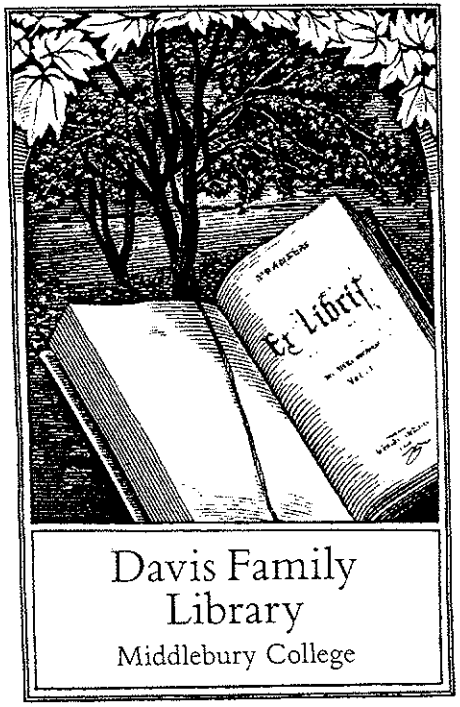


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THE BEDFORD SERIES IN HISTORY AND CULTURE

Title IX

A Brief History with Documents

PART ONE

Introduction: Title IX—Thirty-seven Words That Changed American Sports

—Women's teams sell candy bars and hold bake sales to pay for travel expenses, while men's teams travel in buses chartered at the school's expense.
—The women's swim team practices after dinner because that is the only time the pool is available.
—When a new gym is built, the old gym is "retired" to the women.
—A woman referee is paid half that of a male referee to officiate in the same game.[1]

Welcome to the pre–Title IX world of women's sports. In 1971, the year before Title IX was passed, fewer than 295,000 girls participated in high school athletics, just 7 percent of the total number of athletes; fewer than 30,000 women competed in intercollegiate athletics, and women's sports received a scant 2 percent of overall athletic budgets. In contrast, by 2001 almost 2.8 million girls participated in high school athletics, representing 41.5 percent of all varsity athletes; more than 150,000 competed at the college level, representing 43 percent of all athletes.[2] While the playing field is still not totally level, women and

girls now have far more opportunities to participate in organized athletic activities in their schools and communities than ever before. Athletics, once viewed as a privilege, is now seen as a right.

Over the years, the two words "Title IX" have become practically synonymous with women's athletics. And yet the story is more complicated than just a law and its outcomes. Many of the breakthroughs and successes that the public ascribes to Title IX were as much the product of the broader social changes spurring more equal participation by women and girls in all facets of American life since the 1970s as they were the results of a specific law. It is no coincidence that Title IX was passed in the same year that the Equal Rights Amendment passed Congress, but even if Title IX had not been enacted, there would still have been a dramatic increase in women's participation in sports, precisely because, as sports historian Kathryn Jay noted, "sports had become too important to American society to exclude half the population."[3] Moreover, since athletics has traditionally been segregated by sex, the disparities between men's and women's opportunities were much easier to see once the nation's consciousness was raised by modern feminism. Some discrimination is subtle, almost invisible—not that in athletics.

The events leading up to Title IX's passage in 1972, and the struggle ever since to figure out how to implement the law fairly, demonstrate how athletics became part of the broader political and cultural struggles of the late twentieth century. Title IX also provides a textbook case of the difficulties—and the rewards—of putting abstract principles like equal opportunity and gender equity into concrete, everyday practice.

Even though Title IX is only three decades old, it has a definite history. What Title IX meant in the 1970s is quite different from what it meant in the 1990s or what it means in the twenty-first century, in part because of the incremental changes in the law's implementation, but also because of changes in the broader political climate. By historicizing Title IX's impact and legacy, we are able to trace how the debate over the meaning and implications of the law has changed over time. This debate raises fundamental questions about sports, gender, and modern life. If the playing field is open to women, must women sign on to the prevailing "win at any cost" mentality that structures most sports dominated by men? Is there a contradiction between striving for equality in sports (and society) while also asserting that women are different from men? In times of diminishing resources, how is it possible to promote equity for underrepresented women without taking opportunities away from men? What is the role of the federal government and the courts in fostering social change? On practically every page of this book lurks this question: What is true gender equity when it comes to sports and athletics, and what role has Title IX played in promoting it?

THE PASSAGE AND EARLY YEARS OF TITLE IX

Title IX of the Education Amendments Act of 1972 is only thirty-seven words long and reads in full: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Supporters of women's educational equity tucked that small provision into an omnibus education law and then deliberately kept a low profile as the entire bill worked its way through Congress. It worked. A Department of Health, Education, and Welfare (HEW) administrator charged with implementing the law observed in 1974, "I suspect that the great majority of men and women who voted for Title IX didn't even know Title IX was in there."[4]

The original impetus behind the legislation was the widespread discrimination that women faced in all aspects of the educational experience, from students to administrators to professors. The law was designed to fill a gap in coverage of the path-breaking Title VII of the Civil Rights Act of 1964, which banned discrimination based on race, sex, national origin, and religion in employment, but did not apply to educational institutions. As Representative Patsy Mink of Hawaii, who was a key supporter of the original legislation, said in 2002, "When it was proposed, we had no idea that its most visible impact would be in athletics. I had been paying attention to the academic issue. I had been excluded from medical school because I was female."[5]

In 1970 and then again in 1971, Representative Edith Green of Oregon, one of the few women in Congress and an education specialist, held extensive hearings that documented the barriers that women faced in higher education, such as state universities requiring a higher grade point average to admit women or arbitrarily capping the percentage of women in certain professional schools. In 1971, Green's draft legislation was one of several bills introduced in the House. Around the same time, Senator Birch Bayh of Indiana, a good friend of the emerging women's movement, drafted similar legislation in the

Senate. In his view, Title IX represented "an important first step in the effort to provide for the women of America something that is rightfully theirs."[6] It took two tries, but after the differing bills were finally reconciled in a Senate-House conference committee, the Education Amendments Act containing Title IX was signed by President Richard Nixon on June 23, 1972.[7]

At the time of the 1971 hearings, Representative Green predicted that the proposed legislation was "probably going to be the most revolutionary thing in higher education in the 1970s."[8] She was right, but not necessarily in the ways that she expected. In the hearings and debate about the law, athletics had been barely mentioned, other than an offhand remark by Senator Bayh that the law would not mean that football teams had to be coeducational. Because athletic programs did not receive federal funding, they did not immediately seem likely targets for enforcement. But as the law was written, it applied to the entirety of an institution receiving federal funds, not just a specific program, which meant that athletics did indeed fall within its purview. And since the disparities in spending on men's and women's athletic programs were so great (for example, in 1973–1974 the University of Washington's men's teams had a budget of $2.5 million, while women's teams received merely $18,000),[9] under the law they had to be addressed.

Implementation of the law got off to a very slow start. Not until 1974 did the Department of Health, Education, and Welfare circulate draft regulations about areas covered by the law, and these were not finalized until 1975. Elementary schools were then given a one-year grace period (high schools, colleges, and universities got three years) to survey their programs and develop strategies to address the problems uncovered.[10] Not until 1979 did HEW promulgate its final guidelines telling schools what standards they would have to meet to show they were in compliance with the law.

As the proposed regulations began to circulate, HEW secretary Caspar Weinberger quipped that he had not realized "that the most important issue in the United States today is intercollegiate athletics."[11] By then, college athletic administrators and some politicians had begun to realize that this new law might have huge implications for athletic business as usual. While feminists and some female physical education leaders welcomed this new governmental activism, male athletic directors forecast gloom and doom for men's sports programs, especially football. Members of Congress attempted to exempt revenue-producing sports from Title IX's coverage in 1974 and 1975, but both these attempts failed, as did all later ones.

In the early days of the law, much discussion centered on whether teams should be coeducational based on skill (the model adopted in elementary and high school physical education classes) and whether women should be eligible to play on men's teams. On the high school and intercollegiate level, a consensus soon emerged that sex-segregated but comparable sports teams were a better model. Did that mean that schools had to spend as much to outfit a female swimmer as they did to equip a male football player? The Javits Amendment in 1974 clarified that question, recognizing that certain sports such as football had higher equipment costs than others and that the resulting disparities were not necessarily the result of discrimination.[12]

From the start, football loomed over all Title IX discussions. Because of its high costs and huge rosters (upward of eighty-five scholarships, plus as many as fifty additional walk-on players), it was usually the biggest item in a school's athletic budget. Football programs enjoyed such a mystique in local communities and on college campuses, to say nothing of in the minds of alums, that they were practically sacrosanct. Football's seeming invincibility was also aided by the myth that football's gate receipts and revenues paid for the rest of a school's athletic program. As Senator Roman Hruska said in congressional hearings in 1975, "Are we going to let Title IX kill the goose that lays the golden eggs in those colleges and universities with a major revenue-producing sport?"[13] This myth was not backed up by facts then, and is not now. For example, analysis of National Collegiate Athletic Association (NCAA) figures from 1977 showed that, of the 475 members with varsity football programs, less than 1 in 5 of these programs achieved revenue at least equal to operating expenses. The remaining 80 percent did not even break even, although this figure was closer to 50 percent in Division I schools (those with the largest athletic budgets, most competitive schedules, and highest attendance at games).[14] "King Football" has continued to cause major challenges for Title IX enforcement ever since.

