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Welcome to the Fun-Free University  
*The return of in loco parentis is killing student freedom.*

**David Weigel**

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In April 1968, student activists at Columbia University schemed to take over the dean's office as a protest against the Vietnam War and plans to build a new gym. More than 700 students were arrested, and the uprising won national attention. But the school's buttoned-up administrators hadn't wanted to involve the police, and the rioters eventually were allowed to graduate. The mayor of New York, John Lindsay, even arrived in December to address the students and applaud "the urgent, authentically revolutionary work of this generation."

How much of that revolution has carried over to the Columbia of 2004? Registered students who occupy a building would get a dialogue with administrators, but the

school wouldn't shy from expulsion. According to Ricardo Morales, the school's crime prevention specialist since 1983, nonstudent radicals wouldn't make it into the campus buildings. "If you want to bring a friend over," Morales explains, "you bring him to the lobby and swipe your ID cards. The guest leaves a piece of ID. If he wants to stay for a few days, you can apply for a guest pass."

Even when they're not keeping their borders sealed so tight, college administrators have been adopting harsh measures in response to unapproved student behavior. Last fall, students at Southern Methodist University saw their "affirmative action bake sale," a bit of political theater in which prices were determined by the races of buyers, shut down by the student center. They had failed to register with the university as a "protest" or to go to the officially designated "protest zone," on the south stairs outside of the Hughes-Trigg Student Center.

Many college administrators throughout the country are taking great pains to keep their students under tight control. Yet in the late 1960s and '70s, whether colleges could rein in students was an open question. Previously, America's universities had operated under the doctrine of *in loco parentis* ("in the place of a parent"). By the start of the '70s, thanks to a series of legal rulings and cultural shifts, courts and colleges were tossing out that policy, and universities that had been dealing with students as wards struggled to find a new approach.

That didn't last. *In loco parentis* has been rejuvenated and returned. Administrators have tapped into the devaluation of personal responsibility illustrated by smoking bans and

fast food lawsuits, coupling it with bullish political correctness. The resulting dearth of individual liberties on campuses would have seemed impossible to college students of 25 years ago.

### **Double Secret Probation**

The rights of schools over their pupils were codified before the U.S. Constitution was written. In 1765 the legal scholar Sir William Blackstone wrote that, when sending kids to school, Dad "may also delegate part of his parental authority, during his life to the tutor or schoolmaster of the child; who is then *in loco parentis*, and has such a portion of the power of the parents committed to his charge."

Blackstone was writing about grammar school students, but 19th-century college administrators liked the idea too. Wheaton College, five years after its 1861 founding, denied students the right to form a secret society. The students sued, but judges washed their hands of the matter. In *Pratt v. Wheaton College* (1866), the Illinois courts said judges have "no more authority to interfere than [they] have to control the domestic discipline of a father in his family."

Courts took this hands-off approach well into the next century. When public or private universities bought land, the state treated them like personal fiefdoms. Students got whatever rights their school administrators saw fit to give. At Harvard in 1951, the Administrative Board could tell reporters that it would increase the punishment for a window smashing -- by however much it wanted -- "if a student's name is on the police blotter or in the Boston press." That was the power of *in loco parentis*.

Not until 1960 did this system begin to break down. That year, six students at the all-black Alabama State College participated in anti-segregation lunch counter sit-ins. The school's president sent them letters expelling them for "conduct prejudicial to the school." According to Stetson Law School professor Robert Bickel, the students' case cut to the root of in loco parentis: "The university actually asserted the right to arbitrarily give some students [due] process and deny it to others." When the students sued, federal courts sided with Alabama State. But in the 1961 decision *Dixon v. Alabama State Board of Education*, the U. S. Court of Appeals for the 5th Circuit rejected the school's claim of omnipotence. Suddenly, college enrollment was a contract between the student and the school. Since kids didn't lose their constitutional rights in their backyard, they couldn't lose them on campus. State universities slackened their grip, and private universities such as Columbia followed suit.

During the next few years, in loco parentis continued to collapse as courts chipped away at it. In 1974 the U.S. Supreme Court ruled 8-0 in *Scheuer v. Rhodes* that Kent State students had the right to sue the governor of Ohio for damages incurred during the notorious 1970 shooting there. Chief Justice Warren Burger concluded the brief decision this way: "We intimate no evaluation whatever as to the merits of the petitioners' claims or as to whether it will be possible to support them by proof. We hold only that, on the allegations of their respective complaints, they were entitled to have them judicially resolved." Students had been handed the keys to their kingdom.

