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Introduction

RONNI ALEXANDER ARRIVED at Yale College in August 1973, where she joined the largest group of first-year women that the school had seen to date.¹ The campus was still predominately male, upper class, and White—shockingly different from her hometown of Los Angeles. But Yale was an ideal place for Alexander to pursue her lifelong dream of becoming a professional musician. She immediately joined the Yale Band and started flute lessons with the director, Keith Brion.

By her sophomore year, Alexander had left the band, switched her major to psychology, and stopped playing music altogether. The reason for Alexander's about-face became clear only after she graduated and, in 1977, filed a lawsuit against the university. Alexander alleged that Brion "repeatedly made sexual advances, including coerced sexual intercourse," during her lessons. She further alleged that, as a result these advances, she abandoned her professional aspirations, thought about withdrawing from Yale, and considered suicide.²

Alexander was one of five undergraduate women named as plaintiffs in *Alexander et al. v. Yale University*. Their central claim was that Yale had violated Title IX of the Education Amendments of 1972 by failing to furnish an outlet for sexual harassment complaints. Title IX is the US civil rights law that bars schools from discriminating "on the basis of sex."³ Scholars and politicians alike have called it one of the most significant steps toward gender equity in the last century.⁴ But Title IX was not created to confront sexual harassment, nor does the statute say anything about sexual harassment. In fact, the term "sexual harassment" as we use and understand it today did not exist when the law was passed. We now understand sexual harassment as unwanted behavior of a sexual nature—from suggestive jokes to forcible assault—particularly when a person with more power directs this behavior toward a person with less power.⁵ When Ronni Alexander filed suit, however, this category of misconduct had no name, much less recognition as a civil rights violation.

By framing sexual harassment as a form of sex discrimination that could inhibit equity in education, *Alexander* advanced a completely new understanding

of Title IX. For decades, the sexual exploitation of female students by male faculty had gone unquestioned as part of the college experience.⁶ *Alexander* challenged this reality and charted a more just alternative for women on campus. Plaintiff Alexander's reflections forty years after the case still convey its pathbreaking quality. She said:

The argument [in the lawsuit] was that women couldn't get the same education at Yale as men because we couldn't be alone with our professors, so that was discriminatory. . . . It was a real eye-opener because the situation changed from "Oh, this is the way it is, I mean that's just the way life is. Women get assaulted; women get harassed. Too bad. Just have to be strong and stoic." All of a sudden it was like, "No, there could be a different world." Understanding Title IX in that way was a real surprise. More than a surprise. It was like, they call them "aha moments."⁷

Alexander recast socially accepted behaviors into unlawful expressions of gendered power, reshaping women's right to equal opportunity in education and schools' obligations to uphold that right. In the domain of education, then, it made women more equally human.

In *Unlawful Advances*, I argue that the women claiming protection under Title IX transformed Title IX. In coalition with feminist lawyers, feminist students redefined behavior that Title IX did not explicitly outlaw as clearly illegal under the law. They also created a system for addressing the larger problem of sexual harassment. Since *Alexander*, colleges and universities across the country have initiated special processes to adjudicate sexual misconduct complaints, and the US Department of Education now considers the presence of these processes as evidence of compliance with Title IX.⁸

Ultimately, these students fundamentally changed the law, the organizations it regulates, and gender relations in the academy. They made Title IX into something that transcended its original intentions, urging an even broader rethinking of sex discrimination that still shapes our laws and lives today. Their claims also restructured higher education—both its governance and its culture. While sexual harassment and assault still plague contemporary campuses, there are entire arms of university administration dedicated to managing the problem, visible displays of an institutional commitment to taking it seriously. The feminist students who are the focus of this book demanded these infrastructures and in the process created a strong normative proscription against sexual harassment in colleges and universities. Although this proscription persists to this day, it remains controversial; our interpretive struggle over Title IX is far from finished. *Unlawful Advances* illuminates this ongoing struggle, as well as the more general process by which we, the people, can transform not only the laws that govern us, but the very meaning of equality under American law.