In many ways, Title IX is a very flexible law. Instead of telling schools what they have to do, it allows them to choose how to accomplish its goals. The law does not mandate equal expenditures for both sexes, nor does it require that equal numbers of men and women participate on teams. Despite claims from conservative opponents, it is not an affirmative action law: It makes no mention of preferences,

quotas, or timetables. Like most antidiscrimination laws, it does not offer any funds for implementation of its mandates, and courts have consistently ruled that lack of money is not a sufficient reason for failing to meet the law's goals.[15]

The 1979 regulations (often called the "three-prong test") offered educational institutions three different routes to show that they were in compliance with Title IX. Institutions needed to show only that they were in compliance with one of the three prongs. With small changes and tweaking over the years, these same standards still are the main guiding principles for all Title IX litigation and compliance reviews today.[16]

The first prong requires that participation opportunities for male and female athletes be substantially proportionate to their general enrollment in the educational institution. For example, if male students make up 55 percent of students, then they should receive approximately 55 percent of the athletic opportunities, with the remaining 45 percent allotted to women. This emphasis on proportionality was a compromise. Two other options had been to require that athletic opportunities be split evenly at 50 percent each or that athletic expenditures be equal for the men's and women's programs. At the time, male undergraduates earned significantly more bachelor's degrees than women (56 percent to 44 percent in 1972), so athletic directors probably breathed a sigh of relief when proportionality was chosen, because that goal seemed much easier to reach than 50-50 parity. Ultimately, however, this compromise backfired when women became a majority of college undergraduates by the 1990s.[17]

The two other routes to compliance concern the key issue of "interest" on the part of the underrepresented sex, in this case, women. The second prong requires that a school show that it has a history and a continuing practice of program expansion to meet the interests and needs of women; the third prong requires demonstration that the school's programs "fully and effectively [accommodate]" the interests and abilities of the underrepresented sex.

Why is this issue of interest so critical, and why has it been so contested? Many athletic administrators and even leaders of the NCAA argued that the disparities between men's and women's programs were not necessarily the result of discrimination, but were the result of longstanding societal factors that meant women were less interested in participating in organized sports than men were. Women's sports leaders dismissed this reasoning out of hand in what came to be known as the *Field of Dreams* rationale, following the 1989 movie of

that name. As Donna Lopiano of the Women's Sports Foundation said, "I'm asked all the time whether the interests and abilities of women are met. There's never been a question of enough interest. If you build it, they will come."[18]

Over the years the courts have been especially suspicious when schools have tried to blame women's lack of interest for their failure to increase teams and participation rates. As a federal appeals court ruled in *Cohen v. Brown* (1996), "To assert that Title IX permits institutions to provide fewer athletics participation opportunities for women than for men, based on the premise that women are less interested in sports than men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's interests and abilities."[19] Vivian Acosta and Linda Jean Carpenter, the leading authorities on the history and implementation of Title IX, pinpointed why the opportunity to participate is so central to the questions of equity and fairness at the heart of the legislation, as well as the underlying issue of resources and money: "If you are not in the game, you don't need a uniform."[20]

As the delay in drafting regulations suggests, for most of the 1970s HEW relied on the goodwill of institutions rather than active government enforcement to move educational institutions toward greater gender equity. Still, amazing progress for women's athletics occurred, with participation rates leaping practically overnight from the oft-cited figure of 1 in 27 to 1 in 9. (See Figures 1 and 2.) As journalist Candace Lyle Hogan observed at the time, "Fueled by an almost chemical interaction of a federal anti–sex discrimination law, the women's liberation movement, and what is called the temper of the times, women's sports took off like a rocket in 1972."[21]

The revival of feminism in the 1960s and 1970s provided a key backdrop for the tremendous energy gravitating toward women's sports. Starting with initiatives like the President's Commission on the Status of Women from 1961 to 1963, the passage of Title VII of the Civil Rights Act of 1964, and the founding of the National Organization for Women in 1966, the movement reached new constituencies when consciousness-raising groups sprang up on campuses and radical feminists staged a protest against the Miss America pageant in 1968. While popular memory credits the decade of the 1960s as an era of social protest and change, the greatest breakthroughs for the women's movement occurred in the 1970s, especially early in the decade. In 1972, after languishing for almost fifty years, the Equal Rights Amendment passed Congress and was sent to the states for

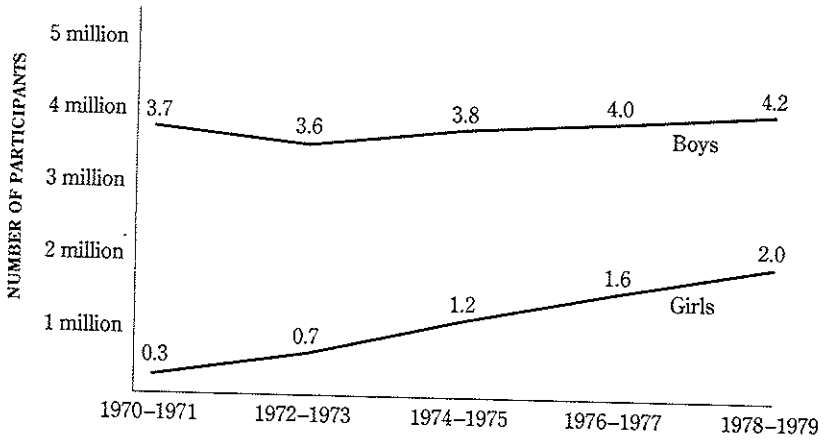


Figure 1. *Number of Boys and Girls Participating in Interscholastic Athletics 1970–1971 to 1978–1979*

Source: National Federation of State High School Associations, *Sports Participation Survey*, 1971, 1973, 1974, 1976, 1978; U.S. Commission on Civil Rights, *More Hurdles to Clear* (Washington, D.C.: U.S. Commission on Civil Rights, 1980), 13.

what looked like quick ratification. That year *Ms.* magazine was launched and Congresswoman Shirley Chisholm ran for president. In 1973, the Supreme Court handed down its landmark decision on abortion in *Roe v. Wade*. Before long, debates over such issues as sex discrimination, pay equity, and equal opportunity were raging not only in the halls of Congress and the chambers of the Supreme Court, but in offices, restaurants, and living rooms across the country. It was not long before many ordinary Americans, not just activists, realized that some of the most glaring examples of gender inequity were found in the field of sports.[22]

WOMEN'S SPORTS IN HISTORICAL PERSPECTIVE

For most of American history, sports have been a male preserve. Competitive athletics were seen as "natural" for men and boys, but somehow "unnatural" or illegitimate for women and girls. As a Connecticut judge said in 1971 when denying girls the right to participate on a boys' high-school cross-country team, "Athletic competition builds character in our boys. We do not need that kind of character in

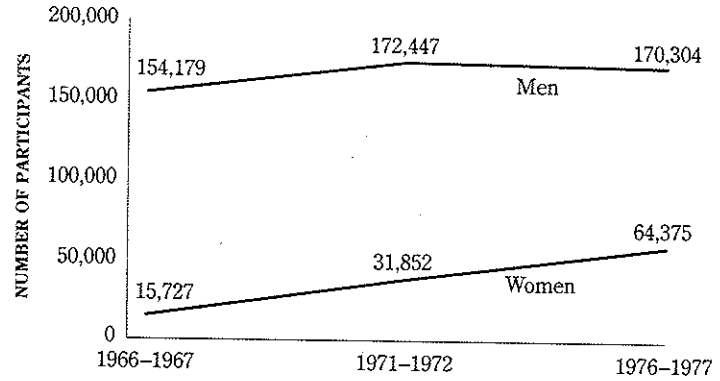


Figure 2. *Number of Men and Women Participating in Intercollegiate Athletics 1966–1967 to 1976–1977*

Source: Comments of the National Collegiate Athletic Association on the Proposed Policy Interpretation of the Department of Health, Education, and Welfare Regarding Application of Its Title IX Regulation to Intercollegiate Athletics, 11; U.S. Commission on Civil Rights, *More Hurdles to Clear* (Washington, D.C.: U.S. Commission on Civil Rights, 1980), 22.

our girls, the women of tomorrow. . . ."[23] Shaped by a popular belief that women's bodies were inherently different from—and weaker than—men's, women's sports developed along a path similar to that of segregated schools in the South before the 1954 *Brown v. Board of Education* Supreme Court decision: separate and definitely unequal.

