

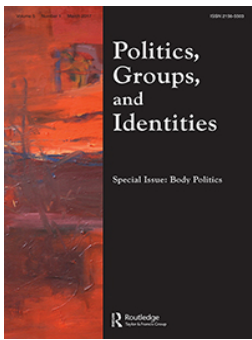
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"Female athlete" politic Title IX and the naturalization of sex difference in public policy

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RESEARCH ARTICLE



“Female athlete” politic: Title IX and the naturalization of sex difference in public policy

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ABSTRACT

How did the passage of Title IX of the Education Amendments of 1972 politically define the “female athlete?” Since the mid-1970s, debates over the application of policy to athletic domains have been profoundly contentious. In this paper, I trace the policy deliberations concerning equity in athletics throughout the 1970s and explore the implications for our political understandings of what makes certain bodies “athletes” versus “female athletes” in contemporary sports and politics. I draw upon literatures from political science, sport sociology, and gender studies, and rely on archival methods to trace the process through which policymakers wed biological sex to policy implementation. I argue that Title IX unexpectedly became a central site for the construction of binary sex difference through three specific means: (1) conflict over the *understandings* of the role that biological sex should play in congressional debate before Title IX’s passage, (2) conflict over *application* of sex to policy design in light of perceived capacities of women’s bodies, and (3) *naturalization* of sex-segregated policy design which defines the relationship between sex and the physical body. The intersectional implications of Title IX’s history demonstrate that policy has not yet fully ameliorated the raced, classed, and heterosexist inequities haunting institutions of American education.

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“These are the bodies that Yale is exploiting”: protest and bodies in Title IX

When the Yale University Women’s Crew team entered the office of their Director of Women’s Athletics in March of 1976 they were stripped naked to the waist. Written across their chests and backs was the text: “Title IX” (Yale Women Strip To Protest a Lack Of Crew’s Showers 1976). The text referenced the sex equity provision of the Education Amendments of 1972 which secures women equal treatment to men in American educational institutions. The rowers were protesting the conditions under which they trained. Yale’s boathouse was located miles from campus and although it contained showers and a locker room for men, the women’s team lacked access to a comparable facility. Rowing left the athletes soaked, both from the sweat of their efforts and the splash off their oars. Without a locker room, the women were made to wait on the unheated bus for their ride back to campus after practice until the men completed their warm, post-practice

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showers. Several women fell seriously ill during the New England winter as a result of their training conditions; their protest was designed to highlight the consequence of their unequal treatment. They read aloud a statement written by team captain Chris Ernst which began, “These are bodies that Yale is exploiting ...” (Gilder 2015, 54).

The Yale women centered their political critique on the embodied concerns of unequal treatment, mobilizing Title IX as evidence that they deserved a healthier athletic training environment. It was the physical body required of athletic pursuits to which, they claimed, Title IX offered particular protections. They were athletes, *female athletes*, contending that their university was treating them as though they were unworthy of the same support received by their male colleagues. This, they argued, constituted sex discrimination; the athletes’ protest made national news in the *New York Times*, claiming their bodies for Title IX (Yale Women Strip to Protest a Lack of Crew’s Showers 1976).

Since the mid-1970s the policy’s applications to sports have been the most profoundly contentious, more so than provisions regarding graduate and public university admissions, or sex equity in college classrooms (e.g., Hanson, Guilfooy, and Pillai 2009; Hogshead-Makar and Zimbalist 2007; Rosenthal 2008). But how has a law designed to protect against sex discrimination and differential treatment in educational institutions come to foreground bodies as an element of politics? And with what consequence for political identity has the “body” emerged as a central category of Title IX? In this paper, I trace the implications of debates over policy design for our political understandings of what makes certain bodies “athletes” – and others “female athletes” – in contemporary sports and politics.

I argue that Title IX unexpectedly became a foremost site for the construction of bodily difference through policy design and implementation via three political processes: (1) conflict over the *understandings* of the role that biological sex should play in congressional debate before Title IX was passed, (2) conflict over *application* of sex to athletic policy in light of perceived capacities of women’s bodies, and (3) *naturalization* of sex-segregated policy design which defines the relationship between sex and the physical body. My argument engages multiple literatures on policy feedback, the construction of political identity, sociology of sport, and gender studies which have yet to consider this politicization of the “female athlete” identity, nor the implications of US civil rights policy approaches to sex non-discrimination more generally. I draw on archival sources to trace the process through which policymakers wed purportedly embodied, biological sex to policy design.

“Female athletes”: sex and public policy¹

Key to understanding the relationships among policy, sex, and sports are the political debates over sex discrimination in education from 1970 to 1979. During these years, policymakers designated *women* as a target population of non-discrimination policy. *Women athletes*, in contrast, were targeted by policy only when policymakers designated athletic programs of American schools and colleges within Title IX’s domain (Edwards 2010). *Women athletes* became central figures in Title IX’s implementation because they had to claim a right to sport (on proliferating numbers of “women’s” teams) only by also claiming their “female” bodies. This unambiguously distinguished them from their “male” counterparts under Title IX’s policy regime. Policy draws this distinction by

endorsing *sex-segregated* sports, and women-specific athletic teams, long established as hallmarks of policy design (McDonagh and Pappano 2007). Consequently, “female athletes” have become a fulcrum for embodied government regulation.