Meet Title IX

Until the late twentieth century, sex discrimination in American schools was legal. Even the landmark US Civil Rights Act of 1964 did not initially address sex discrimination in education.⁹ The Women's Liberation Movement and related feminist mobilization during the 1960s and 1970s prompted both legislative reforms and ideological changes that sought to remedy, among other issues, women's experiences with and lack of legal protections from discrimination. Many of the policies that second-wave feminists pushed for built explicitly on the achievements of the Black Civil Rights Movement. In 1967—just one year after Betty Friedan, Pauli Murray, and forty-seven other women and men founded the National Organization for Women (NOW)—President Lyndon B. Johnson amended Executive Order 11246 to prohibit not just race-based but also sex-based discrimination in the federal workforce and on the part of federal contractors.¹⁰ This amendment served as a launchpad for subsequent antidiscrimination laws, including Title IX.

In 1970 Bernice Sandler, a part-time instructor at the University of Maryland, became the first to use the executive order to challenge systematic employment discrimination against herself and other women in academia. Sandler had asked a colleague why their department had not considered her for one of their seven tenure-track job openings. The faculty member responded first by acknowledging her excellent qualifications, and then he confessed, "You come on too strong for a woman." This criticism launched Sandler into action. Under the auspices of the Women's Equity Action League—a spin-off of NOW—she filed a historic class action complaint against all colleges and universities with the US Department of Labor, alleging an "industry-wide pattern" of sex discrimination. The complaint prompted women faculty from schools across the country to contact Sandler with their concerns. With this information, Sandler and NOW filed similar complaints against hundreds of specific institutions and urged these women faculty to write their representatives in the House and Senate, requesting stronger enforcement of the executive order.¹¹ Their letters helped place the problem of sex discrimination in education onto the national stage. In 1970 Representative Martha Griffiths (MI) gave the first speech before the US Congress on the issue, building momentum among policymakers. Together, these feminist organizations and politicians, among others, worked to create a new law giving women and girls the right to an education free of sex discrimination.¹²

Their efforts culminated two years later with the passage of Title IX. Representative Patsy Mink (HI), the first woman of color and the first Asian American woman to serve in Congress, coauthored the bill with Representative Edith Green (OR) and Senator Birch Bayh (IN). It was one of the first

federal laws written by women for women. The central provision of Title IX reads: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

The statute does not specify what counts as “discrimination” or how schools should address it but rather delegates this task to the US Department of Education Office for Civil Rights (OCR), which regularly issues “rules, regulations, or general orders of applicability” interpreting the law.¹³ Political pressures shape this process; presidents can appoint allies to top offices within the Department of Education who then advance certain ideas about the meaning of the law and compliance with it.¹⁴ The Obama administration’s OCR, for example, prioritized campus sexual misconduct as a key issue for Title IX enforcement. The first Trump administration’s OCR, on the other hand, prioritized preserving due process rights in school grievance procedures. The courts can define Title IX too, although judges have historically deferred to the OCR’s interpretation of its own policies, particularly regulations, the most authoritative form of OCR interpretation.¹⁵

Title IX also gives the OCR teeth, allowing the agency to investigate schools for allegedly breaking the law. Usually, it is complaints filed by individuals, groups, or organizations that prompt investigations, but sometimes the OCR opens investigations at will. These discretionary inquiries allow the OCR to push its current political agenda and direct resources toward problems that it considers “particularly acute, national in scope, or newly emerging.”¹⁶ If an investigation reveals that a school has violated Title IX and the school refuses to comply, the OCR can revoke its federal funding.¹⁷ Nearly all nonprofit colleges and universities receive federal financial support through, for example, student aid and research grants and contracts. Even the wealthiest institutions cannot risk losing this money.¹⁸ The OCR has never pulled a school’s federal funding, though, because schools have always chosen to comply before placing their funding—and their reputations—at risk.