Just because society discouraged girls and women from being physically active does not mean that they meekly sat on the sidelines in their starched dresses and crinolines. Nineteenth-century author Louisa May Alcott stated forthrightly, "Active exercise was my delight. . . . No boy could be my friend till I had beaten him in a race, and no girl if she refused to climb a tree, leap fences, and be a tomboy." In the 1890s, temperance leader Frances Willard learned to ride a bicycle and then wrote a book about the experience. In the 1930s, Babe Didrikson, perhaps the twentieth century's most gifted all-around athlete, won three medals in track events at the 1932 Olympics in Los Angeles and later dominated the women's professional golf tour.[24]

In general, American girls found lots of opportunities for vigorous exercise and play in both the nineteenth and twentieth centuries, either informally in their neighborhoods or through schools, YWCAs,

or settlement houses. But especially after they reached adolescence, girls were often told to pin up their hair, lengthen their skirts, and start acting more conventionally feminine. The tension between athletic competition and femininity ("nice girls don't sweat") is one that continues to the present day, as manifested in the tendency for female athletes to try to conform as closely as possible to dominant cultural standards of beauty, behavior, and grooming. Such nods to conformity often also represent an attempt to distance women's sports from a longstanding—and misleading—association with lesbianism, which in turn increases the difficulty for women athletes who are lesbians to be comfortable and public about their sexual orientation.[25]

In addition to homophobia, women's sports have often divided along lines of class and race. In general, individual sports such as tennis, figure skating, and golf have had higher status and broader public approval than team sports such as basketball or softball; not coincidentally, those individual sports are more expensive to pursue and thus have been more available to elite, usually white, women. Conversely, working-class women have sought out opportunities to play recreational softball or basketball through industrial leagues or the American Athletic Union (AAU), which sponsors and organizes competitions for teams not linked to schools or universities. In the 1940s and 1950s, sports like track and field became the province of small black colleges and universities in the South, especially Tuskegee Institute and Tennessee State University (which produced sprinter Wilma Rudolph), in part because track and field was shunned by white female athletes.[26]

For many women, their formative athletic experiences occurred as part of their schooling, especially in physical education classes and intramural sports. Here they could not avoid confronting the fact that physical activity for girls occurred in a very different universe than similar activity for boys. Starting early in the twentieth century, female athletic leaders put forward a philosophy, carefully nurtured in schools and physical education departments across the country, that was summed up by the phrase "a sport for every girl and every girl in a sport." This model emphasized participation and play rather than the competition and winning that increasingly dominated athletics for men. Play days and other informal competitions were prized over varsity intercollegiate competition as opportunities to promote healthful exercise without compromising femininity. Chances for talented athletes to compete and win took a back seat to opening competition to all comers, no matter what their skill level. Other manifestations of

this different approach to women's sports were special girls' rules for basketball (six players, no roving, limits on dribbling) and outright bans on contact sports like ice hockey and football.[27]

In retrospect, changes were already underway in women's sports in the decades before the passage of Title IX. One example was the expansion of women's participation in the Olympics—from 384 competitors in 1956 to 1,247 in 1976—fueled in part by Cold War rivalries with Soviet bloc states. If the United States was going to hold its own against Soviet athletes in the medal race, it needed the contributions of well-trained female athletes in addition to those of its men. A similar process opened opportunities for black athletes and indirectly helped weaken racial segregation in those years.[28]

Another example of change underway was the 1966 formation of the Commission on Intercollegiate Athletics for Women (CIAW). This group was created to encourage the expansion of opportunities for college women's athletics while also holding on to the more "woman-defined" approach of groups such as the National Section for Girls' and Women's Sports (its parent organization) and the National Association for the Physical Education of College Women. As part of its mandate to build a governance structure for women's intercollegiate athletics, CIAW began offering national championships in two sports, with four more quickly added.[29]

The Association for Intercollegiate Athletics for Women (AIAW), founded in late 1971 and operational the following year, grew out of CIAW's realization that women's intercollegiate athletics needed a permanent, national membership organization to coordinate its activities. Like its predecessors, the AIAW shared a commitment to a more participation-oriented, less elitist approach to sports that differed fundamentally from the reigning male model of sports which intertwined competition, winning, and commercialization. For example, determined not to simply ape men's sports, the AIAW initially banned the awarding of athletic scholarships. But the AIAW moved far beyond the play day approach and embraced varsity competition as a healthy component of women's sports. Although not officially affiliated with the emerging feminist movement, AIAW leaders were moving in the same general direction. According to historian Mary Jo Festle, the main thrust of the AIAW was "whatever the direction of women's intercollegiate sports, it was women who should determine it." Its membership grew quickly from 280 educational institutions in 1971–1972 to 659 just three years later.[30]

Up until the early 1970s, leaders in the field of women's physical

education and sports had been basically on their own. Their programs were small, and nobody paid much attention to them. All that changed with the passage of Title IX and the dramatic growth spurt in women's sports. Now the National Collegiate Athletic Association began aggressively eyeing women's sports. Could the AIAW stand up to the NCAA, the most powerful organization dominating college sports, and keep control of women's sports in women's hands? That battle played itself out in Title IX's first decade.

Women's sports leaders had many reasons to be suspicious of the NCAA's newfound interest in women's sports programs in the 1970s. As Margot Polivy, the AIAW's lawyer, pointed out, "If the NCAA had started women's programs in the 1960s, there would not be an AIAW. But now they say, 'You built a nice house there. We think we'll move in.'"[31] From the start, the NCAA had actively and publicly opposed Title IX, trying first to exclude athletics from it altogether and then working to exempt revenue-producing sports like football. When the 1975 regulations were announced, a lawyer for the NCAA pronounced, "This may well signal the end of intercollegiate athletics as we have known them in recent decades."[32] No wonder female athletic leaders were leery of the NCAA, with the most outspoken critics noting that the money the NCAA had spent lobbying against Title IX over the years would have made a tidy down payment for women's sports programs in its member institutions.

Once it became clear that Title IX was not going away, the NCAA decided that at least it could try to harness women's sports, in part to make sure that there was no competition for its power and control over men's. To that end, the NCAA began to plan a series of national championships that competed with those offered by the AIAW, with the additional carrot that the NCAA provided the championships at no cost to participating schools, a perk that the cash-strapped AIAW could not match. By the 1981–1982 season, the NCAA had prevailed and the AIAW folded. A significant chance for a different kind of women's athletics—less commercial, more focused on education and participation, potentially less exploitative—had been lost.[33]

STALEMATE AND NEW CHALLENGES

The period from 1972 to 1981 witnessed dramatic growth in women's participation opportunities and the amount of money spent on women's athletic programs. Of course, when you start with practically nothing,

increasing the share to 20 percent may mean going only, in the words of gender equity specialist Bernice Sandler, "from absolutely horrendous to only very bad."[34] The real question was what it would take to get that percentage up to 40 or 50 percent, much closer to parity. For a variety of historical, political, and legal reasons, little progress occurred in the 1980s, but in the 1990s there was another surge forward. And yet a new wave of controversy and contention built in that decade about whether increased opportunities for women were coming at the expense of decreased opportunities for men.

Even without regulations in place or active enforcement on the part of the Office for Civil Rights in the Department of Education (which superseded HEW in 1979), Title IX was still a very handy tool in the fight for gender equity. The threat of enforcement, coupled with the possibility of loss of federal funds (a sanction that has never been invoked), could put pressure on administrators or school officials who feared the consequences of noncompliance. Donna Lopiano, a former athlete who ran the women's athletics program at the University of Texas in the 1970s and 1980s, put it this way in 1984: "It was more like a guillotine in a courtyard. People were afraid of it."[35] The law also offered administrators a cover: When confronted about making hard choices or decisions, they could say that they had no choice because it was the law. For their part, women athletes who were struggling for better playing conditions were emboldened to make demands because they knew that they had the federal government on their side, at least in theory. And women athletic administrators, some of whom had been initially lukewarm about the law, began to sense its power when they saw how angry it made the men.

Since so much progress occurred without active prosecution of the law, some critics have concluded that Title IX wasn't all that important, that many of these changes would have happened on their own (and, the argument goes on, would continue today without federal interference).[36] This line of reasoning is challenged by the concerted effort that administrators and the NCAA took in the 1970s to challenge or undermine the law's taking effect. It is also contradicted by the experience in the 1980s, when women's sports basically entered a period of stasis because the law was not being enforced.