Implicitly, however, Title IX’s “female athletes” are thus constituted outside the andro-centric category of “athlete.” In 1979, the Office for Civil Rights (OCR) published Title IX’s “Policy Interpretation on Intercollegiate Athletics” which has, in the majority of contexts, instructed schools to create “women’s” teams where they had been historically lacking, ensuring that women compete in separate competitive venues from men on “men’s teams” (OCR 1979). Our colloquial understandings of Title IX rarely problematize the policy’s more complicated legacies, including the promotion of sex-conscious approaches to athletic competition through sex-segregated teams, nor the resulting codification of embodied sex difference in policy design (see, as exceptions, McDonagh and Pappano 2007; Milner and Braddock 2016). Rather than liberating women from antiquated notions of their physical limitations, policy design has subtly played a role in legitimizing outmoded understandings of male physical hegemony.

This article excavates policy history in order to explicate the methods of political identity formation turning first to several streams of scholarship that inform my approach to analyzing Title IX. Next, I use archival evidence to illustrate the three sequential processes that linked the body to policy and identity. Finally, I offer some implications of reifying the sex binary for our evaluation of policy.

Policy, identity, and the sporting body: multiple streams of scholarship

In this section, I bring into conversation cross-disciplinary literatures on the history of Title IX and sex non-discrimination policy with political science literature on the formation of political identity. My interest in the embodied politics of the “female athlete” requires additional engagement with scholarship on the sociology of sport and feminist scholarship on gender and the body. Reading across these literatures renders open questions about politicized identity and the “female” body within public policy.

Policy history literature and the dominant narrative of Title IX’s success

First, it is essential to articulate the ubiquitous narrative that defines our shared sense of Title IX’s meaning both within and beyond scholarly literature. The 1972 passage of Title IX expanded US civil rights law to protect women in education from entrenched practices of discrimination (Costain 1979; Rose 2015). Lawmakers modeled the text of the law around Titles VI and VII of the Civil Rights Act of 1964, calling for non-discrimination policy in federally funded educational institutions “on the basis of sex.” Although the congressional text did not reference athletic programs, debates over subsequent policy design swiftly coalesced around the application of the law to sports (Edwards 2010; Fishel and Pottker 1977; Gelb and Palley 1982). Over the ensuing 44 years, the implementation of public policy has dramatically re-shaped American athletics at both the high school and college levels (Acosta and Carpenter 2014; Stevenson 2007).

Policy design, which instructs colleges and universities to create equitable opportunities for both sexes in order to reverse practices of women’s exclusion, has engendered first- and second-order implementation effects. Both interest groups and scholars argue that Title

IX's implementation generated the primary, intended effects of increasing women's athletic participation and access to scholarships and resources of college sports (Brake 2010; Kane and Ladda 2012; NCWGE 2012; NWLC 2012; White House 2012).² Women and men now partake in organized athletics in far greater numbers than they did in the early 1970s (NCAA 2016).³

This proliferation in formal athletic participation has run parallel to (and, to some extent, fueled) an intense cultural interest in sports, as well as increased educational expenditures directed at athletics (Clotfelter 2011). Since 1972, women's college athletic participation has expanded 12-fold, an evolution facilitated by the structural growth of thousands of new teams for American girls and women (Acosta and Carpenter 2014; NCAA 2016). Similarly, girls' high school athletic participation has increased substantially. Half of girls graduating from American high schools now have considerable athletic experience (NFSHSA 2016; Stevenson 2007) as compared to only one of 12 girls in 1971 (NFSHSA 2015).

In addition to these direct consequences, sociologists, economists, and many feminist interest groups suggest second-order, spillover effects of policy implementation. Girls with athletic backgrounds are likely to enroll in college (Shifrer et al. 2015), participate in the workforce as adults (Stevenson 2007, 2010), and enjoy better, long-term health (e.g., Kaestner and Xu 2010; Staurowsky et al. 2015). The implementation of policy changed educational and sporting institutions; over time, the girls and women who inhabit these altered institutions are themselves transformed.⁴

"Feedback" literature and the making of policy constituencies

Despite the evidence regarding Title IX's transformative *social* effects, the *political* effects of Title IX, including the emergence of protests like that at Yale, remain under-explored.⁵ In other policy domains, scholars of American politics concerned with identifying how public policy makes politics focus increasing attention on the relationships among policy, social groups, and political identity. Schattschneider (1935), Lowi (1964) and Wilson (1974) famously argue that public policies of various types generate distinctive patterns of political mobilization. Their studies inspired a generation of scholars investigating questions of how policy "feeds back" into the political arena, reshaping ensuing policymaking and constituent mobilization (e.g., Campbell 2012; Mettler and Soss 2004; Skocpol 1992).

Policy and legal scholars argue that legal regimes, policy design, and processes of group identification intersect to cultivate feedback effects for political identity among policy recipients (e.g., Bruch, Ferree, and Soss 2010; Soss 1999). Following Althusser's (1970) contention that law "hails" groups into being, scholars show that policy can engender group identification among previously inchoate or apolitical social groups, shaping the "social construction of target populations" (Schneider and Ingram 1993, 1997).⁶ Policy, in other words, may have political effects that can reshape future politics at both the institutional and mass levels, inspiring changes to individual and group consciousness (Béland 2010; Campbell 2012; Mettler and Soss 2004; Pierson 1993). Additionally, policies can, "set political agendas and shape identities and constituent interests. They can influence beliefs about what is possible, desirable, and normal" (Soss and Schram 2007, 113). Political identity can be a key element in understanding how political change occurs (Strach 2013).