In addition to the OCR, the courts and schools themselves also implement Title IX, and each setting provides an outlet for rights claims. The OCR addresses grievances through its administrative complaint process; the courts, through litigation;¹⁹ and schools, through internal grievance procedures. The people claiming protection under the law may use any of these processes in any order.²⁰ This flexible enforcement structure gives claimants some autonomy to shape the life of their claims. It also gives them the ability to apply pressure to one setting by filing a grievance in another. In response to *Alexander*, for example, Yale officials created an internal process to address sexual harassment complaints.

These three outlets for grievances have pros and cons. Internal complaints cost victims the least, but, of course, they are not free. Complainants must still recount the alleged incident of discrimination, often repeatedly, which can take a social and psychological toll, particularly in cases of sexual harassment and assault.²¹ School policies can also be confusing and difficult to navigate, even though they are meant to be more accessible than the two other outlets.²² Schools' responses to reports of discrimination can even exacerbate the harms of discrimination by, for example, contributing to educational interruptions and tuition losses.²³ Colleges and universities do, however, usually allow victims more time after an incident to file a complaint, and they tend to resolve complaints more quickly than the courts and the OCR. At most, if not all, institutions, only members of the campus community can file internally. These local complaints typically produce individual-level outcomes. In cases of student-on-student sexual harassment, for example, the school may move the alleged perpetrator into another dormitory or class section.

Lawsuits cost the most of the three options. Victims must file suit between one and six years after an incident, depending on the state, and they must do so through an attorney.²⁴ Some lawyers will take on these cases pro bono, but most will charge their hourly rate, which adds up quickly, considering that lawsuits often take months—if not years—to resolve.²⁵ These monetary costs compound the social and psychological costs that come with reporting discrimination. Only the alleged victims of sex discrimination or their parents, if they are under eighteen, can sue schools under Title IX. Court decisions can generate individual-, organizational-, and national-level outcomes: A judge, for example, may award monetary damages to the plaintiff, require a school to change how it implements Title IX, or redefine the scope of the law more generally.

Federal complaints are a middle ground between internal grievances and lawsuits. Anyone can file an OCR complaint against a school, although complainants are usually the victims of sex discrimination. Federal complaints do not cost money to file, but they do cost time and confidentiality. It can take years for the OCR to resolve claims, and at the time of filing, details about the incident become publicly accessible under the Freedom of Information Act. The OCR also requires complainants to file within 180 days of the last act of discrimination.²⁶ Federal complaints are unique in that individual-level outcomes are usually secondary to organizational- or national-level outcomes.²⁷ Resolutions will often require the allegedly noncompliant school to change how it implements Title IX, which may in turn create a cascade of similar changes by other schools.²⁸ Resolutions may, in rare cases, implicitly introduce new interpretations of the law. Table 1 summarizes the differences between filing an internal grievance, a federal complaint, and a lawsuit.

TABLE 1. Ways to File a Title IX Claim

	Internal Grievance	Federal Complaint	Lawsuit
Who can file	Member of school	Anyone	Affected person
Time limitations	Varies by school	180 days or waiver	1–6 years by state
Costs	Lowest	Intermediate	Highest
Typical outcomes	Individual-level		Individual-level
		Organizational-level	Organizational-level
		National-level	National-level

The ambiguity of Title IX’s wording, along with its enforcement structure and capacity for mobilization, has enabled the OCR, the courts, and schools to apply the law extremely broadly—and differently—over time. For many years, Title IX was best known for promoting gender equity in athletics, but it does much more.²⁹ Interpretations of the law have required schools to provide equal opportunity in admissions, financial aid, and science, technology, engineering, and mathematics (STEM) programs; barred discrimination in housing, healthcare, and school discipline; and protected pregnant and parenting students, and gay, lesbian, bisexual, queer, and transgender students.³⁰ This book is about one of the most common and politically contested uses for Title IX today: Its prohibition against sexual harassment, including sexual assault.