The fate of Title IX has always been tied to the larger political climate. Its immediate passage in 1972 was heavily influenced by the surge of legislative activism related to the increasingly loud demands of the modern feminist movement, which had its greatest impact in the first half of the 1970s. By 1975, however, when HEW was just

beginning to figure out how to implement this wide-ranging and potentially controversial law, the momentum of the women's movement had stalled. A clear signal of this is the stalemate over the Equal Rights Amendment. Only one state, Indiana, in 1977, ratified the ERA after its flush of success from 1972 to 1974, and the amendment went down to defeat in 1982.[37]

Given its long delay in issuing final guidelines for implementation, President Jimmy Carter's administration clearly did not consider Title IX to be its highest priority. But at least the law was a better fit with the Democratic Party's political philosophy than with that of the Republicans who took over in 1981. As part of Ronald Reagan's attempts to scale back big government and limit federal initiatives, his administration promoted a general easing up on governmental regulation, especially in areas such as civil rights. These political developments, coupled with the concerted backlash against all the social movements of the 1960s and 1970s, including the gains that feminism had won, meant the early 1980s offered a chilly climate for Title IX enforcement.

A more specific cause of the backsliding was a legal case decided by the Supreme Court in 1984, *Grove City College v. Bell*. Grove City College in Pennsylvania was an unusual school: It deliberately avoided all federal aid to maintain its independence from governmental interference. Not surprisingly, with no direct federal dollars coming in, the school did not feel that Title IX applied to it. In 1984, the Supreme Court ruled that Grove City was in fact covered, because certain financial grants to students (indirect aid) triggered the connection. But in what the *New York Times* called a clear example of "judicial activism," the justices significantly narrowed the coverage of the law from what Congress had seemingly intended—that it apply to an entire institution, not just a specific program—by ruling that if Grove City were ever found guilty of discrimination in a program not receiving federal aid, Title IX and its sanctions did not cover that situation. Since no athletic departments received federal funds, suddenly they were not covered by the law.[38]

Any hope that institutions were moving toward gender equity out of a sense of fairness and goodwill rather than fear of government intervention or the loss of federal funds was quickly dispelled in the aftermath of the *Grove City* decision, as schools cut recently added women's athletic programs and scholarships and the Office for Civil Rights cancelled twenty-three investigations. As Linda Jean Carpenter and Vivian Acosta observed in a pointed understatement, "In general, the removal of Title IX jurisdiction revealed the ephemeral nature of the goodwill required for continued equitable treatment for female athletes."[39] After major increases in women's participation rates through 1981, there was no change at all from 1981 to 1985. Not until 1988, when Congress passed the Civil Rights Restoration Act over President Reagan's veto, was the broad coverage of Title IX restored.

Another pattern was clearly evident by the 1980s: a dramatic decline in the number and percentage of women coaches and administrators. In 1973, women had coached 92 percent of women's teams, but by 1984 this had dropped to 53.8 percent and by 2002 it was only 44 percent.[40] Even though there has been an increase in the absolute numbers of coaching opportunities because of the dramatic growth in women's teams, most of these new opportunities have gone to men. In 1973, women's sports had been run by physical education departments with low prestige and meager compensation. In part because of Title IX, jobs coaching women's teams became better compensated and more attractive to men; since the 1970s, the gap between men's and women's coaching salaries has widened, not shrunk, in large part because of skyrocketing salaries paid to high-profile football and basketball coaches.[41] A similar decline in positions for women administrators in athletic departments was also apparent. Although not mandated to do so by Title IX, most institutions merged the previously separate men's and women's athletic departments, invariably ending up with men in charge. This marginalization continues today. There are now far more women college presidents than women athletic directors, confirming that while Title IX had a significant impact on opportunities for student athletes, it did little to prevent backsliding for women coaches and administrators.[42]

A significant new chapter in the history of Title IX occurred in 1992, when the Supreme Court ruled in the case of *Franklin v. Gwinnett County Public Schools* that individuals were entitled to monetary damages, both compensatory and punitive, if their challenges were successful in the courts. (The case involved sexual harassment; Title IX prohibits discrimination in all areas of education, not just athletics.) Lawyers now had a stronger incentive to take on Title IX cases because they could potentially win big damage awards; conversely, institutions had a stronger incentive to settle cases rather than face long and expensive legal battles. From that point on, the trend was for lawsuits, rather than complaints to enforcement agencies such as the

Office for Civil Rights, to be the main avenue for raising and resolving Title IX disputes. As the stakes got higher, and resources in cash-strapped universities grew more limited, the level of acrimony surrounding implementation of the law increased dramatically.[43]

Ever since the original implementation guidelines were promulgated in the 1970s, athletic administrators and university officials have claimed that they were vague or unclear in their intent. In 1995, spurred in part by the 1994 electoral landslide that gave Republicans control of Congress, the House of Representatives held yet another round of legislative hearings to clarify Title IX enforcement; the following year the Office for Civil Rights issued yet another clarification about compliance. But was this ongoing foot-dragging really a question of the clarity of the regulations, or was it more fundamentally a disinclination on the part of university administrators to comply with the law at all? Most of the discontent surrounded the emphasis on proportionality as the main way to prove Title IX compliance.

Here, decisions made back in the 1970s came back to haunt administrators and athletic directors. When the regulations were originally drawn up, female undergraduates were in the clear minority, so linking participation opportunities to enrollments seemed like a good bet. In the intervening years, however, the proportion of women enrolled in college had increased dramatically and the proportion of men had declined, so that by the year 2000, women earned 57 percent of bachelor's degrees compared to men's 43 percent, practically the reverse from when Title IX passed.[44] Even if schools were working hard to increase opportunities for women, the gap was widening for reasons beyond athletic administrators' control: trends in higher education that were tilting college enrollments to a decidedly female majority. As Donna Lopiano realized in retrospect about the original compromise, "the shoe now pinches."[45]

Because schools had not always paid attention to the other modes of compliance besides proportionality, accommodating student interest and showing a history of expanding opportunities,[46] they were now stuck with the most difficult standard to meet. So what did institutions do? In the 1990s, many looked once again to the possibility of expanding new sports for women, something that had last been done on a concerted basis in the 1970s. In 1996, the NCAA drew up a list of "emerging sports," which put them on a fast track to having the minimum number of teams necessary for national varsity championships to be offered. Emerging sports included ice hockey, synchronized swimming, team handball, water polo, archery, badminton, bowling, squash, and equestrian.[47] Another fast growing sport was rowing (crew), which was one of the few women's sports that carried a large roster (as high as one hundred for the various boats) that could help offset football in the proportionality total. Another attraction of crew was that it was one of the few sports where an athlete with the right physique and attitude could be trained on the college level without earlier participation or training.[48]

While many welcomed these new opportunities for women's intercollegiate athletic participation, others rued that the very nature of the emerging sports might skew the racial proportion of female athletes to the disadvantage of women of color. "White-girl sports" such as golf, soccer, and lacrosse were much more likely to be played in suburban high schools or the private club circuit where white students predominated. Tina Sloan Green, director of the Black Women in Sport Foundation, said in 1999, "When you increase scholarships in these sports, you're not going to help people of color. But that's not in their line of interest. Title IX was for white women. I'm not going to say black women haven't benefited, but they have been left out."[49]

In addition to adding sports for women, some schools chose another route: cutting men's so-called minor (or Olympic) sports, especially wrestling and gymnastics, in the name of achieving gender parity. In some cases, men's programs were dropped in order to bring down the total number of male participants; in other cases, they were cut for budgetary reasons or lack of interest. According to the Office for Civil Rights of the Department of Education, which is charged with enforcing Title IX, cutting men's teams is a "disfavored" route to Title IX compliance. A lawyer who has studied the effects of Title IX agreed, calling the elimination of men's non-revenue sports "the least fair and least educationally sound means of resolving the dilemma of Title IX compliance."[50] Attorney Lynette Labinger, who won a major Title IX case against Brown University in the 1990s, made a similar plea for not simply cutting men's teams in order to comply with Title IX: "My mindset is preserve opportunities and increase them, not cut them in the name of paper compliance. That creates hard feelings and it causes people to assess blame, and that's always bad."[51]

Many commentators pointed out the insincerity of blaming cuts in men's programs on the need to comply with Title IX. After all, by the 1990s the law had been in effect for more than two decades and educational leaders and university heads could have been moving gradually into compliance over that period. Instead they stalled, or did as little as possible to comply. Now stronger demands for action were

coming from a new generation of women athletes who were backed up by case law that made their challenges more likely to succeed. But universities were in difficult financial situations by then and did not have the resources to expand women's opportunities as easily as they did in the 1970s. Plus, women now made up a far greater proportion of undergraduates than before. Christine Grant, a longtime athletic administrator at the University of Iowa, faulted the leaders and CEOs of major institutions for dragging their feet over the years: "Through a proactive stance, the CEOs [could] have averted the current situation which now pits men's minor sports against women's sports—the have-nots against the have-nots—leaving intact enormous football and basketball expenditures and deficits. Blaming gender equity for the demise of men's minor sports is a red herring."[52] That is where things stood as Title IX entered the twenty-first century.

