been far more substantial in a significant minority of our state-based systems of public higher education.²⁷

B. Pell Grants

The enormous increase in the use of Pell grants is almost wholly a product of far larger numbers of students from modest economic circumstances attending college. The inflation-adjusted size of Pell grants today is essentially the same as it

²⁵ Edward B. Reeves & Jesse Lowe, *Quantile Regression: An Education Policy Research Tool*, 24 SOUTHERN RURAL SOC. 175 1, 175 (2009), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.564.258&rep=rep1&type=pdf> [<https://perma.cc/T6YZ-73EU>].

²⁶ Julia O'Donoghue, *Higher Education Is a Loser Again in Louisiana's Latest Budget Battle*, TIMES-PICAYUNE (Nov. 17, 2016), http://www.nola.com/politics/index.ssf/2016/11/budget_deficit_plan.html [<https://perma.cc/3EKD-ZTQW>]; Dawn Rhodes, *Falling Public University Enrollment Shows Effects of State Budget Impasse*, CHI. TRIB. (Sept. 12, 2017), <http://www.chicagotribune.com/news/local/breaking/ct-state-university-enrollment-drops-met-20170912-story.html> [<https://perma.cc/8MAQ-CGEV>].

²⁷ See MITCHELL ET AL., *supra* note 3, at 11.

was forty years ago.²⁸ Meanwhile, the percentage of the cost of higher education that those grants cover has declined drastically because of the dramatic increase in the per-student cost of institutional operation.

C. Federal Tax Policy

The tens of billions of annual federal tax dollars that are now being funneled to families with children in college (and, via those families, to postsecondary educational institutions) by means of tax credits and deductions disproportionately benefit upper-middle- and upper-class Americans. Since nearly half of all American households pay no net income tax even without regard to these credits and deductions, these tax breaks go exclusively to better-off families.²⁹ As a functional matter, federal tax policy over the past twenty years has diverted relatively greater resources to wealthier families and the institutions their children attend, and relatively fewer resources to poorer Americans, and the institutions their children attend.

D. Federal Government Research Grants

By definition, research grants go to research institutions. Practically speaking, the higher up an institution of higher education sits in the educational hierarchy, the more federal government money it receives in research support. Thus, federal government research grants, which have quadrupled in real-dollar terms over the past forty years, and increased by two-and-a-half times over the last twenty years,³⁰ serve as another form of subsidy that disproportionately favors academia's already-rich—and getting richer—elite colleges and universities, at the expense of the vastly larger number of nonelite institutions.

E. Expendable Endowment Income

No form of third-party subsidization better illustrates the extent to which higher education in America has come to reflect the nation's increasing wealth stratification than endowment income. A brief survey of private giving to colleges and universities over the past half-century reveals the following.

²⁸ *Trends in Higher Education: Maximum and Average Pell Grants over Time*, COLL. BOARD, <https://trends.collegeboard.org/student-aid/figures-tables/maximum-and-average-pell-grants-over-time> [<https://perma.cc/XZ26-YH6Z>] (last visited Feb. 6, 2018).

²⁹ *T16-0121—Tax Units with Zero or Negative Income Tax Under Current Law, 2011–2026*, TAX POL'Y CTR., <http://www.taxpolicycenter.org/model-estimates/tax-units-zero-or-negative-income-tax-july-2016/t16-0121-tax-units-zero-or-negative> [<https://perma.cc/62BV-T58F>] (last visited Feb. 6, 2018).

³⁰ See *Federal Funds for R&D*, *supra* note 23 and accompanying text.

In 1966–67, the combined endowments of all postsecondary institutions in the United States amounted to \$65.5 billion, in 2015 dollars.³¹ This amounted to \$10,242 per enrolled student. Only \$11.8 billion of this figure represented endowments at public institutions—a sum which amounted to \$5,324 per student (again, all figures are in 2015 dollars).

By 1980–81, these figures had become considerably worse for American higher education. The overall value of the endowments held by colleges and universities had actually declined in real dollars to \$64.4 billion, in 2015 dollars.³² And because enrollments had nearly doubled over this time, the per-student value of these endowments had fallen by approximately half. The overall situation was even worse at public institutions. While enrollments at public colleges and universities more than doubled, the decline in real value of the total endowments at these institutions (from \$11.8 billion to \$11.4 billion) did not reflect the fact that fully one-third of the latter figure was accounted for by a single institution: The University of Texas at Austin. It is no exaggeration to say that no other public college or university in America had what would today be considered an endowment of any real practical economic significance.