Myriad applications of this “policy feedback” approach demonstrate that public policies across the spectrum can reshape their specific, intended constituencies (Campbell 2012). Retired Americans are politicized through Social Security (Campbell 2003), post-war education benefits conferred by the G.I. Bill shape the activism and civic engagement of World War II veterans (Mettler 2005), and encounters with the welfare state confer perceived status, informing recipient population opinions on the nature of government (Soss 1999). Although public policy does not invariably lead to positive feedback effects (Patashnik 2008; Patashnik and Zelizer 2013), there is ample evidence that policy design and implementation frequently re-make constituent political interests.

Anecdotally, scholars hypothesize Title IX’s function as a catalyst for “female athlete” political identity formation. Mettler and Soss (2004) reference Title IX as an example of public policy which educated women on their expanding set of political rights. Anne Norton conjectures that “decisions on equal protection and Title [IX] have encouraged, and in some cases created, populations of female athletes and have given more salience to that identity” (Norton 2004, 58). John Skrentny argues that policy “helped create hundreds of thousands of women athletes” (Skrentny 2002, 231). But these examples are merely suggestive; no scholarship to date has formally analyzed the relationships among civil rights policy, athletes, and politics.

Sociology of sport and the literature on cultural gender politics

Instead of a scholarly emphasis on analyzing politics, the evolving cultural status of the “female athlete” has emerged as a focal point for investigation. Scholars investigating social change in light of Title IX conclude that policy produced certain uneven outcomes (see one review of the literature in Knoppers and McDonald 2010). On the one hand, “female athletes” can now, more than ever, participate in sports historically reserved for men (NCAA 2016). However, these teams are rarely sex integrated and often reinforce norms of male physical superiority, even imposing rules that penalize physical contact between players when women play sports such as hockey and lacrosse while celebrating such aggression in the men’s game (Theberge 2000). Sociological approaches highlight that sex-segregated sporting practice can reify false notions of women’s physical inferiority compared to men’s “natural” strength (Fields 2004; Ring 2009).

Concurrently, women athletes must negotiate paradoxical gender expectations and often face pressure to downplay their muscled strength in service of more normatively gendered femininity (Krane et al. 2004; Theberge 2000). Sociologists of sport identify diverging struggles for men and women athletes, most pronounced in sporting settings where gender expectations pressure athletes to conform to either feminine or masculine ideals. Women’s ice hockey (Theberge 2000) and men’s figure skating (Adams 2011) each challenge the naturalized association of masculinity to athleticism. Although these sports may hold a key to decoupling the associations between physical strength and male supremacy, oppressive gender expectations continue to limit both women and men, even in light of policy-driven change. This literature focuses on the root of this paradox as cultural or social rather than political (Lorber 1994).

The spotlight on culture indicates that the purported “revolution” in women’s sports produced contradictory outcomes. Although policy has conditionally improved women’s access to sport, it has made limited durable modification to the long-standing

double-standards for “female athletes” compulsory heterosexuality (Wright and Clarke 1999) and semi-obligatory adherence to traditional gender norms (Cooky 2009; Dworkin and Messner 1999; Messner 1988). Women athletes continue to suffer from a dearth of media coverage as well (Cooky, Messner, and Musto 2015). Not only do women’s sports consistently receive a dismal share of the total media attention, their lack of coverage remains largely unchanged over time despite the significant increase in their athletic participation. The absence of routine media coverage sends a troubling message that women’s athletics are less exciting, less competitive, and less worthy of resources than their male counterparts (Cooky, Messner, and Hextrum 2013).⁷ Consequently, we now hold competing narratives of both transformation and stagnation in Title IX’s social and cultural legacies.

This literature also makes clear that “female athlete” *bodies* are a part of what constitutes the fraught cultural politics of gender in sport (Dworkin and Messner 1999; Heywood and Dworkin 2003). Women’s bodies perceived to be suspiciously strong can be sex-tested at the Olympic level (Karkazis et al. 2012; Pieper 2016), and the pervasive, homophobic anxiety regarding lesbianism leads many women athletes to “apologize” for confounding traditional femininity by performing hyper-heterosexuality while in the public domain (Festle 1996; Griffin 1998). These sociological studies map rocky terrain for the role of athletics in reshaping gender roles and expectations while also hinting at a fundamental disconnect between the methods of policy design and implementation, and the full achievement of equity promised under Title IX. Again, the role public policy played in constituting these cultural politics remains under-analyzed.⁸ This scholarship suggests the need to engage policy studies with the cultural scaffolding that reinforces our associations among gender, women, and the body. I turn next to the expansive, feminist stream of literature on this topic.

Feminist scholarship on the body

Bodies, and women’s bodies in particular, have been a significant concern in feminist scholarship for decades (e.g., Fausto-Sterling 2000; Young 1980, 2002). Disentangling the notion of binary sex from the body has been a central aim of feminist theory since DeBeauvoir (1953) famously argued that one is “not born a woman,” theorizing the relationship between bodies and the gendered self. This conversation also thrives in Black feminist thought, where intellectuals have long articulated the relationships among systems of domination, embodiment, race, and sex (e.g., Cohen 1999; Collins 2000; Hancock 2016). Feminists consistently call for greater attention to the ways in which culture, science, politics, and art shape the body itself (e.g., Bordo 1993; Dietz 2003; Moi 1999; Price and Shildrick 1999).