TOWARD GENDER EQUITY

What exactly is gender equity in sports? Here is how the NCAA defined it in its 1993 Gender Equity Report:

> At an institutional level, gender equity in intercollegiate athletics describes an environment in which fair and equitable distribution of overall athletics opportunities, benefits and resources is available to women and men and in which student-athletes, coaches and athletic administrators are not subject to gender-based discrimination.
>
> An athletics program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender.[53]

Minnesota gender activist Dorothy McIntyre offered a less abstract image: "When one piece of the pie is left in the pan and two kids both want a piece, give one the knife to cut it in half and the other one gets first choice. That's equity in a pie-shell."[54] A final definition puts it more colloquially: "If we are going to give jock straps out to the men, then we should provide [sports] bras for the women."[55]

The general concept of gender equity in sports enjoys wide popular support, and has since the 1970s. In a widely reported NBC News/*Wall Street Journal* poll from 2000, 79 percent approved of Title IX; in a follow-up question, 76 percent approved of cutting back on men's athletic programs to ensure equivalent opportunities for women.[56] Polls as early as 1974 found that 88 percent supported equal funding for

men's and women's sports. Note that these polls show the public is willing to take a far more radical approach to gender equity than most athletic and educational leaders, including equal (rather than proportional) funding and cutting men's sports.[57] It is probably easier to endorse those goals in the abstract than to have to find the way to make them happen. As the president of the University of Miami said in 1999, "I think almost everybody in higher education believes the goal of Title IX is worthy. The controversy is whether the end justifies the means, and that's the battleground where this is being fought."[58]

The root issues here are money and resources. As Alabama football coach Bear Bryant said in the early days of Title IX, "I'm all for women's athletics but if we had to split our budget, it would bankrupt us."[59] Even in flush times, postwar educational institutions have rarely been given a blank check to spend on either academic programs or athletics, and in times of recession and economic downturns, they face the same financial constraints as any business or profession. With finite resources and a federally mandated requirement for change, educational institutions have to make some hard choices.

Unfortunately, these choices are too often presented as a zero-sum game: If women win, men lose; if women's programs expand, men's must be cut back. Abundant evidence confirms that this is not necessarily the case: In the three decades of Title IX's existence, both men and women have increased their participation in intercollegiate athletics.[60] According to a study prepared by the General Accounting Office in 2001, the number of women's teams increased from 5,695 in 1981–1982 to 9,479 in 1998–1999; in the same period, men's teams rose slightly from 9,113 to 9,149.[61] Approximately 163,000 women participated in intercollegiate sports in 1998–1999, up from 90,000 women in 1981–1982; in those years, men's overall participation rose slightly from 220,000 to 232,000. Since 1992–1993, 963 schools have added teams, while 307 schools have discontinued them; most schools that added teams did so without cutting men's teams, although the largest Division I-A schools were the most likely to say that they made cuts in men's teams because of Title IX.[62] (See Figures 3 and 4.)

What these figures mean is that many institutions have been able to accommodate the interests and needs of an expanding pool of women athletes at the same time that they have maintained participation opportunities for men. They have accomplished this by reallocating internal resources, finding new sources of revenue, and trimming excess from bloated budgets. Walter Byers, the former executive director of the NCAA, put it this way: "The costs of Title IX and the

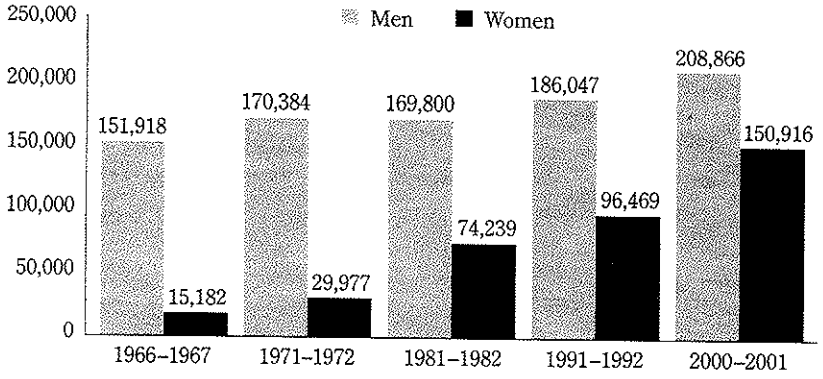


Figure 3. *Athletics Participation Totals—All Sports (NCAA)*

Source: NCAA Year-By-Year Sports Participation 1982–2001; Sports and Recreation Programs of Universities and Colleges 1957–82 (NCAA); U.S. Department of Education, Secretary's Commission for Opportunity in Athletics, *Open to All: Title IX at Thirty* (Washington, D.C.: U.S. Department of Education, 2003), 13.

entry of women into the big time should not be blamed for today's highly publicized financial problems for college sports. At the heart of the problem is an addiction to lavish spending."[63]

Nowhere is the addiction to lavish spending more evident than in football, which *Sports Illustrated* in 1995 called "that overfed sacred cow"[64] and Jessica Gavora tagged "the fat man tipping the canoe of Title IX."[65] From 1989 to 1993, the substantial increases in football budgets at Division I-A schools far outdistanced the additional money spent on women's sports.[66] A decade later, as the *Chronicle of Higher Education* reported in 2002, of 115 colleges with Division I-A football, 91 spent a larger proportion of their budgets on football than on all women's sports combined.[67] But try suggesting any changes to football coaches like Penn State's Joe Paterno: "Eighty-five scholarships is the bare minimum for football. I think if proponents of cutting football could come in and see a practice, they'd understand that.... People who keep saying we should cut football are on a course for self-destruction."[68]

In 1995, only partly in jest, *Sports Illustrated* posited three sexes when it came to sports: male, female, and football.[69] What has happened, especially since the 1990s, is that a rough hierarchy has shaped the context in which decisions about Title IX are made. At the very top are men's high-profile sports such as football and basketball,

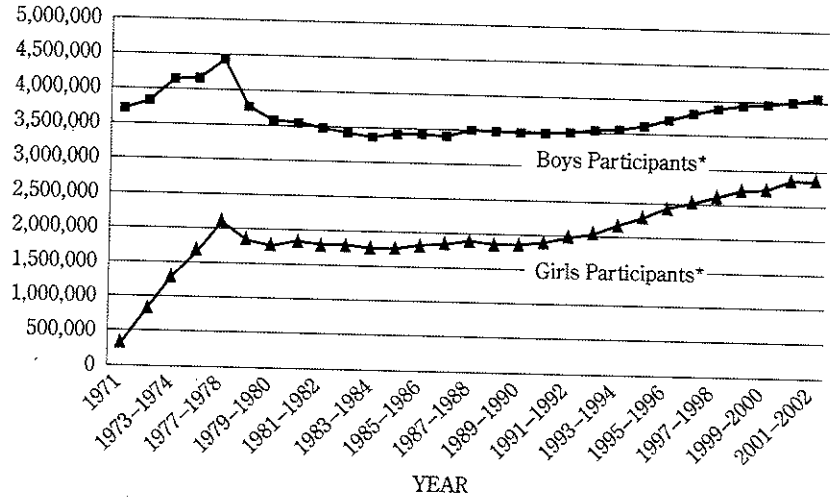


Figure 4. *Athletics Participation Totals—All Sports (National Federation of State High School Associations), 1971–2002*

*In years prior to 2000–2001, these figures did not include a portion of participants in combined sports.

Source: National Federation of State High School Associations 2002 Participation Survey; U.S. Department of Education, Secretary's Commission for Opportunity in Athletics, *Open to All: Title IX at Thirty* (Washington, D.C.: U.S. Department of Education, 2003), 14.

the budgets of which continue to expand and consume a large portion of the overall athletic budget and which, contrary to popular myths, do not necessarily bring in revenue. While women's sports activists repeatedly point out that money shaved from bloated football budgets would more than pay for women's sports, so far most football programs have proven immune to major cuts or changes. That leaves women's sports and all the remaining men's sports to fight it out for the remaining resources, with women's sports holding a slight edge (in large part because of the threat of Title IX litigation) and expensive men's sports such as gymnastics and wrestling being especially at risk.[70] Sports historian Mary Jo Kane called this "a very clever strategy to have men's minor sports being pitted against women," but she also noted, "The irony in all this is that if men's nonrevenue sports would team up with women's sports and go after football, [reducing] the size and expenditures in football, you could add sports for women and very comfortably support men's nonrevenue sports."[71] Donna

Lopiano put it well: "Football is pitting the victims against the victims. Until they rise up, men's minor sports will be crying the blues as football keeps laughing to the bank."[72]

The stakes in this battle over resources are especially high for women athletes, because in a classic case of "blaming the victim," too often women and Title IX, rather than decisions made by athletic or university administrators, are blamed for cuts and changes in men's sports. Swimmer and sports activist Donna de Varona noted, "To create trench warfare between men and women is terrible. If it happens, women will be blamed, and they don't have to be.... The idea is to comply without being retaliatory."[73]

De Varona's use of the metaphor of "trench warfare" is apt, because in the 1990s the debate over gender equity was increasingly framed in argumentative and combative terms such as "battle," "tug of war," or "fight." In part, this reflected the increasing tendency for Title IX disputes to end up in court, which demanded an adversarial stance pitting one set of facts and interpretations against a competing set, with no room for a middle ground. Such battles in the courtroom, plus press coverage on either side, encouraged a tendency toward overstatement, taking cases out of context, or exaggeration, all in the service of scoring a point.[74] More broadly, this polarized and dichotomous thinking seems to represent a hardening of attitudes on the part of the lawyers, administrators, and activists who are waging this fight. A willingness to compromise or work together in goodwill toward a mutually beneficial solution is increasingly rare in such "us versus them" discourse. And the biggest losers may be the students who want only a chance to compete.