Thirty-five years later, the situation has changed dramatically. After actually declining from the mid-1960s through the early 1980s, the total value of the endowments at American colleges and universities grew an astounding 732 percent in real terms between 1980–81 and 2014–15, in constant dollars.³³ Indeed, Harvard and Yale by themselves now have endowments the combined value of which is almost greater than that, in real dollars, of all the thousands of higher education institutions in the United States in the early 1980s.³⁴

A similar pattern of explosive growth has marked the endowments of elite public institutions. The University of Michigan, which had a total endowment of just \$115 million in 1982 (\$283 million in 2015 dollars) saw that total grow to nearly

³¹ KENNETH A. SIMON & W. VANCE GRANT, NAT'L CTR. FOR EDUC. STATISTICS, DIGEST OF EDUCATIONAL STATISTICS 93 tbl. 129 (1969), <https://files.eric.ed.gov/fulltext/ED035996.pdf> [<https://perma.cc/6PY3-AB82>].

³² W. VANCE GRANT & LEO J. EIDEN, NAT'L CTR. FOR EDUC. STATISTICS, DIGEST OF EDUCATION STATISTICS 150 tbl. 139 (1982), <https://files.eric.ed.gov/fulltext/ED225272.pdf> [<https://perma.cc/XAC6-98HF>].

³³ NAT'L ASS'N OF COLL. & UNIV. BUS. OFFICERS, EDUCATIONAL ENDOWMENTS' INVESTMENT RETURNS DECLINE SHARPLY TO 2.4% IN FY2015; 10-YEAR RETURNS FALL TO 6.3%—INSTITUTIONS INCREASE ENDOWMENT SPENDING DESPITE LOWER RETURNS X (2015), <http://www.nacubo.org/Documents/2015%20NCSE%20Press%20Release%20%20FINAL.pdf> [<https://perma.cc/AN4F-NYBU>].

³⁴ As of the end of fiscal 2016, Harvard and Yale's combined endowments equaled almost \$60 billion. The 20% increase in U.S. equity markets since that date make it highly likely that this figure now exceeds the \$64.4 billion (in 2015 dollars) that represented the total endowments of all U.S. colleges and universities in 1980–81. GRANT & EIDEN, *supra* note 32.

\$10 billion by fiscal year 2015.³⁵ At that point, Michigan's endowment was, in constant dollars, nearly as large as that of every public school in the country thirty-five years earlier.

Yet this explosion of private money in academia has been extraordinarily unbalanced. As of fiscal year 2014, just 2 percent of the nation's approximately 5,300 colleges and universities held three-quarters of the \$536 billion in endowment wealth controlled by higher education institutions in the United States.³⁶ While a handful of colleges and universities had accumulated staggering totals of privately donated money, and a couple of hundred others had built up endowments that produced income streams that funded a significant portion of institutional costs, the overwhelming majority of colleges and universities had little or no private income to help offset their operating costs.³⁷

IV. RATES OF SPENDING GROWTH AT SPECIFIC INSTITUTIONS

Let us consider different historical rates of both absolute spending and spending growth among different American higher education institutions in one specific institutional context—that of law schools. Again, all dollar figures in what follows are given in constant, inflation-adjusted 2016 dollars.

In 1956–57, the 131 law schools approved by the American Bar Association had approximately \$25,000,000 in direct operating expenses.³⁸ This was equivalent to about \$6,110 per student. The average tuition at these schools was \$4,191, while the average public law school charged resident tuition of \$1,893.³⁹ The highest spending law school was probably Harvard.⁴⁰ Harvard Law School had direct

³⁵ NAT'L ASS'N OF COLL. & UNIV. BUS. OFFICERS & COMMONFUND INST., U.S. AND CANADIAN INSTITUTIONS LISTED BY FISCAL YEAR (FY) 2015 ENDOWMENT MARKET VALUE AND CHANGE IN ENDOWMENT MARKET VALUE FROM FY2014 TO FY2015 2 (2016), <http://www.chronicle.com/blogs/ticker/files/2016/01/2015-NCSE-Endowment-Market-Values.pdf> [<https://perma.cc/N97Z-4C8V>].

³⁶ SNYDER ET AL., *supra* note 11, at 744 tbl. 333.90.

³⁷ *See* NAT'L ASS'N OF COLL. & UNIV. BUS. OFFICERS & COMMONFUND INST., U.S. AND CANADIAN INSTITUTIONS LISTED BY FISCAL YEAR (FY) 2016 ENDOWMENT MARKET VALUE AND CHANGE IN ENDOWMENT MARKET VALUE FROM FY2015 TO FY2016 2–22 (2017), <https://middlestates.rutgers.edu/sites/default/files/2016-Endowment-Market-Values.pdf> [<https://perma.cc/L7KZ-TRQS>].

