

BOOK REVIEW

EQUAL PLAY: TITLE IX AND SOCIAL CHANGE

Editors: Nancy Hogshead-Makar and Andrew Zimbalist

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It is not uncommon to discover journalists and authors making sweeping statements regarding the social history of the United States, such as declaring one generation the greatest of all time, or similarly declaring 1968 to be the single most important year that has shaped the present. This trend or interest in tracing the impact of a significant public figure, public speech, or public event over time has not escaped those involved in law and sport. Title IX of the Educational Amendments of 1972 (Title IX) has been a frequent and popular choice of authors for viewing and examining social changes in the United States in general, and in sport specifically.

With the passage of nearly four decades since Title IX became law, admittedly some faculty as well as students know little about the social context that inspired leaders in government, education, law, and sport to draft and work toward the ratification of *Title IX*. Readers of *Equal Pay: Title IX and Social Change* will have a better understanding of pre-Title IX society while perhaps finding answers to their questions about the origins of Title IX.

In *Equal Play: Title IX and Social Change*, editors Nancy Hogshead – Makar, and Andrew Zimbalist, bundle primary documents and administrative regulations with a diverse and excellent collection of excerpts from well known publications, essays, and speeches of the following noted authors: Susan Cahn, Welch Suggs, Larry Schwartz, Bil Gilbert, Nancy Williamson, Gary Roberts, Vivian Acosta, Linda Jean Carpenter, Mariah Burton Nelson, Jessica Gavora, Don Sabo, Christine Grant, and Michael Sokolove. No doubt some readers of this *Journal of Legal Aspects of Sport* book review have the original texts of these authors on their bookshelves. However, for others who are less familiar with the authors listed or the documents referenced, *Equal Play: Title IX and Social Change* will prove to be an invaluable addition to

your private collection of resources and references. Similarly, it would serve as an outstanding companion text for a number of courses or as a pre-course reading to establish a common baseline of knowledge regarding the historical, social, and legal context of Title IX.

In addition to the notoriety of the authors featured in *Equal Play: Title IX and Social Change*, the editors may generate name recognition among readers. Andrew Zimbalist, PhD, a sport economist and faculty member at Smith College, is a seasoned author and editor of many books, articles and essays that examine professional and amateur sport. Nancy Hogshead - Makar is an attorney and faculty member at Florida Coastal School of Law. This 1984 Olympic gold and silver medalist in swimming is also former President of the Women's Sports Foundation (WSF) and current legal advisor to the WSF. She is a Title IX expert witness who has testified in Congress, and she has written amicus briefs representing athletic organizations in the United States Supreme Court.

Promoted as "a reader of influential essays on the history and future of Title IX" (Temple University Press Release), the editors follow the classic edited-text approach of providing an introduction to the authors and essays of each section. Both Hogshead - Makar and Zimbalist also contribute original works. The editors have divided their reader on Title IX into the following five sections: *Women's Sports Before Title IX*; *Staking a Claim: The First Decade*; *The Initial Backlash: The 1980s*; *Accelerated Pace: The 1990s*; and finally *The Second Backlash: 2001 - 2008*.

The section one, *Women's Sports Before Title IX*, readings are as follows: *Coming on Strong: Gender and Sexuality in Twentieth – Century Sports* by Susan Cahn; *Heroines as Well as Heroes* by Welch Suggs; *Didrikson Was a Woman Ahead of Her Time* by Larry Schwartz, and *Sport is Unfair to Women (Part I)* by Bil Gilbert and Nancy Williamson. Within this introductory section Cahn reviews the era when medical professionals warned against strenuous exercise, such as running, that might damage a women's ability to reproduce. Cahn's essay also provides the reader with a view of the moralists who suggest that a woman might become masculine and homosexual via her participation in sport. Cahn explores how this premise was used as a deterrent to the involvement of girl's and women's involvement in rigorous physical activity and sport. Welch Suggs' contribution is primarily historical as he compares and contrasts the development of men's and women's competitive sport in the United States, with a primary focus on intercollegiate sport. The works by Schwartz, Gilbert, and Williamson provide readers with a vision of the highly remarkable skill, strength and talent of a selected few female athletes who excelled. However, the point is made that these "stars" were the exception, as

the accomplishments of average female athletes were marginalized and to a large extent, simply ignored during the early years of women in sport.

In Part II, *Staking a Claim: The First Decade*, Hogshead – Makar and Zimbalist present a resource - rich section that provides the reader with classic original documents and administrative regulations that are central to the history of Title IX. The *Speech of Senator Birch Bayh to the New York Women's Political Caucus* is likely to stir discussion among readers new to the exploration and understanding of the social, educational, and political history of Title IX, as is the *Statement of Honorable Birch Bayh, a U. S. Senator from the State of Indiana, on the Tower Amendment*. Hogshead – Makar and Zimbalist also include the *Amendment to Title IX of the Education Amendments of 1972; Javits Amendment; 1975 Title IX Regulations; A Policy Interpretation: Title IX and Intercollegiate Athletics; National Collegiate Athletic Association v. Joseph Califano et al;* and *Geraldine G. Cannon v. University of Chicago et al.*

In *The Initial Backlash: the 1980s*, Part III, the editors dedicate a few sentences to reflect upon the progress attributed to Title IX through the early 1980s. The statistics of the time reflected the following: "thirty – three percent of all high school athletes were now female, representing a 600-percent increase from pre – Title IX days. Thirty percent of all intercollegiate athletes were now female, representing a 100-percent increase from pre-Title IX days" (pg. 99). However, set-backs to Title IX were soon to be realized and Hogshead – Makar and Zimbalist include the following items to highlight what they term "the initial backlash:" *Grove City College et al v. Terrel H. Bell et al.*, the Civil Rights Restoration Act of 1987; and *Reducing the Commercialization of Intercollegiate Athletics* by Gary R. Roberts. The introduction to this section is particularly valuable as the reader is swept along through a well written and easily followed narrative telling the political and legal story of the struggle to defeat and then to restore Title IX. As a reviewer of many books on Title IX, this is perhaps the best summary of *Grove City* that this reviewer has encountered as it could easily stand alone as a short essay. Following this comprehensive introduction, readers then benefit from reading the full text of *Grove City College et al v. Terrel H. Bell et al.*, and the Civil Rights Restoration Act of 1987.

