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Recommended Citation

Olt, P. A. (2020). The implicit costs of regulatory compliance in higher education: A case study. *Journal of Higher Education Management*, 35(2), 28-43

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The Implicit Costs of Regulatory Compliance in Higher Education: A Case Study

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It has been proposed that higher education is the most highly regulated sector in America (Lee, 2010). Broadly speaking, institutions are regulated by government at the federal, state, and local levels, as well as other implied sources. While sharing commonalities with other sectors, higher education institutions are differentiated by their educational mission.

There is no indication that regulations or compliance requirements are created to increase the size of bureaucracies at educational institutions; rather, they are put in place to direct institutions toward desired behaviors and ensure that institutions are obeying. Well-designed regulations for appropriately desirable behaviors should create positive impacts, such as non-discrimination, protection of the environment, safety, and privacy (Dunham, 2010). Hearn and McLendon (2012) questioned the likelihood that, without such regulation, institutions would have adequately addressed ethical issues. One requirement stipulated by Title IX of the Education Amendments Act of 1972 was to ban institutions from sex-based discrimination, and the most visible manifestation is in the equal number of male and female sports teams, which is widely regarded as successful. In its report to the U.S. Senate, the Task Force on Federal Regulation of Higher Education (2015), here after designed as the “Task Force,” noted that institutional accountability is an appropriate goal, but it can be accomplished without the costliness and difficulty associated with the current palate of regulatory requirements on higher education.

Small liberal arts colleges (SLACs) are stretched to meet the same or similar compliance requirements as large institutions, although their funding and staffing may be far less. Though larger institutions may be burdened, they can usually benefit from an economy of scale in staffing and have a flow of appropriations and research grants. Bok (2013) juxtaposed the multi-billion dollar endowments at a major research university against the struggle for survival at many SLACs.

The purpose of this case study was to understand the impacts of regulatory compliance on labor at a SLAC in the Midwest through the lens of implicit cost. Opportunity cost occurs when a decision is made where one must forego “the next best thing. That sacrifice is the opportunity cost of the choice” (McConnell, Brue, & Flynn, 2012, p. 4). Underneath that umbrella, explicit cost is the more well-known facet as “the direct cost...independent of the attributes of any alternative” (Stone, 2015, p. 22), while implicit cost is the “opportunity cost of an action that does not directly involve monetary payment...forgoing the benefits of an action that could have been chosen” (Black, Hashimzade, & Myles, 2017, “Implicit Cost,” para. 1). For the purposes of this study, I included governmental regulators as well as implied regulators—institutional accreditation and the National Collegiate Athletic Association (NCAA)—because they are generally seen as indispensable to those institutions who participate in them. I conducted the research at a SLAC, which was defined as a higher education institution with less than 1,000 students that is characterized by “an undistracted and undiffused intensity of focus on a broadly based education in the arts and sciences..., as well as the firm and

unswerving commitment to bring to the education of undergraduates the full resources appropriate to a small university” (Oakley, 2005, p. 3).

Theoretical Framework

Personnel in higher education who have regulatory compliance as secondary duties are faced with making decisions between the oft-competing priorities of regulatory compliance activities and their primary responsibilities. Ariely (2016) noted that governments impose regulations generally to motivate individuals and organizations to choose their desired behaviors through both positive and negative incentives. Government and implied regulation hardly represent an open choice. Personal and institutional motivations must be set aside, as the decision is preordained by fiat. This does not, however, eliminate the reality of opportunity cost, a foundational concept of microeconomics.

Opportunity cost has been defined as the sacrifice of the next-best thing when a decision is made (McConnell et al., 2012), while Black et al. (2017) portrayed it as the benefits forgone in such a decision. This sacrifice could be measured in explicit cost, as the lost usage of funds used toward the direct expense associated with the decision, and implicit cost, as the best alternative or foregone benefit that was given up in the decision. In the context of higher education then, regulatory compliance may cost both financially and “in terms of the talents and energies expended; that they divert higher education from its primary mission of teaching and scholarship; and that they erode the integrity of campus decision making” (Kaplin & Lee, 2014, p. 15).

Literature Review

Two concepts in the literature served as a backdrop for this study: liberal arts colleges and regulation in higher education.

Liberal Arts Colleges. While liberal arts colleges (LACs) have widely been viewed as an ideal of American higher education (Thelin, 2011), the missions and operations at specific LACs are highly variable, as the sector values independence and uniqueness. To create well-rounded graduates, LACs are often intentionally small to facilitate mentoring through close relationships (Bonvillian & Murphy, 1996; Hawkins, 2000). Though there are some extremely wealthy LACs, most tend to have very limited financial resources, leaving little room for bureaucracy, duplication of roles, or excess (Lang, 2000). The small size of SLACs limits the professional support staff but allows them to be operationally agile and have cross-functional employees (Bonvillian & Murphy, 1996; Labaree, 2017). It has long been predicted that LACs would disappear completely or leave only the most prestigious or wealthy institutions, and research does indicate that the number of LACs and their enrollments are in decline (Astin & Lee, 1972; Breneman, 1990; Tarrant, Bray, & Katsinas, 2017).

Regulation has a particularly sharp impact on LACs, as budgets are often balanced with little room for additional spending on compliance (Bonvillian & Murphy, 1996). Ekman (2014) noted that, “The significant costs of compliance are felt most acutely at small institutions, where the benefits of scale are less readily available” (p. 26).

