In Loco Parentis in Higher Education:

The Evolution of Student Rights and Responsibilities

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Abstract

The Latin phrase *in loco parentis* translates to “in the place of a parent.” While it is traditionally thought of as an antiquated notion of discipline or restriction of student freedom, it can be argued that *in loco parentis* in higher education is alive and well, but operating under the modern umbrella of student affairs. *In loco parentis* has evolved from a basis for corporal punishment to a responsibility on the part of higher education institutions to ensure student safety. This transition is examined by key U.S. Supreme Court rulings, student conduct codes, and evolving higher education policies over the last 150 years.

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In the early days, prior to 1880, colleges and universities had free reign in how they operated, punished, and monitored their students. In *A History of American Higher Education*, John Thelin (2004) talks about this period of time as being one of little standards or accountability. Thelin (2004) also talks about the personal relationship between students, facility, and staff. Early institutional missions mention developing ‘character’ for their students, and occasionally refinement was even a goal of attending college in the first place. It was commonly accepted during this time period that institutions would assume the role of the parent for the students under their care. *In loco parentis*, or *in the place of the parent*, refers to the legal responsibility granted to institutions of higher education to act as they see fit when caring for the students entrusted to them.

The exact origins of *in loco parentis* are not entirely clear, but we know it can be traced back to England’s *common law*, and William Blackstone’s *Commentaries on the Laws of England* are most often cited as the source of *in loco parentis* (Stoehr 2011). In the seventeenth century, Blackstone, and English judge and politician, writes, “[the father] may also delegate part of his parental authority, during his life, to the tutor or the school master of his child: who is then *in loco parentis*, and has such a potion of the power of the parent committed to his charge” (Blackstone 1765, p. 441). Stoehr notes, however, that in European institutions during this time *in loco parentis* was widely considered only applicable to matters of “restraint and correction” (Stoehr 2011, p. 1698). According to Stoehr, once brought to America, the notion of *in loco parentis* shifted from its original purpose of classroom management to that of an excuse for teachers to defend the use of corporal punishment, especially in the courtroom (Stoehr 2011).
One of the earliest examples of the seemingly limitless power granted to educational institutions under the guise of *in loco parentis* is on record in the United States Supreme Court case *State v. Pendergrass* decided in the state of North Carolina in 1837. Primary school teacher Rachel Pendergrass was found guilty of assault and battery in a lower court after punishing a seven-year-old female student by whipping her with a switch. The case was appealed to the U.S. Supreme Court and the decision was reversed, the judge stating that the actions of Pendergrass were within her power as the child’s teacher. This judge further stated that the power held by teachers to correct their students was analogous to that of a parent, even if it meant inflicting pain (Nadelhaft 2008).

In the nineteenth and early twentieth centuries, *in loco parentis* was not merely enacted as a means for behavior correction. Colleges and Universities were also granted *in loco parentis* when it came to regulating their student’s personal lives or exerting control over more than just their student’s academic standards and studies. For example, according to the conduct code adopted in 1921 at Calvin College in Grand Rapids, Michigan, women were subject to a 10pm curfew and required to record all comings and goings with their residence hall. Male students had no such curfew or tracking requirement. Calvin’s 1921 gender-based conduct code also prohibited women from smoking and wearing shorts to the dining hall (Steiner 2011). Moral regulations, dress codes, and limiting or banning social expression and free speech were ways in which higher education institutions attempted to exert control over their student body and were common during the mid-twentieth century.

The beginning of the shift away from *in loco parentis* in its traditional capacity occurred in 1961. In a landmark case, *Dixon v. Alabama*, a U.S. Federal Court ruled that higher education institutions could no longer act *in loco parentis* to discipline or expel their students. Alabama
State College attempted to expel five students, presumably for their participation in civil rights demonstrations, but the courts ruled that a public college could not expel students without at least minimal due process. In their anthology *American Higher Education Transformed, 1940-2005*, Wilson Smith and Thomas Bender refer to the *Dixon* case as “the leading case on due process for students in public higher education” (Smith & Bender 2008, p. 484). The impact of *Dixon v. Alabama* for higher education is the definitive message that institutions were no longer allowed to dismiss or punish students arbitrarily and without some form of formalized due process.

Another landmark case that moved American higher education institutions away from *in loco parentis* occurred in 1969 in Des Moines, Iowa. In *Tinker v. Des Moines Independent Community School District*, the U.S. Supreme Court favorably defined the constitutional rights of students in U.S. public schools, including the First Amendment. When students were suspended for wearing black armbands to show support for a Vietnam war truce, the Supreme Court “signaled its departure from the *in loco parentis* standard articulated earlier by famously declaring that ‘it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate’” (Stoehr 2011, p. 1702). With these important court cases decided, colleges and universities are increasingly less self-regulating, and increasingly subject to government rules and regulations regarding student rights and disciplinary measures. During the turbulent social changes of the 1960’s, students also became engulfed in social movements for civil rights and liberties, and many institutions began appointing students to influential committees and governing boards (Nuss 1996).

