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## Education Policies for Gender Equity: Probing into State Responses

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**Abstract:** The implementation of non-discriminatory sex legislation provides theoretical and empirical grounds to examine responses by the state to gender equality. Tracing the trajectory of one such law in the U.S.—Title IX—over a period of 40 years, this study analyzes the extent to which the state: (1) acted as a unitary body, and (2) functioned to dismantle its own oppressive gender features. By examining the federal government’s three core branches (executive, legislative, and judicial), the study finds differential responses by branch, with the greatest variability expressed by the executive branch, revealing the state to be less than a coherent institution. The study also shows only modest efforts to enforce the law, raising doubts about the commitment of the state to transform the social relations of gender. The state’s framing of gender equality exclusively in terms of non-discriminatory practices falls short of fostering changes in gender mentalities and identities in U.S. educational institutions—an outcome reflected in the persistent gender clustering of fields of study at the university level.

**Keywords:** gender; anti-discriminatory sex policies; higher education; state theories.

### **Políticas de educación para la igualdad de género: Análisis de las respuestas estatales**

**Resumen:** La aplicación de una ley educativa contra la discriminación proporciona fundamentos teóricos y empíricos para examinar las respuestas del Estado a la igualdad de género. El seguimiento

de la trayectoria de una de esas leyes en los Estados Unidos, *Título IX*, durante un período de 40 años, permite analizar el grado en que el Estado: (1) actúa como un cuerpo unitario, y (2) funciona para dismantlar sus propias características opresivas de género. Mediante el examen de los tres poderes principales del gobierno federal (legislativo, ejecutivo y judicial), el estudio encuentra diferentes respuestas según el tipo de poder, con la mayor variabilidad expresada por el poder ejecutivo, revelando que el Estado no se comporta como una entidad coherente. El estudio también muestra sólo modestos esfuerzos para hacer cumplir la ley, lo cual plantea dudas sobre el compromiso del Estado en cuanto a la transformación de las relaciones sociales de género. Al enmarcar la igualdad de género exclusivamente en términos de prácticas no discriminatorias no se ha llegado a fomentar cambios en las mentalidades y las identidades de género en las instituciones educativas de los Estados Unidos, un resultado que se refleja en la persistencia de la segregación por género en varios campos de estudio a nivel universitario.

**Palabras clave:** género; políticas contra la discriminación sexual; educación superior; teorías sobre el Estado.

### **Políticas de educação para a igualdade de gênero: Analisando as respostas do estado**

**Resumo:** A aplicação da uma lei educativa contra discriminação fornece fundamentos teóricos e empíricos para analisar as respostas por parte do Estado para a igualdade de gênero. Analizando a trajetória de uma tal lei nos Estados Unidos, o *Título IX*, durante um período de 40 anos, permite analisar a medida em que o Estado: (1) pode agir como um corpo unitário, e (2) funciona para dismantlar o suas próprias características opressivas de gênero. Ao examinar os três poderes principais do governo federal (legislativo, executivo e judicial), o estudo encontra respostas diferenciadas segun o poder, com a maior variabilidade expressa pelo poder executivo, revelando que o estado não se comporta como uma instituição coherente. O estudo também constata apenas modestos esforços para fazer cumprir a lei, levantando dúvidas sobre o compromisso do Estado para transformar as relações sociais de gênero. O enquadramento da igualdade de gênero exclusivamente em termos de práticas não discriminatórias não consegue promover mudanças nas mentalidades e identidades de gênero em instituições de ensino dos Estados Unidos -- um resultado refletido na segregação por gênero persistente em varios campos de estudo a nível universitário.

**Palavras-chave:** gênero; políticas sexuais anti-discriminatórias; ensino superior; teorias do Estado.

## **Introduction**

One of the first legislations in western countries to address women's inequality and discrimination in education was enacted in the U.S. in 1972. As a policy affecting all educational institutions receiving federal funds, Title IX of the Education Amendments of 1972—commonly known as Title IX—gave legitimacy to gender issues and to the role of the state in promoting the advancement of women. Consideration of explicit anti-discriminatory measures to protect students and employees in educational settings was a landmark, the culmination of a major feminist effort to use the state to improve conditions of girls and women. Title IX (Public Law 92-318) stated: "*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 educational program or activity receiving Federal financial assistance.*"

Title IX prohibits sex discrimination toward both students and staff. For students, Title IX regulations initially covered 12 areas: admissions, recruitment, housing, comparable facilities, access to course offerings, access to schools, counseling, financial assistance, employment assistance, health and insurance benefits, marital or parental status, and athletics. For employees, the regulations covered nine areas: hiring, recruitment, compensation, job classification, fringe benefits, marital or

parental status, advertising, pre-employment inquiries, and sex as a bona-fide occupational qualification (Federal Register, 1975). Title IX regulations did not call for affirmative action, although it noted that an institution could adopt affirmative action to correct a numerical imbalance by either sex (Federal Register, 1975). The law applies to both public and private educational institutions and to other organizations receiving federal assistance for educational activities, from kindergarten to professional schools and research laboratories.<sup>1</sup>

In the past two decades, the state has become a crucial component of feminist political theory in its assumption that actions by the state can be determinants in the advancement of social causes and the protection of human rights (Molyneux & Razavi, 2002). Liberal feminist conceptions of the state see it as an impartial arbiter of interests and needs; this perspective relies on the power of the law to make corrections in social inequalities (Arnot & Weiler, 1993; Jaggar, 1983). Liberal feminism's optimistic perception of the state paves the way for efforts to influence the state and have it enact public policy (Lloyd, 1998; McClain, 2006; Okin, 1989).<sup>2</sup> In contrast, more critical perspectives of the state see it as an essentially gendered and patriarchal institution, bent on maintaining men's advantage and thus gender inequalities (Connell, 1987; MacKinnon, 1989; Marshall, 1997b; Pateman, 1988; Phillips, 1998). While several definitions of patriarchy exist, it is usually conceptualized as a pervasive societal structure comprising ideology, traditions, and institutions that justify the holding of greater power, assets, and status by men than by women. Although affected by history and specific context, patriarchy retains the commonality of women's subordination (for a full discussion of patriarchy from various feminist theoretical perspectives, see Jaggar, 1983). Connell, particularly in her classic *Gender and Power*, explains that the state is gendered both in composition and in one of its key objectives: the preservation of masculine hegemony in society. Like Foucault, Connell sees the state as a "dispersed apparatus of social control working through dominant discourses as much as force" (1987, p. 128), but also as an entity in which patriarchy is simultaneously constructed and contested. Connell argues that since the legitimacy of the democratic state is based on its presumed ability to address equality, the state is vulnerable to both external and internal demands to become more democratic.

Empirical analyses of state policies have produced a less clear-cut picture, leading Mazur (2002, p. 9) to conclude that the state acts as "a series of arenas, some of which may be patriarchal and others may have the potential to be quite woman-friendly" (see also MacKinnon, 1989). In the U.S. context, educational policies have been given scant attention from a gender perspective; an exception is Marshall (1997a; 1997b), who finds that many public policies designed to modify gender relations in education tend to be incomplete, poorly funded, and extremely vulnerable to challenges from governmental institutions and other groups who see such changes as cutting deeply into the protected status quo and threatening an eventual redistribution of power.

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<sup>1</sup> Title VII of the Civil Rights Act of 1964 prohibited discrimination in employment on the basis of "race, color, religion, sex, or national origin," but excepted educational institutions. Title VI of the same act prohibited discrimination on the basis of race, color, or national origin in federally assisted programs, but did not cover sex discrimination. The Equal Pay Act of 1963 prohibited discrimination in salaries on the basis of sex but exempted all professional and administrative employees, including faculty (Sandler, 1997). It was not until 1972 that Title IX of the Education Amendments of 1972 introduced protection against sex discrimination in *educational* programs and activities (Flansburg & Hanson, 1993).

<sup>2</sup> Examples of such groups are the National Organization for Women, the National Women's Political Caucus, and the Feminist Majority Foundation.

## Research Objectives

This article seeks to understand Title IX as a *state* response to demands for social and cultural change regarding gender. Since over time multiple governmental agencies were implicated in the evolution of Title IX, the study focuses on the concept of the state and leans on the contributions of political science, history, educational policy, and feminist theory to provide an account of Title IX's scope, execution, and, to a certain degree, impact. This article explores the concept of the state through its three main constitutive parts: the executive, the legislative, and the judiciary. Although far from exclusive, these units are central components of any modern democratic state. The key questions explored in this study are: How did the state deploy its authority and resources to attain proposed objectives? To what extent have key agencies of the state worked as a coherent whole? How can the scope and trajectory of Title IX be best explained?