Regulation in Higher Education. If accountability is being held responsible for one’s actions, regulation is the primary tool to achieve that in higher education. Institutions are subject to regulation from the federal, state, and local governments (Ewell, 2011; Kaplin & Lee, 2014). Flowing from the accountability movement, the 2000s and 2010s have seen a rapid increase of regulations for higher education, inflaming tensions and imposing a growing cost of compliance (Bok, 2013). Since

policymakers often utilize regulation to incentivize desired behaviors (Ariely, 2016), regulations are often now attached to funding to ensure it is used as intended (Mumper & Freeman, 2011). Higher education generally has not welcomed such specific regulation, seeing compliance requirements as unfunded mandates that push cost along to students (Mumper, Gladieux, King, & Corrigan, 2016). There are also several implied regulatory sources for higher education separate from the government but tied to its authority, most notably institutional accreditation and the NCAA. Institutional accreditation provides access to federal student aid funds and grants. Anctil (2009) noted that the perception of an institution's athletic programs in major sports has become influential upon recruiting donors and prospective students.

The regulatory state. The significant regulation of higher education is a relatively modern phenomenon, with the period of the 1970s through the 1990s representing a significant turn in the relationship between government and higher education. Whereas institutions had generally been trusted to behave appropriately before, the government now targeted the sector for increased scrutiny, which was accompanied with an explosion of regulations (Thelin, 2011). While the No Child Left Behind Act of 2002 focused on primary and secondary education, its impacts were profound in pushing the accountability culture into the higher education sector (Eaton, 2010). During the 2010s, a new degree of pushback arose from inside higher education against regulations that were perceived as useless or burdensome. In their joint statement, the Association of American Universities, Association of Public and Land-grant Universities, and Council on Government Relations (2011) recommended the elimination of excessively burdensome regulation and extending compliance flexibility to small institutions.

The expansion of regulation has become so profound that governance of higher education has been described as a regulatory state (Austin & Jones, 2016; King, 2007) that shows no sign of decline (Turner & Angulo, 2018). Despite the divide in American politics becoming increasingly large, the regulatory environment associated with accountability has been equally embraced by the political left and right (St. John, Duan-Barnett, & Moronski-Chapman, 2013). Klick and Mitchell (2016) likened the regulatory state to over-protective parents, ultimately stunting the maturity of their children. Vance (2012) described it as simultaneously oppressive in volume and ambiguity, while Casper (2014) derided the growing burden placed on institutions by government regulation and the bureaucratic accreditation process. Facing this growing body of regulatory compliance, institutions turn their focus to "ensure survival" against legal sanction (Turner and Angulo 2018, 56).

Concerns. Concern about the impacts of regulatory compliance in higher education continue to rise, and, as administrators advocate for regulatory relief (Mumper et al., 2016), Casper (2014) noted that,

It might be assumed that they [universities] can absorb increasing political demands and regulation, and the accompanying increase in operating costs, while remaining unaffected in their quality, their vitality, and their ability to contribute to society as they have so magnificently done. If I had only one message to leave with you, it would be that you not permit that profound misconception to gain currency. (p. 123)

Research has indicated that regulatory compliance may have numerous negative consequences on higher education, but chief among those concerns has been financial cost. Regulatory compliance requirements have generally been unfunded mandates from government (Dougherty & Reddy, 2013). In one previous case study, the cost of federal regulatory compliance at one institution was found to be 6.5% of the annual operating budget (Hunter & Gehring, 2005). The impacts of compliance costs are, however, most acutely felt at small institutions with relatively small budgets and little ability to distribute workload (Ekman, 2014).

While administrative costs associated with compliance take away funds from teaching and scholarship, Dunham (2010) noted other deleterious impacts as negating autonomy to make decisions on the front lines, driving toward standardization and away from a diversity of institutions to meet the differing needs to students and society, and interfering with the ability of institutions to make their own decisions to compete in the marketplace of ideas. The drive for performance-based accountability in higher education has been described as conflicting with expansive regulation, which prescribes uniformity and undermines the ability of institutions to adapt successfully (Shin, 2010). Certain types of regulation, such as the Affordable Care Act of 2010, have made full-time employees significantly more expensive, pushing greater use of adjunct faculty to fulfill instructional needs (Boerner, 2013).

Margaret Drugovich, president of Hartwick College and member of the Task Force, directed an institutional study to be done in 2011-2012 to account for regulatory compliance (Zack-Decker, 2012). The Task Force (2015) then presented its findings on the relationship between regulation and higher education to the US Senate Health, Education, Labor, and Pensions Committee ahead of a reauthorization of the Higher Education Act. Flowing from his involvement in that, Nicholas Zeppos, co-chair of the Task Force and president of Vanderbilt University, commissioned studies on the cost of compliance there (Vanderbilt University, 2015a) and the costs at 12 other institutions (Vanderbilt University, 2015b). Though received with a degree of skepticism in the higher education media (Blumenstyk, 2015; Woodhouse, 2015), these studies comprise the bulk of what is known about the costs of compliance in modern universities, representing calls for reforming regulation rather than deregulation.

Klick and Mitchell (2016) described the problem best, noting that, “Perhaps the gains from [government] intervention will be sufficient to justify the opportunity cost, but those costs should be included in the cost-benefit analysis. Too often only the predicted benefits are considered, while the attendant long-term costs go unseen” (p. 37).

Methods

I conducted a single instrumental case study (Stake, 1995) at a private SLAC to research the implicit costs of regulatory compliance. A case study “investigates a contemporary phenomenon (the ‘case’) in its real-world context” (Yin, 2014, p. 2) to “catch the complexity of a single case” (Stake, 1995, p. xi). An instrumental case study approach was selected to investigate the broader issue of implicit costs from the regulatory compliance activities at higher education institutions (Stake, 1995). Because so little is known about this problem, it was studied within its natural, real world context, for which a single case study design is ideally suited (Stake, 1995; Yin, 2014). The bounded system for this study consisted of administrators, faculty members, and staff who performed regulatory compliance as a secondary duty at Town College during the spring semester of 2018.

