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January 9, 2018: Dangerous Hypocrisy on the Right

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Title: Dangerous Hypocrisy on the Right

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1/9/2018—During the Obama Administration, I heard protests from conservative law professors about executive overreach in general and challenges to individual liberty in particular—like the alleged IRS treatment of tax exemption petitions by right leaning groups.

But, now that the threats are coming from the Trump Administration, I hear nothing. And these threats are much more dire. Maybe I am just not hearing them.

There are three such immediate threats. The most obvious is the criminal investigation of a losing Presidential candidate. I don't believe America has ever done this before and it is a sure way to lose democracy. You think it won't be open season on private citizen Trump next? This objection has nothing to do with whether Secretary Clinton was guilty of a crime. Leaving the loser alone is a structural protection of the democratic process. Nor does it have anything to do with investigations of President Trump. It's always open season on government officials.

The other two threats come from the new tax law. One is the excise tax on large university endowments. Here is a description: "The bill includes a 1.4 percent excise tax on investment income at private colleges with an enrollment of at least 500 students and with assets valued at \$500,000 per full-time student. That reflects the more narrow proposal included in the Senate bill. The House bill would have taxed colleges with assets valued at \$250,000 per full-time student. The provision is estimated to raise about \$1.8 billion in revenue over 10 years. Lawmakers have estimated it will affect about 35 institutions."

The 35 institutions estimated to be affected are not all liberal by any means. The University of Chicago is affected, for example. But the overwhelming majority are and this was quite intentional.

So, what we have here is government specially taxing its enemies. Do I even have to point out what a catastrophe this is? This is the very tyranny that conservatives have been warning us against for decades. Now it's actually here and nothing is said.

The other provision violates the norms of federalism. Congress should have no opinion about the domestic policies of the States. But this bill for the first time caps deductions for local and state taxes. Its aim is to be put pressure on high tax States like New York and California to change their liberal tax and spend policies.

Personally, I like this tax change, but that has nothing to do with the principles of federalism. States should be free from pressure from Washington to change their domestic policies. Imagine a Democratic Congress refusing emergency hurricane relief to Texas and Florida because of their lack of State income taxes, on the ground that they should first raise funds to aid their own citizens before the rest of us should have to pay for relief. Same principle.

Conservatives have consistently protested efforts in Washington to treat the States like outposts of the federal government, carrying out its policies. But, suddenly, because the imposed policy is lower taxes, the critique has disappeared.

These are big and unprecedented threats against democracy. If not protested, they will become the new norms.