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ABSTRACT

Institutions of higher education have long stood in loco parentis to their students. This concept is now widely challenged. This paper examines the evolution of the concept and discusses 29 court cases, beginning with a case heard in a Maine court in 1847. The evidence indicates that the future of the concept is unpredictable. Procedural due process is becoming more popular, but the reasons are becoming more diverse; reasonableness itself is no longer sufficient cause, but due process has taken on other meanings -- e.g., "fair play," "arbitrary," "shock the conscience," "freedom of speech," etc. Recent evidence from court cases shows that, though there has been some turning away from the concept, a semantic change in definition may be evolving. There appears to be a recognition of the inherent right of educational institutions to control students. Sometimes this is termed the implied power to enforce reasonable regulations. The concept of in loco parentis seems to be enduring, and even with the provisions for due process, there is no strong indication that due process will be substituted entirely. (AF)

THE CONCEPT OF IN LOCO PARENTIS IN HIGHER EDUCATION

By

Herman Edward Harms

June, 1970

FOREWORD

"The King is Dead, Long LIve the King" has long been a slogan which emphasized the continuity of government -- even an oppressive one. While a number of people have (prematurely perhaps) celebrated the "death" of the concept of in loco parentis, one may awake to find that the concept still lives in another form. This position is the conclusion Dr. Herman Harms has reached in his historical study of the concept. No doubt there will be some who may wish to take issue with Dr. Harms' conclusions. However, he points out with very ample documentation that the in loco parentis concept is still a sound legal position insofar as the courts have determined to date even though the application of "restrictive" parental controls have experienced drastic changes in most colleges and universities.

The parentis part of our day to day society may have changed a great deal. This change is reflected in the collegiate attitude. In reality a college can assume no more restrictive position in its relationships to students than parents are willing to support. The change, therefore, which has been identified may not be so much the responsibility itself as it is the changing positions of the parents themselves.

This monograph is a part of a series of studies relating to higher education made available by the Institute of Higher Education, University of Florida. We are pleased to provide this particular study as a contribution to the literature of higher education. Additional information

may be obtained from the basic study which is reported in Dr. Harms' dissertation, "A History of the Concept of In Loco Parentis in American Education," which is available on microfilm.

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INTRODUCTION

In higher education, just as in compulsory educational institutions, there has been a long history of the position of the institution as standing in loco parentis to its students. While the situation is somewhat different at these two levels, nevertheless, the legal concept as it is constituted in the common law of the land applies to both. This concept, that of standing in the place of the natural parent and being made liable, either by delegation or by assumption of some of the privileges, rights, duties, and responsibilities of the parent, long has been established.

College and university administrators and faculty members are often looked to, and by law required to, make certain decisions which have a bearing upon the academic and nonacademic activities of the students. In some situations of conflict, administrators may discover that they have not pursued proper legal action. Many administrators and faculty members do not possess the legal background that would insure proper action in mediating differences of opinion so as not to make arbitrary decisions or violate the rights of the individuals concerned.

Institutions of higher education operate under many laws, rules, and regulations. Some of these are legislative enactments and others are edicts issued by governing boards. As institutions of society, the colleges and universities also must operate under the common law or that precedent law which has been established by the courts over the

years. This law is found in the many decisions of the courts and far exceeds the number of statutory laws. This type of law is entwined with the customs, traditions, folkways, and mores of the society and as society changes, so do its institutions. The courts must take into consideration the record of the heritage of the past plus the social implications of the present. Many other factors must be considered such as religion, economics, social status, and many dissimilar philosophies that are ever present in a pluralistic society.

By establishing precedent, the courts need not seek new responsible decisions when similar cases previously have been mediated. Likewise, administrators can be governed and well advised to review the records to seek responsible decisions to questions which arise but previously have been heard and thereby provide a uniformity and a leveling action in the application of rules and regulations.