Research Site and Participants. To protect confidentiality, identifiable information was obscured by using pseudonyms.

Site. Town College was selected as a typical case of a SLAC, enrolling between 500-999 students, making teaching and community the core of its mission, operating as a private institution, not being characterized as wealthy with massive endowments, and being regionally accredited. Matea, the Vice President for Academic Affairs, noted that the ethos of the campus lay in the “lived experience” based on the “quality of interaction” between students and college employees. It is located in a small town in the rural Midwest, employing 57 tenured or tenure-track faculty members and 102 full-time staff members. The institution also employed between 45-50% of the student population during the academic year.

Participants. During an interview, Matea and I identified nine participants who were key to this study, and all agreed to participate. Participants are identified with pseudonyms in Table 1, including their primary position and significant compliance responsibilities.

Table 1 – **Participants**

Participant Pseudonym	Position	Significant Areas of Compliance Duties
Chloe	Registrar	Title IX, NCAA, Family Educational Rights and Privacy Act, Financial Aid, Immigration, Data Collection and Reporting for all Compliance
Darnell	Director of Financial Aid	Federal and State Financial Aid
Emily	Science Lab Manager	Hazardous Materials, Chemical Hygiene Officer, Occupational Health and Safety Administration (OSHA), State Department of Natural Resources
Joshua	Vice President of Finance	Financial Management, Financial Aid, Non-Profit Status, Endowment
Matea	Vice President for Academic Affairs	Accreditation, Faculty, Broad Oversight
Melissa	Vice President for Student Affairs	Food Service Health Codes, Building and Fire Codes, Substance Abuse, Counseling, Title IX, TRiO
Robert	Human Resources Director	Affordable Care Act, Internal Revenue Service, Federal and State Department of Labor, Americans with Disabilities Act, Civil Rights, Title IX, and Data Collection and Reporting for all Compliance
Samuel	Athletic Director	NCAA, Title IX
Sydney	Director of Teacher Education	State Department of Education, Title II of the Elementary and Secondary Education Act

Data Collection. I conducted semi-structured interviews with individuals, performed document analysis, and analyzed archival records. The use of multiple data sources provided robust data for the study and increased the credibility of the study through triangulation (Creswell, 2013; Stake, 1995; Yin, 2014). I first interviewed the vice president for academic affairs as the gatekeeper to understand Town College, its orientation toward regulatory compliance, and identify further participants. I then interviewed the other eight participants and began to gather documents and archival records. The documents were provided by the participants, consisting of department manuals, documentation of compliance work, and compliance workflows. Many departments did not, however, have operations manuals or compliance plans written out as the variety and volume of work limited the ability of departments to take the time to write out such manuals. I gathered the archival records from publicly available data provided online by the NCAA and the U.S. Department of Education’s Integrated

Postsecondary Education Data System (IPEDS), Information for Financial Aid Professionals (IFAP), and College Scorecard.

Data Analysis. Qualitative data analysis should not be thought of as a completely discrete process, rather best begun concurrently with data collection (Creswell, 2013; Stake, 1995); thus, I began my own analysis from the beginning of data collection by writing of reflective notes, transcribing, and in vivo coding. Yin (2014) suggested utilizing theory and spending a significant time with the data as tools for data analysis. Peering through the lens afforded by microeconomic theory, I looked for the alternatives not able to be chosen—implicit cost—when faced with regulatory compliance. Then, I spent a significant amount of time with the data to see the themes and concepts emerge. Such thematic analysis was accomplished through one round of in vivo coding followed by a round of pattern coding (Saldaña, 2016).

Credibility Measures. Wolcott (2005) noted that the nature of qualitative research does not align well with the concepts of validity or reliability, but rather qualitative researchers should increase establish credibility. One strategy I employed to increase the credibility of the study was data triangulation by collecting interview, documents, and archival data (Stake, 1995; Yin, 2014). I also used member checking for transcripts and the final report (Creswell, 2013; Stake, 1995). As a final approach to addressing the credibility of my study, I provided rich, thick description to give the reader the best possible understanding of the situation at Town College (Stake, 1995; Yin, 2014).

Findings and Analysis

Through this study, I found that regulatory compliance significantly affected labor at the SLAC, resulting in implicit costs for individuals and the institution. The effects of regulatory compliance on labor were primarily that: 1) it had become overwhelming and overburdened those performing it, and 2) it had changed the institution in almost every facet.

Overwhelming and Overburdened. The most overt way in which regulatory compliance affected labor at Town College was compelling administrative staff members to manage a wide variety of roles. Most of the administrators and staff had more than one distinct role they filled for the institution. Though additional roles were rarely focused on compliance, each divergent responsibility came with its own associated regulatory compliance requirements.

Whereas the variety of responsibilities managed by few individuals could be easily observed, the situation underneath the surface was one of great stress for those individuals bearing that breadth. Joshua repeatedly used the term “onerous” to describe regulatory compliance, and indeed, that seemed to encapsulate how the participants felt about it. To maintain the student-facing mission at its highest level, regulatory compliance responsibilities were generally added as secondary work responsibilities upon their small cadre of staff members, who then become “even more burdened with work.” Thus, staff members consistently, rather than seasonally as is common in higher education, worked between 50 and 70 hours per week to meet the varied demands and student needs. Their strong commitment to the mission and ethos of the institution led them to sacrifice self over students.

Perceived misalignment. Most of the participants expressed that they perceived a spike of regulatory compliance during the 2010s, which became the primary driver behind their increasing workloads. The complexity of regulations, tight timelines, and overlapping requirements with multiple agencies all enhanced the stress. Samuel was clear this resulted from “being held more accountable [externally], and I think that's what's really produced more work...The amount of work has tripled, I would say.”