By then, campus revolts were making national headlines, radical groups had been profiled in *Life* and *Esquire*, and undergrads were helping manage George McGovern's presidential campaign. By 1978, when Dean Wormer in *Animal House* threatened his students with "double secret probation," audiences recognized it as a knowing goof on a dead-and-buried policy. As Stetson's Bickel puts it, "The fall of in loco parentis in the 1960s correlated exactly with the rise of student economic power and the rise of student civil rights."

### **Save the Children**

In 1969 Sheldon Steinbach arrived at the American Council on Education, the catchall coordinating body for universities, just in time to weather the worst of the campus revolts. Elite schools such as Berkeley, Columbia, and Cornell were acquiescing to radical students and opening up their internal judicial processes. Students won seats on some boards of trustees. Administrators appeared to have lost their grip.

"The basic liberal arts education began to crumble," Steinbach says. "That's what it looked like. When the war ended, we could consolidate, sit back, and look at how to save the system."

An unexpected boon arrived in 1974, the year of the Kent State decision *Scheuer v. Rhodes*. Sens. John Warner (R-Va.) and James Buckley (Conservative-N.Y.) sponsored the Family Educational Rights and Privacy Act (FERPA) in the hope of empowering parents to keep tabs on their kids' academics. Committees amended the bill into a codification

of student privacy rights, and Steinbach got a crack at it before FERPA moved on to the Senate. When the bill passed, parents could peek into the records of their children until their 18th birthday, at which point those rights transferred to the student. But FERPA created exceptions: Schools could release records to providers of financial aid and to "appropriate officials in cases of health and safety emergencies." If a student was hit with a subpoena or legal charge, the school could peek into his criminal records. Yet college administrators and their advisers, Steinbach included, kept the champagne corked. It wasn't immediately clear what effect the law would have, outside of giving parents annual notice of their new rights.

"It was a schizophrenic time," Steinbach explains. "We were moving from segregated campuses to co-ed, affirmative action campuses. We didn't have our feet on the floor in 1974."

Meanwhile, concern about the state of campuses was spreading. In March 1977, *Newsweek* ran a hand-wringing exposé titled "The End of Expulsion?," which gave the supposed academic apocalypse some context: "In just ten years, most of the rules that once governed student life *in loco parentis* have simply disappeared. Even serious scholastic offenses, such as cheating and plagiarism, seldom incur the harsh penalties that were once automatic. Most college administrators admit that they lean over backward to avoid expelling students." The irksome rites of passage that had been mandatory -- core curricula, single-gender dorms, class attendance -- fell away.

In the 1979 case *Bradshaw v. Rawlings*, the U.S. Court of

Appeals for the 3rd Circuit spelled out the universities' weakness. When a Delaware Valley College sophomore three years under the Pennsylvania drinking age hitched a ride from a drunk driver and was injured in a car crash, he sued the school. The court shrugged him off. "The modern American college is not an insurer of the safety of its students," it said. "Rights formerly possessed by college administrations have been transferred to students."

Expectations were pointless, because "beer drinking by college students is a common experience. That this is true is not to suggest that reality always comports with state law and college rules. It does not."

The court's decision reflected the way students lived: They had a new relationship with their deans, who should treat them like the young adults they were.

How then, did the contemporary nanny university arise? Administrators who got their degrees in the 1960s had a certain idea of how students should be governed, and they found three tools for regaining control. The first involved intoxicants, including the escalating war on drugs and the mid-'80s change in the drinking age from 18 to 21. The second was an attempt to stave off liability for student mental health problems by intervening with students who were seen at risk of breakdowns. The third and most well known was a rigid enforcement of political correctness that set standards for just how rowdy students could get.

### **Just Say No**

University administrators immediately started wringing their hands over the "kids will be kids" philosophy of

*Bradshaw v. Rawlings*. When one of their wards was arrested, injured, or killed, whether a lawsuit resulted or not, the school felt a blow to its prestige and sense of community. Unchecked hedonism and recklessness among students increasingly free to skip classes or make their own schedules were perceived as a threat to the institution's reputation.

Brett Bokolow, manager of the National Center for Higher Education Risk Management (NCHERM), estimates that colleges have been seeking formulas to keep students out of actionable situations for 20 years. In the 1980s, they were increasingly finding themselves liable for providing services or sponsoring events that involved alcohol. After only a few legal wounds, schools sought methods to put the responsibility for drinking or drug use on the backs of students and fraternities and sororities. Two weapons fell into their laps.