I define the state as the set of formal and enduring institutions that establish the rules of the political game, ranging from persuasion to the use of force. It comprises a normative, administrative, bureaucratic, and coercive set of institutions (Connell, 1987; Rhode, 1994; Skocpol, 1985; Weiler, 1983). Further, the state does not function alone but in varying degrees of interaction with civil society. Sabatier (1991) admonishes us that any assessment of the way policies are formulated and implemented requires an understanding of the behavior of key governmental institutions; this means that it is not sufficient to look at one specific institution but rather at the constellation of institutions that constitute a policy subsystem. Sabatier further argues that understanding the process of policy change requires a time perspective of a decade or more.

Title IX has several features that make it a strong candidate for the examination of state intention and action: First, it is a law located in a mature and stable democracy with an official commitment to gender equality. Second, it has been in effect for 40 years and thus accumulated a trail of decision-making. Third, its focus—sex discrimination, addressing an ingrained set of beliefs—makes it a suitable case from which to analyze the state as a contested terrain when the proposal and implementation of a law faces such disagreement in interpretation, allocation of resources, and efforts to strengthen or weaken it. Fourth, Title IX is an educational policy that sought women's advancement and consequently offers an opportunity to consider the possibilities and limitations of state-led social transformation.

## Analytical Framework

In political theory, there is wide consensus that democratic states aspire to legitimacy by responding to the needs of its citizens. The state not only represents the locus of formal authority but in its actions is crucial to the preservation of social cohesion (Pateman, 1988; Barkey & Parikh, 1991; Bartelson, 2001). Creating social cohesion requires resolving antagonisms, which involves policies to address both economic and social inequalities. How states accomplish this or *should* accomplish this is a matter of different interpretations. Some scholars (notably Schumpeter, 1942, and Dahl, 1956) argue that states constantly respond to demands from multiple social sectors and, in so doing, tend to be pluralistic. Others, based on structuralist views of the state, see more control than responsiveness and maintain that states serve primarily the needs of the dominant social classes (Gramsci, 1971; Miliband, 1969). An important contribution by Gramsci (1971) and Althusser (1971) is their explanation of the role of ideology—i.e., the framing of political issues in status-preserving ways—and thus the manufacture of persuasion to maintain state legitimacy. Yet others take a more nuanced position: while states do respond to the pressure of the strongest social bloc, they (through their bureaucracies) function with fluctuating degrees of autonomy (Bartelson, 2001; Offe, 1972; Poulantzas, 1974). Extending Gramsci's thought to the understanding of gender, if

states are patriarchal (i.e., have a social hierarchy dominated by men), it would follow that states would profess to accommodate gender demands superficially but would be disinclined to transform such an entrenched social order.

Most theories of the state emphasize the economic basis of politics. Attention is given to social classes (particularly elites and workers) and class struggle, but—because most of these theories were conceptualized before the contemporary women’s and civil rights movements—categories such as gender and race are not acknowledged in the analysis of political dynamics. And yet, gender is implicated in many facets of state functioning, including a gender division of labor within state apparatuses, the gendered structures of political and economic power, and the interplay between social movements and state policies (Norgaard & York, 2005; see also MacKinnon, 1989). Gender is embedded in state behaviors not only through economic rationales but also on the basis of ideological principles regarding notions of specifically what kinds of relations between women and men are acceptable. Institutions such as the school and the mass media play central roles in this regard.

This article treats Title IX as a concrete referent for the understanding of state response to gender inequality in education. It defines the “state” operationally as the federal government of the U.S. and proceeds by focusing on its three core branches: the executive, legislative, and judicial powers. When explanations of state intention and behavior are set at high levels of abstraction, the roles of the different branches of government, public agencies, and individual actors cannot be distinguished. What emerges instead is the image of a highly coordinated entity, which may not match reality. In contrast to the highly aggregated approach, March and Olsen argue, “the stories of politics are stories attached to real political events in real political institutions” (1966, p. 61). I do not examine here the roles of persons but rather of institutions (Barkey & Parikh, 1991); as Miliband (1969) observes, institutions are as important as the people who head them. I adopt an intermediate position by not dealing with particular individuals but rather with significant decisions by the three core state branches.

Methodologically, I use a case-study approach, for it enables a holistic and longitudinal view of the implementation process (George & McKeown, 1985), which is essential to understand the types and sequence of events and the logic sustaining them. The implementation process to which I refer focuses on the means by which the law becomes treated at federal levels of government and—accordingly—funded, expanded or contracted in meaning, and revised. The treatment of implementation, therefore, departs from the predominant literature that focuses on agenda-setting (e.g., Kingdon, 1995c) or execution at micro-levels (e.g., McLaughlin, 1987). This article recognizes that policy is not only an output, but a process—a process that involves negotiation, contestation, and competition among diverse groups (Ozga, 2000; Weiler, 1983).

In studies of U.S. public policy, the Congress is often seen as the focal point since it is this body that enacts the laws (Cohen-Vogel & McLendon, 2009). Those who refer to the study of intergovernmental relations often have in mind federal-state relations (e.g., McDermott, 2009) rather than a more comprehensive understanding of the interaction among the three branches of government at the federal level. This is appropriate yet incomplete, as the judicial and executive branches play substantial roles in the implementation of laws; consequently, analysts must be sensitive to events that are multi-actor in nature. Since Title IX was federal legislation, this study centers on the federal government as a major actor and disaggregates it into its executive, legislative, and judiciary branches.

*Executive* action includes the responses by the various presidential administrations since the inception of Title IX as well as the work of the agencies assigned to enforce it, particularly the Office for Civil Rights (OCR). To examine *legislative* responses I consider core decisions by Congress regarding Title IX’s scope and funding; to investigate *judicial* actions I center on rulings by the

federal Supreme Court, though considerable Title IX litigation has occurred at the levels of lower federal courts and state courts. An examination of the related interaction between the state and civil society is beyond the scope of this investigation; however, it is noted where it most contentiously occurred, namely between several pressure groups and the legislature.

This article consists of three parts: First, it describes Title IX's objectives and evolution from its enactment in 1972 to 2013 examining the responses the law has generated among the three branches of the federal government, noting areas of agreement and disagreement, and highlighting what kinds of state theories tend to receive empirical support. Second, since all policy is ultimately assessed in terms of objective attainment, it links state intentions to outcomes by focusing on two key Title IX objectives: women's access to higher education and their participation in a wider set of fields of study. Third, the article provides an interpretation of the trajectory of Title IX by juxtaposing the process and outcomes linked to its implementation with prevalent state theories.

### **Data Sources**

The data draw on reports by federal agencies, judicial decisions, scholarly legal and education articles, publications by women's advocates, and government statistics. While numerous articles have appeared in the popular press regarding Title IX—because of the controversy it engendered, particularly in the area of sports—the academic production has been much more limited. A bibliographic search identified about 20 legal articles and very few peer-refereed articles in education journals (notably, Anderson et al., 2006; Fishel, 1976; Stromquist, 1993; Walters & McNeely, 2010).

## **The Unfolding Life of Title IX**

### **Legislative Actions**

In early 1970, feminist groups introduced several proposals to stop sex discrimination in education, proposals that were discussed in the House of Representatives, the Senate, and the White House (OCR, 1997; Sandler, 2007). Responsive to these concerns, Representative Edith Green proposed a bill to prohibit sex discrimination in education and organized Congressional hearings during June-July 1970 on the conditions of girl's and women's education, which resulted in over 1200 pages in a two-volume report distributed to every member of Congress.<sup>3</sup> After lengthy discussion, Title IX was passed as a floor amendment in 1972. At the time of its approval, this amendment “was not seen as being of much interest to, or having any major implications for, educational institutions” (Sandler, 2007, p. 477).

### **Complementary Legislation**

There were three key pieces of legislation that functioned—coincidentally, not by express design—to complement Title IX. Most important was the Women's Education Equity Act (WEEA) of 1974, which had a proactive dimension by providing funds for institutions to develop educational materials and training approaches to work on gender and other discriminatory structures such as race, class, language, and disability (EDC, 1999). WEEA enabled the creation of a WEEA Equity Resource Center, but despite the critical importance it had in providing resources for institutional change, WEEA was never funded at the authorized level of \$80 million per year; at its highest level it was allocated \$10 million, and that amount was gradually reduced to a mere \$500,000 by 1992

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<sup>3</sup> Title IX was proposed by four congresswomen (Edith Green, Martha Griffiths, Patsy Mink, and Shirley Chisholm) and two male senators (Birch Bayh and George McGovern), all Democrat. In 2002, Title IX was renamed “The Patsy Mink Equal Opportunity in Education Act,” reflecting her long-time support for the law. Green led the initial legislative efforts.