Those in higher education expect seasonally high workloads, such as in the admissions office leading up to the start of a new fall semester. However, as Darnell noted, “It’s kind of crazy—the seasonality, that’s pretty much disappeared.” What used to be recovery and improvement times were replaced with activities like audits, inventories, report filing, and mandatory training. Ultimately, this new reality led many to question whether such compliance really aligned with their institution or their role in it.

One major source of compliance-related stress was the perception that compliance work was not aligned with an employee’s primary work purpose. Melissa talked with conviction about her work in the SLAC environment—“I really do think there’s something special about a private liberal arts college and the degree of community that you’re able to develop. It’s something I treasure and would not want to give up.” However, Samuel described feeling guilty “when I meet with the student athletes at the beginning of the year, telling them how many forms they have to fill out. . . . It’s just like, ‘Okay, at what point are we gonna get to what we’re really here for?’” He further explained that their purpose was “to spend time with the student athletes” not “sit in front of a computer and look at all the paperwork that each student athlete fills out.”

However, the student-focused work often had to be set aside for compliance work, which Melissa described as doing “burdensome, tedious things that truly in the life of a student or in impact upon them is pretty negligible.”

While the purpose expressed by the employees was profoundly people-focused, often their work tasks seemed to be “just more paperwork,” as Robert put it. While he spent a great deal of time on compliance reports, Robert expressed a suspicion that often such paperwork “gets filed into a warehouse and nobody ever looks at,” because they commonly did not receive feedback from regulatory agencies. Melissa approximated how she and her staff would “spend half of [their time on regulated tasks] just doing the paperwork on it to prove to somebody they’re doing it.” Such paperwork was, as Emily described it, “dry” and “boring.” In this mission- and ethos-driven workplace, the participants often lived in frustration due to spending significant amounts of their time with electronic and physical paperwork rather than with people.

Sacrificing self. At Town College, the employees generally placed the institution and mission as a very high personal priority, often imposing a great toll on themselves. As Melissa put it, “the cost [of the extra compliance work] is on you.” Regardless of whether they wanted to sacrifice themselves for regulatory compliance, Melissa affirmed that “you have no choice but to just spend more time.” The entire system at Town College was predicated upon everyone getting done what must be done when it had to be done. Questioning that system was a foreign concept; it was just the way things were. The primary difference between regulatory compliance and other duties at Town College was that the removal of choice, as regulatory compliance came from the outside rather than arising from local need.

Giving up a work-life balance. My questions about a work-life balance most frequently drew a snort or laugh as the first response. Chloe described how regulatory compliance often breached her tipping point, eliminating balance from her life:

It is exactly the extra hours that the stuff that I would’ve been doing during the day, but I can’t because I have to set up the Title IX stuff or talk to the attorney or sit in the interviews or whatever the case might be. Then, I’m doing [my primary responsibilities] in the evening or on the weekends.

Such investments of time in the evenings and on the weekends, however, came at a cost that amounted to more than just a tally of hours.

Human buffers. A buffer absorbs impact, and in many ways at Town College, those doing

compliance work served that role for the institution. Samuel believed that “[regulatory compliance is] a necessary burden, but we don't have the resources to keep up with the pace that they're asking us to with it.” The concept he expressed, along with several other participants, was that the regulatory compliance responsibilities increased consistently while resources remained the same or shrank slightly.

Chloe described the workload consequence for such requirements with limited resources as coming “off my hide and out the hide of my colleagues.” At the busiest times, she described how “there's probably a toll on my health, a toll on personal relationships, a toll on relationships on campus, if we're under siege...So, yeah, we are overextended, sometimes in a very negative way.” The sacrifices of self then had impacts on those with whom they were in relationships. As a mother of young children, Emily was quick to describe what she would do with her time if her compliance duties went away—“I would reduce my hours, and I would spend that time with my family.”

Changing the Institution. Regulatory compliance at Town College did not just affect labor at the individual level, as it also caused institutional challenges to the focus on people and the quality of the services being provided. The core mission of each of the departments was people-focused; however, despite the best efforts of employees to sustain those services at the highest level, there were times when competing priorities of compliance interfered. Most of the participants described compliance as a situation where they had “no choice.” It did not matter what else was going on for the campus or students, NCAA questions had to be answered immediately or Title IX investigations had to proceed ahead. Work functions generally had no personnel overlap, thus, many times, student services—no matter how pressing—were required to be set aside until the compliance process was satisfied within the mandatory timeline. The participants, especially those with long ties to Town College, saw the impacts of regulatory compliance as significant and building over time. Matea listed the two things that differentiated Town College as being superior in “the quality of the interaction from faculty to student [and] the thoroughness of the residential community.” As no-choice regulatory compliance had crept in, it had tarnished their full ability to maintain and enhance these two distinctives.

Time utilization. Town College was people-focused, at least when it could be so. “I think one has to really be careful,” Melissa cautioned, “[with] how much time you spend on that [compliance] and when you're behind a closed door, while other things on the campus were going on and you weren't being able to attend to.” The demands of compliance could easily overwhelm the people-focused mission of Town College, undermining its niche and ultimately harming the students. However, regulatory compliance often limited the ability of employees focus on “things on the campus” that Melissa felt they needed “to attend to.”

Tough decisions. The employees at Town College were often confronted with challenging decisions about how they would spend their time. Regulatory compliance work required a large amount of time, because one had to learn the regulations, remain current on regulatory changes, learn the compliance procedures, do the required compliance activities, and then report the compliance activities that were done. They frequently spoke of their student-facing responsibilities as those that *should* be done, whereas their regulatory compliance responsibilities were those that *had to* be done. In that equation, the answer to the decision was always doing the regulatory compliance work.