Work on the relationship between public policy and bodies suggests that direct and indirect regulation of bodies is a principal concern in the politics of reproduction (Luker 1985; Roberts 1997), birth control policy (Gordon 1990), sex education (Irvine 2002), disability policy (Stone 1984), and medical science (Fausto-Sterling 2000). Although the body is fundamental to the sporting experience, we do not yet understand how Title IX, a civil rights policy originally aimed at ending sex discrimination in education, came to shape a set of embodied politics wherein “female athletes” could claim their bodies for Title IX.⁹

Methodological approach to studying Title IX's history

In order to address these gaps and conundrums in research, I focus on the 1970s, particularly the congressional debates preceding the passage of the Education Amendments of 1972 through the finalization of the 1979 policy interpretation (OCR 1979). During this period, stakeholders within the US Congress and the federal bureaucracy debated the methods for policy interpretation and design. I draw on primary and secondary historical data sources from the archives of the US federal government (including congressional hearings and floor transcripts, papers at the Richard Nixon Presidential Library, the Gerald R. Ford Presidential Library, and the Jimmy Carter Presidential Library), the private papers of the National Collegiate Athletic Association (Indianapolis, IN), as well as the women's history papers in the Sophia Smith Collection (at Smith College), and the Schlesinger Library on the History of Women in America (at the Radcliffe Institute for Advanced Study). Taken as a whole, these sources reveal an unlikely history.

Although others have detailed the political battles over creating policy implementation guidelines in the 1970s (Edwards 2010; Rose 2015; Skrentny 2002; Suggs 2005; Ware 2011), my work explores the under-appreciated implications of these political battles, particularly as they pertained to the question of sex integration. I aim to join the conversation started by other scholars about the consequences of segregation (McDonagh and Pappano 2007; Milner and Braddock 2016), focusing herein on the history of policy debates between policymakers and activists. By examining disputes over the implementation of segregationist policy in athletics, I argue that political conflict created an interlocking relationship among biological sex, physical capacity, and political identity. These conflictual political processes have unexpectedly cemented the body as a central category of Title IX. Next, I present my original findings from this archival research, periodizing the events of the 1970s in order to illustrate three means through which policymakers constructed bodily difference through: *understandings* of sex as a biologic binary, the *application* of these beliefs to policy debates, and the *naturalization* of binary sex into policy design.

Conflict over *understanding* biological sex in policy creation: 1970–1972

When congressional debate on the topic of sex discrimination in education brought the question of women's unequal treatment in education to the national stage, sports were neither dominant, nor wholly absent as Congress considered the formal legislation that would become Title IX.¹⁰ Senator Birch Bayh (D-IN) and Representative Edith Green (D-OR), together with a small cadre of elite feminist activists,¹¹ carefully assembled a “stealth” (Rose 2015, 167) coalition which aimed to incorporate sex non-discrimination language in a legislative amendment to the Civil Rights Act of 1964.¹² Dr Bernice Sandler, a pre-eminent activist in developing Title IX, recalled that Green intentionally attached the law to an omnibus education bill, noting she “thought that if the bill drew attention, it would be saddled with amendments, or worse, killed altogether” (Wulf 2012). Deliberation in the Senate signaled the political struggle over interpretation and implementation that would follow.

Central to the limited debate that transpired before Title IX's passage were concerns about sex integration. At issue was how sex non-discrimination law might require men and women to be treated, particularly within the historically androcentric domains of

military institutions and athletic programs. Senator Peter Dominick (R-CO) raised pointed questions about whether policy might obviate sex-segregated locker rooms, showers, or athletic teams, while Senator Strom Thurmond (R-SC) voiced concerns over the repercussions of potential sex integration. Their statements forced Bayh to go on record to moderate their concerns:¹³

These regulations would allow enforcing agencies to permit differential treatment by sex only [sic] – very unusual cases where such treatment is absolutely necessary to the success of the program – such as in classes for pregnant girls or emotionally disturbed students, in sports facilities or other instances where privacy must be preserved (118 U.S. Congressional Record 5807, 28 February 1972).

Senator Bayh assumed that sports – like pregnancy – invoked the female body in unique ways when he coupled anxieties over sports with concerns over pregnancy. Bayh implied, and assured fellow lawmakers, that the prevailing logic embedded in the realm of athletics is that of sex “difference.” He subtly reified the sex binary during these foundational debates, suggesting that biologic difference was relevant for policy-makers puzzling over incorporating women into male enclaves. The coupling of “females” in sports with pregnant female bodies suggested the belief that women’s bodies are not only different from men’s, they are also capable of fundamentally distinctive things (including giving birth) by virtue of biology.

By collapsing the capacities of pregnant female bodies onto proposed legislation for “*female* athletes,” Bayh posited sex as a marker for *female* bodies as those who require “special treatment” and a designated space separate from the men. Men remained marked as the natural heirs to athletic domains. This approach managed to silence the critiques of lawmakers hoping to use the threat of sex-integrated spaces to kill the promise of Title IX, but it simultaneously established a fraught legislative history which conceptualized and incorporated strict ideas about fundamental sex difference into the archive of policy.

Title IX’s feminist proponents, comparative outsiders in congressional lawmaking with the intended strategy to remain under the radar on this issue in the early 1970s, worked to downplay concerns about sex-integrated teams and locker rooms, neither affirming nor disputing Bayh’s protectionist logics during recorded debate.¹⁴ Although Sandler and her small cohort of activists anticipated that sex non-discrimination policy would be a thorny matter, their primary aim was to ensure that the law passed.¹⁵ The recorded debate around athletics indicated that the few lawmakers who were publicly debating the sex non-discrimination provision shared an *understanding* about binary sex difference which they inscribed in the legislative record. Opponents of sex equity provisions invoked the threat of integration as proof that the means of achieving sports equity were sufficiently preposterous to negate the need for any legislation at all. Proponents, publicly lead by Senator Bayh, called these threats a bluff, suggesting that the mechanisms for equity did not require the denial of sex difference. When President Nixon signed the Education Amendments into law on June 23, 1972, these limited conversations constituted the full trail of congressional intent for interpreting the sex non-discrimination provision in the realm of athletics.¹⁶ However, the content of discussions around athletics foreshadowed the debates about the *application* of sex to policy design that were to come.