(Flansburg & Hanson, 1993; see also NWLC, 2004). Alluding to budgetary constraints, the WEEA Center was discontinued in 2003 during the first term of the G.W. Bush Administration. WEEA still exists but has received no funding since FY2011.

The second piece of legislation to lend substantial support to the implementation of Title IX was Title IV of the Civil Rights Act of 1964 (Brown & Reid, 1987). This act supported schools and universities working to comply with the CRA's omnibus anti-discrimination mandate by providing federal funding for 43 Desegregation Assistance Centers and corresponding staff at each state education agency. During the Reagan administration, the centers were reduced to 10 and renamed Equity Assistance Centers. In 1996, under the Clinton administration, Congress continued to fund the Desegregation Assistance Centers but eliminated Title IV funding for state education agencies. The latter resulted in the loss of the full-time state-level Title IX coordinator, an action that consequently led to a considerable decrease in the provision of training and assistance services to local schools and school districts.

The third piece of legislation linked to Title IX has been the Carl D. Perkins Vocational Education Act, passed in 1984. It set aside 10.5% of its budget for elimination of sex bias and stereotyping in vocational education and specifically sought to help single parents, single pregnant women, and displaced homemakers gain marketable skills. This vocational act included \$60,000 in annual funds for a vocational education sex-equity coordinator and related activities at the state level. When it was reauthorized as the Carl D. Perkins Career and Technical Education Act in 1988, under the Clinton administration, the set-aside funds for gender equity programs and the designated funding for sex equity coordinators were eliminated, although the states were allowed to spend between \$60,000 and \$150,000 a year of their federal grants on gender equity activities. Reauthorized in 2012, these conditions have remained.

Title IX—as other civil rights laws—was provided meager funds for its implementation, basically financial resources for the hiring of monitoring personnel. While it is not uncommon to have unfunded mandates, Nash et al. (2007, p. 71) observe that “even in comparably favorable years for funding gender equity, the federal financial support of Title IX and other activities to advance gender equity has been miniscule (less than .02% of the annual education agency budgets).”<sup>4</sup> Salomone (1986) makes a similar observation, noting “the organs of government have not afforded equality for women the same expansive reading as that allowed other groups such as racial minorities and the handicapped” (p. 134).

### **Mechanisms and Resources for Implementation by the Legislative Branch**

To reach its anti-discrimination objectives at the institutional level, Title IX regulations called for: (1) the designation of “at least one employee to coordinate institutional efforts to comply with and carry out Title IX responsibilities,” (2) the development of a “transition plan” within each educational institution, (3) the establishment of grievance procedures, (4) the dissemination of the plan on nondiscrimination policy at the institutional level, (5) a one-time self-evaluation by the

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<sup>4</sup> There is some support for gender issues outside Title IX. The National Science Foundation was spending \$40 million in 2006 to support four programs to increase the participation of women in science, technology, engineering, and mathematics. Between 1997 and 2006 the Department of Health and Human Services spent between \$80 million and \$170 million a year to support “abstinence-only-until-marriage” curriculum programs. This policy, implemented during the G.W. Bush Administration was thought by many to be a regressive policy as it did not consider fully the nature of sexuality in contemporary society (Shulman, 2006). It is estimated that total federal support for these programs and accompanying campaigns amounted to \$1,484 million; much of the funding for implementation went to predominantly faith-based organizations (Doan & Williams, 2008).

institution to ensure it has been in compliance, and (6) the undertaking of remedial action as pertinent. Educational institutions were to notify all their students and employees of the name, office address, and telephone number of the employee designated as Title IX coordinator. This public notification was to be done yearly and information related to the law was to be included in faculty and student handbooks (Federal Register, 1975); except in very few cases, this notification did not happen.

Overall, Title IX has faced considerable ambivalence from the legislative branch. During 1974 and 1975, when the regulations for Title IX were being drafted, there were several attempts by Republicans in Congress to protect “revenue-producing sports” (especially football) by exempting them from Title IX. The Supreme Court supported this position through its *Grove City College v. Bell* decision (see below). However, in 1988 a majority in Congress succeeded in passing the Civil Rights Restoration Act, which challenged the Supreme Court’s interpretation of Title IX, overrode a veto by President R. Reagan, and declared that the *entire* institution receiving directly or indirectly any type of federal assistance is bound by Title IX legislation. In 1994, Democrat politicians succeeded in mustering support to pass the Equity in Athletics Act mandating that intercollegiate sports programs in institutions receiving federal student financial assistance must release data on the functioning of women’s and men’s sports programs through annual reports beginning in 1996, thus compelling compliance by monitoring expenses and statistical information.

In 2010, again in the context of a Democratic-dominated legislature, as preparations were underway to reauthorize the Elementary and Secondary Education Act, over 50 women’s groups organized under the National Coalition for Women and Girls in Education, approached legislature officials to request that high school graduation, STEM course participation, and sex- and race/ethnicity-disaggregated data on academic performance be made part of the accountability system. They requested also that WEEA be reauthorized and granted sufficient funds to do an adequate job (NCWGE, 2010). So far, the legislature has not responded to this request and, given the current cost-reduction climate and the Republican-controlled House, WEEA’s reauthorization is unlikely.

In all, steps by the legislature over the years, while supportive of sex anti-discrimination legislation, provided limited technical and funding resources to make this principle more salient and enforceable in the everyday life of education institutions. Recognition of inequalities affecting women have strengthened the state’s interest in social cohesion as predicted by Pateman (1988), Barkey & Parikh (1991), and Bartelson (2001), but at the same time, legitimacy through discourse rather than action is visible in the legislature, which validates Gramsci’s (1971) contention that ideology permeates society and that it functions with great force.

### **Executive Actions**

Title IX regulations assigned production of the guidelines for policy implementation to the Health, Education, and Welfare Department (HEW)<sup>5</sup>; HEW had the responsibility of issuing regulations under Title IX, for which it held a number of consultations and public hearings. HEW took two years to design the regulations, a reflection of the complexity of identifying all educational areas in which sexual discrimination could arise as well as an indication of the limited HEW staff assigned to work on the regulations.<sup>6</sup> An additional year was spent soliciting commentary to the draft regulations and seeking some degree of consensus; about 9,700 comments were received

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<sup>5</sup> In 1980, HEW was divided into the Department of Health and Human Services and the Department of Education.

<sup>6</sup> According to Shelton & Berndt (1974), 18 persons were assigned to draft the regulations but only 2-3 worked on a regular basis, and no one worked full time on the task.



(Fishel, 1976). In the end, the regulations covered explicitly discriminatory policies and practices as well as ostensibly neutral policies that have a disparate impact on members of one sex (Rubin, 1981). One key area of concern pushed by the women's movement was that procedures to review and evaluate textbooks for sexist bias be put in place. This was not included in the regulations because content of education is an area delegated to the states and it was felt that acting otherwise would raise a constitutional issue.<sup>7</sup> The result was the stipulation in Title IX regulations that, "Nothing in this regulation is to be interpreted as requiring, prohibiting, or abridging in any way, the use of particular textbooks or curricular materials" (Section 1040.45)."<sup>8</sup> Monitoring and enforcement of Title IX were assigned to the Office for Civil Rights (OCR) in the U.S. Department of Education.

### **Monitoring and Enforcement Activities by the Executive Branch**

According to Title IX regulations, OCR must make "every effort with an educational institution to resolve violations of the civil rights law." To do so, it must respond to complaints or initiate its own monitoring actions (the latter referred to as "compliance reviews"). OCR was given the responsibility for monitoring sex discrimination in addition to its original monitoring of other forms of discrimination.<sup>9</sup> Given its limited budget and personnel, OCR has relied almost exclusively on complaints rather than on compliance reviews.<sup>10</sup> In the 40 years of Title IX's existence, no tertiary education institution has lost federal funds due to non-compliance, although institutions have lost substantial amounts of money in responding to various related suits filed against them, especially when the plaintiffs have been successful.

In early years, concerned with the slow enforcement by OCR, the Women's Equity Action League sued HEW (Adam v. Mathews, 1976) in a Washington, D.C. court and won. The judge gave OCR 90 days to address complaints, 90 days to obtain voluntary compliance, and 90 to enforce compliance.