Samuel described the compliance work of the athletics department as extremely “time-consuming.” Within recent years, “the amount of [regulatory compliance] work has tripled” for the athletics department. In a previous semester, they had tracked their work hours in small time segments, and he was disheartened when he realized how much of that time was devoted to compliance work. He continued to describe a long list of “other things that you shortchange because of [regulatory

compliance work],” such as more time mentoring student-athletes and coaching activities. He believed those sacrificed things “would improve the whole athletic department environment, the student athlete experience” more than what they were doing with regulatory compliance in the NCAA.

Joshua discussed that 45-50% of the student body was employed on campus. Though he wanted to devote more time to using that student employment as a developmental opportunity, his time was limited due to compliance work. If that compliance work disappeared, he noted that “I would like to devote much more effort to developing very regulatory-like structures for training them [student employees] ...It would become a part of their portfolio when they leave the institution.” Such an endeavor would certainly align with the ethos of the institution, though it had instead become an implicit cost of regulatory compliance.

Roadblocks and interruptions. Town College employees wanted to interact with students—to teach, mentor, and help them. However, the workflow related to regulatory compliance often preempted that. Sometimes, regulatory compliance did push interaction with students, though not always ways associated with an employee’s primary work responsibility. Such interruptions to primary workflow had become the norm for Chloe, as she described how,

I've come now to expect it. It makes my life very difficult, because sometimes we've had [a] major Title IX investigation going on at the end of the spring semester or the end of the fall semester. It does demand my attention.

Without diminishing the importance of serving the students with a thorough Title IX investigation, the registrar needed to be spending the end of each semester working on graduating students, facilitating efficient grade submissions, making sure transcripts were accurate and issued promptly, and so on. When a Title IX investigation was going on at Town College, Chloe said that it “dominates” her workflow.

Further, Chloe described what was given up with work “in the trenches” of a student-service department for the sake of regulatory compliance. “Even though we try to add hours to the day,” she noted, they were just unable to get everything done as well or as quickly as they really needed to. She continued that,

We know at the end of every semester we're gonna be swamped in certain ways, and so we make adjustments. We make it clear that we're not gonna be able to do transcript fulfillment as quickly, or we do some things like that to try to create the slack in the system. But when some of these compliance issues come up and they take priority, that just throws the wrench in the monkey works.

Unfortunately, in the eyes of those facing these tough decisions, it was just not possible to do as well with the students as they wanted to. Self-sacrifice could only go so far, and at a point, the quality and timeliness of student-facing work were sacrificed as well.

Personnel decisions. All the participants noted that they would prefer their responsibilities be more people-focused; however, regulatory compliance limited the ability of many to do so. Matea estimated that Town College had the equivalent workload of two full-time employees doing compliance. These two full-time equivalents then had taken the place of other personnel additions.

Rare additions. Of the divisions represented in this study, only the athletics and financial aid departments reported getting increased staffing to address the growing compliance burdens. Samuel noted that the institution had responded to increased compliance work with the NCAA by transforming

several part-time coaching positions into full-time. This afforded Samuel the “benefit of spreading the hats around” in the athletics department. In the financial aid office, Darnell was concerned about how regulation had expanded to the point “where institutions of higher education have to spend hundreds of thousands of dollars just to keep up with the regulations.” As that burden has increased, the financial aid office had come to rely upon several student workers to fill the gaps that the two full-time staff members could not meet.

Justifying jobs. In reflecting about what would happen at Town College if regulatory compliance requirements completely disappeared, Joshua assumed that “some people would lose their jobs, that some people could be reallocated for other jobs and other effort within the institution.” This was an important indicator that the institution had already reallocated its labor force, though subtly and not necessarily with intention, to meet the requirements of regulatory compliance. He noted that these changes were “not always commensurate with where we would like to see the institution go.” Town College, for better or for worse, could not escape the reality that they were not entirely in control of the substance or direction of their operations.

Restrained excellence. The desire for excellence was clear at Town College. However, regulatory compliance seemed rarely, if ever, focused on excellence, rather enforcing a relatively low minimum standard. Whereas excellence implied continued improvement, compliance implied just meeting a standard.

Interference with professional discretion. A sentiment commonly expressed by the participants was that they had lost a great deal of professional discretion over the recent decades due to regulatory compliance. This was accompanied by a feeling that the regulatory requirements were often set by distant bureaucrats in government, rather than trained experts dealing with the realities of their situations. While regulation could ensure a minimum standard was held, that standardization also cut into the ability of professionals to determine what was appropriate or best in specific situations.

Giving up local success. During the interviews, I spoke with all four members of the institution who worked with Title IX. Each had a unique perspective on compliance, but one common theme came up repeatedly—the institution previously had a system that protected students as well or better but more comfortably fit within the institutional operations. They saw Title IX as a nationwide initiative to bring those below expectations up to a minimum standard, but it tended to be somewhat less effective than what Town College had been doing before. Melissa commended that she was “not sure the outcomes have been terribly different than what we did before” but resulted in huge expenditures “to increase the likelihood that someone doesn't file a complaint.” Thus, there was the implicit cost of a system that worked well for the students and Town College in favor of a more expensive system that questionably brought any improvement.

Maintenance mentality. Robert reflected upon how his time would be used differently if there were not regulatory compliance:

I think that there is some compliance paperwork that does interfere with being able to do things that have more effect on the college...I would probably work on other things that I don't get to do, like looking at policies or efficiencies.

As result of the small human resources staff, he had just begun “revising the handbook, for the second time, in the nine years that I've been here.” Without time to step out of the grind to think about the bigger picture, the institution had sacrificed improving efficiency and communicating up-to-date expectations to employees in favor of maintenance of what they were doing and how they were doing it.