Conflict over the *application* of biology to the capacity of “female” bodies: 1972–1975

This meager legislative discussion of Title IX’s application to athletics came to be highly consequential when the OCR in the Department of Health, Education, and Welfare (DHEW) took up the task of writing implementation guidelines in the summer of 1972.¹⁷ Without a robust trail of legislative intent on the means for implementation, OCR’s initial policy guidelines gave institutions little direction on the specific question of how to ensure equal athletic opportunities for girls and women.¹⁸ DHEW Secretary Caspar Weinberger suggested in a July 1973 memo addressed to OCR that women should be allowed a tryout for existing men’s “noncontact” teams, but women’s failure to make the existing “men’s team” did not also necessitate that schools establish a separate “women’s team” to meet women’s needs (Fishel and Pottker 1977, 109).¹⁹

There were several consequences of this working interpretation. First, the back-and-forth between OCR and Weinberger in the years following Title IX’s passage further demonstrates the application of a binary understanding of sex in bureaucratic debates. The debates increasingly employed the idea that women and men were “different” in terms of the way sex non-discrimination policy ought to engage their rights to sport on “men’s” versus “women’s” teams.²⁰ In the mid-1970s, bureaucrats invoked the congressional *understanding* of sex difference into policy *application*.

Importantly, the second-wave feminist movement was not yet a highly structured and institutionalized lobbying force on educational issues, neither embedded with state bureaucrats who might provide key information, nor (yet) capable of mounting a sweeping response to the bureaucratic debate on topics of athletics (Banaszak 2009; Goss 2012). In the months before and after Title IX’s passage the debate was largely restricted to within elite circles.²¹ Sandler and Margaret Dunkle, operating under the Project on the Status and Education of Women (PSEW), authored an important policy document on the topic of athletic equity in 1974.²² The paper, titled “What Constitutes Equality for Women in Sport?”, argued for Title IX’s strict enforcement without explicitly taking a stand on “mixed teams.”²³ Even as PSEW delineated the strengths and weaknesses of segregated sports, their logic throughout was premised on the understanding that women and men were *different* types of athletes. Even while conceding that segregated sports may better serve the “average female” than the “superior woman athlete,” the paper invoked language that reified embodied sex difference.

The debate among feminists invoked this difference-based approach. Even the National Organization for Women (NOW), the most pro-integration feminist group, feared that women’s abrupt incorporation into sporting spaces would require them to meet the long-standing, ostensibly gender-neutral standards for team try-outs and physical strength. Women, denied training opportunities by sex discrimination and dissuaded from pursuing muscled strength by restrictive gender norms, were thought to be incapable of competing with men.²⁴ Even as medical scientists published reports that women were no more susceptible to athletic injury than were men (Haycock and Gillette 1976), policy debates proceeded under the presumption of male superiority and greater physical invincibility. The PSEW paper referenced a number of sex-based studies of women and men’s physical capacities, simultaneously conceding that the “average female” is smaller than the “average male,” even as the authors also questioned whether looking to averages may itself engage in improper, sexist logic.

Women's rights advocates struggled to disprove many sexist assumptions. They were fearful that full integration might confirm women's weakness and forego alternatives which could secure women greater numbers of competitive opportunities on their own teams. Furthermore, women's historic exclusion from athletics left activists with limited information about women's actual physical capacities. In this sense, even feminists were hobbled in their vision for future policy by the same discrimination they aimed to combat. Locked as they were in a logic of binary sex difference and a history of women's exclusion from physical training and competition, feminist activists struggled to unify around a clear, anti-sexist alternative.

The long-standing practice of women's exclusion from "men's" athletic teams proved a difficult problem to solve. Abruptly treating women "the same" as men in policy design by way of offering them the opportunity to try out for "men's" athletic teams could not automatically solve historic discrimination against women-as-athletes. Thus, even the most active women's groups, like NOW, PSEW, and the National Coalition for Girls and Women in Education (NCGWE) found themselves advocating for a "difference-based" approach to creating athletic opportunities for women.

Not all groups favored the same version of regulation. NOW, in particular, only supported segregation in the short-term. In a 1974 "Legislative Alert," they wrote, "NOW is opposed to any regulation which precludes eventual integration. Regulations that 'protect' girls and/or women are against NOW goals and are contradictory to our stand on the ERA."²⁵ Yet their main concern was for securing athletic opportunity for the "average female" who had never been allowed access to sport. Women's past exclusion from athletic training, coaching, and youth sports meant that the "average female" was unprepared to join athletic teams populated by men advantaged through years of preparation.

In the mid-1970s, it was less politically costly for feminist activists to adapt and expand existing institutional structures rather than articulate a vision for integrated sports that would require major modifications to men's sporting enclaves. Even NOW struggled to articulate a demand for full integration as a first stage of implementation. Advocating for restructuring sports altogether would have required that activists confront entrenched male interests, including the coaches and athletic directors who were already mobilizing against Title IX's more modest implementation.²⁶ Assenting to sex-segregated sports, which *applied* logics of sex difference rather than questioning them, helped women's rights advocates win the battle against exclusion and discrimination, if not the war against misogyny.