As the Department of Education opened for business in 1980, an increasing number of students were turning to government aid and loans to pay for their college bills. From 1970 to 1980, federal aid to college students soared from \$600 million to \$4.5 billion. In 1978 Congress had passed legislation that entitled all college students to federally insured loans. Suddenly, colleges had leverage to punish students for misusing their leisure time. If they were getting money from taxpayers, they were treated like any other employee found partying on the job. Since students were making use of their loans every minute of the academic year, all of their fun was suspect, and much of the adult behavior that vexed administrators was happening on the public dime.

Colleges became willing and able to shift some burden to Greek organizations, which had grown again after a marked falloff in the Vietnam era. Many schools created incentives for fraternities and sororities to go dry, or at least disincentives for them to stay wet. In one typical action in 1988, Rutgers University, which had just banned bringing kegs into dorms, responded to a student's death by embargoing all Greek events. In 1997, after first-year student Scott Kreuger drank himself to death at a pledge event, MIT banned freshmen from fraternities. More responsibility was shifted to fraternity and sorority members. By the mid-'90s, universities had become so strict that they were rarely found liable for student sins. Instead of threatening to punish their kids if they came home late, schools simply took away the car keys. If kids somehow got themselves into trouble, it was a police matter.

Colleges found the rest of their arsenal in 1987, when Congress threatened to withhold federal transportation money from states that allowed anyone below the age of 21 to buy alcohol, with the result that 21 became the de facto national drinking age (see "Age of Propaganda" below). Across the country, the harshness many schools had formerly applied only to drug offenses began to apply to drinking as well, and the war on fraternities was ramped up. Finally, in 1998 FERPA was amended to make one provision clearer: Colleges could sidestep their students' wishes and inform parents whenever a drug or alcohol law was broken. Before that, less than 20 percent of schools had informed parents of such violations. Afterward, most of them did so.

In 2001 *The Chronicle of Higher Education* reviewed this phone-home policy and found great success. Reporters spotlighted the story of a University of Delaware freshman who pledged to quit drinking after police stopped him on the street for a Breathalyzer test. After he was caught, his parents began bringing him home each weekend and lecturing him on his mistakes. The student stopped drinking, but not because he worried about the effects of booze. If he was caught again, he would be suspended for a year.

### **For Your Own Good**

Keri Krissik transferred to Stonehill College in Easton, Massachusetts, in January 1999, 10 years after she was first diagnosed as anorexic. Krissik survived a heart attack four months after arriving and finished her course work while convalescing. In September the school refused to let her back in because, according to spokesman Martin McGovern, "we couldn't monitor her." If she were allowed back in and was injured, the school could have been liable. Stonehill dearly wanted to avoid the risk.

Krissik eventually settled with Stonehill, but the courts neglected to ask why, after they'd relieved colleges of the need to nanny their students, the college wouldn't damn the consequences and let her study. The lawsuit provides an answer.

Just as colleges have calculated the legal risks of letting students get away with drinking or recreational drugs, they remain in danger of being held responsible when students face mental collapse or attempt suicide. If administrators

had moved on and handed their wards more lifestyle freedom after in loco parentis ended, they'd have room to dodge these bullets. But since they had accepted responsibility for keeping kids off the bottle, it was easy for lawyers to make them responsible for the rest of the pressures of campus life.

Schools started this battle with a handicap. During the last decade, more and more students have been diagnosed as overstressed or treated for depression while still in high school. In February 2003, after tracking student complaints from 1989 to 2001, researchers at the University of Kansas found that the number of students diagnosed with depression had doubled while the number of "suicidal" students had tripled. The proportion of students taking psychiatric medication rose from 10 percent to 25 percent.

In response to such trends, college administrators started making pharmaceuticals and therapy sessions more readily available on campus. Elite universities have been able to provide the most buffers against mental illness claims. According to the May 2002 issue of *Psychology Today*, 2,000 Harvard students had sought counseling in one year. Fully half of them walked away with a prescription for antidepressants. Students who lived on campus had access to free massages and an ever-expanding mental health center.

