

THE TRENDS REPORT 2019



The New ‘In Loco Parentis’

By VIMAL PATEL

IN 1911, Berea College really didn’t like its students to eat at a restaurant across the street from the campus.

That summer the college’s administrators changed the conduct code to forbid students to visit restaurants or recreational sites not controlled by the institution. The rules, they said, were intended “to prevent students from wasting their time and money, and to keep them wholly occupied in study.”

When a few students decided to go anyway, Berea expelled them. The restaurant’s owner sued the college — and lost.

Berea was acting according to the philosophy of *in loco parentis*, the idea that colleges should act “in the place of the parent” — responsible not just for students’ education but also for their physical and moral safety. That approach predominated through most of the 20th century.

As a matter of law, *in loco parentis* has been in retreat in recent decades. But as an organizing principle for college behavior, it’s making something of a comeback. This resurgent version, at traditional four-year colleges, is more attitudinal than legal, and motivated by 21st-century conditions. Past iterations were paternalistic, but the new version is driven by tuition-payers’ expectations, colleges’ concerns about legal liability, shifting cultural and social norms, and an evolving understanding of human development.

You can see it in the crackdown on fraternities and sororities. It’s part of what drives colleges to try to prevent and punish sexual assault and harassment. It informs colleges’ responses, in clinics and classrooms, to the growing mental-health needs of students, as professors are being trained to recognize and deal with stresses in a student’s life.

These pressures are “encouraging universities to exercise their supervisory and decision-making roles in more-active ways,” says Julie Reuben, a Harvard historian who studies the role of education in American society and culture. “Institutions are taking a more heavy-handed involvement with their students.”

THE LEGAL demise of *in loco parentis* came in the 1960s, when student activists demanded, and the courts affirmed, constitutional rights of free speech. As a result, students could assert previously unapplied rights to protest the policies of their administrations. In response,

colleges retrenched to focus primarily on the academic development of their students. Courts came to view colleges as bystanders, not in control of or responsible for the moral development of their students.

A case from 1979 shows how far the pendulum swung. A circuit court refused to hold Delaware Valley College liable when a student hurt another student in a car crash after getting drunk at a college-sponsored picnic where alcohol was served to minors. That case, and others that followed, helped shape the nature of the relationship of colleges to their students. This “bystander era” informed institutional attitudes for decades.

That *laissez-faire* attitude began to unravel for Texas A&M University at College Station about 20 years ago — at 2:42 a.m. on November 18, 1999, to be exact.

That was the moment that Aggie Bonfire, a beloved tradition at Texas A&M, turned tragic. The bonfire consisted of a stack of logs several stories high that students erected and burned before the game against rival University of Texas at Austin. That morning, the tower collapsed while under construction, killing 12 and injuring dozens more.

The tragedy of the collapse was overwhelming. But it also helped reframe how the university thought about its liability and responsibility when it came to students. A trend toward litigation was already underway, says Ray Bowen, who was president at the time. The collapse brought that new reality into focus.

“What changed,” says Bowen, who retired as president in 2002, “is our realization that risk was something we needed to factor into all of our student activities.”

So a university that was allowing unsupervised students, including freshmen, to construct a giant stack of logs in the middle of the night now decided that it had to assess the danger of things no one had ever thought to consider: the possibility of injuries at its off-campus freshman-orientation camps, or a rogue student-newspaper editor perhaps libeling someone. (It quickly backed off on the latter, Bowen says, as the risk was so small.)

That greater involvement in the lives of students was born not of paternal concern but of concerns about legal liability, Bowen says. “The whole idea of *in loco parentis* is muddled by the cultur-

al change across the board on the use of litigation to resolve disputes,” he says. “There are lawyers in College Station who make a living off of campus.”

TODAY THE desire to be more involved in the lives of their students is most visible perhaps in colleges’ relationship with their fraternities and sororities.