While this concept of in loco parentis was in the stages of evolution in the courts throughout the history of higher education, not all courts agreed as to the extent that the institution did, in fact, stand in the place of the natural parent. Research discloses that there is, however, no substantial distinction and generally the colleges and universities have been considered as acting in this position of parental authority and responsibility. As a general rule, the courts have upheld the position as long as powers of control, restraint, or disciplinary action were not unreasonable or arbitrary. Often, the courts have required that all administrative avenues of redress be exhausted prior to appealing to the courts. This more or less affirmed the inherent

authority of the institution and, in those cases which did reach the courts, the judicial decisions were slow to disturb the rules and regulations that the institutions had prescribed for the students. The records show that the courts quite consistently upheld the actions and, although sometimes it may appear that courts seem to condone what may be described as arbitrary action, there seems to be an attitude of providing wide latitude to the interpretation of these actions. Quite often the courts recognize that the necessity to control large numbers of students may require more restraint than might be allowed in other settings. In some situations, while not approving the actions of the institutions entirely, the courts were hesitant to interfere. Courts often have noted that complaints against institutional authority have existed since these institutions have had the duty of student control. Some courts have even stated that the officials must act in a quasi-judicial capacity and should not be held liable for an error in judgment and any cases against them must be proved beyond any reasonable doubt. In the court decisions, there often appears to be a presumption of the correctness of the official's action and an inference that he was acting in good faith.

CHAPTER II

EVOLUTION OF THE CONCEPT

In the history of western civilization, the state or the governing agencies of the state have for the most part been concerned with the fact that the welfare of the state depended upon the intelligence of its citizens.

Although there are people who feel that the educational institutions are out of touch with society, there are few who deny that the schools are actually agencies of that society. It is this society which provides institutions of higher education for citizens seeking further instruction beyond the compulsory school requirements. This society has placed the responsibility for these colleges and universities into the hands of the governing board which then serves in loco civitas and is legally responsible for the institutions it administers. Often this authority and responsibility is not clearly delineated but is closely related with the principle of in loco parentis while the student is, for the time being at least, under supervision of the college or university. The concept of in loco parentis is a legalistic concept which relates to the relationship between the institution and the student. Inasmuch as the concept is, to a large extent, the result of the common law processes, it takes into consideration the customs and traditions of the country along with the statutory laws and regulations for the governance of institutions of higher education.

In the transfer of the English common law to the United States, the concept of in loco parentis was a natural part of the inheritance inasmuch as it had already existed under the paternalistic rules that governed in the colleges of Oxford and Cambridge. It was not unusual in these early colleges for students to live with the president and as the enrollments increased and this no longer was practicable, colleges soon took over the housing of their students. In colleges, such as Harvard, the administrators exercised authority over the living arrangements of students, either in on-campus of off-campus housing arrangements. The presidents were generally considered as acting in loco parentis in their concern for the students' housing, discipline, morals, and other elements of student life both academic and nonacademic. As enrollments increased, this authority and responsibility was further delegated to administrators and faculty.

The evolution of the concept as the result of challenges to college and university regulations began early in the history of higher education. One of the first cases concerned the age of students subject to provisions of the concept. This case was heard in a Maine court in 1847. This court ruled that when a person over twenty-one years of age voluntarily attended a school, the rules of common law applied and the concept of in loco parentis would apply regardless of age.[1]

An Illinois court heard a case in 1866 concerning the authority of a college to set regulations governing admission and expulsion. The

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[1] Stevens v. Fassett, 27 Me. 266 (1847).

court stated that a college rule which forbade its students from joining a secret society was not unreasonable. The court did not see it as a violation of good morals or the law of the land. The college authorities have wide discretionary powers to regulate discipline and so long as these orders did not violate divine or human law, the courts would not interfere. The court went further to state that when it was said that a person had a legal right to do a certain thing, all the phrase meant was that the law did not forbid these things to be done. It did not necessarily follow that the law guaranteed the right to do them at all possible times and under all possible circumstances. The court viewed the institution as being somewhat different than society at large in the respect that, as a citizen, a person may be permitted to do things which he may not be permitted to do under the rules of a college, and that the colleges have authority to assign penalties for the violation of their rules. This court saw that the joining of secret organizations, creating a situation wherein the students tended to withdraw from the control of the faculty, would impair to some extent the discipline of the institution. The court saw nothing inconsistent in expulsion for violation of rules and thought it absurd to even think that a college could not take this action under such circumstances.[2]