In 1995—20 years after the enactment of Title IX regulations—OCR began producing statistics disaggregated by type of complaint (i.e., discrimination on account of sex, race/national origin, disability, age, and multiple/other). Those dealing with sex discrimination have been relatively few, averaging 8% of the total complaints submitted yearly to OCR. By far, most complaints have addressed physical disability and, to a lesser extent, race/national origin (OCR, 2006). Given the estimated high incidence of sexual harassment in educational institutions, it is unclear what the low

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<sup>7</sup> A different version of the antecedents of the elimination of textbooks attributes it to the considerable opposition by textbook publishing firms, which involved personal contacts with the U.S. Secretary of Education. This opposition led curricula and textbooks to be considered outside the bounds of Title IX on the grounds that such a requirement conflicted with the First Amendment of the Constitution, which guarantees freedom of speech. For a detailed account, see *HER* editors, 1979, and Stetson, 1991.

<sup>8</sup> Further, when Congress authorized the creation of the Department of Education in 1979, it stipulated that the new department was not "to exercise any direction, supervision, or control over the curriculum" or "over the selection and content of ... textbooks" (U.S. Public Law 96-88, Section 103[b]).

<sup>9</sup> OCR is also responsible for monitoring discrimination in education on the basis of race, color, ethnicity, and disability. Appropriations to carry out its multiple functions rose from \$45 million in 1990 to \$63 million in 1998 and to \$91 million in 2006 (OCR, 1998 and 2006), but staff in this agency feel it remains substantially underfunded and the number of its full-time personnel has remained stagnant.

<sup>10</sup> However, a different view of OCR is held by some activists. In a 1978 report, *Stalled at the Start: Government Action on Sex Bias in the Schools*, PEER showed that between 1973 and 1976, HEW received just two Title IX complaints against school districts per investigator and that it had resolved an average of 3/10 of one complaint per investigator. Since the total number of complaints against school districts, including race complaints, was just six per investigator per year, PEER concluded that this was hardly an overwhelming burden.

level of complaints reflects. At least three possibilities emerge: most complaints are being resolved at the institution of origin, the law has not provided sufficient incentive for aggrieved parties to invoke it, or people have sought direct resolution through the courts.

It is clear that OCR has not received sufficient budget increases over time to expand its personnel, which would have allowed it to carry out more of its authorized monitoring activities (Shelton & Berndt, 1974; Rubin, 1981; Stromquist, 1993; Smith et al., 1998; NCWGE, 2008). Not surprisingly, Title IX has been a low priority for OCR and there is widespread consensus that it has been a weak enforcer of this law (Hutchens & Townsend, 2000; Nash et al., 2007; NCRW, 2010; PEER, 1978; Salomone, 1986; Stromquist, 1993). It was not until 1987, for example, that OCR finalized a key document, "Title IX Grievance Procedures. An Introductory Manual," designed to assist schools to establish Title IX complaint procedures, first drafted as an interim document in 1980. It is also the case that OCR had agreements with 17 agencies to conduct Title IX compliance reviews on their behalf but several years later it had not completed them (Goulden et al., 2009). To "promote, coordinate, and evaluate gender equity programs, including the dissemination of information, technical assistance, and coordination of research activities" (U.S. Department of Education Organization Act, cited in Maatz, 2013), the U.S. Department of Education has been mandated since 1994 to appoint a Special Assistant for Gender Equity. The position was filled during 1994-2000 but has remained vacant ever since.

On the occasion of the 25<sup>th</sup> anniversary of Title IX, OCR issued a publication in which it asserted the legislation had produced "a sea change in gender equity in education" (p. 1) stating, "Since its passage in 1972, Title IX has had a profound impact on helping to change attitudes, assumptions, and behaviors and, consequently, our understanding of how sexual stereotypes can limit educational opportunities" (1997, p. 9). The statistics in this report showed declines from 1980-82 to 1990-92 in the number of dropouts among high school girls who had become pregnant; it also presented data showing that more girls were taking algebra, geometry, and chemistry. The OCR report expressed satisfaction that by 1994, 38% of women were earning medical degrees compared to 9% in 1972 and 43% of the women were earning law degrees in 1994 compared to 7% in 1972. It also noted that although there had been an increase in the doctorates women earned in science from 9% in 1973 to 20% in 1993, few women were obtaining their doctorates in math and physical science (where 17% were women), computer science (14%), and engineering (7%).

Ten years later, a document, by the National Coalition of Women and Girls in Education taking stock of Title IX on its 35<sup>th</sup> anniversary, was less impressed with the progress, noting among several shortcomings the fact that women were still seriously underrepresented as students and faculty in the fields of physics, computer science, and engineering. The authors attributed this underrepresentation to "biased career counseling, gender stereotypes, unequal treatment by teachers, sexual harassment and other discriminatory practices" (NCWGE, 2008, p. 23), citing in support the results of a survey of college and university campuses that had found that 62% of female students had experienced sexual harassment.

One of the most contested provisions of Title IX has been athletics. Groups challenging Title IX have complained that it functions as an illegal quota system and that, in order to meet these "quotas" for female athletes, schools have had to eliminate wrestling, gymnastics, and other men's sports. In seeking non-discriminatory treatment, OCR issued guidelines (known as the "three-part test"), identifying three different ways for schools and universities to show compliance: that intercollegiate sports for male and female students are provided in numbers proportionate to their respective enrollment; that where members of one sex are underrepresented, their opportunities have been expanded; or that the institution can show that members of the underrepresented sex have been fully and effectively accommodated by the present program. These guidelines have been

challenged through litigation and pressure upon political officials, but the government has retained them, thus continuing the application of Title IX to sports.

Another recent challenge to Title IX has been the reemergence of single-sex schools and classrooms, which in the context of predominant social practices, many feminists see as major settings for the transmission of gendered messages. Title IX allowed single-sex classes for specific purposes such as contact sports, instruction in human sexuality, and remedial or affirmative activities to decrease sex discrimination. In 2006 under the G.W. Bush Administration, the Department of Education issued regulations permitting non-vocational single-sex education, which, from the perspective of many Title IX supporters, serve “many more purposes and do not have adequate safeguards to ensure that sex segregated schools, classes, or activities will not increase sex discrimination” (NCWGE, 2008, p. 11).

To date, there has been only one official evaluation of Title IX. For the 25<sup>th</sup> anniversary of the law, Congress requested that the Secretary of Education “provide the first report to the nation on the status of women and girls in education.” The evaluation was to be composed of two parts: The first volume, developed by the National Center for Education Statistics, was a summary of general data trends for the education of girls and women. The second volume was to provide “additional sources of data and to deepen the understanding of what the numbers mean” (Smith et al., 1998, p. 19). Only the first volume, entitled *Trends in Educational Equity of Girls and Women* (Bae et al., 2000), was published. It presented a large amount of sex-disaggregated data on such issues as academic achievement, students at risk, after-school activities, post-secondary enrollments, educational outcomes, and cross-national comparisons of academic achievement. The years covered by the data did not allow a longitudinal assessment, for most data covered only one point in time, precluding examination of progress attributable to Title IX implementation.

The second volume, which contained more interpretation, was produced by the Education Development Center (EDC) after winning a bidding contract. This study, based on multiple data sources, found that there had never been any follow-up to determine whether institutions actually performed the self-evaluations mandated by Title IX, whether the results of these evaluations had been published, and whether the institutions had taken action to eliminate any sex discrimination policies or practices they had discovered (Smith et al., 1998). Interviews carried out by the EDC evaluators found that many state superintendents of education and their office staff did not know who their Title IX coordinators were.<sup>11</sup> When persons identified as state coordinators were contacted, many of them were unaware of their role as coordinator and those who were aware of their Title IX responsibilities were in another full-time position. Moreover, there has been a decline in the number of coordinating positions. Prior to 1996, more than 40 states (80%) had a full-time Title IX coordinator (funded by the Title IV program of the Civil Rights Act). Congress eliminated funding for this position in 1996, and two years later only 20 states (40%) had such a position and in only two states was this a full-time person. As noted earlier, under President G.W. Bush, the WEEA Equity Resource Center was discontinued in 2003, thus greatly reducing the possibility of access to suitable educational materials and training to address sex discrimination.

Smith and associates (1998) found that most of those appointed as Title IX officials declared that they were available only to answer questions from local school districts, and had no support

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<sup>11</sup> Implementation of Title IX varies by state. It is actively enforced in California, whose State Department of Education has established a program for Educational Equity. This requires its local school districts to design staff development and professional growth activities that include “strategies for identifying and eliminating bias on the basis of sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color and mental or physical disability” (CDE, 2004). Other states that have been particularly engaged include New York and Massachusetts.

themselves to maintain their earlier levels of technical assistance to schools in such areas as sex equity in mathematics and sciences, expanding career options, sexual harassment, equity in athletics, and gender issues related to program access and achievement.<sup>12</sup> While the external reviewers assigned to assess the EDC report found it acceptable, the Department of Education (under the G.W. Bush Administration) made the decision not to publish it.