Sacrificing quality. Quality often proved difficult to do within time constraints. When asked how he would reallocate the time that would be made available if he were not performing compliance activities, Joshua stated that, “I’d like to say finding more creative ways to serve the institution with respect to developing new programs, developing different ways for allocating budget. Providing even more support to the various units that require some sort of vigilance.”

Many of the participants indicated that, when an individual took pride in the quality of their work, it showed outwardly in the quality of the product. Melissa reflected upon the converse—no-choice compliance—in different light: “with some of these things that are imposed, you do something to say you did it.” The quality, then, of the product was restrained by the removal of personal ownership and pride. Innovation simply could not be done at scale in competition with no-choice regulatory compliance.

Benefits of external authority. Despite the various challenges brought by regulatory compliance, such external authority could also be wielded as a force for good. Sydney’s explained how outside assessment and the state Department of Education helped them know “that we’re on the right track with a number of those things.” Joshua found that compliance requirements “do provide us with benchmarks and with procedural clarifications that allow us perhaps to move forward in more measured ways than if there were no compliance requirements.” Thus, external regulation could provide helpful feedback and guidance.

Managing superiors. Emily served in an awkward role, where she both worked under the science faculty but was above them on issues of safety and compliance. She described how, “It makes my role so much easier as well, as both a subordinate and an overseer,” as she could simply say “It’s because it says right here, and it’s got to be in compliance.” Without the force of external regulators, it likely would have been difficult for Emily to assert her role in chemical and environmental safety over faculty members who outranked her.

Catalyst for change. As a small college where faculty members taught a breadth of courses, it could have been easy to settle into a comfortable system or deviate outside of disciplinary norms. However, external inputs from the state Department of Education helped promote curricular changes. Sydney described how state requirements for teacher education degrees changed frequently, necessitating the regular review of curricula.

Discussion

“The whole regulatory piece permeates the campus,” Darnell told me. This pithy statement forced me to consider how well this was aligned with Birnbaum’s (1998) collegial institution, which was epitomized in SLAC culture and the Town College desire for an intimate learning community based on relationships. Though valuable in ensuring minimal expectations were met as an accountability measure to society, the pervasive nature and impact of regulatory compliance seemed to eat away at the spirit of what this SLAC embodied.

Interpretation Through Implicit Cost. I used the concept of implicit cost as the theoretical framework for analyzing the results of this study. Opportunity cost suggests that, when faced with a choice, people and organizations will always choose their preferred option, thus leaving behind the implicit cost of the next-best option. However, as discovered in this study, higher education institutions practically have no choice with external regulation, being compelled against the backdrop of severe consequences. The forced choice then becomes the best choice based on the severity of punishment; however, it is not the best choice outside that lens as determined by the institutions. Thus, the substance

of the functions chosen under compliance may, in fact, be inferior to the opportunity cost, forcing the institutions to leave behind what they would otherwise perceive as the best choice.

Implicit cost for employees. The implicit cost for the participants at Town College was self—relationships, personal well-being, and balance. The complications and mandatory timelines of regulatory compliance had drastically expanded the responsibilities held by individuals. Though a full-time work week in the United States is considered to be 40 hours, it is widely understood that employees paid a salary and classified as exempt are expected to not have a clock-punching mentality, wherein they would reach 40 hours of work in a week and check out from their responsibilities. However, the participants felt the weight of ongoing 50- to 70-hour weeks on their personal lives. If the time demands of regulatory compliance were lightened, most participants indicated they would spend that time on their personal well-being.

Implicit costs for the institution. Town College experienced its own implicit costs from regulatory compliance. This next-best alternatives were complex, with varied costs for each job position and division. Taken in aggregate, however, the implicit costs were concentrated around four concepts—time for students, hiring choices, employee specialization, and innovation.

Time for students. Town College sought to be a tightknit learning community focused on caring relationships. With so many duties and associated compliance activities condensed into a small administrative staff, the institution had sacrificed a part of that ethos, when comparing what Town College *was* doing against what it *could have* been doing.

Students may not get the services they need in the timeline they desire as the employees who would provide them are instead filing paperwork on mandatory timelines, attending compliance training, or doing compliance work. Melissa described the situation this way—

When I come to work, I feel like my main goal is to try to have influence and impact on students. I understand the need for compliance. I understand the need for documentation on things, but I think it can get really excessive...I think [those who report to me] could probably see and do about twice as much as they actually do, because they have to spend half of that just doing the paperwork on it to prove to somebody they're doing it.

Hiring choices. In the athletics and financial aid departments, personnel additions were created in response to needs for regulatory compliance work, leaving an implicit cost of other positions. Based on the responses from the three vice president participants in this study—Joshua, Matea, and Melissa—there were implicit costs to those compliance additions in athletics and financial aid: tenure-track faculty members, counselors, and development officers.

Specialization. Related to opportunity cost, economic models propose the concept of specialization in the division of labor, wherein individuals “specialize on types of work at which they have a comparative advantage” and “acquire specialized skills” (Black et al., 2017, “Division of Labour,” para. 1).

In a system where the few administrative staff members of Town College managed an increasingly complex regulatory state, specialization was impossible. Certainly, there was a sense of specialization, since each participant had a primary responsibility and there was no duplication of duties among those at a level where compliance was managed. However, this was only a degree of comparative specialization related to others inside the organization. This not only suggests that these employees are doing their secondary duties less efficiently, but it also means they are not able to reap the benefits of

specialization in their primary duties.

Innovation toward excellence. Another implicit cost to the institution was the freedom to innovate. Before Title IX practice came into its current form, Town College had a robust system for investigating sexual harassment and assault. Both Chloe and Melissa looked back with pride upon the system they had helped design and operate for decades. Their unique approach met the needs of their campus very well; however, they had to set that aside in order “to change and morph into meeting the standards” of policy guidance from the U.S. Department of Education. Rather than meeting both policy goals and institutional culture, they followed policy written with a broad-brush stroke that was not designed to best meet their local needs.