An Indiana court in 1882 went to considerable length to draw a distinction between admission to college and control after admission. The court stated that even though admission was premised on being a state resident of suitable and reasonably good moral character, not

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[2]People ex rel. Pratt v. Wheaton College, 40 Ill. 186 (1866).

afflicted with a contagious or loathsome disease, and not incapacitated by some mental or physical infirmity, the government and control of students after admission was quite another thing. The court stated that every student upon his admission, by implication, promises to submit to and be governed by all the necessary and proper rules and regulations which have been or may thereafter be adopted for the government and control of the students. The court recognized that so long as the rules and regulations were not contrary to law or common usage or acted upon directly by the legislature, the board, administrators, and faculties acting within the scope of their respective authorities have wide discretionary powers. Whatever they believed to be for the best interest of the students and the institutions could be performed so long as it was not unlawful. This authority included any and all personnel services as well as academic work.[3]

A Pennsylvania court in 1887, ruled that for a student to be dismissed for disorderly conduct, the hearing or trial must be in accordance with a lawful form and in this particular case, the student was dismissed by the faculty, which was not in accordance with lawful procedures.[4]

Another expulsion case, in 1891 in an Illinois court, was heard when the plaintiff asked for a writ of mandamus to be reinstated. This involved the student's refusal to comply with a university rule requiring attendance at chapel. The court stated that a citizen has the right to use his time as he pleases and so long as he does not interfere with the

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[3]State ex rel. Stallard v. White, 82 Ind. 278, 42 Am. Rep. 496 (1882).

[4]Hill v. McCauley, 2 Pa.Co.Ct. R 459 (1886), 3 Pa.Co.Ct. R 77 (1887).

rights of others, he may do as he will, go where he pleases, and conduct himself as he sees fit and proper. The court, however, differentiated between a citizen in society and a student in a university. The court stated that when a citizen enters a university, or is placed there by those having control over him, he surrenders some of these individual rights afforded to citizens in society at large. This court saw no invasion of personal liberty of a student and observed that the university could determine how the student's time would be occupied, what their habit should be, and their general conduct.[5]

A Kentucky court, in 1913, stated that college authorities stood in loco parentis concerning the mental training and physical and moral welfare of pupils and may, in their discretion, make any regulation for their government which a parent could make for the same purposes. Unless these regulations were unlawful or against public policy, the court stated it had no jurisdiction and whether the rules or regulations were wise or their aims worthy was a matter left solely to the discretion of the authorities or parents as the case may be.[6]

The United States Supreme Court made an important ruling in 1915 concerning the abolishing and further prohibiting of secret organizations in educational institutions. Legislation abolishing such secret organizations was not considered as control of the colleges and universities, but rather as a method providing for student welfare. The court viewed these measures for discipline as methods of enforcing legislative

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[5]North v. Trustees of University of Illinois, 137 Ill. 296, 27 N.E. 54 (1891).

[6]Gott v. Berea College, 156 Ky. 376, 161 S.W. 204 (1913).

enactments. The court ruled that the Constitution of the United States gave sanction to the states to determine what rules were imposed. The court stated that fraternities, sororities, and other societies existed at the will of the faculty and governing boards and had no constitutional right to such existence. The court ruled that the nature of regulations established by a state as to discipline of its educational institutions, and how such regulations shall be enforced, were matters for the state courts to determine. At that time, the court did not see any conflict between due process provisions of the Fourteenth Amendment and state rules concerning student behavior.[7]

Private colleges seem to have even more latitude as to whom they allow to attend and whom they could expel. A Pennsylvania court, in 1923, ruled that such an educational institution could make regulations which reserved the right to exclude, at any time, students whose conduct it regarded as undesirable. Also, it was further stated that the college was not required to prove charges or hold a trial before the dismissal of a student if the authorities regarded the student as undesirable. The court saw the college as having plenary power to impose penalties for offenses committed by students.[8]

A Missouri court, in 1924, ruled that a person standing in loco parentis to a child was one who has put himself in a situation of a lawful parent, by assuming the obligation incident to the parental relationship without going through the formalities necessary to legal adoption.