Since the 1990s, the focus of the debate over Title IX enforcement has increasingly shifted from how to improve and expand opportunities for women to the fear that male athletes, especially in minor sports, would be harmed in the process. As Jessica Gavora argues, "a law designed to end discrimination against women is now causing discrimination against men."[75] Instead of sympathy for girls who needed a federal law merely to take the field, the public now feels concern for male wrestlers whose teams are being cut. This current chapter is taking place in an increasingly conservative social and political climate, especially since Republicans captured the White House in the 2000 election.

It has been especially easy to pitch this "men lose when women gain" mind-set when men's teams are cut solely to improve the proportionality ratio at a specific school, which deprives men of chances to play their sport and does nothing to change the number of sports opportunities for women. These cases, while rare, are often widely reported in the press as examples of the absurdities that compliance has caused. When male athletes have tried to use Title IX to protect them from what they see as discrimination based on sex behind these cuts, however, the courts have ruled that this protection only applies to the underrepresented sex, women. As the Office for Civil Rights has said on repeated occasions, capping men's participation opportunities or cutting men's teams outright are disfavored ways to achieve Title IX compliance, and women too often shoulder the blame for the results of those decisions.[76]

The way in which women are often blamed for bad outcomes suggests that despite all the miraculous changes in women's athletics in the last thirty years, there are still lingering resentments and unease about women's prominent new role in the athletic landscape. As one sports historian noted, "Instead of championing them, female student athletes are still viewed by a generation of male leaders as half-invited, troublesome, stepdaughters who are depleting men's resources."[77] Men's intercollegiate athletics evolved slowly and fitfully over a century, but women, this view goes, had their opportunities handed to them on a platter without earning their place on the playing field. "There's no question that it [women's sports] ran before it walked," observed Cornell's athletic director in 1978. "The men didn't have what the women have now in their early years."[78] Caught up in an increasingly commercialized intercollegiate athletic system, women's sports remain at a disadvantage. "For many," Kathryn Jay noted, "women did not deserve equal treatment—even if mandated by law—unless they could pack the stands with screaming fans, just like men."[79]

UNINTENDED CONSEQUENCES AND UNFINISHED AGENDAS

Over the past thirty years, the history of Title IX has been fraught with unintended consequences. The first, of course, is that lawmakers framed the law as a general tool to challenge sex discrimination in educational institutions without fully grasping what a revolutionary—and controversial—impact it would have on the field of athletics.

Another is the long-term negative impact on the employment opportunities of women coaches and administrators, who have seen their percentages plummet as women's participation soars. Also, there are the lingering questions about whether many of these changes would have happened even without Title IX because of the broad rethinking of the role of women in modern American life, including athletics, that has occurred independently since the 1970s.

Another unintended consequence of Title IX is that women athletes now often take access to sports, including the growth of professional leagues in fields such as basketball, volleyball, tennis, and golf, for granted. Girls and women in high school and college today have lived their whole lives in a post–Title IX land of opportunities, a huge difference from women just twenty years their seniors. Judith Sweet, past president of the NCAA, captured this well in 1993: "I never had the opportunity to be a varsity athlete, and when I talk to the female athletes and try to put that in perspective compared to the opportunities they have now, all I get are blank stares. That's positive because they can't relate to what I'm saying."[80] It's also negative, however, because it means that female athletes today have no idea of how recent and contested the access they take for granted is.

There are other downsides to women's increased athletic participation, such as the sexual abuse of female athletes by male coaches and the widespread incidence of eating disorders among girls and women who participate in sports. Basketball star Mariah Burton Nelson and runner (and later competitive bodybuilder) Leslie Heywood are among the former athletes who have come forward with their own stories of sexual abuse by their coaches, abuse rooted in the power imbalance between omniscient and powerful coaches and their subservient but grateful charges.[81] The desire for control and perfection that drives athletic excellence can also lead to anorexia and bulimia as athletes succumb to societal and coaching pressures to lose weight to improve their athletic performance. This pressure is especially severe in sports such as gymnastics and figure skating, but also affects cross-country, swimming, and others. (Male athletes face these pressures too, especially in gymnastics and wrestling.) So widespread is this phenomenon that the term "female athlete triad" was coined to describe how eating disorders and compulsive exercise can lead to muscle depletion and bone loss, as well as amenorrhea (cessation of menstruation), making women athletes more prone to injury as well as stress-induced immune disorders.[82]

Do women enjoy more equitable access to sports than they did

thirty years ago? The answer is yes, absolutely. Have they reached athletic parity with men? Definitely not. Even the weight that should be given to these statements is open to conflicting interpretations. Activists survey the field and note that men's programs still receive almost two dollars for every dollar that goes to women's programs. As Congresswoman Cardiss Collins noted, "If schools designated two-thirds of their academic scholarships for men, we would be outraged. We should have similar outrage with respect to sports."[83] Not everyone, however, shares her outrage. Many who have witnessed the massive increases in the numbers and prestige of women's programs think that maybe it is time to slow down and put the focus back on men. Part of the challenge of studying Title IX historically is to try to reach an assessment of what has been accomplished and at what cost, and where the field of sports might go in the future.

One thing that is clear from the history of Title IX is that as women's programs have expanded and solidified their place in the academy, they have not caused a fundamental value shift or reorientation in the meaning of college sports. Instead of being seen as a chance to find alternative ways to achieve both equality and difference, "Title IX came to be interpreted as requiring 'sameness,' and the model adopted was the men's, not the women's," Mary Jo Festle noted.[84] Another historian concluded, perhaps a bit too harshly, "In effect, as a result of Title IX, college sport acquired a women's wing, nothing more."[85]

The story of women's basketball is instructive. In the 1950s and 1960s, the top women's basketball teams were small schools such as West Chester State University and Immaculata College. Girls who loved basketball went to those schools because they knew the schools had strong programs; they weren't recruited, they didn't get scholarships, and they didn't play in fancy gymnasiums. (At Immaculata, a Catholic school in Pennsylvania, the nuns banged buckets in the stands to cheer the players on.) In the wake of Title IX, and especially with the advent of scholarships for women athletes, large universities with strong men's teams and big budgets could decide to attract and build comparable women's programs from scratch. Why would a girl join the Mighty Macs of Immaculata if she could get a scholarship (and television exposure) at the University of Connecticut? Small schools could no longer compete in the big leagues and quickly faded from national view.[86]

The growth of women's basketball is symptomatic of many of the changes that are reshaping college athletics in general as it continues

to become increasingly commercialized and specialized. Standards of performance have risen so high that there is little room for late bloomers or walk-ons: Intercollegiate athletes in most sports have already been playing for years, nurtured not just in high schools but also in youth leagues, in summer camps, and even through private coaching. Multi-sport athletes are increasingly rare. Athletes are recruited for what they can add to a team, so they receive a definite edge over other students in admissions despite lower SATs, and their education often takes a back seat to their athletic performance. Graduation rates are dropping, and the exploitation of athletes is increasing. Television rights, game receipts, and winning seasons fill university coffers and put enormous pressure on coaches and teams to win.[87] These factors used to apply only to elite male athletes and coaches. Now they increasingly apply to women as well.