"Separate but equal" and the *naturalization* of sex difference: 1975–1979

With biology firmly under-girding the debate over non-discrimination policy, policymakers worked to craft the specifics of policy design. Between 1975, when OCR circulated guidelines articulating plans for the "elimination of sex discrimination in athletic programs" (OCR 1975), and 1979, policymakers considered the specifics of how to apply issues of sex difference to athletic teams. Football coaches emerged as increasingly verbal advocates for the male-dominated status quo.²⁷

Policymakers, including both feminists and men's athletics advocates, acknowledged that there were two separate issues: participation opportunities (including athletic

scholarships) and resource allocation. Women's groups, increasingly committed to pursuing a "separate but equal" strategy that would ensure a transformation from the historic practices of women's exclusion, found themselves in discussions framed largely by the fears of men's coaches. Entrenched men's interests were overwhelmingly concerned with finding a policy design that would minimally disrupt the status quo, guided as they were by the fear of being required to fund women's new opportunities. In time, policymakers struck a deal: men's teams would neither be obliged to accept women on their "men's" rosters, nor would they be required to equally allocate the athletic budget between the sexes. Instead, the 1979 guidelines instructed schools to create *separate* opportunities for women where they had been lacking without a strict mandate for equal funding. Separate teams based on the *naturalized* premise of two distinct sexes became the desired policy solution, even for the women's rights advocates (namely NOW) who preferred them as merely a short-term intervention to a complex problem.

This *naturalization* also resulted from policy design that adopted rather than challenged the segregationist status quo. Activists were unprepared, perhaps unwilling, but surely too preoccupied by battling with entrenched male athletic interests in the late 1970s to take up several questions which haunt sporting structures. What fundamentally defines "women?" Is biology destiny? Did women require the protections against male competition that they had been historically afforded? Such questions were set aside, rather than openly debated in the second half of the decade.

The processes of *understanding*, *applying*, and *naturalizing* produced certain complications. In a deep irony of second-wave feminist politics, the response of activists whose political mobilization had aimed to undermine women's differential treatment came to *support* a segregated model for equity in sports that assented to a difference-based approach by the end of the 1970s. The consequence of women's historical exclusion from athletic training required activists to swallow the idea of women's physical inferiority in order to protect a potential future filled with enduring opportunities for the next generation. As such, rather than fundamentally undermining biologic approaches to women's inclusion into sports, policymakers and feminists relied upon them to interrupt the processes of women's exclusion. A binary understanding of embodied biology thus became the enduring legacy for women's inclusion into sports.

Discussion and conclusions

The implications of this legacy bear upon the policy feedback effects of Title IX including the construction of political identity, the reification of supposedly binary sex, and our shared meanings of what women "are." Since the 1970s, women's ability to re-articulate the meanings of femininity through physical pursuits has been fraught with normative expectations attached to embodied sex and operationalized through public policy. The particular modes of policy design that produce primarily sex-segregated sports teams are both good *and* problematic. To a great extent, Title IX's implementation has done what previously seemed impossible: it has remade high school and college athletics in a new form which values and secures opportunities for "women's" bodies. Despite being beholden to the system of sex-segregated sports, women athletes now have opportunities to contest the grounds of their marginalization, ending their wholesale exclusion from sporting domains. As the Yale rowers illustrate, the "female athlete" is now an effective

mobilizing identity of embodied rights-claiming. The construction of a policy constituency has enabled women to engage more fruitfully in political protest at the same time as it has expanded the terrain of opportunity available to women athletes as a group. However, protest and opportunity, tied as they are to troubled embodied politics, mean that women (and both transgender and intersex athletes) are limited by their need to protest as “female athletes,” rather than be incorporated fully into the category of “athlete” itself.

By generating policy implementation mechanisms that relied on biologic understandings of sex, institutions of American politics constituted the political identity of the “female athlete.” Although many women played sports on women’s teams before Title IX, sports were not a foremost issue on the feminist agenda before the passage of Title IX and there is very limited evidence of women mobilizing to make political claims around the identity of a “female athlete” until after 1972 (Ware 2011). Through the categorical definition of sex as a characteristic of bodies, policy distinguished this identity. Since policy only conceives of individual identities through the category of sex, the defining feature of the “female athlete” in this sense is not her athleticism, but instead her presumed identity as female. She is politically cast not as an athlete who happens to be female, but as a female who happens to be, in some sense, athletic. Neither is she merely an athlete. She exists in the modified category of “female athlete,” defined by her embodied sex, while the category of athlete remains marked as inherently male.

Thinking intersectionally, other complications emerge. Title IX’s collegiate “female athlete” is requisitely able-bodied and capable of being admitted into colleges and universities in order to claim her “right” to sport. As such, she is predominately racialized as a white woman, middle or upper economic class. To this day, white women are over-represented in college athletics when compared both to their proportion among college women and among the general population of women (Pickett, Dawkins, and Braddock 2012). As such, by codifying rights to sports through educational institutions, the federal government dictated that Title IX would largely replicate and not fully ameliorate the other raced and classed inequalities haunting institutions of American education.

Yet primarily, and most insidiously, the “female athlete” is explicitly sexed by the effectuation of the very law that aimed to end the use of sex as a legal marker of access to education and sports. The “female athlete” is unambiguously and unavoidably biologically female. Bodies that defy such sex-based classification (including transgender and intersex athletes) do not easily find protections from discrimination under standing policy design.²⁸ In this sense, the political category of sex as applied to bodies in sporting settings generated an antiquated, rather than liberated category of gender, haunted by legacies that exclude individuals whose gender-identity may not align with characteristics of their physical body. Furthermore, even cisgender “female athletes,” through their myriad acts of aggressive play, unrelenting power and speed, unapologetic perspiration, and competitive zeal, inherently flaunt, exceed, and collapse long-standing definitions of femininity. The ways in which purportedly “female” bodies commandingly embrace conventionally masculine traits of muscled strength inherently challenge the sex-based binary distinction upon which Title IX was built.