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[7]Waugh v. University of Mississippi, 237 U.S. 589, 59 L.Ed. 1131, 35 Sup. Ct. Rep. 720 (1915).

[8]Barker v. Trustees of Bryn Mawr College, 278 Pa. 121, 122 A. 220 (1923).

This relationship is merely a question of intention. The court noted that although the word "children" when used irrespective of parentage may denote that class of persons under the age of twenty-one years, its ordinary meaning with respect to parentage had no limits as to age.[9]

A Florida court, in 1924, cited the opinion that as to mental training, moral and physical discipline, and welfare of the public, college authorities stood in loco parentis and at discretion may make any regulation for their government which a parent could make for the same purposes. So long as the regulations prescribed did not violate human or divine law, the courts have no authority to interfere.[10]

A Maryland university, in 1924, denied readmission of a student after two years of attendance. The charge was that it was in the best interests of the university that the student did not continue. The university contended that the student was not readily submissive to rules and regulations that had been prescribed. In the ensuing court case, it was ruled that this was not abuse of discretion by the officials. Unless the rules and regulations were abusive or were formulated and enforced arbitrarily, the court would not interfere. This court stated that colleges and universities, whether private or public, have the right to take reasonable precautions and steps in disciplining their student body.[11]

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[9]Meisner v. U.S., DC.Mo., 295 F. 866 (1924).

[10]Stetson University v. Hunt, 88 Fla. 510, 102 So. 637 (1924).

[11]Woods v. Simpson, 146 Md. 547, 126 A. 882 (1924).

In 1928, a student was dismissed by a New York university. In an ensuing court case, the court held that a rule by the university that attendance was a privilege and not a right and that the university had the right to require withdrawal of any student without giving specific reasons therefore was binding. This court stated that the university was not bound by the general principles of justice found in the courts. The court, noting the in loco parentis position of the university, stated that so long as the person was given an opportunity to hear the testimony against him, question witnesses, and make any rebuttal statement, the courts would be slow in disturbing the decision of the university.[12]

An Ohio court, in 1931, ruled against the student in an expulsion case with the observation that, unless unreasonable, arbitrary, or unlawful regulations were enforced, the rules and regulations issued by the officials of a college, university, or school under their vested authority are binding on all students who are in attendance.[13]

In Texas, in 1932, a court in ruling on another expulsion case stated that the legislature of the state placed the power with the Board of Regents to enact rules and regulations as may be necessary for the successful government and administration of the university. This authority would not be disturbed unless the board acted arbitrarily or abused the authority vested in it.[14]

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[12]Anthony v. Syracuse University, 231 N.Y.S. 435 (1928).

[13]West v. Board of Trustees, University of Miami, 41 Ohio App. 367, 181 N.E. 144 (1931).

[14]Foley v. Benedict, 122 Tex. 193, 55 S.W.2d 805 (1932).

A California court, in 1934, was asked by a student to order a university to permit him to study without taking the required military training. The court saw no transgression of any personal rights or due process procedures in requiring this training as a requirement for attendance. This court saw this function of the state's purpose within its authority and noted that private judgment can not be placed above the powers and compulsion of the agencies of government.[15]

A North Dakota court, in 1938, noted that when an association is a voluntary one, the association has the right to make its own regulations concerning admission and expulsion of members. This court ruled that when one became a member of a voluntary organization, by this very act he was accepting the rules promulgated by that organization. Except in cases of fraud or breach of contract, the rules and decisions of such an arrangement must be accepted.[16]

Another court, in 1942, ruled that the term in loco parentis, according to its generally accepted common law meaning, embodied both assuming the parental status and discharging the parental duties. This court held that one could stand in loco parentis to an adult.[17]

In 1945, a Florida court ruled that the right to attend an educational institution provided by the state was not a natural right but a public benefaction and those who seek to become beneficiaries of it must

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[15]Hamilton v. Regents of University of California, 293 U.S. 245 (1934).