³⁸ ASS'N OF AM. LAW SCH., ANATOMY OF MODERN LEGAL EDUCATION: AN INQUIRY INTO THE ADEQUACY AND MOBILIZATION OF CERTAIN RESOURCES IN AMERICAN LAW SCHOOLS 73–74 (1961).

³⁹ *Id.*

⁴⁰ Although individual schools are not identified by name in the report, the range of budgets is given from highest to lowest, and it is very likely that Harvard, because of its size and eminence, was at the top of the range.

operating expenses of about \$19.68 million. This worked out to around \$11,927 per student. At this time, Harvard charged \$7,765 in annual tuition.⁴¹

Six decades later, Harvard Law School *by itself* was spending more money per year, in constant, inflation-adjusted dollars, than all 131 American-Bar-Association-approved law schools were spending in the mid-1950s. Per Harvard University's financial disclosures, the law school spent approximately \$243 million in 2015–16.⁴² This works out to around \$126,300 per student, including students enrolled in non-J.D. programs. Remarkably, Harvard Law School today spends more than ten times as much per student, in real dollars, than it did when Ruth Bader Ginsberg was enrolled there. As a point of comparison, real GDP per capita was slightly more than three times higher in 2016 than it was in the 1956.

Harvard Law School had an endowment of \$1.883 billion as of the end of fiscal year 2017, so the institution can certainly afford to spend more than six figures per year educating its charges.⁴³ The difficulty, from a social perspective, is that the equivalent in the higher education world of keeping up with the Joneses ends up driving the cost of attendance at elite, and semi-elite, and distinctively nonelite law schools at a similarly dizzying pace. Note that every law school in America now charges far more in tuition, in real dollars, than Harvard did even a few decades ago, and in most cases several times more. Average resident tuition at public law schools, which in theory are supposed to be affordable alternatives to private education, is now higher in real dollars than that of the most expensive private schools as recently as the 1980s.⁴⁴

Another striking example of how fast operating costs have gone up over even a relatively short time frame is provided by Stanford Law School, whose annual operating budget over the past twenty years has been published by Stanford University.⁴⁵ The following are Stanford Law School's annual revenues, in constant, 2017 dollars:

⁴¹ HARV. UNIV., OFFICIAL REGISTER OF HARVARD UNIVERSITY: THE CATALOGUE OF THE LAW SCHOOL 1956–1957 94 (1956), [https://iiif.lib.harvard.edu/manifests/view/drs:427285082\\$100i](https://iiif.lib.harvard.edu/manifests/view/drs:427285082$100i) [<https://perma.cc/S7EM-B6CZ>].

⁴² HARV. UNIV., FINANCIAL REPORT: FISCAL YEAR 2016 5 (2016), https://finance.harvard.edu/files/fad/files/harvard_ar_11_12016_final.pdf [<https://perma.cc/KZ85-6XSV>]. The university's disclosures reveal that the law school had an endowment of just over \$1.8 billion in 2015–16. This would have generated \$81 million in expendable income, using the standard percentage of expendable annual income equaling 4.5% of the total endowment. The disclosures also reveal that 33% of the law school's operating expenses were covered by expendable endowment income. *Id.* at 5.

⁴³ HARV. UNIV., FINANCIAL REPORT: FISCAL YEAR 2017 7 (2017), https://finance.harvard.edu/files/fad/files/final_harvard_university_financial_report_2017.pdf [<https://perma.cc/3W62-79BF>].

⁴⁴ Paul Campos, *The Extraordinary Rise and Sudden Decline of Law School Tuition: A Case Study of Veblen Effects in Higher Education*, 48 SETON HALL L. REV. 167, 174 (2017).

⁴⁵ Stan. Univ., *Stanford: Annual Report 2016*, <http://annualreport.stanford.edu/2016/> [<https://perma.cc/Q5RZ-UDKR>] (last visited Feb. 6, 2018).

1996–97:	\$31.43 million
2001–02:	\$43.68 million
2006–07:	\$61.44 million
2011–12:	\$72.66 million
2016–17:	\$93.49 million

Stanford Law School's revenues have nearly tripled in real dollars over the past twenty years, and have gone up by nearly a third in just the past five years alone, at a time when plunging applicant numbers have produced massive declines in tuition revenue for the large majority of law schools.⁴⁶ As a result, Stanford is now spending around \$135,000 per year per student in educational operating expenses—a figure which is more than double the sticker tuition cost of attending the school, which, although it has risen very rapidly, has not risen nearly as rapidly as the school's overall revenue and its operating expenses. The difference between tuition revenue and operating expenses is mostly made up by expendable income from the school's massive endowment, along annual gifts, and research grants.