In the past, when a disaster struck, like the death of a student from hazing, colleges had a predictable response: Kick the offender, usually a fraternity, off campus. The reaction had a dual purpose: punishing bad behavior by students while keeping the institution at a safe remove if something went wrong again.

Now, when a student is injured or dies because of alcohol or hazing, colleges are exercising greater oversight of Greek life.

Pennsylvania State University is the most vivid example. It changed its approach after Timothy Piazza, a sophomore engineering student, died in a 2017 hazing incident. His parents sued the university, and 18 members of Beta Theta Pi were criminally charged for not helping Piazza.

The university instituted sweeping oversight of the Greek system, aimed at cracking down on hazing, sexual assault, alcohol abuse, and other problematic behavior. Penn State took charge of monitoring and disciplining fraternities and sororities. It hired several new student-affairs staff members to oversee Greek life, many of whom conducted random checks on the chapters to make sure they complied with university policies. The university created a scorecard for each group, including information to educate parents, such as each chapter’s cumulative GPA and history of alcohol and hazing violations.

In a message to the campus in January, Penn State’s president, Eric J. Barron, said it already appeared that the reforms were helping to curb troubling behavior. In the fall of 2018, there were 17 percent fewer alcohol-related student visits to the emergency department of a local hospital. Grade-point averages among fraternity and sorority members have risen.

“We considered withdrawing university recognition of Greek-letter organizations and walking away from Greek life altogether,” Barron said in the message. “But we believed that Greek organizations operating without university

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TAKEAWAY

The Overseen Student

- After the legal demise of *in loco parentis*, in the 1960s, colleges went in the opposite direction, viewing their role more as bystanders. Now they seem to have found a middle ground.
- The new *in loco parentis* is driven by tuition-payers’ expectations, colleges’ concerns about legal liability, shifting cultural and social norms, and an evolving understanding of human development.
- Increasing competitive pressure on colleges is encouraging them to exercise their supervisory and decision-making roles more aggressively.
- You can see that in many forms, including more-intrusive advising and crackdowns on fraternities and sororities.

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oversight would make our community less safe.”

Penn State’s shift reflects a larger change that colleges are negotiating, says Gentry McCreary, of the Nchern Group, a risk-management consultancy. Since the demise of *in loco parentis*, colleges have struggled with their relationship with fraternities and sororities, he says.

There are two schools of thought. Colleges can be “all in” — partnering with Greek-life groups to create policies and oversight to keep students safe, prevent misbehavior, and manage risk. Or they can be “all out” — allow the system to govern itself and distance themselves from responsibility if something goes wrong.

In either case, McCreary says, the thinking isn’t driven by grand notions of traditional *in loco parentis* but by parochial concerns about liability, as determined by the personal philosophies of general counsels. A key question for colleges as they decide which model to pursue, he says, is, if something goes terribly wrong, “Which lawsuit would you rather defend?”

Colleges are opting toward going all in, McCreary says. The reasons are varied, he believes: negative publicity that

institutions receive for student deaths, changing norms about adulthood, and the belief that students are becoming less able to engage in the process of self-governance, or managing and resolving conflict on their own, he says.

“Self-governance has kind of died this slow, painful death over the last decade or so as students became less and less able developmentally to hold each other accountable and enforce standards and expectations within their organizations,” he says.

“So there’s a lot of conversation now about what needs to happen. Do we just strip them of the opportunity to self-govern? Or do we set up structures that incentivize them and teach them how to do that while at the same time having a safety net in case they don’t? The latter is probably better.”

IF YESTERDAY’S version of *in loco parentis* treated students as mounds of clay to be formed, the emerging version sees traditional-age students as occupying a liminal stage of development — and colleges as well-positioned to help them mature.

Educators these days have a better understanding of cognitive development and “emerging adulthood,” the theory that people in their late teens to

mid-20s are in a distinct developmental stage and are delaying traditional adult roles of marriage, parenting, and full-time employment.

The needs of some students are more acute.