[16]State v. North Central Association of Colleges, 23 F. Supp. 694 (N.D.) (1938).

[17]Niewiadomski v. U.S., 159 F.2d 683 (1947).

submit to such regulations and conditions as laws and rules provide as a prerequisite to participation. This court noted that occasionally liberties are abolished or limited when the common good or common decency requires enactment of restrictive laws.[18]

A student, who was denied readmission to a Washington university in 1952 for refusal to submit a report of a chest x-ray, brought suit against the university. The student contended that the x-ray report was not submitted because to do so would violate his religious beliefs. The court ruled that the requirement did not violate any constitutional rights or guarantees of religious freedom. The court decided that religious beliefs are absolute, but right to free exercise of them is not absolute in that such conduct remains subject to regulation for the protection of society.[19]

A Minnesota court, in 1952, ruled that the Board of Regents was a constitutional corporation created to carry out the state purposes. The court further reasoned that the university was a creature of the Board of Regents and, as such, was therefore an agency of the state and acted for the state.[20]

A United States District Court in New York, in 1959, hearing a case involving a college, stated that before appeal to a court, all administrative remedies must be exhausted. This court noted that education processes were reserved to the state governing bodies, not the

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[18]Satan Fraternity v. Board of Public Instruction for Dade County, 156 Fla. 222, 22 So.2d 892 (1945).

[19]State ex rel. Holcomb v. Armstrong, 239 P.2d 545 (Wash.) (1952).

[20]Reid v. University of Minnesota, 107 F. Supp. 439 (1952).

courts. Inasmuch as the student concerned had been afforded proper hearings and necessary rights, the court saw no liberties or due process rights violated.[21]

In 1960, a Connecticut court noted that the relationship is not so much a legal status but to stand in loco parentis was primarily a question of intent which often must be determined in the light of the circumstances peculiar to each case.[22]

In another dismissal suit, this time in New York in 1962 from a private university, the court ruled that a student, when admitted to such an institution, whether secular or religious, is under an implied contractual arrangement that if the student complies with the terms of the university, the university in turn will issue the degree. The university, the court ruled, can not take the student's money and allow him to remain and waste his time in whole or in part and then arbitrarily refuse to confer the degree. So long as the dismissal action was not arbitrary, the court stated that the university was within its rights to expel a student.[23]

In a 1964 case, a student at a university in Colorado claimed that the university showed discretion by charging different fees for "in-state" and "out-of-state" students. The plaintiff claimed violation of equal

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[21]Steier v. N.Y. State Educational Commissioner, 271 F.2d 13 (1959).

[22]Bricault v. Deveau, 21 Conn. Sup. 486, 157 A.2d 604 (1960).

[23]Carr v. St. John's University, 231 N.Y.S.2d 410 (New York) (1962).

protection, due process, commerce and privileges and immunity clause of federal constitution, and due process clause of state constitution. This particular court would not interfere inasmuch as it considered the regulation a legislative matter and that the legislature did not assign the different rates arbitrarily or unreasonably.[24]

A Florida court, in 1966, stated that the university had the duty to take affirmative action to exclude from the student body those individuals not conforming to established standards. So long as the student is advised of charges and provided the opportunity to refute them, the court saw no abuse of the authority granted the university.[25]

A California court, in 1967, took notice of the changing concept and indicated that perhaps state universities should no longer stand in loco parentis to their students. Even though acknowledging this status and noting the changing times, the court stated that control and regulation of student conduct and behavior as such conduct may impair or obstruct the achievement of the goals of the university is a responsibility of the university. The court stated that "...except for the applicable constitutional limitations, relationship between appropriate university rules and laws of the outside community is entirely coincidental. The validity of one does not establish the validity of the other."[26]

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[24]Landwehr v. Regnets of University of Colorado, 396 P.2d 451 (1964).

[25]Woody v. Burns, 188 So.2d 56 (Fla.) (1966).

[26]Goldberg et al. v. The Regents of the University of California, 248 C.A.2d 867, 57 Cal. Rptr. 463 (1967).