Again, as is the case with Harvard, Stanford has become so wealthy that it can easily afford to indulge in what should be considered an astonishing rate of increased spending. But it is not only the Harvards and the Stanfords which, in the extremely diverse world of American higher education, have gone on remarkable spending sprees. Here are the comparable budgetary numbers for the law school of a state flagship university. The school is ranked consistently in the thirties and forties in the U.S. News Law School Rankings, so it qualifies as what is often referred to as a “strong regional,” as opposed to an elite institution such as Harvard or Yale.⁴⁷

The following figures reflect direct operating expenses, in constant 2016 dollars:

1980–81:	\$5,419,300
1995–96:	\$13,133,920
2000–01:	\$15,478,080
2005–06:	\$18,299,710
2010–11:	\$24,408,000
2015–16:	\$30,073,300

The student body at the school was approximately 15 percent larger in 2015 than it had been in 1980. Meanwhile, spending had increased by 455 percent in real terms, and resident tuition had, in constant dollars, risen by more than 1,000 percent. Since very few law schools have endowments of any size, increases in spending will have to be paid for by increases in tuition, to a much greater extent than is the case at Harvard, Stanford, and a handful of other rich schools. Note that by 2015–16, this school, which is slightly smaller than Stanford's law school, was spending almost

⁴⁶ Campos, *supra* note 44, at 184.

⁴⁷ Budget documents on file with the author.

the same amount of money, in constant dollars, as Stanford had been generating in revenue less than twenty years earlier. Yet Stanford's revenue growth has been so explosive during the last two decades that its operating budget is still nearly three times larger than that of a school which more than doubled its own budget during this time frame. Such are the difficulties of trying to keep up with the Joneses in the midst of the New Gilded Age.

Finally, in order to add a wider perspective to this analysis, let us look beyond the world of elite and regional law schools, and consider an institution that in many ways is far more representative of the kinds of schools that a large percentage of America's postsecondary student population actually attends.

Community College of Denver is the single largest community college in the state of Colorado. Its enrollment of more than 9,000 students includes many part-time students, so the school's total enrollment in terms of FTE students is around 5,200 at any one time. The school's total operating budget in 2015–16 was \$47,248,000—about \$9,058 per FTE student.⁴⁸ This is about one-sixth as much per student as is being spent by the regional law school whose budget is described above, one-fourteenth as much per student as Harvard Law School, and one-fifteenth per student as much as Stanford Law School.

What pedagogical or political justification might there be for our society to spend 1,400 percent more per capita to educate students at elite law schools than those at community colleges, especially when one considers the respective abilities and needs of those students? Why does our higher education system spend such astounding sums in some institutional contexts, and so little in others? It is difficult to imagine that these remarkable variations could be justified in terms of either economic efficiency or any plausible conception of justice.

Such figures reveal how deceptive it can be to observe—accurately—that American postsecondary institutions currently spend an average of about \$34,500 per year per FTE student. They also reveal the extent to which the general economic structure of our New Gilded Age is reflected in the increasing division of American higher education into an extraordinarily wealthy and privileged upper-class, a frantically striving middle-class, and a profoundly struggling lower-class.

V. CONCLUSION

The increasing student debt loads of Americans are driven in large part by the extent to which massive increases in subsidies to American higher education have failed to keep pace with even more massive increases in the per-student cost of that education. That cost spiral is driven by, among other things, a kind of New Gilded Age economic logic. This logic ensures that the remarkably profligate spending habits of the higher education equivalent of what has come to be known as “the one

⁴⁸ CMTY. COLL. OF DENVER, BUDGET DATA BOOK: ACTUAL FISCAL YEAR 2015–16; ESTIMATE FISCAL YEAR 2016–17 3 (2016), <http://www2.cde.state.co.us/artemis/ccacctserials/ccd19internet/ccd19201617internet.pdf> [<https://perma.cc/U3Z2-AP24>].

percent” end up influencing spending patterns throughout the college and university hierarchy.⁴⁹

Rather than being defunded, American higher education is spending, on average, ever-greater sums of money on a real-dollar, per-student basis—and that spending is being subsidized with unprecedented sums of public and private money. But when we look beyond averages, the remarkable wealth stratification this explosion of spending reflects and reproduces should trouble anyone who wants to see postsecondary education in America play a role in creating an even mildly egalitarian society.

⁴⁹ See Annie Lowrey, *The Economics of Occupy Wall Street*, SLATE (Oct. 5, 2011), http://www.slate.com/articles/business/moneybox/2011/10/occupy_wall_street_says_the_top_one_percent_of_americans_have_.html [<https://perma.cc/9E73-PF6A?type=image>].