A few years later, Congress mandated that a study be carried out by the Government Accounting Office to assess the compliance with Title IX of four federal agencies (the Departments of Education and Energy, NASA, and NSF)—all major allocators of research funds for the sciences. The report found that these agencies had complied with Title IX by investigating complaints and providing technical assistance but that “most had not conducted all required monitoring activities,” much less “any Title IX compliance reviews of their grantees” (GAO, 2004, pp. 2 and 12). This was a sobering finding, given the existing biases against hiring and advancing women in STEM faculty positions reported by the National Academy of Sciences (NAS, 2007).

As this study has shown, the machinery set up by the state to enforce Title IX was poorly funded and weakly staffed, making its monitoring and enforcing activities more symbolic than real. Here, a manifestation of the state trying to foster non-discriminatory practices through ineffectual means can be perceived. The behavior of the federal government as a reluctant partner in the transformation of gender relations again supports the view of the state not as a neutral institution but as one interested in defending its legitimacy. According to Poulantzas (1974), administrative procedures and routines give state bureaucrats “relative autonomy” in the policy-making process. I did not find this to be true of OCR—the main bureaucracy behind Title IX. This agency upheld Title IX guidelines but their degree of enforcement seems to have followed the gender perspective of the country’s president at the time, which may be a consequence of the OCR head being a political appointment. There is no evidence that OCR constituted a self-conscious, semi-autonomous group.

### **Presidential Responses**

The eight U.S. presidents who completed their tenure during the existence of Title IX (Nixon, Ford, Carter, Reagan, G.H.W. Bush, Clinton, G.W. Bush, and Obama, have shown differential behaviors toward this legislation. It has been observed that the enforcement of Title IX languished under Ronald Reagan (1981-89) and G.H.W. Bush (1989-93), was questioned under G.W. Bush (2001-2009), and not enforced seriously until Clinton (1993-2001) (Anderson et al., 2006; Zimbalist, 2003). Clinton issued an executive order in 1997 instructing all federal departments and agencies to develop “new and vigorous” Title IX enforcement plans (Anderson et al., 2006; Walters & McNeely, 2010). In 2011, under Obama, OCR issued a clarification letter to supplement its Revised Sexual Harassment Guidance of 2001.<sup>13</sup> The communication reminded educational institutions that a Title IX coordinator must be appointed and trained to undertake specific grievance procedures. Also under Obama, the Department of Education issued a comprehensive

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<sup>12</sup> The EDC report found that in terms of indicators such as access, performance, and completion of high school by pregnant girls, minority girls had lower success compared to white girls.

<sup>13</sup> Clarification letters, known as “Dear Colleague,” have the value of policy guidelines according to the Department of Education. Over Title IX’s lifetime, OCR has written clarification letters on issues of athletics, financial aid, and sexual harassment.

guidance for schools, colleges, and universities to fulfill their Title IX obligations. Yet, no president has seen it necessary to undertake a deep assessment of the law or to foster its improvement.<sup>14</sup>

Notable among the presidential challenges to Title IX was the appointment by G.W. Bush of a Commission on Opportunity in Athletics in 2002. While officially its purpose was to assess the benefits of Title IX, the main concern of the commission was the alleged damage that Title IX had brought to men's sports at high school and college levels. After months of hearings, the commission's report (*"Open to All": Title IX at Thirty*, 2003) produced recommendations that would have created loopholes (such as reporting male practice players as female athletes and counting as athletes young women who are not really part of a given team) allowing schools to resurrect the comparative advantages in men's athletics. Two of the women commissioners denounced the report and, when the ensuing controversies between coaches/sports associations and women groups were not resolved, President G.W. Bush did not proceed further. However, shortly afterward the Department of Education issued a guidance that incorporated one of the most disputed recommendations of the Commission, namely the use of e-mail surveys<sup>15</sup> to assess girls' interest in sports. This guidance was repealed by Obama in 2010. Also during the G.W. Bush administration, the U.S. Department of Education issued regulations that expanded the use of sex-segregated programs that might contribute to "the achievement of an important governmental or educational goal." This measure has been protested, so far without success, by many feminist groups.

From the above account, it can be seen that the state, as represented by its executive leaders, has expressed varying levels of support for Title IX. In general, Republican presidents have been less supportive of measures to counter sex discrimination in schools, which they have manifested either by diminishing support for significant complementary policies or by seeking to introduce changes perceived by feminist groups as hostile, such as the return to single-sex classrooms or the proposed e-mail surveys to determine girls' interest in sports. As predicted by feminist theories critical of the state (Connell, 1987; MacKinnon, 1989; Marshall, 1997a, 1997b; Pateman, 1988; Phillips, 1998), presidential action has expressed, at most, benign neglect of gender policies, thus supporting Gramsci's assertion that states may acquiesce to demands for more democratic practices but not to demands for structural transformation. At the same time, there are significant differences in the extent to which individuals subscribe to gender ideologies. Some presidents, indeed, have been more responsive to Title IX legislation than others.

### Judicial Interpretations

The prevention of discriminatory practices seems a simple task at first sight but the judgment of everyday actions can be complex and nuanced. Title IX has generated a number of interpretations by judicial bodies at district, state, and federal levels. Issues now settled, such as whether Title IX covers educational employment, sexual harassment, and the right to individual legal action, and whether it applies only to programs or to an entire institution, are the products of lengthy deliberations in earlier years. The trajectory of Title IX, from inception in 1972 to the present, shows a sinuous path, with setbacks by major legal challenges as well as interpretations that have broadened its scope. Major legal disputes that reached the level of the U.S. Supreme Court and

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<sup>14</sup> For instance, recommending that testing be done of Title IX and gender equity knowledge for teacher certification. Teacher certification takes place at the state level, but the federal government could make such testing a requirement for accepting certain funds. The No Child Left Behind Act certainly uses such a strategy.

<sup>15</sup> Disputed by many on grounds that e-mail communications are informal and some respondents may not pay attention to them.

culminated in decisions that expanded or strengthened Title IX include the following, presented in chronological order so changes over time may be identified:

1. *Cannon v. University of Chicago* (1979; 441 U.S. 677), in which the Court decided that Title IX accorded plaintiffs a private right of action (i.e., could sue as individuals), without first having to exhaust their complaints at their institutional level or through an administrative body such as OCR. This decision is considered to have speeded up the process of seeking anti-discriminatory redress. The Court, however, also ruled that proof of discrimination effect alone is not sufficient and that discriminatory intent must be proven. Legal experts viewed proof of intent as a major setback to Title IX (Rubin, 1981). In the end, this case brought both supportive and debilitating dimensions to the law.
2. *North Haven Board of Education v. Bell* (1982; 456 U.S. 512), in which the Court upheld the validity of Title IX to protect employees as well as students from sex discrimination. Earlier, in 1997, a U.S. Court of Appeals ruled that sexual harassment constitutes sex discrimination and is thus covered under Title IX.
3. *Moire v. Temple University School of Medicine* (1985; 613F Supp. 1360), in which the Court ruled that “a hostile environment of sexual harassment” is actionable under Title IX, thus incorporating sexual harassment into the law.
4. *Franklin v. Gwinnett County Public Schools* (1992; 503 U.S. 60), in which the Court ruled that monetary damages remedies (for both punitive and compensatory purposes) are available for an action brought to enforce Title IX and that the remedies are limited to back pay and prospective relief. This decision was considered a “major step forward in Title IX enforcement” (Bertenthal, 2002) since, by introducing monetary grievances, lawyers became more likely to take Title IX suits (Flansburg & Hanson, 1993). It applies to discrimination by employee-to-student or employee-to-employee.
5. *Cohen v. Brown University* (1997), in which the Supreme Court refused to hear this case, thus upholding a lower court decision requiring Brown University to comply with existing Title IX guidelines to demonstrate gender equity in intercollegiate athletics, thereby supporting the existing OCR three-part test.
6. *Davis v. Monroe County Board of Education* (1999; 526 U.S. 629), with the Court deciding that schools could be sued for failing to respond to peer sexual harassment charges by a student if the institution knew about but ignored the harassment and that the harassment had to be “severe, pervasive, and objectively offensive,” thus depriving the victim of equal opportunity of access to the school’s resources.
7. *Jackson v. Birmingham Board of Education* (2005; 544 U.S. 167), in which the Court prohibited retaliation against those who report sex discrimination, a decision considered to encourage victims and witnesses to come forward.
8. *Equity in Athletics Inc. v. Department of Education* (2011), in which the Supreme Court declined to hear this case that challenged the use of the OCR three-part test for compliance with athletics.