In Colorado, in 1968, a court heard a case under the due process and civil rights provisions surrounding disciplinary action taken against student protest demonstrations. The court lifted the in loco parentis doctrine somewhat when it agreed with the students that the concept was no longer tenable under these circumstances. Although not striking the concept entirely, the court believed that a trend was developing to reject the authority of university officials to regulate "off-campus" activities of students. At the same time, the court made the pronouncement that conduct disruptive of good order on the campus should properly lead to disciplinary action.[27]

Another protest case, this time in Louisiana in 1968, resulted in the court's upholding of the expulsion of students by the university. This court saw the doctrine of in loco parentis of little use in dealing with the modern "student rights" problems and considered "fair play" the proper approach to deal with them. However, again the court did not see the necessity for adversary proceedings and noted that the courts have long recognized that "the university in the area of discipline could probably best be appreciated by the educational implications of discipline that extend beyond legal due process in the total educational process."[28]

An Alabama court, in 1968, observed that the college does not stand, strictly speaking, in loco parentis to its students. This court

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[27]Buttny v. Smiley, 281 F. Supp. 280 (Colo.) (1968).

[28]Zanders v. Louisiana State Board of Education, 281 F. Supp. 747 (1968).

found no violation of constitutional rights in a search of a student's room and noted that due process proceedings are not criminal proceedings and do not require all rules of evidence and constitutional guarantees to be strictly followed. The court stated that the college possesses an "affirmative obligation" to enforce reasonable regulations.[29]

The concept in early history was, to a large extent, that of disciplinarian and enforcer of rules. Throughout the ensuing years, courts have ruled that school authorities stand in loco parentis to their students in matters of mental training, moral and physical discipline, expulsion, and demands upon the students' time.

The operation of institutions of higher education are governmental functions. These institutions are considered auxiliaries of the state. The authority of these institutions is ample and full and applies to all levels. In contests to challenge this authority, the courts generally have reasoned that public interest supersedes individual rights. The courts have consistently upheld the institutional authority over the students and have not viewed controversies over the exercise of this authority as adversary proceedings. There seems to be an implied or inherent right of colleges and universities to control students. These institutions not only have the right to afford educational facilities but also have a responsibility to provide them for the health and welfare of the students.

In recent years, the courts are beginning to question the validity of the concept and there appears to be more emphasis on procedural due

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[29]Moore v. Troy State, 284 F. Supp. 725 (Ala.), (1968).

process. No definite trend however, has been established. There is a trend toward a more liberalizing attitude in the harshness in areas of discipline and more emphasis is being placed upon services to the students in more democratic and enlightening manners.

CHAPTER III

SUMMARY AND CONCLUSIONS

The future of the concept of in loco aprentis appears to be unpredictable and perhaps incapable of an unchanging definition. It is not something that is susceptible to simple deduction or reduction to the lowest common denominator. It is much deeper than control of students and more complex than the degree of legal authority that is afforded the colleges and universities. It is a complex of elements in interaction. Rapid population growth, the explosion of knowledge, the alienation of students, poverty, problems of urban renewal, racial tensions, automation, war, the cultural lag, and a resistance of authority all seem to be societal problems that have overlapped into its institutions.

As can be seen from the court decisions, procedural due process is becoming more popular but at the same time the reasons are becoming more cloudy. Reasonableness itself is no longer sufficient cause but due process has taken on many other meanings, such as "fair play," "arbitrary," "shock the conscience," "contrary to decency," "freedom of speech," "freedom of protest symbolicly," and others depending upon the circumstances.

The courts are being petitioned to render verdicts in matters of race, search-seizure, finance, academic offerings, dress, grooming, demonstrations, protests against Vietnam, protests against poverty, campus newspapers and their freedom of the press, fraternities, and the many

facets of obedience to orders and respect for the rights of others. The concept of in loco parentis was used to mediate some of these confrontations but as it appeared that sometimes the colleges quoted this authority to justify their arbitrary action, other definitions of due process were substituted. Often the issue of in loco parentis is not mentioned in controversies related to dress and grooming because it is more expedient to seek redress by other means if it is anticipated that the courts may uphold the concept.