Does it have to be this way? The pre–Title IX history of women's sports offers an alternative model of sports that is more about the benefits of participation and the sheer fun of playing the game. As a former president of the AIAW put it, "Must the woman's rights movement demand for our young girls a share in the things that are wrong in sports today as well as a share in the rights in order fully to prove equality?"[88] Christine Grant also talks about some of these unintended consequences: "None of us wants to take away from the idea of gender equity in any way, but as it now stands, as we move more and more toward equitable treatment for men and women, we move more and more into creating the same kind of environment in terms of pressure to win, to get bonuses, to get recruits, to get fans, to get on television. We have to decide if that's the kind of success for women's sports that we want."[89]

Because the financial resources of modern educational institutions are increasingly stretched, some believe Title IX has the potential to reform and reshape collegiate athletics by causing a halt to the "arms race" that has caused athletic budgets to escalate in an unending quest for national prominence as the main measure of an educational institution's public value. The conclusions of the Carnegie Commission Report investigating intercollegiate athletics are even more relevant today than they were when the report was originally published in 1929: "The defects of American college athletics are two: commercialism, and a negligent attitude toward the educational opportunity for which college exists."[90] In 1998, Allen Sack and Ellen Staurowsky surveyed the defects of a collegiate system running amok and concluded, "Title IX and the struggle for gender equity have a greater potential

for restoring the educational integrity of college sport than any reform passed by the NCAA in the past 100 years."[91] Restoring a measure of sanity regarding the role of athletics on campus and refocusing the student athlete experience more on education could be some of the most lasting long-term changes to come out of Title IX, although there is as yet little evidence that this is happening.

Someone once called Title IX "the biggest thing to happen to sports since the invention of the whistle."[92] It has been around for thirty-plus years and counting, and shows no sign of going away. Nor will the changes that have occurred in women's participation opportunities in sport: They have meant too much to individual girls and women and have been absorbed too deeply into the fabric of modern American life. The women's sports revolution is here to stay. Merrily Dean Baker, Princeton's first female athlete director, captured it perfectly: "I was called a tomboy, my daughters are called athletes."[93] Title IX played a fundamental role in that transformation.

NOTES

[1]Project on the Status and Education of Women, *What Constitutes Equality for Women in Sport?* (Washington, D.C.: Association of American Colleges, 1974), 7, 8, 16.

[2]National Coalition for Women and Girls in Education, "Title IX at 30: Report Card on Gender Equity" (Washington, D.C.: National Coalition for Women and Girls in Education, 2002), 14, 15.

[3]Kathryn Jay, *More Than Just a Game: Sports in American Life since 1945* (New York: Columbia University Press, 2004), 162.

[4]Gwendolyn Gregory quoted in Edward B. Fiske, "Congress Moves to Modify Law Restricting Sex Bias by Schools," *New York Times*, November 25, 1974, 23. For background on the passage of the law, see Karen Blumenthal, *Let Me Play: The Story of Title IX* (New York: Atheneum Books for Young Readers, 2005), and Welch Suggs, *A Place on the Team: The Triumph and Tragedy of Title IX* (Princeton, N.J.: Princeton University Press, 2005). See also Document 1.

[5]Quoted in Brian L. Porto, *A New Season: Using Title IX to Reform College Sports* (Westport, Conn.: Praeger, 2003), 144.

[6]Quoted in Mary Jo Festle, *Playing Nice: Politics and Apologies in Women's Sports* (New York: Columbia University Press, 1996), 112.

[7]Nixon signed the law just one week after the burglary at the Watergate apartment complex, the coverup of which would end his presidency two years later. The passage of Title IX was not the only event that month that would have major historical consequences.

[8]*Hearing before the Special Subcommittee on Education of the Committee on Education and Labor*, House of Representatives, 92nd Cong., 1st sess. (March 1971), 579–80.

[9]Jay, *More Than Just a Game*, 165.

[10]While Title IX applies to all educational institutions receiving federal aid, the focus of this introduction is on the impact of Title IX on intercollegiate athletics.

[11]"H.E.W. Head Says Title IX Won't 'Bankrupt' Schools," *New York Times*, June 27, 1975, 15.

[12]Linda Jean Carpenter and R. Vivian Acosta, *Title IX* (Champaign, Ill.: Human Kinetics, 2005), 31.

[13]"Prohibition of Sex Discrimination, 1975," *Hearings before the Subcommittee on Education of the Committee on Labor and Public Welfare*, Senate, 94th Cong., 1st sess. (September 16 and 18, 1975), 15.

[14]Candace Lyle Hogan, "Football Is Hardly Sugar Daddy," *New York Times*, December 10, 1978, 52.

[15]See *Favia v. Indiana University of Pennsylvania*, 812 F. Supp. 578 (1993).

[16]See Document 10.

[17]U.S. Department of Education, Secretary's Commission for Opportunity in Athletics, *Open to All: Title IX at Thirty* (Washington, D.C.: U.S. Department of Education 2003), 2. See also Donna Lopiano to Howard McKeon, May 15, 1995, in "Hearing on Title IX of the Education Amendments of 1972," *Hearing before the Subcommittee on Postsecondary Education, Training, and Life-long Learning of the Committee on Economic and Educational Opportunities*, House of Representatives, 104th Cong., 1st sess. (May 9, 1995).

[18]Quoted in Jessica Gavora, *Tilting the Playing Field: Schools, Sports, Sex, and Title IX* (San Francisco: Encounter Books, 2002), 73.

[19]*Cohen v. Brown*, 101 F. 3rd 155 (1996), 66–67.

[20]Carpenter and Acosta, *Title IX*, 72.

[21]Candace Lyle Hogan, "Title IX: From Here to Equality," in D. Stanley Eitzen, *Sport in Contemporary Society: An Anthology* (New York: St. Martin's Press, 1977), 420. The article originally appeared in *WomenSports* 4 (September 1977).

[22]For the history of second-wave feminism, see Ruth Rosen, *The World Split Open: How the Modern Women's Movement Changed America* (New York: Viking, 2000), and Sara M. Evans, *Tidal Wave: How Women Changed America at Century's End* (New York: Free Press, 2003).

[23]Quoted in Project on the Status and Education of Women, *What Constitutes Equality for Women in Sport?* 2.

[24]The quote from Louisa May Alcott is found in Betsy C. Postow, ed., *Women, Philosophy, and Sport: A Collection of New Essays* (Metuchen, N.J.: The Scarecrow Press, 1983). For general background on the history of women in sport, see Susan K. Cahn, *Coming on Strong: Gender and Sexuality in Twentieth-Century Women's Sport* (New York: Free Press, 1994), and Lissa Smith, ed., *Nike Is a Goddess: The History of Women in Sports* (New York: Atlantic Monthly Press, 1998).

[25]The best introduction to the issue of homophobia and women's sports is Pat Griffin, *Strong Women, Deep Closets: Lesbians and Homophobia in Sport* (Champaign, Ill.: Human Kinetics, 1998).

[26]See Smith, *Nike Is a Goddess*, especially 14–19.

[27]Cahn, *Coming on Strong*, covers this period.

[28]Jay, *More Than Just a Game*, 48–60.

[29]Festle, *Playing Nice*, 98–101, 109–10. See also Ying Wushanley, *Playing Nice and Losing: The Struggle for Control of Women's Intercollegiate Athletics, 1960–2000* (Syracuse, N.Y.: Syracuse University Press, 2004), chap. 5.

[30]Festle, *Playing Nice*, 184, 171.

[31]Gordon S. White Jr., "Are Women's College Sports Units in Peril?" *New York Times*, May 6, 1980, C16.

[32]Gerald Eskenazi, "Title IX Rules Issued for Equality in Sports," *New York Times*, June 4, 1975, 29.

[33]The *New York Times* extensively covered the battle between the AIAW and the NCAA. The most detailed scholarly account is Wushanley, *Playing Nice and Losing*. See also Festle, *Playing Nice*, 199–216.

[34]Quoted in Jay, *More Than Just a Game*, 171.

[35]Quoted in George Veysey, "Help on Way for Title IX," *New York Times*, April 22, 1984, 53.

[36]A prime example is Gavora, *Tilting the Playing Field*.

[37]Evans, *Tidal Wave*, 61–97, 176–78.

[38]"Judicial Activism in Grove City," *New York Times*, March 3, 1984, 22.

[39]Carpenter and Acosta, *Title IX*, 121.

[40]Ibid., 179.

[41]Welch Suggs, "Uneven Progress for Women's Sports," *Chronicle of Higher Education*, April 7, 2000, A52.

[42]Carpenter and Acosta, *Title IX*, 173–76.

[43]Carpenter and Acosta, *Title IX*, see the Franklin case as so important that they divide their discussion of legal cases into pre- and post-Franklin chapters.

[44]U.S. Department of Education, *Open to All: Title IX at Thirty*, 2.

[45]Donna Lopiano to Representative Howard McKeon, May 15, 1995, found in "Hearing on Title IX of the Education Amendments of 1972" (1995). See also the letter from Bernice Sandler that appeared in the *Chronicle of Higher Education* on March 8, 2002.

