

# *“COMPLIANCE UNIVERSITY” IN THE NEW FEDERAL ADMINISTRATION*

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# A BRIEF HISTORY OF HIGHER EDUCATION LAW

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- The Five Eras
  - The Era of Legal Insularity (Trust)
  - The Civil Rights Era (Dyads)
  - The Bystander Era (Deflection)
  - The Facilitator Era (Balancing)
  - The Compliance Era, i.e. “Compliance University”(Accountability)
- The Rise of Contractual Relationships with Students
- From Donors to Consumers—Visitors (Sir Henry Maine)

# STUDENT AFFAIRS AND FACILITATOR U.

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- **Facilitator University Model – shared responsibility, reasonable risk**

*“A facilitator college balances rights and responsibilities - it is neither extremely authoritarian nor overly solicitous of student freedom. Importantly, a facilitator college seeks shared responsibility rather than allocating it unilaterally or not at all. Facilitation implies an appropriate and reasonable degree of risk. . . .”*

This definition adopted from: Bickel, R.D., & Lake, P.F. (1999). *The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life?* Durham, NC: Carolina Academic Press.

**Texas A & M University, Department of Student Activities**

- **Educational model of managing a student learning environment – student as “visitor”**
- **Broadening of classes of educators**

Peter Lake, *The Rights and Responsibilities of the Modern University: The Rise of the Facilitator University* (Carolina Academic Press, 2013).

# WHAT HAS CAUSED THE RISE OF COMPLIANCE U.?

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- Advocacy/Consumer culture
- Changing roles of lawyers and legalists – “J.D. preferred”
- The rise of college “courts”
- Successes and Failures of the Civil Rights Era
- Globalization
- Student debt
- P-20
- Shift to focus on federal policy objectives
- Role of foundations/advocacy groups – “Dupont Circle”
- Evolution of risk management (Enterprise Risk Management)
- Loss of trust
- Shift in financing of higher education

# COMPLIANCE U. FOCUS AREAS

## **Modern focus in five interlocking areas:**

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### 1) Safety

Pressure to increase safety (post-Virginia Tech and post-April 2011 Dear Colleague Letter on Title IX/sexual assault) and the rise of campus “teams” (CARE, BIT, Threat Assessment)

### 2) Core Mission Delivery

White House initiatives – ratings, scorecards, gainful employment

### 3) P-20 Connectivity

### 4) Governance

White-collar crime (think Penn State—Graham Spanier conviction)

### 5) The Continuation of the Civil Rights Era

# POTENTIAL TRANSFORMATIONS IN HIGHER EDUCATION IN THE TRUMP ADMINISTRATION

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- Virginia Foxx, U.S. House Education Committee/Lamar Alexander Republican Senator from Tennessee
- General Deregulation Agenda at Federal Level—Will States Diverge?
- Funding? Is higher education a major policy priority?
- DeVos, U.S. Secretary of Education/ Sessions, Attorney General, Dept. of Justice
  - K-12 focus?
  - Dear Colleague(s) from Justice/ Focus on Due Process and/or Criminal Justice Response? Retrenchment on 2011 DCL, etc?
  - Candice Jackson to lead DOE's Office for Civil Rights
- Jerry Falwell, Jr. tapped by Pres. Trump to head a commission on higher education. "The goal is to pare [governmental micromanagement] back and give colleges and their accrediting agencies more leeway in governing their affairs."
  - Focus on Faith Based Education//and Institutions "off the grid"?

# POTENTIAL TRANSFORMATIONS CONTINUED

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- Federal regulation rollbacks? Implications for For-Profit/Title IX/Lending/Immigration (Sanctuary campuses)
- State Law? (Georgia HB 51 Failed)
  - Disciplinary hearing can only take place if a criminal investigation has been launched.
  - Prevents interim disciplinary measures from taking effect until a criminal investigation has been launched.
  - Emanuella Grinburg, *This Bill Could Change How Colleges Handle Sexual Assault in Georgia*, CNN (Feb. 3, 2017)
- Speech/Student Press/Association/Expressive Activity
  - Could protesting on campus affect federal funding?
- Greater support for trade schools, vocational schools, community colleges, HBCUs?
  - Adam Harris, *Here's Every Major Statement Trump and DeVos Have Made on Higher Ed*, Chron. of Higher Educ. (March 3, 2017).

# WILL WE SEE A RETREAT FROM COMPLIANCE UNIVERSITY?

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- Look for New Compliance Mandates—Federal, Local, Accreditation, Consumer Expectations
- Red, Blue & Purple
- The Rule of Law—The Role of Lawyers
- Impact of Penn State, Baylor, UNC Chapel Hill → Changing Roles for Boards, Presidents, Athletics