Many of the conflicts, of course, are not the result of the concept but rather are problems of society in general. Colleges and universities do not have control over such issues as Vietnam, the draft, and the governmental functions of foreign policy and have no authority over their solution. While recognizing that the colleges and universities have stood in loco parentis to their students, the conditions are somewhat different from those existing in compulsory-attendance schools. Recent events show that the institutions are retreating from control of students in their personal lives but research does not indicate that this is a parental desire. In the final analysis, parental support is necessary to finance the institutions of higher education. Some cases of campus rioting have resulted in many state legislative bills to control demonstrations and punish offenders. Often this is a restrictive or punitive type of legislation and may deprive deserving students the opportunity to attend college due to reduction of financial support by society.

While students in higher education are dissenting on certain

administrative issues, at the same time they seem to be stating as their reason the lack of personal concern of the institution. This presents a dichotomy for, on the one hand, less control is indicated and, on the other hand, more personal treatment is being requested. The institutions have met this challenge by relinquishing much of the disciplinary control of students and, at the same time, increasing personal concern and creating more family atmosphere for living and learning. It is not unusual to include in dormitory and campus housing facilities counselors and advisors to whom the students may go for assistance. This assistance is not limited to academic problems but also extends to problems in their personal lives, marriage, religion, parental relations, finance, and complaints against the establishment.

Evolution of the concept of in loco parentis has been evident in some colleges in providing smaller units of students in "houses" where they participate as a unit or family for most of their academic courses as well as their social activities. Often major professors in the same area are available as a parental substitute at any time.

Other similar paternalistic arrangements are in evidence as "Colonies," "Campuses," and "Cluster Colleges." Autonomy is given various colleges in the multiversities to reduce the impersonal campus nature. This autonomy often has resulted in the formation of an individual identity or family unit with which the student identifies. At multi-campus universities, much autonomy is granted to the individual campuses to give students more personal attention and identity. Increased emphasis on sensitivity training and the humanities is in evidence. There are many new and enlightening

programs designed in interdisciplinary study, integrated programs, and core courses concerned with the whole person, not just the academic pursuits of the student.

A more paternalistic institution is evolving in the junior or community college movement. These colleges, with some exceptions, are smaller in size, more personal, and tend to encourage closer faculty-student relationships. More emphasis is placed upon teaching as opposed to research. The astounding proliferation of the junior colleges in the last decade might well be the result of the very fact that they are more paternalistic, closer to home, and generally attempt to meet the individual needs better than the large impersonal institutions.

The college president, once considered an astute scholar pictured in a formal atmosphere of the library, now often is seen at retreats with students in some pastoral setting. He meets with members of the student government, ombudsmen, fraternity members, and protest groups to hear complaints and suggestions for improving faculty-student relationships. He often is seen at demonstrations and student gatherings and has been known recently to appear on the playing arena at athletic events, not only as a spectator but also as a paternal participant in pre-game formalities.

Research has shown that authorities of the institutions of higher education stand in loco parentis in areas of mental training, moral and physical discipline, and the welfare of the public. While corporal punishment is no longer the weapon used to maintain discipline, there still is considerable control of students through other more subtle

methods. Some recent court cases seem to indicate that there may be a tendency to substitute the inherent right of educational institutions for in loco parentis to control students to prevent disruptive instances which impair or obstruct the achievement of their educational goals.

Control has been lessened in off-campus areas and officials no longer remain rigid in many campus decisions such as dress, grooming, curfew, traffic regulations, and parking. There is however, decided parental concern in areas of housing, food service, loans, scholarships, tuition aid, work-study programs, employment, physical and mental health, population control, recreation, guidance, and placement services. While most of the polls indicate that the public expects the institutions of higher learning to exercise more control over students, it appears that the administrators no longer desire this stringent control even when they agree with parents. Many off-campus incidents are referred to the local community police. In cases where students become involved with local law enforcement agencies off-campus, the university must be especially careful to protect the rights of the students. In a pluralistic society, a citizen may be a member of many different organizations besides that of the university. It would be impossible to maintain control over students in all off-campus situations. It would be a violation of their rights to assign another sentence to students who have been found guilty and sentenced as the result of an off-campus incident. The American system of jurisprudence provides that no one should be tried and sentenced twice for the same offense. The university must be careful to protect this civil right of its students so that they are not placed in double jeopardy.