[46]The University of Missouri at Columbia is an example of a school that complied with Title IX by the "interests and abilities" test (prong three) by offering all women's sports available in Missouri high schools, surveying regional competitions in the Midwest, and looking at levels of club and intramural participation. The school would not have passed under the proportionality prong because of its large football team, and it hadn't added any new women's teams since 1997 (prong two). Welch Suggs, "Proposals on Title IX Intensify the Debate over Gender Equity," *Chronicle of Higher Education*, February 14, 2003, 39.

[47]National Collegiate Athletic Association, *Achieving Gender Equity: A Basic Guide to Title IX and Gender Equity in Athletics for Colleges and Universities* (Indianapolis: National Collegiate Athletic Association, 2002), chap. 6.

[48]See the chapter by Anna Seaton Huntington on canoeing, kayaking, rowing, and sailing in Smith, *Nike Is a Goddess*. See also Paula D. Welch, *Silver Era, Golden Moments: A Celebration of Ivy League Women's Athletics* (Lanham, Md.: Madison Books, 1999).

[49]Quoted in Welch Suggs, "Title IX Has Done Little for Minority Female Athletes—Because of Socioeconomic and Cultural Factors, and Indifference," *Chronicle of Higher Education*, November 30, 2001, 35. See also Jim Naughton, "Title IX Poses a Particular Challenge at Predominantly Black Institutions; The High Percentage of Female Students Makes It Difficult to Meet 'Proportionality' Standard," *Chronicle of Higher Education*, February 20, 1998, A55.

[50]Porto, *A New Season*, 156.

[51]Quoted in Carpenter and Acosta, *Title IX*, 73.

[52]"Hearing on Title IX of the Education Amendments of 1972" (1995), 121.

[53]National Collegiate Athletic Association, *Final Report of the NCAA Gender-Equity Task Force* (Indianapolis: National Collegiate Athletic Association, 1993), 2. See Ellen J. Staurowsky, "Examining the Roots of a Gendered Division of Labor in Intercollegiate Athletics: Insights into the Gender Equity Debate," *Journal of Sport and Social Issues*, 19, no. 1 (February 1995), 28–44, for the compromises made to agree on that wording.

[54]David F. Salter, *Crashing the Old Boys' Network: The Tragedies and Triumphs of Girls and Women in Sports* (Westport, Conn.: Praeger, 1996), 38.

[55]Welch, *Silver Era, Golden Moments*, 57.

[56]Welch Suggs, "Poll Finds Strong Public Backing for Gender Equity in College Athletics," *Chronicle of Higher Education*, July 7, 2000, A40.

[57]Lee Sigelman and Clyde Wilcox, "Public Support for Gender Equity in Athletics Programs," *Women & Politics*, 22, no. 1 (2001), 85, 89.

[58]James C. Garland quoted in Welch Suggs, "Colleges Consider Fairness of Cutting Men's Teams to Comply with Title IX," *Chronicle of Higher Education*, February 19, 1999, A53.

[59]Quoted in Festle, *Playing Nice*, 127.

[60]See, for example, Peter L. Shaw, "Achieving Title IX Gender Equity in College Athletics in an Era of Fiscal Austerity," *Journal of Sport and Social Issues* 19, no. 1 (February 1995), 6–27, and Don Sabo, "Women's Athletics and the Elimination of Men's Sports Programs," *Journal of Sport and Social Issues*, 22, no. 1 (February 1998), 27–31.

[61]General Accounting Office, "Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams" (Washington, D.C.: General Accounting Office, March 8, 2001). This statistic is the source of the claim, often cited by opponents of further Title IX change, that women now have more teams than men and thus have made a major stride toward equality. When the numbers of actual participants on these teams are tallied, however, men still receive a substantial majority of participation opportunities because of football.

[62]GAO, "Intercollegiate Athletics." See also Jennifer Jacobson, "Colleges Cut Men's Teams," *Chronicle of Higher Education*, March 23, 2001, 44.

[63]Porto, *A New Season*, 61.

[64]Alexander Wolff and Richard O'Brien, "Scorecard," *Sports Illustrated*, February 6, 1995.

[65]Gavora was referring specifically to the large numbers of athletes involved, which make it difficult for any school with a large football program to achieve proportionality between male and female athletes. In other contexts, however, she is critical of how men's minor sports have been sacrificed in order to achieve compliance. *Tilting the Playing Field*, 60.

[66]Donald F. Mahony and Donna Pastore, "Distributive Justice: An Examination of Participation Opportunities, Revenues, and Expenses at NCAA Institutions, 1973–1993," *Journal of Sport and Social Issues*, 22, no. 2 (May 1998), 148.

[67]Welch Suggs, "Title IX at 30," *Chronicle of Higher Education*, June 21, 2002, 38.

[68]Joe Paterno quoted in Steve Wieberg, "Bid for Proportionality Has Its Costs," *USA Today*, June 20, 1997, 11C.

[69]Wolff and O'Brien, "Scorecard."

[70]According to Mahoney and Pastore, "Distributive Justice," over the period 1973–1993 the strategy seemed to be to take money from men's minor sports to give to women's sports, as reflected in a declining percentage of resources (42 percent in 1973 versus 28 percent in 1993) that men's minor sports commanded in the overall budget (148).

[71]Quoted in Gavora, *Tilting the Playing Field*, 63.

[72]Quoted in Porto, *A New Season*, 57.

[73]Quoted in Ellen J. Staurowsky, "Critiquing the Language of the Gender Equity Debate," *Journal of Sport and Social Issues*, 22, no. 1 (February 1998), 10.

[74]Staurowsky's "Critiquing the Language of the Gender Equity Debate" is excellent on this point. While some of the most outrageous overstatements have come from football coaches predicting disaster if football is touched, Staurowsky points out that activists like the Women's Sports Foundation also engage in hyperbole and overstatement. One example she cites is the repeated references to how sports are good for girls and women in terms of lowering the risk of breast cancer, building self-esteem, and ending spousal abuse. Boys and men are never expected to justify why sports are good for them: It's a given.

[75]Gavora, *Tilting the Playing Field*, 4. See also Leo Kocher, "1972: 'You Can't Play Because You're a Girl'; 2004: 'You Can't Play Because You're a Boy,'" in Rita J. Simon, ed., *Sporting Equality: Title IX Thirty Years Later* (New Brunswick, N.J.: Transaction Publishers, 2005), 147–63.

[76]See the statement of Norma Cantu, head of the Office of Civil Rights, in "Hearing on Title IX of the Education Amendments of 1972" (1995).

[77]Festle, *Playing Nice*, 280.

[78]"Cornell Unable to Meet Sports Proportionality Deadline," *New York Times*, March 4, 1978, 16.

[79]Jay, *More Than Just a Game*, 241.

[80]Carpenter and Acosta, *Title IX*, 109.

[81]See Leslie Heywood, *Pretty Good for a Girl: An Athlete's Story* (New York: Free Press, 1998), and Mariah Burton Nelson, *The Stronger Women Get, The More Men Love Football: Sexism and the American Culture of Sports* (New York: Harcourt Brace, 1994).

[82]Heywood, *Pretty Good for a Girl*, describes how she pushed her body so far when running track that she developed mixed connective tissue disease. For another view of the problem, see Merrell Noden, "Dying to Win," *Sports Illustrated* (August 8, 1994), 54–60.

[83]Festle, *Playing Nice*, 279.

[84]*Ibid.*, 226.

[85]Staurowsky, "Critiquing the Language of the Gender Equity Debate," 21.

[86]Robin Herman, "Women's Basketball Arrives," *New York Times*, March 20, 1978, C1. For more on women and basketball, see Pamela Grundy and Susan Shackelford, *Shattering the Glass: The Remarkable History of Women's Basketball* (New York: The New Press, 2005), and Julie Byrne, *O God of Players: The Story of the Immaculata Mighty Macs* (New York: Columbia University Press, 2003).

[87]For a wide-ranging discussion of college athletics that pays equal attention to men's and women's sports while documenting their convergence toward the male model, see James L. Shulman and William G. Bowen, *The Game of Life: College Sports and Educational Values* (Princeton: Princeton University Press, 2001); its empirical findings are included in Document 20. For the history of men's sports, see Randy Roberts and James Olson, *Winning Is the Only Thing: Sports in America since 1945* (Baltimore: Johns Hopkins University Press, 1989); Jay, *More Than Just a Game*; and Porto, *A New Season*, chap. 2.

[88]Shulman and Bowen, *The Game of Life*, 125.

[89]Quoted in Festle, *Playing Nice*, 281.

[90]Quoted in Shulman and Bowen, *The Game of Life*, 268.

[91]Allen L. Sack and Ellen J. Staurowsky, *College Athletes for Hire: The Evolution and Legacy of the NCAA's Amateur Myth* (Westport, Conn.: Praeger, 1998), xiii.

[92]Quoted in Festle, *Playing Nice*, 113.

[93]Quoted in Welch, *Silver Era, Golden Moments*, 156.