Yet, other U.S. Supreme Court decisions have curtailed or made ambiguous the reach of Title IX. Chief among them are:

1. *Vorchheimer v. School District of Philadelphia* (1977; 430 U.S. 703), in which the Court upheld a lower court decision stating that the existence of a single-sex school (in this case a military school) does not constitute gender discrimination when enrollment is voluntary and the educational opportunities available to girls and boys in the area are essentially equal.
2. *Mississippi University of Women v. Hogan* (1982; 458 U.S. 718), deciding that private single-sex undergraduate institutions can be exempt from the admission requirements of Title IX but

they must comply with constitutional equal protection requirements in admissions (i.e., show evidence schools of comparable quality are available for the aggrieved sex) or act to address the effect of past discrimination. In this particular case, a program for nursing open only to women was found to violate the Fourteenth Amendment equal protection clause. In a later decision, *U.S. v. Virginia* (1996; 518 U.S. 515), the Court reiterated that gender-based admissions are in direct violation of the equal protection clause of the Fourteenth Amendment.

3. *Grove City College v. Bell, Secretary of Education* (1984; 465 U.S. 555), in which the Court interpreted legislative intention under Title IX to mean that it applied only to programs or activities (not the entire institution) that receive direct federal financial assistance. This has been the strongest challenge to Title IX. The decision, which many interpreted as being aimed at removing athletics programs (which did not receive federal funding) from Title IX, caused *all* Title IX-related complaints brought to OCR and the courts to be abandoned for four years. This Supreme Court decision was modified by the Civil Rights Restoration Act in 1988, an action taken by Congress in which Senator Edward Kennedy played a major role. The act restored the principle that if an institution received any federal dollars, all activities and programs of the institution irrespective of their sources of funding were also covered under Title IX.
4. *Gebser v. Lago Vista Independent School District* (1998; 524 U.S. 274), in which the Court decided that a student may sue for damages for sexual harassment only if the school had notice of the misconduct and acted with “deliberate indifference.” According to legal experts, this proviso makes it difficult for plaintiffs to bring such cases because sexual victims often keep silent while experiencing harassment (Zwibelman, 1998).
5. *National College Athletic Association v. R.M. Smith* (1999; 525 U.S. 459), in which the Court decided that dues paid to the NCAA from institutions that received federal aid did not make the NCAA an entity that could be sued under Title IX because the law applies only to institutions that receive federal funding directly.

In sum, the most important decisions regarding Title IX by the Supreme Court do not support the notion of a consistent judicial branch bent on endorsing the suppression of women through patriarchal structures. Rather, legal judgments that oscillate between restricting and expanding the reach of Title IX are in evidence. Overall, through the Court’s decisions, a liberal philosophy is at work, one that gradually widens freedoms and rights by incorporating concepts such as sexual harassment, equal opportunity, individual right to redress, right to financial compensation, and freedom from retaliation. The judicial branch of the state, thus, emerges as willing to break some elements of the patriarchal architecture. In the data examined, it is not so much the bureaucracy that is assuming a measure of autonomy (as posited by Poulantzas, 1974), but rather the judiciary branch of the state.

## Two Key Policy Outcomes

It is difficult to attribute changes in gender relations or in women's status to a specific set of policies rather than to other explanatory variables unrelated to public policy (Mazur, 2002).<sup>16</sup> The latter include an omnipresent mass media that, although depicting women in highly sexualized terms, also present women in professional and non-conventional roles and thus convey new social role models. Economic changes have also made it necessary for women to work outside the household, leading to transformations in values and practices that may have preceded or reinforced the influence of Title IX. The range of Title IX coverage was wide; here I focus on only two areas, both related to higher education.

### Women's Access to Higher Education

Women comprised 42.3% of the enrollment in undergraduate education in 1972 (the year Title IX was enacted) and their proportion has been rising since then. Table 1 below shows degree attainment by sex across different time periods. It can be observed that by 1990 women represented the majority of the students attaining their bachelor's degree and that by 2008 they were the majority of those earning their master's and doctoral degrees. The largest jump at the undergraduate level took place between 1975 and 1980, when women moved from 45.7% of all undergraduates to 52.3% (Bae et al., 2000, p. 60). The earning of master's degrees by women reached its highest increase between 1970 and 1980, rising from 40% to 49% in that period (IES, 2012). Women's attainment of their doctoral degrees also registers its highest jump between 1970 and 1980, increasing from 13% to 30%. Since those years cover periods under Title IX implementation, some attribution to the effects of the law is reasonable.<sup>17</sup>

Table 1  
*Percentage of College Degrees Conferred on Women, 1940-2010*

Year	Bachelor's degree	Master's	Doctor's
1940	41.26	38.24	15.35
1950	23.88	29.15	9.59
1960	35.26	31.62	10.45
1970	43.06	39.68	13.31
1980	49.04	49.42	29.65
1990	52.92	52.62	36.40
1998	56.10	57.10	42.00
2008	57.30	60.60	51.00

*Source:* IES, 200, 2009; NCES, 2010.

<sup>16</sup> For instance, in the context of substantial changes in gender relations in Nordic societies, it has been asserted that perhaps innovations such as the birth control pill and the IUD had been more effective than equity legislation (see Haavio-Mannila et al., 1985). In a similar vein, explanations for the increased educational expectations among women in the European context include reduced discrimination in the labor force, better negotiations between family and professional life, and changes in the composition of families, among other hypotheses (see Vincent-Lancrin, 2008).

<sup>17</sup> Women, whether white, black, Hispanic, or Asian/Pacific Islander, have a greater participation in higher education than men of their respective ethnicities (Bae et al., 2000, p. 62).



But a different reading is also possible from the data presented in Table 1. Looking at the numbers of degrees conferred, it can be seen that by 1940 women accounted for 42% of bachelor degree holders, a proportion that gradually increased over the decades—even before Title IX. Similar trends toward a gradual increase since the 1940s can be observed for women holding a master's or doctorate degree. An exception to this increase occurred in 1950, a period that reflects the return of large numbers of World War II male soldiers to civilian life and the concomitant return of many women to the domestic sphere.

The growing educational advantage of women over men at the bachelor's and master's levels has been attributed to different factors. Some observers interpret it mostly as a sign that educational environments have become friendlier to girls than to boys, and conclude that educational systems have overcorrected gender asymmetries. Alternative explanations for the lower participation rates of men in higher education are that it is easier for them to attain good paying jobs with lower levels of education than women, that as more women enter the labor market they realize they need academic credentials, and that to compete with men for jobs of comparable pay, women usually need higher levels of education. As shown in Table 2, at any level of education, women earn less than men and women must have at least two more years of education to earn as much as men.

Table 2

*Annual Median Medium Earnings of Full-time, Full-year Wage and Salary Workers, Age 25-35, Educational Attainment and Sex, 2010*

Sex	Less than High School Completion	High School Diploma or Equivalent	Some College	Associate Degree	Bachelor's Degree	Master's or Above
Male	24,000	32,800	37,900	39,900	49,800	64,200
Female	17,800	25,000	29,500	34,700	40,000	49,800

*Source:* IES, 2012.

### Field of Study Choice

In the early 1970s, many colleges and universities required women to have higher test scores and better grades than men to gain admission, and most medical, veterinary, and law schools had admission quotas limiting the number of women to 15 or fewer per school (Eisenmann, 2007; NCWGE, 1997; Sandler, 2007; University of Pennsylvania Law Review, 1976). Married women were not accepted in schools of nursing and men were discouraged from applying to this field (OCR, 1997). This situation changed dramatically after Title IX.<sup>18</sup> After Title IX removed any quotas that had been limiting women's access to fields of study, their enrollment in law programs grew from 3% in 1970 to 40% in 2005 and 47% in 2010, and in medicine from 10% in 1970 to 48% in 2007 although it declined slightly to 46% in 2012.

<sup>18</sup> It should be noted that similar sex-segregation norms functioned at the high school level, with girls not allowed to take courses such as shop and carpentry. While female students have now access to all vocational fields, career and technical education choices have maintained a lopsided gender balance, with very small proportions of young women in heating/refrigeration, welding, electrical, and plumbing programs (NCWGE, 2008).

The selection of disciplines at the bachelor's level shows a considerable increase of women in the natural and biological sciences, business management, and engineering, though a stark underrepresentation of women remains in engineering and computer science. Women's presence in education and health has continued to increase, and they have also registered notable increases in attaining first-professional degrees, particularly in dentistry, law, and medicine, moving from an average of 4.7% in 1970 to 43.3% by 1997 (IES, 2007). Nonetheless, the persistent clustered participation of women by field of study and their low doctorates in fields related to science and technology (such as physical science and engineering) suggest that the educational system has not yet been able to modify ingrained notions of femininity and masculinity (see Table 3).