Courts generally have not considered that legal rules of due process are exactly transferable to the college situations inasmuch as these cases generally are not considered to be adversary proceedings. The complicated rules of law in such proceedings are not necessary so long as the student is formally advised of the grounds on which he is being questioned, given an opportunity to refute the charge, and given a hearing based on rules of fair play.

It is conceivable that colleges and universities of the future will be held responsible, as the parent under law, to educate the citizen to his maximum potential in keeping with his station in life. The concept of in loco parentis may, in the future, hold the institution responsible for the further training and education of the student later in life as he is required to retrain for another occupation due to the obsolescence or phasing out of one for which he prepared. The institution may also be delegated the paternalistic responsibility for job placement as well as preparation for the world of work.

One might speculate why the institutions would desire to maintain the awesome responsibility for the concept because if the students really demanded all the services that could be obtained under such a doctrine, the institutions would find themselves in an impossible position. From the standpoint of the college and university, it may be a definite advantage to bury the concept as an anachronism of an earlier and simpler era. In the past, however, when additional responsibilities have been placed on the institutions, they accepted them and it does not appear that simply because some additional responsibilities are placed upon them that

institutions of higher education will abdicate their position because they appear to be impossible requirements.

The trend toward procedural due process and equal protection before the law will continue to bring about court litigation. With the diversity that exists in the student population, consensus will often be difficult to secure, even if it were desirable. The avenues of due process must be kept open and students must continue to be heard on controversial issues. Often however, the issues are not clearly drawn but are decided on a meager majority vote which posits a large segment of the population in a minority position with almost as much strength as the majority. This makes it difficult to distinguish between the rights of one group and the deprivation of rights of the other group.

Public opinion appears to cast its vote for the concept of in loco parentis but no longer supports the oppressive nature of the concept. Society is becoming more paternalistic, as evidenced by the tremendous number of legislative enactments in the social security area. As these paternalistic measures become more and more intermeshed with the customs and traditions, so will society transmit this cultural heritage into its institutions of higher education.

Although the courts have not been unanimous in turning away from the concept, recent evidence shows that at least a semantic change in definition may be evolving. There appears to be a recognition of the inherent right of educational institutions to control students. Sometimes this is termed the implied power or the affirmative obligation to enforce reasonable regulations. Some courts seem to uphold the concept

but under other terminology, recognizing that regulations and rules are necessary to maintain order so long as these ordinances are not arbitrary or unreasonable.

The concept of in loco parentis appears to be an enduring, living concept which will continue to evolve as psycho-socio-economic forces impinge upon it and the due process provisions attempt to filter out some of its harshness and unfairness. Even with the provisions for due process, there is no strong indication that due process will be substituted entirely for it is recognized that the concept of in loco parentis does possess kindness, understanding, and a human aspect not present in regular associations of the general citizenry. To replace the concept entirely with due process may do a severe injustice to the student for within the concept it appears possible to enjoy the best of two worlds. Surely the student, who is the hope for the future of the country as well as for democracy, is entitled to the best that can be provided and not just the minimum that is available to any citizen. A benevolent and humane parental concept seems to offer more promise and afford more personal advantages to the student than the alternative offered by due process.

Hopefully, democracy and the democratic processes have advanced to the point that these differences of opinion can be mediated and compromises reached to the mutual advantage and advancement of all citizens. The country perhaps is entering a period of social planning and reason must prevail using disciplined methods of study, research, and better human relations. Assuming that both parties adhere to the same democratic creed, compromise within these boundaries will be possible.

The future of a better concept of in loco parentis appears to be bright as society and the institutions of higher education move from the harsh discipline of fatherly oppression of the early concept into the benevolent and humane parenthood of a more enlightened age. The procedural due process and equal protection of the individual will not only aid in this transition but also are a part and the result of the evolution of the concept of in loco parentis itself throughout the evolution of western civilization.

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