The overarching goal of these programs is not to eliminate stress or wean students off medication. It's to stop lawsuits, and the ugliest lawsuits of the last decade have concerned students who killed themselves while enrolled, even though studies (including one conducted by the MIT task force

appointed after Scott Kreuger's death from alcohol poisoning) have shown that most students who commit suicide never seek counseling.

At the University of Illinois, counselors work with residential assistants to monitor students who attempt or seriously consider suicide. Such students are ordered into four weeks of assessment sessions under the university's watch. Those who refuse get the Keri Krissik treatment -- they're no longer students. *The New York Times Magazine* called Illinois' approach "a highly successful, model plan" for colleges that want to keep their undergrads under control.

### **How to Think**

As the protective mind-set returned, it jibed with administrators' desires to make their campuses placid in every possible way. Alcohol and drug policies had emerged in a national context, justified by laws beyond the university's control, while mental health policies were driven largely by the threat of lawsuits. But administrators didn't need anyone to force their hands to insert speech standards and "hate crime" prohibitions into campus life. In 1987 the University of Michigan responded to a handful of anonymous racist fliers with new campus regulations aimed at suppressing offensive speech. The speech code, the first to end up in court, prohibited "any behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap, or Vietnam-era veteran status." A university pamphlet, soon withdrawn, explained that such

"harassment" would include hanging a Confederate flag on your dorm room door or being part of a student group that "sponsors entertainment that includes a comedian who slurs Hispanics."

Ironically, a one-time member of Berkeley's Free Speech Movement seized on this approach when she became an administrator. Annette Kolodny, a dean of the University of Arizona's College of Humanities, used her 1998 book *Failing the Future* to explain why colleges needed to regulate what students said. In concert with other administrators, Kolodny had stiffened penalties for offensive speech and created workshops in which new students could have their values certified or corrected. Her bogeyman was "antifeminist intellectual harassment," and her policies were designed to bring contrary speech out into the open, so it could be "readily recognized and effectively contained."

By the start of the 1990s, Kolodny's view of campus speech was the norm. Harvard law professor Randall Kennedy told *The New York Times* in 1991 that speech codes made sense, and that their opponents were just warring against 1960s values. Journalists had gotten some taste of universities' strange speech standards through *The Dartmouth Review*, a conservative newspaper whose editors were punished for articles that would have been protected anywhere else in New Hampshire. But they didn't comprehend how strict the standards were until codes at Stanford, the University of Wisconsin, and George Mason University were challenged in court and overturned. Based on these cases, schools learned how to design speech restrictions that were more likely to pass legal muster.

The speech codes, increasingly unpopular but largely still in effect, contain more than a whiff of the omnipotence administrators enjoyed under *in loco parentis*. Students are not treated as the adults that *Dixon* made them out to be. Instead they're young minds that need shaping. In most cases the bodies formed to govern speech -- student judicial boards, special committees -- are uniquely able to adjudicate without explaining their standards for punishment.

Universities' speech restrictions, unlike their recreational policies, do more to attract lawsuits than to repel them. NCHERM offers a seminar on how administrators can thwart the Foundation for Individual Rights in Education and the American Civil Liberties Union. But there hasn't been any measurable trend toward saving face by scrapping these rules. They're seen as too important to ditch -- and that's illustrative of the way universities view their students.

### **Back in Control**

Four decades after *in loco parentis* started to stagger, college students would be hard pressed to name their new personal liberties. Yes, they no longer fear "double secret probation." And when administrators crack down, they will almost always at least provide a reason. But today's students may be punished just as hard as their predecessors -- often harder. They've discovered that social engineers have a hard time turning down the opportunity to control things.

The expanding control over college students has had

repercussions in the rest of America. Campuses are proving grounds for make-nice public programs. They've provided laboratories to test speech codes and small, designated "free speech zones" for protests. (Such zones marginalize and effectively silence dissent, which is one reason they've been adopted by the major political parties for their national conventions.) The stiffening of campus law also illustrates the trend toward greater control of *adults'* personal behavior.

In loco parentis could be overturned only once. After 1974, students should have had an arsenal of new rights. But parents never stopped believing that universities were responsible for shaping their kids, and schools have nervously assumed that too much freedom will bring about the system's collapse.

It won't. College students will drink, despair, play loose with hygiene, make dirty jokes. Before in loco parentis made its comeback, they were thriving. Meanwhile, the changes that really worried academics in the 1970s -- demands for new disciplines, shrinking core curricula -- are settling into permanence. It's the most enjoyable effect of the '60s student revolts that's being whittled away.

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