Limitations

The primary limitations of this study derived from what was being investigated and the methodology. Implicit cost is subjective and seemingly defies quantification. Thus, I attempted to describe the implicit costs of regulatory compliance in a way that faithfully represented the views of the participants. Further, a single case study is focused on just one setting, though this is intentional with the methodology and not a limitation in the conventional sense. While the purpose of qualitative research is not to produce generalizable results, these two factors—looking for implicit costs and using a single case study—limit the direct applicability of results elsewhere. However, the responsibility for generalization in qualitative research lies on the reader, and I believe that readers across all settings can find insight into how the regulatory compliance affects institutions and their employees who work with compliance.

Recommendations

Muller (2018) tied much of the current societal fixation with measuring compliance in higher education back to the desire for the accountability of those receiving public funding. This has resulted in a variety of publicized metrics based on compliance, from the reporting of crimes on campus to employment of graduates. In his chapter entitled “Unintended but Predictable Negative Consequences,” Muller explained the lessons to be learned from a broad review of national policies regarding data and reporting, which align closely with this study. He identified the following realities that have emerged from such a national fixation: goal displacement through diversion of effort to what gets measured, promoting short-termism, costs in employee time, diminishing utility, rule cascades, discouraging risk-taking, discouraging innovation, discouraging cooperation and common purpose, degradation of work, and costs to productivity (pp. 169-173). Against this backdrop of Muller’s work, I make the following recommendations to policy and research.

Recommendations for practice. I do not believe this study is suggestive that higher education become unregulated; rather, both the policymakers and those who implement policy need to become more aware of the practical impacts that regulatory compliance has on institutions. I believe this case study illustrated that the existing regulations need to be improved to accomplish the policy goals without punishing effective institutions or causing unnecessary burdens from compliance. St. John et al. (2013) acknowledged implicit costs in higher education policy, writing that, “If we assume that any specific set of policies will result in equalizing opportunities, we will miss the opportunity to craft new strategies that may work better” (p. 14). The goal for policymakers, then, should be to identify and regulate policy goals while reducing the “onerous” nature of compliance, as Joshua so aptly put it. The goal for those managing compliance at institutions should be to identify gaps in compliance management, account for

the financial and other costs of compliance, and advocate for more effective regulation.

Recommendations for further research. Kaplin and Lee (2014) noted that, in addition to questions of values and addressing real issues on campuses, research is needed on all facets of regulatory cost to understand whether the laws that regulate higher education are “more a beacon or a blanket of ground fog” (p. 15). Unfortunately, there is a significant gap in the research related to the costs, impacts, and unintended consequences of regulations on higher education. Because that gap in the literature is so profound, this study attempted to provide some initial insight through one institution in the beleaguered SLAC sector. Further research is needed to evaluate regulatory compliance management and its effects at other types of institutions. Though ties between regulation and affordability have been suggested and could be logically inferred, research is needed to directly examine the degree to which regulatory compliance affects the cost of attendance for students.

Conclusion

Regulatory compliance in higher education is in the midst of an unprecedented expansion. However, there is no indication that this expansion is done just to create more paperwork or expense for educational institutions. It is vital that, at every level of the policymaking and regulatory process, key policy goals are clearly expressed and supported with strong regulation. However, it must also be acknowledged that there are always opportunity costs. All stakeholders in higher education then must consider the opportunity costs as new policies are developed and institutions attempt to comply.

References

- Ancil, E. (2009). Institutional advancement and spectator sports: The importance of television. *New Directions for Higher Education*, 2009(148), 35-44.
- Ariely, D. (2016). *Payoff: The hidden logic that shapes our motivations*. New York, NY: TED Books Simon & Schuster.
- Association of American Universities, Association of Public and Land-grant Universities, & Council on Government Relations. (2011). *Regulatory and financial reform of federal research policy: Recommendations to the NRC Committee on Research Universities*. Retrieved from <https://eric.ed.gov/?id=ED517267>.
- Astin, A., & Lee, C. (1972). *The invisible colleges: A profile of small, private colleges with limited resources*. New York, NY: McGraw-Hill.
- Austin, I., & Jones, G. (2016). *Governance of higher education: Global perspectives, theories, and practice*. New York, NY: Routledge.
- Birnbaum, R. (1988). *How colleges work: The cybernetics of academic organization and leadership*. San Francisco, CA: Jossey-Bass Publishers.
- Black, J., Hashimzade, N., & Myles, G. (2017). *A dictionary of economics* (e-book version; 5th ed.). Oxford, United Kingdom: Oxford University Press.
- Blumenstyk, G. (2015, July 22). The search for Vanderbilt’s elusive red-tape study. *The Chronicle of Higher Education*. Retrieved from <http://www.chronicle.com/article/The-Search-for-Vanderbilt-s/231807/>
- Boerner, H. (2013). The adjunct debate: Part-time faculty, the Affordable Care Act, and class hours. *Community College Journal*, 83(6), 11-13.
- Bok, D. (2013). *Higher education in America* (rev. ed.). Princeton, NJ: Princeton University Press.
- Bonvillian, G., & Murphy, R. (1996). *The liberal arts college adapting to change: The survival of*