Table 3

*Percentage of Women Recipients of Doctorates by Broad Field of Study, 1972-2008*

Field of Study	1978	1983	1993	2003	2008
All Fields	27.0	33.7	38.3	45.4	46.1
Life sciences	22.9	30.9	41.9	48.3	52.9
Physical sciences	10.4	13.9	20.8	26.5	27.9
Social sciences	31.0	39.8	48.8	55.5	58.4
Engineering	2.2	4.5	9.3	17.3	21.5
Education	39.7	50.4	58.8	66.1	67.1
Humanities	37.7	43.3	47.3	50.6	52.2
Other fields	20.5	29.4	36.1	44.9	48.7

*Source:* NSF/NIH/USED/USDA/NEH/NASA, 2008, cited in NSF, 2008.

Cultural scripts and ideology render gender transformation difficult, often being defended even by those who stand to gain from change. Data for 29 countries, both developing and industrialized (some of which have adopted non-discriminatory sex policies), covering the 1965-1990 period, show a tendency for women's choices to be circumscribed to the arts, the humanities, and the social sciences, avoiding the physical sciences, computer sciences, and engineering (Bradley, 2000; Charles & Bradley, 2002). Another study, based on a sample of 14 OECD countries, found that gender is a significant determinant of field of study, after controlling for individual characteristics such as ability and family background (Flabbi, 2011). This is strong evidence that symbolic conditions are not significantly altered by anti-discriminatory legislation and that, therefore, a state seriously committed to change would need to explore additional measures.

A juxtaposition of the low participation of women in the physical sciences and engineering with the fact that in 2010 full-time, year-round working women earned 77 cents for every dollar earned by equally qualified men (U.S. Bureau of the Census, 2011) confirms the persistent stereotyped notions of how women and men are supposed to fare in the labor force (and perform at home)—again, images that educational attainment has not yet been able to substantially modify.

### Theorizing State Responses to Gender Issues

Title IX can be assessed at two levels: The first examines how the state went about framing and implementing Title IX's anti-discriminatory objectives. This requires judging Title IX on its own terms—as an exclusively anti-discrimination measure. The second level considers it as a federal government response to gender inequality and examines it in the light of state theories to explain the extent to which Title IX, given its scope, could attain changes in the social relations of gender.

## Implementing Anti-Discrimination Law

Over the life of Title IX, the legislature has oscillated, reflecting the influence of a varying composition and set of external pressure groups. On the one hand, it enacted Title IX and later overrode a veto by Presidential Reagan, thereby defending Title IX objectives in the face of the 1984 Supreme Court interpretation that would have considerably narrowed its application. On the other hand, it did not fund the required increase of OCR staff for stronger enforcement of Title IX, did not support complementary legislation to help develop gender-sensitive materials and training, and did not undertake serious monitoring of Title IX problems and accomplishments over time. The picture of the state reflected in legislative behavior shows political authorities ostensibly in opposition to discriminatory sex practices but less interested in providing effective means to do away with them.

In the case of the judicial branch, except notably for the Supreme Court's debilitating interpretation expressed in *Grove City College v. Bell* in 1984, legal decisions by the highest court have in general tended to expand the scope of the law and to facilitate the use of legal means to seek redress (Van de Graaf, 1983). Such legal decisions made it possible for individuals to seek redress against discrimination without first having to pass their complaint through their educational institutions, made it possible to receive financial compensation (which increased the appeal of the law to plaintiffs' lawyers), recognized sexual harassment as a form of sex discrimination, and protected those protesting discrimination from retaliation. The judicial branch emerges as a state expression that has generally endorsed gender equality and sought to bring its many dimensions into congruence with changing times and needs.

The source of the most varied state approach to Title IX throughout its existence has been the executive branch. While OCR has acted relatively evenly over the years, responding to judicial interpretations of Title IX by updating regulations through various "guidance" documents, the more visible part of the executive branch—the presidential office—has undergone considerable oscillation in its position, depending on the political philosophy of the office holder at the time. When Republicans have occupied the executive office, their influence on Title IX has been mostly negative, especially through lax implementation, the challenge to sports regulations, and reinstatement of single-sex education. Democrats have encouraged greater enforcement of the law by the bureaucracy, although they have made no major effort to increase its financial support or explore the implementation experience to identify issues or processes that needed to be corrected. In the end, the limited implementation of Title IX suggests a state response that was meant to be more symbolic than a serious effort to eliminate sex discrimination practices.

## Changing the Social Relations of Gender

Moving to the second level of analysis, how might Title IX as a gender equality measure by the state be assessed? Considering the higher education gains by women over the past 40 years, progress has been dramatic in an institution previously marked by admission ceilings for women in certain professions. Yet in several other fields crucial to modern society women have not made comparable progress. This suggests that women's choices of field of study are social products and that many forces—beyond those of discrimination in educational institutions—operate. So the question is, could the federal government have attempted something more comprehensive than anti-discrimination? It is too often forgotten that discrimination is a manifestation of deeper causes, some of which involve existing social institutions. Title IX legislation has remained far from engaging in a sharper understanding of gender inequality and its potential redress.

In capitalist societies, liberal ideologies of social change predominate. Such ideologies assign great importance to *individual* freedom. Anti-discriminatory measures in the context of a liberal state

are put in place to enable individuals to pursue their personal ambitions. The liberal state seeks to treat each citizen with equal concern and respect, and give him or her equal opportunity (Rhode, 1994). For their part, liberal feminists press the state to engage in anti-discriminatory sex legislation for women to achieve equality with men. As shown earlier, the presence of women in the federal legislature was essential to introduce the problem of women's discrimination in education for consideration and to have its solutions enacted into law.<sup>19</sup> It is easier for liberal feminists to consider using public policies than it is for radical, socialist, or anarchic feminists (Jessop, 2008), but this does not mean that liberal feminists totally trust the state to engage in gender transformation. This is reflected in the organizations they have set up to monitor state action in education—including Title IX—such as the National Coalition for Women and Girls in Education, the Women's Equity Action League, and the Project of Equal Education Rights.

The evidence throughout the 40 years of Title IX supports the view that the state is not unitary (Rhode, 1994). The three institutions under study exhibited differential behavior and there is no evidence of substantial coordination; on the contrary, at various times, they have been at odds with each other.<sup>20</sup> However, at a higher level of abstraction, the behavior by the U.S. federal government can be seen as one that protected pervasive patriarchal norms by not challenging them. Assumptions about the nature of a problem affect the policy solution and the logic of action advanced by a policy (McLaughlin, 2006). In assessing gender policies, Mazur (2002) asks, "Does the policy formally acknowledge the gendered nature of social problems and design solutions to redress gender-based inequities?" A similar point is made by Arnot and Weiler (1993) when they refer to "silences" within policy discourse. Applying Mazur's question to Title IX, it is evident that the state framed gender in terms of one single dimension—that of sex discrimination.

Complying with its mandate as a democratic state, accountable to its respective constituents, the U.S. Congress enacted legislation that declared its commitment to sex equality. However, Title IX addressed only sex discrimination, not the gendered structures that support power and status asymmetries between women and men. According to Gramsci (1971), the creation of social consensus is a mechanism by which relations of domination and subordination do not have to be imposed; they simply become "common sense." Even in the context of changing our understanding of gender in society, what prevails is the "common sense" of "improvement" rather than drastic change. This was very much foreseen in Gramsci's concept of hegemony, or the dominance of the subordinate classes through persuasion. The foundation for Title IX was brought to the state by the women's movement, which continued to press for its adoption. With great reluctance and only after considerable debate and modification, the state was able to accept Title IX because it could be framed as a law to target "sex discrimination," rather than one that would treat the more complicated issue of gender asymmetries. This meant that gender equity would occur in very limited ways—nothing to change in terms of institutions or other social structures, only to modify certain individual practices at educational institution levels.

It can be argued that the presence of anti-discriminatory sex policies contribute to the widespread notion that democratic and egalitarian practices exist in society, even though such

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<sup>19</sup> As Mutari (2006) observes, because of their life experiences, women tend to be more sensitive than men to social conditions. Women's organizations have played major roles in struggles to secure child labor laws, protective legislation, anti-poverty and other social welfare programs, equal pay laws, equal employment opportunities, affirmative action, family and medical leave, and regulations requiring equal treatment for part-time workers.