The statistics, in fact, are alarming. One in five teens and young adults live with a mental-health condition, and three-quarters develop it by age 24, according to the National Alliance on Mental Illness. Colleges feel greater pressure to address these mental-health concerns because, in many cases, students are developing them during their formative college years.

Michelle Lampl, an anthropology professor at Emory University, has seen this growing need in students up close. Over the years, it seems to her, college students have become less resilient, or, at the least, more expressive of that lack. “The health of our late adolescents,” she says, “is a national emergency.”

Meanwhile, the perception among both students and the public has grown that college is an unhealthy place.

Lampl thought Emory could encourage students to make healthier choices during a critical time in their lives.

Enter “Health 100: It’s Your Health,”
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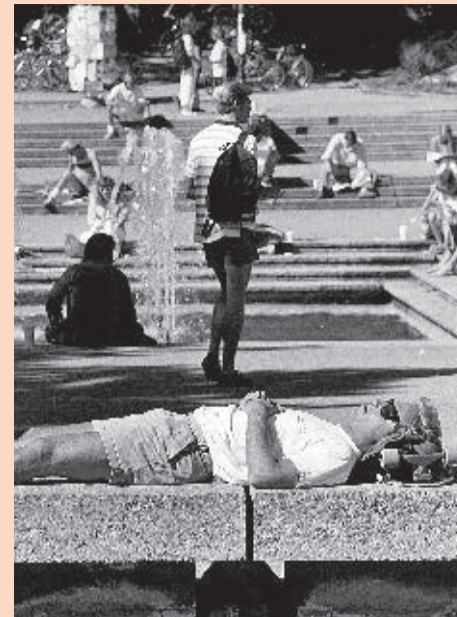
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GRANGER / THE GRANGER COLLECTION

The Rise and Fall of *In Loco Parentis*

A look at court cases dating back to the mid-19th century shows the waxing and waning of the policy at colleges. Latin for “in the place of the parent,” the term refers to the idea that colleges have wide influence on students’ lives.



DENVER POST VIA GETTY IMAGES

1866

People v. Wheaton College

A student sued after he was suspended for joining a secret society against administrators’ wishes. The Illinois Supreme Court ruled in the college’s favor, stating that as long as its rules “violate neither divine nor human law, we have no more authority to interfere than we have to control the domestic discipline of a father in his family.”

1913

Gott v. Berea College

Kentucky’s Court of Appeals upheld Berea’s right to expel students for patronizing certain restaurants. The college argued that it was compelled to “prevent students from wasting their time and money, and to keep them wholly occupied in study.”

1924

Stetson University v. Hunt

Florida’s Supreme Court upheld Stetson University’s suspension of a student for “offensive habits that interfere with the comforts of others.” She was alleged to have rung cowbells, walked the dormitory halls at forbidden hours, and turned off lights. Borrowing from the Wheaton College ruling, the judges wrote that “courts have no more authority to interfere than they have to control the domestic discipline of a father in his family.”

1961

Dixon v. Alabama

Alabama State College had expelled a group of black students for participating in a civil-rights demonstration after they were refused service at a lunch grill in Montgomery. The U.S. Court of Appeals for the Fifth Circuit held that “due process requires notice and some opportunity for hearing before a student at a tax-supported college is expelled for misconduct.” *In loco parentis* began to crumble.

1967

Hammond v. South Carolina State College

Free-speech rights push back on *in loco parentis*. Students challenged their suspensions for violating a rule that prevented demonstrations without prior approval from the college. A U.S. District Court stated that “the rule under which these students were suspended was incompatible with constitutional guarantees and is invalid.”

1979

Bradshaw v. Rawlings

A circuit court refused to hold Delaware Valley College liable in a case in which a student was seriously injured by another student who got drunk at a college-sponsored off-campus picnic. Clarifying a new era, in which colleges were seen as bystanders, the court stated that administrators no longer exerted control over students’ morals: “At one time, exercising their rights and duties [*in loco parentis*], colleges were able to impose strict regulations. But today, students vigorously claim the right to define and regulate their own lives.”