With *in loco parentis* no longer being upheld in higher education, the relationship between today’s institutions and their students has shifted to a less personal and less arbitrary model of due process, to that of self-responsibility and privacy. The rights of the students have
been expanded, and the rights of the parents have been reduced. Toward the end of the twentieth century and the beginning of the twenty-first, higher education institutions began to accept as best practices a type of conduct code for basic expectations and limitations for their student bodies. Student civil liberties were now upheld and of utmost importance. The ‘facilitator model’ is considered the new standard, with institutions acting as facilitators of educational experiences and students are recognized as responsible adults. This movement away from *in loco parentis* and the resulting increase in government rules and regulations have affected almost every facet of American higher education. Federal policies such as the Family Educational Rights and Privacy Act of 1974 gave students access to their education records, opportunities to attempt to have these records amended, and some control over the disclosure of information within their records. The Jeanne Cleary Disclosure of Campus Security Policy and Campus Crime Statistics Act, or Cleary Act, is another example of Federal policy affecting higher education. Under the Cleary Act, institutions must keep and disclose information about crime on and near their respective campuses.

While the notion of *in loco parentis* is generally assumed to be defunct or outdated, there continues to be a proven responsibility on behalf of higher education institutions to keep their students safe. A recent example occurred at the Massachusetts Institute of Technology in 1997 when a freshman student, Scott Krueger, was found dead in his fraternity house bedroom after a night of drinking and hazing. The institution agreed to pay Krueger’s family six million dollars in damages for its role in failing to keep this student safe (Levine 2000). The President of MIT, Charles M. Vest, offered this public apology, “At a very personal level, I feel that we at MIT failed you and Scott. For this you have our profound apology” (Levine 2000, p.1). As a result of the Krueger case, MIT changed its housing and fraternity policies and began to require all first
semester freshmen to live on-campus. Even after the fall of *in loco parentis*, cases such as Scott Krueger’s do show the implied responsibility that remains for institutions to maintain their student’s health and wellbeing. The millennial generation’s parents are accustomed to being heavily involved in their children’s lives, and going off to college is no exception. The fact that there are parents suing institutions over their child’s alcohol, drug abuse, or suicide can be seen as a return to the idea that higher education institutions are expected to maintain some level of control over their student body.

Even with the modern shift away from *in loco parentis*, there is still an element of higher education where it continues to exist. The Student Affairs movement, surfacing in the late twentieth century, is the division of modern American colleges and universities charged with enhancing student growth and development. Student Affairs areas can include academic advising, residence life, campus life, diversity and inclusion, health and wellness, sports and recreations, or new student services. With the evolution of the student affairs movement, the role of university officials had now shifted from exclusively professors, discipline, and authority, to now a focus on education and coordination of campus life (Nuss 1996).

With the growth and seemingly permanent fixture of student affairs offerings, we can conclude that some form of *in loco parentis* is going to remain in higher education. There are, however, steps that can be taken to ensure this new version of *in loco parentis* does not infringe on the rights and responsibilities set forth in the new ‘facilitator’ model of higher education. Setting clear expectations for both students and parents can be instrumental in providing a successful and healthy college experience. Forming and enforcing clear policies for high-risk areas of campus life, fraternities and sororities, for example, and consistent, competent administrators to facilitate them will also be instrumental in providing a new version of *in loco*
in loco parentis. Replacing traditional residence halls with learning communities, living arrangements that promote social education, positive study habits, or mental wellness, for example, offer students both the freedoms of independent living and the structure and resources in loco parentis.

It is imperative that all facets of the campus community are communicating the same message about the college or university’s stance on in loco parentis. This means accurately communicating the expected and permissible role of the parents and university officials in matters of discipline and social responsibility. New student orientation for parents and students, as well as ongoing student development will allow all parties to better understand their role and responsibilities for maintaining a safe and healthy college experience.

The relationship between colleges and universities and their students has changed dramatically over the last 150 years. While it is thought to be an old, dead notion, the concept of in loco parentis is perhaps alive and well, just not in the ways it traditionally has been seen. Recent court rulings have confirmed that there is an implied responsibility for college campuses to keep their students safe, and there is no escaping the fact that occasionally this means acting in the place of the parent. This concept is not limited to punitive measures, but rather focuses on modeling, advising, ensuring access, or providing resources. With the ever-evolving culture of college campus life, in loco parentis, is also ever changing and evolving in American higher education, and whatever form it takes, will continue to mold itself right along side of our social and campus culture.
References