Thus, the “female athlete” represents not merely a figure of progress, but also a figure imbued with deep tensions. Women who fail to conform to feminine expectations while

competing often face social denigration of their athletic performances as excessively masculine and inappropriate for women's bodies.²⁹ Women's bodies thought to be suspiciously strong, unnervingly fast, or too masculine, not only stretch gendered understandings of physicality, they defiantly undermine the male/female binary assumptions that constitute the political category of sex inherent to Title IX (Butler 1998). Yet contradictorily, the better and more competent the athlete, the greater the countervailing pressure to balance these physical feats by performing femaleness in gender normative ways. Sociologists demonstrate that gender policing of female athletes remains a factor on sports teams across the country and in media portrayals of women in sport (Cooky, Messner, and Musto 2015; Schultz 2014). Women athletes must now, politically and culturally, continue to perform a certain brand of femaleness (always already in juxtaposition to male bodies under Title IX) even as they compete in sports. In a perverse consequence of history, the price to pay for shifting understandings of women's physicality is borne by the very bodies Title IX aims to empower.

Perhaps two of the most important methods for evaluating any civil rights policy hinge on the extent to which it effectively curtails discrimination or circumvents potential discrimination by another name. Here, Title IX – and our shared understanding of it as a model of policy success – falls short, at least in part. Beyond the domain of sports, the naturalized practice of segregating women and men contributes to the difficulty in addressing continued and often pernicious discrimination against cisgender women, as well as transgender and intersex people. So long as we fail to acknowledge the fraught legacy of accepting purported sex difference at the core of policy design, we also remain haunted by attempts to renaturalize this false dichotomy in other policy applications (see also Davis 2014). The resurgence of bathrooms as a contested domain for transgender students and the problematic demands by conservative political groups that students adhere to bathrooms which serve their “real” sex underscore this point (see also Westbrook and Schilt 2014). Instead of ensuring students' equal treatment regardless of whether their physical body matches their gender identity, Title IX's reliance on the body as a fundamental category in education means that both trans- and cisgender students potentially face the requirement that they declare their embodied sex in order to be protected from discrimination on its basis. So long as Title IX continues to rely on policy design that invokes binary sex as a category in athletics, public policy will fail to afford non-discrimination protections to some of the most vulnerable populations in terms of gender-identity, race, economic class, and physical ability within educational institutions more broadly.

Ultimately, this history of policy development demonstrates that current policy guidelines continue to undermine women's full liberation from the antiquated notion that their bodies are always second-class. This gendered hierarchy that continues to favor men (as athletes and elsewhere) is ubiquitous across multiple domains in American society and remains a pernicious element of American culture (see also MacKenzie 2015). At the same time, turning to history reminds us that *understanding*, *applying*, and *naturalizing* binary sex in policy resulted from political processes, not a natural order. In the face of evolving social and political arrangements around the meanings of gender and women's demonstrable physical accomplishments, institutions of American politics – indeed activists claiming the identity of “female athletes” themselves – have as much potential as ever to evolve and address the current limitations of public policy.

Notes

1. I will refer to women athletes under Title IX as “female athletes” throughout the article in order to underscore my argument that policy design is constitutive of our gendered understanding of Title IX’s athletes in the binary “male/female” sense. I retain the use of quotations throughout in order to denaturalize the use of this gendered term.
2. Of course, many women were athletes long before Title IX (e.g., Cahn 1995; Guttman 1991). Even still, policy generated significant growth in participation since 1972.
3. Although girls’ and women’s athletic participation initially expanded more rapidly than did boys’ and men’s, it is under-recognized that boys and men have also seen an overall growth, rather than the threatened decline, in sporting opportunities since 1972 (NCAA 2016; NFSA 2016).
4. Importantly, scholars increasingly acknowledge that these benefits are not equally available to all women. Girls enrolled in urban schools are less likely than girls in suburban schools to have access to athletic teams (Sabo and Veliz 2012), as are women enrolled at community colleges versus 4-year baccalaureate programs (Castañeda, Katsinas, and Hardy 2008). Girls and women of color, many of whom are also disproportionately represented in urban high schools and community colleges, are less likely to reap the benefits of policy implementation (NWLC and PRRAC 2015; Pickett, Dawkins, and Braddock 2012). Women and girls with disabilities are unlikely to have sporting opportunities at any level (Duncan 2013), and both transgender and intersex athletes’ participation opportunities remain beholden to the shifting matrix of rules that govern the conditions of their inclusion in sport (Griffin 2012; Karkazis et al. 2012). Thinking “intersectionally” (e.g., Cohen 1999; Collins 2000; Crenshaw 1989; Hancock 2008, 2016; Strohlovitch 2007), it is clear that Title IX’s implementation has been unevenly transformative for various subpopulations of women.
5. This absence is noted elsewhere, specifically among historians who call for a focus on “the role of sports advocacy in feminist politics” (Cahn 2014).
6. For example, most elderly Americans now identify as “retirees,” free from the requirement of full-time employment as a result of status conferred through Social Security (Campbell 2003).
7. A significant body of research also points to the consequences of sexualized coverage of women athletes which focuses on their physical attractiveness, appearance, and non-sporting activities instead of their athletic accomplishments (e.g., Kane 1996). The absence of routine coverage of strong women athletes precludes opportunities to reframe how both girls and boys think about women’s strength (Daniels 2012; Daniels and Wartena 2011).
8. Though the role of culture is often also set aside by scholars of policy development, doing so obscures important factors particularly for scholarship concerned with gender (Strach 2013).
9. Notably, the invocation of sex difference inherent to Title IX’s policy design also allows men to claim *their* bodies for policy. Although the preponderance of policy advocacy has coalesced around women’s opportunities, men too have mobilized their status as “male athletes” to assert gendered rights under Title IX (Messner and Solomon 2007; Rosenthal 2008; Walton and Helstein 2008).
10. As Malkiel (2016) demonstrates, the struggle for coeducation in elite American colleges and universities was ongoing in the late 1960s and early 1970s. However, formal federal policy discussions on the issues of women’s exclusion from educational institutions writ large did not begin until 1970.
11. In the early 1970s, the feminist coalition targeting educational domains was small, led primarily by the Women’s Equity Action League (WEAL). WEAL was founded in 1968 by feminists who objected to the National Organization for Women’s (NOW) support of abortion rights, and NOW’s activist tactics. Although WEAL’s advisory board included several Members of Congress who became very active on Title IX (including Representatives Edith Green (D-OR), Shirley Chisholm (D-NY), Patsy Mink (D-HI), and Martha Griffiths (D-MI)), Dr Bernice Sandler lodged the first sex discrimination complaints under Executive Order 11246. She was politicized after being denied a faculty appointment for coming on “too strong for a woman” (Sandler 2000).