1983

Mullins v. Pine Manor College

A middle ground between the *in loco parentis* and bystander eras was reached. A student who had been raped on the campus sued the college for not taking reasonable steps to protect her. A Massachusetts court ruled in the student’s favor. “The fact that a college need not police the morals of its resident students,” it stated, “does not entitle it to abandon any effort to ensure their physical safety.”

Source: *The Curious Life of In Loco Parentis at American Universities*, by Philip Lee

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a required course for all freshmen that aims to get students to make healthier choices to improve their well-being, including diet and mental health. This isn't your high-school health course. The classroom is flipped, with all material available online. Classes of 19 or fewer students, led by an upperclassman, meet to discuss the readings and relate them to real experiences. One reading, for example, is about the biological and psychological effects of how sleep affects health.

"The point is to engage people when they are young in the value of health," Lampl says. "Some 95 percent of things that affect your health are under your control. They are behavioral."

The course, she says, has had a transformative effect on the campus well beyond the classroom. Students have met with the dining-services director, and the cafeteria now has more-healthy options, she says.

The course at Emory is the product of a campus with many advantages to elevate health — the federal Centers for Disease Control and Prevention is nearby, and two former CDC directors are on the faculty. But many other colleges are similarly paying closer atten-

tion to the health and wellness of their students.

Wake Forest University has created an office of well-being, developed a freshman-experience course that includes well-being as a focus, and offers students free coaching sessions to help in areas like stress management, goal setting, and resiliency. Wake Forest and other colleges feel increasingly responsible for serving the whole student.

THE DICTATES of the marketplace are also exerting pressure on colleges, which have become increasingly responsive to the consumer tastes of tuition payers. Back in 1993, *The New York Times* noted that colleges "are promoting, as never before, the campus as intellectual resort — Club Med with books." The article quoted Harvard's president as saying, "Where else in America can you get hotel, health club, career advice, and 1,800 courses for \$90 a day?"

Those pressures have intensified over the years as state support has withered and competition has grown for traditional-age students. The modern-day relationship between colleges and their students is highly influenced by consumerism, says Peter F. Lake, a profes-

sor of law at Stetson University who has written extensively about *in loco parentis*. The cost of college has shifted to families, which are simultaneously more empowered.

"You're seeing consumers trying to find a way to get what they want out of the transaction," Lake says. "They're looking for various legal remedies and rights to structure that deal."

Economic imperatives shape colleges' behavior, too. The way this new form of *in loco parentis* manifests itself in response to economic forces depends on the type of institution.

At a regional public institution, it might involve more-intrusive advising to guide students to the finish line, keeping them enrolled and paying tuition. The classical view of college as a wall to be scaled, with some climbing it and others failing, is no longer appropriate, says Julie Reuben, the Harvard historian. Colleges are being held accountable for student success in ways they weren't in previous generations.

At a place like Harvard, the new way of asserting *in loco parentis* is a response to a different set of pressures. It can be seen in the fight over single-gender clubs. In an attempt to further gender

equity, the university, which doesn't have the legal authority to eliminate the clubs, is trying to discourage students from joining them by making those who do so ineligible for prestigious scholarships.

"That kind of social engineering is a modern form of *in loco parentis*," Reuben says.

Gone is the dictatorial control over the lives of students, as at Berea. That control is no longer legally or culturally appropriate.

But at Emory, Harvard, and other campuses putting mental health in the curriculum and assuming some measure of responsibility for the safety of students, *in loco parentis* isn't a justification for heavy-handedness.

Instead, it means that colleges are encouraging their students to make what are deemed to be better and healthier choices. Lake calls this "the facilitator era."

It is something of a compromise between *in loco parentis* and the over-correction of the bystander era that followed it. "My job as a teacher is not to guarantee your outcome," Lake says. "It's to provide reasonable opportunities to make choices for yourself. I'm facilitating. Not ensuring." ■

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