- small schools*. New York, NY: Routledge.
- Breneman, D. (1990). Are we losing our liberal arts colleges? *AAHE Bulletin*, 43(2), 3-6.
- Casper, G. (2014). *The winds of freedom: Addressing challenges to the university*. New Haven, CT: Yale University Press.
- Creswell, J. (2013). *Qualitative inquiry & research design: Choosing among five approaches* (3rd ed.). Thousand Oaks, CA: SAGE Publications.
- Dougherty, K., & Reddy, V. (2013). Performance funding for higher education: What are the mechanisms? What are the impacts? *ASHE Higher Education Report*, 39(2), 1-134.
- Dunham, S. (2010). Government regulation of higher education: The elephant in the middle of the room. *Journal of College and University Law*, 36, 749-790.
- Eaton, J. (2010). Accreditation and the federal future of higher education. *Academe*, 96(5), 21-24.
- Ekman, R. (2014). The future favors smaller private liberal arts colleges. *Change*, 46(6), 24-27.
- Ewell, P. (2011). Accountability and institutional effectiveness in the community college. *New Directions for Community Colleges*, 153, 23-36.
- Hawkins, H. (2000). The making of the liberal arts college identity. In S. Koblick & S. Graubard (Eds.), *Distinctively American: The residential liberal arts colleges* (pp. 1-26). New Brunswick, NJ: Transaction Publishers.
- Hearn, J., & McLendon, M. (2012). Governance research: From adolescence to maturity. In M. Bastedo (Ed.), *The organization of higher education: Managing colleges for a new era* (pp. 45-85). Baltimore, MD: The Johns Hopkins University Press.
- Hunter, B., & Gehrin, D. (2005). The cost of federal legislation on higher education: The hidden tax on tuition. *NASPA Journal*, 42, 478-497.
- Kaplin, W., & Lee, B. (2014). *The law of higher education* (5th ed.). San Francisco, CA: Jossey-Bass Publishers.
- King, R. (2007). Governance and accountability in the higher education regulatory state. *Higher Education*, 53, 615-644.
- Klick, J., & Mitchell, G. (2016). Infantilization by regulation. *Regulation*, 39(2), 32-37.
- Labaree, D. (2017). *A perfect mess: The unlikely ascendancy of American higher education*. Chicago, IL: The University of Chicago Press.
- Lang, E. (2000). Distinctively American: The liberal arts college. In S. Koblick & S. Graubard (Eds.), *Distinctively American: The residential liberal arts colleges* (pp. 133-150). New Brunswick, NJ: Transaction Publishers.
- Lee, B. (2010). Fifty years of higher education law: Turning the kaleidoscope. *Journal of College and University Law*, 36, 649-690.
- McConnell, C., Brue, S., & Flynn, S. (2012). *Economics* (19th ed.). New York, NY: McGraw-Hill.
- Muller, J. (2018). *The tyranny of metrics*. Princeton, NJ: Princeton University Press.
- Mumper, M., & Freeman, M. (2011). The continuing paradox of public college tuition inflation. In D. Heller (Ed.), *The states and public higher education policy: Affordability, access, and accountability* (2nd ed., pp. 37-60). Baltimore, MD: The Johns Hopkins University Press.
- Mumper, M., Gladioux, L., King, J., & Corrigan, M. (2016). The federal government and higher education. In M. Bastedo, P. Altbach, & P. Gumport (Eds.), *American higher education in the 21st century: Social, political, and economic challenges* (4th ed., pp. 212-237). Baltimore, MD: The Johns Hopkins University Press.
- Oakley, F. (2005). Prologue: The liberal arts college: Identity, variety, destiny. *American Council of Learned Societies Occasional Paper*, 59, 1-14.
- Shin, J. (2010). Impact of performance-based accountability on institutional performance in the U.S. *Higher Education*, 60, 47-68.

- St. John, E., Duan-Barnett, N., & Moronski-Chapman, K. (2013). *Public policy and higher education: Reframing strategies for preparation, access, and college success*. New York, NY: Routledge.
- Stake, R. (1995). *The art of case study research*. Thousand Oaks, CA: SAGE Publications.
- Stone, D. (2015). Clarifying (opportunity) costs. *The American Economist*, 60(1), 20-25.
- Tarrant, M., Bray, N., & Katsinas, S. (2017). The invisible colleges revisited: An empirical review. *The Journal of Higher Education*, 89(3), 341-367.
- Task Force on Federal Regulation of Higher Education. (2015, February 12). *Recalibrating regulation of colleges and universities: Report of the Task Force on Federal Regulation of Higher Education*. Retrieved from http://www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf
- Thelin, J. (2011). *A history of American higher education* (2nd ed.). Baltimore, MD: The Johns Hopkins University Press.
- Turner, L., & Angulo, A. (2018). Risky business: An integrated institutional theory for understanding high-risk decision making in higher education. *Harvard Educational Review*, 88, 53-80.
- Vance, D. (2012). Regulation reform. *The Independent Review*, 17, 271-280. Vanderbilt University.
- (2015a). *The cost of federal regulatory compliance at Vanderbilt University: An assessment of federal regulatory compliance costs in FY 2013-2014*. Retrieved from <https://news.vanderbilt.edu/files/2015-VU-CRC-Summary.pdf>
- Vanderbilt University. (2015b). *The cost of federal regulatory compliance in higher education: A multi-institutional study: An assessment of federal regulatory compliance costs at 13 institutions in FY 2013-2014*. Retrieved from <https://news.vanderbilt.edu/files/Regulatory-Compliance-Report-Final.pdf>
- Wolcott, H. (2005). *The art of fieldwork* (2nd ed.). Lanham, MD: AltaMira Press.
- Woodhouse, K. (2015, August 3). Does compliance cost \$11k per student? *Inside Higher Ed*. Retrieved from <https://www.insidehighered.com/news/2015/08/03/vanderbilt-university-weighs-its-controversial-compliance-costs-report>
- Yin, R. (2014) *Case study research: design and methods* (5th ed.). Thousand Oaks, CA: SAGE Publications.
- Zack-Decker, K. (2012). *Compliance at Hartwick College: A special report to the president of the college*. Retrieved from http://www.naicu.edu/docLib/20130315_Compliance-HartwickColl-12-12.pdf