12. The group attempted to downplay open discussion of the sex-based provision by asking interest groups to abstain from lobbying (Costain 1979; Fishel and Pottker 1977; Skrentny 2002).
13. Discussion transpired in both the House and the Senate in 1971. On August 6, the Senate considered the notion of coed football teams. Senator Bayh argued that the proposed legislation would neither “mandate the desegregation of football fields” nor men’s locker rooms. Revealing the undercurrents of male entitlement and sexism, Senator Dominick replied, “If I may say so, I would have had much more fun playing college football if it had been integrated.”
14. In the 1970 congressional hearings on sex discrimination in education, feminist experts neither mentioned discrimination in athletics, nor women athletes as key stakeholders in the unfolding discussion.
15. Sandler noted during a 1981 interview, “We knew it was going to cover athletics; it was not a surprise. We just didn’t tell many people” (Millsap 1988, 32).
16. The complete histories of congressional debate over university undergraduate admissions policies, the inclusion of military academies under the purview of Title IX, and single-sex educational activities (like beauty pageants and father–daughter dances) are reviewed in both primary (Fishel and Pottker 1977) and secondary sources (Rose 2015). Skrentny (2002) also details the contingent debates around racial desegregation which helped distract from the sex equity provisions.
17. The trail of initial bureaucratic conversations is found primarily in the Margaret Dunkle Papers at the Schlesinger Library, the Richard Nixon Presidential Library, and in Fishel and Pottker (1977).
18. The first memo circulated to colleges and universities regarding implementation made no mention of the application of law to athletics. Margaret Dunkle Papers, 1957–1993; “Memorandum to Presidents of Institutions of Higher Education Participating in Federal Assistance Programs,” August 1972. MC 530, Box 1, Folder 11. Schlesinger Library, Radcliffe Institute, Harvard University. It was not until October of 1972 that a concerted conversation about athletics began.
19. The “contact sports” distinction continues to be highly contentious (Fields 2004).
20. These discussions foreshadowed how this model of difference manifests itself today. “Men’s” versus “women’s” teams are often defined by different rules, different equipment, and gendered expectations (see, for example, McElwain 2004; Ring 2012; Theberge 1997). Since this model became policy, the promotion of segregated teams has become increasingly impactful in the means of how we consume, spectate, and value “men’s” versus “women’s” games.
21. Although Sandler was among the 50 representatives of women’s education, athletic, and student groups invited by OCR to discuss initial responses to the legislation in August 1972, OCR later reported that these meetings were a “disappointment” (Fishel and Pottker 1977, 106). Dunkle Papers; “Letter to Sandler from DHEW”, July 27, 1972. Box 1, Folder 11. Schlesinger Library.
22. Sandler operated as the Executive Director at PSEW for 20 years. The Schlesinger collection holds the PSEW files.
23. The draft history of the paper is located in the Dunkle Papers at the Schlesinger, Box 29, Folders 1–4. The final draft can be found in the PSEW Records, MC 557, Box 8, Folder 5. Schlesinger Library.
24. The PSEW paper attributed women’s historical exclusion from sports as a key cause of this belief. Here again, advocates erred toward public policy that required institutions to increase opportunity for women on “women’s teams” as the initial intervention.
25. National Organization for Women Records, 1959–2002; MC 496, box 55, folder 24. Schlesinger Library.
26. The full record of this organization exists across files at the Gerald Ford Presidential Library and the private papers of the National Collegiate Athletic Association. Article-length considerations require me to elaborate these dynamics in other work.
27. White House Central Files, Education; Box 9. Gerald Ford Presidential Library, Ann Arbor, MI.

28. Both transgender and intersex people continue to face difficulties in achieving full access to sport under a sex-segregated regime (Buzuvis 2011).
29. The ways in which “female athletes” stretch the definitions of femininity also have complicated implications for the perceived threat of lesbianism and homophobia in sports (Cahn 1995; Griffin 1998).

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