In Part IV, *Accelerated Pace: The 1990s*, Hogshead – Makar and Zimbalist describe the 1990s as a "renaissance" period for Title IX advocates. At this time gender equality was generally supported by society and the courts as more and more women were working in all facets of business, education, politics, and government. This decade also witnessed a celebration and rapid growth in sport participation by girls and women as the benefits of sport

participation were examined, claimed, and announced. Many landmark empirical studies on women in sport were published during this decade, and parents began to advocate for their daughters' involvement in sport and for equal access to quality coaches, facilities, and equipment. The essay excerpt from Mariah Burton Nelson's, *The Stronger Women Get, the More Men Like Football*, addresses some of the old stereotypes about women and sport, and the explanations given by those determined to minimize female access to quality sport resources.

Despite greater societal acceptance of gender equality in sport, not all parties were supportive nor compliant with Title IX. "The 1990s was a time for testing the statutory language of Title IX and the 1979 Policy Interpretation in courtrooms across the country" (pg. 132). Private lawsuits brought by athletes and their families marked this decade of Title IX, and the editors address the legal developments from *Franklin v. Gwinnett County Public Schools*; *Cohen v. Brown University*; *Cook v. Colgate University*; and *Kelly v. Board of Trustees of University of Illinois*. Key policy interpretations were also issued during the 1990s and Hogshead – Makar and Zimbalist include essays addressing the *Office of Civil Right's 1996 Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test*; and the *Bowling Green Letter*. The editors include one invaluable resource for readers unfamiliar with the work of researchers Vivian Acosta and Linda Jean Carpenter; notably their *Women in Intercollegiate Sport: A Longitudinal, National Study, Twenty – Nine Year Update, 1977 – 2006*.

The final section of *Equal Play* includes original documents and essays primarily stemming from the Department of Education's review of Title IX and subsequent reforms regarding implementation of Title IX. The editors provide a thorough and well written overview of the politically motivated actions of Education Secretary Rodney Paige and the Department of Education. Readers should be cautioned that this is not an imbalanced representation of the Title IX voices heard loudest during 2001 – 2008. However, for readers searching for a critical review of recent actions, it is unlikely that they will locate a finer collection of works than what is presented in *Equal Sport*. Also, neither Hogshead – Makar nor Zimbalist hide the fact that they are in fact strong advocates for Title IX, and they lay no claims to being unbiased in their choice of essays or in their own original writings included in *Equal Play*.

In Part V, *The Second Backlash: 2001 – 2008*, the editors address the new wave of criticism, that Title IX has gone too far and is no longer needed. The editors include court cases, documents, essays, and book excerpts to represent what they term, "the Second Backlash." Among their inclusions in Part V is

the *National Wrestling Coaches Association et al v. Department of Education* case, and an excerpt from the Title IX criticism: *Tilting the Playing Fields: Schools, Sports, Sex and Title IX* by Jessica Gavora. Nancy Hogshead – Makar has published a response to Gavora, and an excerpt of *Critique of Tilting the Playing Fields: Schools, Sports, Sex Title IX*, appears in this section. Additional views of the "Second Backlash" are provided in Part V through three essays written by Zimbalist: *What To Do About Title IX, Bush Administration Uses Stealth Tactics to Subvert Title IX* in which Zimbalist discusses the controversy regarding the use of email surveys to assess students' interest in sport, and *Title IX by the Numbers*, in which Zimbalist provides statistical analysis to support his statement that "...gender equity results compiled during the Bush administration are consistent and dismal" (pg. 305). He further concludes that "...the Bush administration has succeeded in stalling gender equity's steady progress" (pg. 305). Also included in Part V is Don Sabo and Christine Grant's essay, *Limitations of the Department of Education's On – Line Survey Method for Measuring Athletic Interest and Ability on U. S. A. Campuses*. Lastly, the 23 recommendations of the Secretary of Education's Commission on Opportunity in Athletics findings, *Open to All: Title IX at Thirty* are included, as are Commission members Donna de Varona and Julie Foudy's *Minority Views on the Report of the Commission on Opportunity in Athletics*.

Recent Title IX-related publications have not included an in-depth discussion of the political agenda aimed against Title IX, or the social context of Title IX. Hogshead – Makar and Zimbalist have assembled a coherent and strong collection of writings to illustrate and support their position and assertion that Title IX has been a target of political action as well as an important contributor to social change. The editors state "... (the) public – policy formation underlying Title IX both outline and inform the challenges that lie ahead. In the final analysis, the struggle for gender equity in athletics is best understood as an ongoing process whose successes and stumbling blocks have empowered society generally, and women specifically, in turning back transforming stereotypes and biases" (pg 6).

Throughout *Equal Play*, the reader is presented with documents representing the social policy issues surrounding Title IX from all three branches of government. The addition of *Equal Play* to the collection of writings on Title IX is helpful for readers struggling to understand those who find Title IX to be contentious rather than logical. *Equal Play* is a well written and thoroughly researched text that provides a critical review of the historical, social and political context in which Title IX was conceived, became law, and now exists. Although readers may not agree with the arguments or opinions of

the authors and editors, the arguments are clearly presented and supported by thorough documentation and research.

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