<sup>20</sup> From the point of view of democratic theory, the three branches should be independent in order to engage in "checks and balances." From the perspective of policy implementation, the three branches need to coordinate their actions. There is here an unresolved tension in democratic theory.

practices are insufficient to foster deeper social change. Structures of disadvantage are embedded in norms, habits, symbols, and assumptions that underlie institutional rules and procedures, which function independently of individual intention (Young, 1990). Anti-discriminatory measures do not consider the variety of contexts and constraints that shape ostensibly individual choices. Title IX protected individuals and held organizations liable for individual practices or institutional practices against women. It focused on issues of educational access and an important aspect of the educational experience—that of vulnerability to sexual harassment—but it did not call for an institutional reconfiguration to challenge gender. As the product of a patriarchal state itself, Title IX probably could not have gone farther to challenge the dense, deeper, and more subtle mechanisms that create and reproduce gender. Title IX conceptualized schooling as an apolitical institution, giving lawmakers a way of framing regulations in a way that could mask gender-based problems (Marshall, 1997b). It avoided dealing with questions of knowledge content by explicitly exempting textbooks and curricula from the regulations arena. It skirted a more direct and effective approach of creating new mentalities when it failed to provide widespread and specific gender-awareness training for teachers and administrators. It did not recognize patriarchy as a social structure with multiple institutions supporting it.

Title IX did not confront the issue of gender socialization (which includes the sex biases and sex-based expectations of students, staff, parents, and community) (Rhode, 1990). While the law increased awareness of discrimination so that more men and women engaged in corrective actions, by not intervening directly in gender relations, the liberal emphasis of Title IX sought to ensure individual rights, not to modify collective conditions (i.e., seeing women as a group and gender relations as a pervasive social dynamic). This should not be surprising because, as an institution of social regulation, the state cannot engage in drastic transformations but rather endorse social models of regulation that complement market forces (Jessop, 2008).

Leaving textbooks and curricula out of the parameters covered by Title IX meant that the ideological messages and practices of schooling and society remained beyond consideration. Without explicit counter-education that challenges conventional gender norms, students fall into the dominant gender norms. Changing the classroom and school climate (as well as broadening career opportunities for girls and women and expanding their athletic interests) requires going beyond anti-discrimination measures and moving into the development and deployment of anti-sexist measures, which in the educational context implies the active development of new educational materials and the recurrent provision of gender-sensitive training for those teaching and administering positions in educational institutions. The state, through Title IX, sought equality of treatment—a form of equal opportunity—but it did not challenge the deeper roots supporting ideologies that shape conceptions of gender through the knowledge and experience gained in schooling. In this respect, Gramsci's assertion of the role of ideology in “naturalizing” significant aspects of social life is validated by Title IX's existence and evolution.

Sports has been the most contested area regarding Title IX—so much so that the majority of the American population believes that Title IX regulations dealt only with sports. To some extent, sports became a contentious issue due to the decreased funds for male athletics, which was an unintended effect of educational institutions having to make room for girls' sports. The reason provoking the debate here is economics. But it also must be recognized that equalizing the participation of women and men in sports threatens deep conceptions of masculinity and femininity. As Connell remarks, “Sport isn't just a capitalist institution, it is also a key cultural site for the articulation and circulation of hegemonic masculinities. Very specifically, it is an institutional setting that creates links between the exemplary masculinities of the footballers, basketballers, etc., and the ruling-class masculinities of the businessmen. The coaches, who are the bearers of opposition to

gender equity, are, in Gramscian terms, organic intellectuals of patriarchy” (2010, personal communication).

Those who hold a positive view of the impact of Title IX concentrate on its impact on girls and women through sports, noting that it enabled them to occupy spaces of leadership and enjoyment previously denied to them thus producing an important cultural shift. These are extremely important contributions; here what I argue is that gender mentalities and daily practices have not been changed or challenged sufficiently by Title IX to empower women into positions of recognition, authority, and wealth comparable to those of men.

## Conclusions

Explanations of state responses to gender issues must link ideology to policy design and policy implementation. The use of state theory to account for the framing and implementation of political agendas on gender helps us understand the potential and limits of state action. This study has shown that the state is gendered, but *unevenly* gendered. The study found that several degrees of patriarchal response were in effect in the executive arm of the state, with Democrat administrations displaying conciliatory efforts and Republican administrations more oppositional, a behavior that might reflect different masculinities among political elites (Connell, 2010). The legislature supported Title IX much more at the symbolic than at the financial level, while the judicial power overall defended and even expanded its reach.

When trying to explain the logics of gender policy change by the state, Htun and Weldon (2010) identify two competing logics: (1) rationales that seek to improve the status of women as a group or alleviate gender-based class inequalities, and (2) rationales that challenge perennial traditions (e.g., organized religion) of major cultural groups. Htun and Weldon call the former a non-doctrinal policy and the latter a doctrinal policy, and predict that doctrinal policies will be extremely difficult to enact and implement. The logic in Title IX fits into what could be termed a non-doctrinal policy because antidiscriminatory laws prohibit a behavior but do not require institutions to be fair in a broader sense. However, even within this relatively “easier” rationale, it is clear that conservative groups and individuals within the state may still express strong reluctance to implement even a modest legislation in favor of equalizing gender relations.

Robert Post, a recognized legal authority on such issues, argues that “antidiscrimination laws seek to neutralize widespread forms of prejudice that pervasively disadvantage persons based upon inaccurate judgments about their worth and capacities” (2000, p. 8). He remarks that antidiscrimination proposes “blindness” in that it seeks to render social markers such as race and gender irrelevant. He urges a more sociological approach to societal change, to transform rather than transcend existing practices regarding race and gender, and to adopt a position that would go beyond attacking “stereotypes” and engage instead in efforts to “break down old patterns of ... segregation and hierarchy” (Post, p. 38).

At the highest level of aggregation—the state as an entity—expected behaviors occurred. As might have been predicted by Gramsci, the state did not confront ideological issues that would have required a much more proactive and challenging attitude. Title IX as an anti-discriminatory measure was designed to protect individuals from the prejudicial practices of others. As a narrow anti-discriminatory policy, Title IX did not acknowledge the full gendered nature of social problems and, consequently, fell short of a solution to current gender-based inequities. But it was precisely that which made it palatable to lawmakers and acceptable for adoption by the state.

Even within its narrow anti-discriminatory parameters, not only was Title IX allocated inadequate funding for proper enforcement, but the gradual cutbacks in complementary federal programs, particularly WEEA, weakened the main structure to support equity efforts. Over the

years, legislation has remained stagnant by framing gender issues basically as a problem of inappropriate behaviors (i.e., discriminatory practices). No efforts have occurred to introduce such concepts as patriarchy, subordination, recognition, and redistribution, key issues in contemporary feminist thinking. The unwillingness to learn from feminist theory can be understood as a resistance on the part of the state to alter gender relations. It can also be taken as evidence of a strong reluctance to give up its cultural and political hegemony (Althusser, 1971; Gramsci, 1971). In short, a democratic patriarchal state will make concessions but is not likely to question itself.

Title IX gives us several lessons about the possibilities and limits of state action in gender transformation. First, legislation targeting sex discrimination is critical to bringing legitimacy to gender issues and yet it constitutes only an initial first step in seeking deeper changes. Anti-discriminatory legislation corrects individual practices but there is considerable distance between the avoidance of negative behaviors at individual levels and the creation of equity at institutional and structural levels. The educational effort cannot be reduced to “removing obstacles” but must also involve creating new collective mentalities, for while gender is internalized at the individual level, it is also culturally embedded and normalized through myriad social institutions. Second, to change a major social pattern such as career choices by women and men it is indispensable to have comprehensive policies that interlink such areas as domestic labor at home, family leave policies, reproductive policies, and compatibility of family structures and labor market. Third, the state, even in widely accepted democratic contexts such as the U.S., is reluctant to engage in altering the function of gender in society, despite the narrow parameters it sets. Title IX did move forward, but slowly and through a number of setbacks and weak enforcement. Fourth, change in the social relations of gender cannot rest merely on the *enactment* of legislation. Subsequent state behaviors must be constantly *monitored* and, if necessary, *countered* by the feminist movement. And this is perhaps the greatest challenge. Title IX has been monitored by the women’s movement and the state has been challenged at times. But the state and the women’s movement are two social actors with very different access to resources. Less powerful, but constituting half of the population, women can gain great leverage through collective action. Questions that invite reflection are: What political alliances and efforts remain to be explored in the effort to create gender solidarities across social classes and ethnicities? What measures can be taken to create greater intergenerational action within the women’s movement? And last, but not least, how can women in higher education settings increase their gender awareness and knowledge so that they can strengthen their ties with women actively seeking to affect the state?

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# education policy analysis archives

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