In contemporary colleges and universities, it goes without saying that sexual harassment is unlawful sex discrimination under Title IX, and schools have invested significant resources in complying with this interpretation of the law. Many institutions dedicate millions to managing the problem through special bureaucracies spread over multiple offices with tens of employees. Title IX spending at the University of California, Berkeley, for example, rose by \$2.5 million in 2016 alone.³¹ In 2024 Harvard maintained a network of over fifty Title IX resource coordinators responsible for addressing sexual misconduct on campus.³² Nearly thirty faculty and staff were doing the same at Yale.³³

These sexual harassment response systems have become core elements of academic governance, but they are also enormously contentious. During the Obama administration, the OCR issued a “Dear Colleague” letter (DCL) in 2011 clarifying how schools should address sexual misconduct under Title IX.³⁴ The letter sought to place the rights of complainants and respondents on more equal footing by, for example, encouraging schools to use a “preponderance of the evidence” standard in their grievance procedures. This standard is lower than the alternatives (i.e., “clear and convincing” and “beyond a

reasonable doubt”), allowing schools to take disciplinary action against respondents if it is “more likely than not” that they committed sexual misconduct. Some Americans considered this and other recommendations in the letter—including that schools should not allow complainants and respondents to cross-examine one another—insensitive to the stakes of rape allegations, expulsion from school, and the body of law safeguarding student due process rights. A wide range of stakeholders—from conservative politicians and misogynistic men’s rights organizations to university professors and self-identified feminists—joined together to protest the guidance, which, in their view, made colleges and universities less, not more, equitable.³⁵

President Trump’s first term in office gave this backlash access to the highest levels of power.³⁶ Education Secretary Betsy DeVos rescinded the Dear Colleague letter in 2017 and issued a replacement rule in 2020 that narrowed the definition of sexual harassment, rolled back victim protections, and prioritized the due process rights of individuals accused of sexual misconduct.³⁷ During his presidential campaign, Vice President Biden vowed to “put a quick end” to the rule, which, he said, “gives colleges the green light to ignore sexual violence and strips survivors of their rights.”³⁸ In 2022 the Department of Education delivered on this promise, proposing yet another set of regulations that would reverse many of the Trump-era changes and restore key pieces of the Obama-era policies. The draft rule drew over 240,000 public comments, more than double the number received for the 2020 regulations.³⁹ The OCR released the final version in 2024, which did reinstate a more victim-centered approach by, among other changes, restoring a more expansive framework for holding schools liable for sexual harassment and requiring schools to use the “preponderance of the evidence” standard in their grievance procedures.⁴⁰ Like the 2011 Dear Colleague letter, the regulations did not prohibit live hearings or the use of cross-examination altogether, and indeed they further specified how schools could use these tools in more equitable ways, speaking to the concerns of both victim and due-process advocates.⁴¹ This latest interpretation of the law has again transformed how schools must handle sexual misconduct on campus, continuing the churn in Title IX policy that began more than a decade ago.

The present political battle over Title IX centers, then, on *how*, not *whether*, the law should regulate sexual harassment. The fact that it does apply here is now assumed; but this was not always the case. Indeed, the university policies, procedures, and infrastructure at the heart of the current debate only recently came into being. They did not exist fifty years ago. Back then, at the time of the law’s passage, no one understood sexual harassment as a problem that schools had to—or ought to—address. University officials dismissed the few incidents that made it onto their desks as trivial and “personal” or as universal and

“natural.” Only in the last few decades has American society recognized sexual harassment as a problem at all.

Transforming sexual harassment into a civil rights violation under Title IX was far from inevitable. Sexual harassment could have been defined in exclusively criminal terms. It could have never become taboo. Elsewhere in the world, victims of campus sexual misconduct have few, if any, civil protections. Why did sexual harassment become illegal under Title IX? When did schools start to manage sexual harassment in the way that they do now, through legalistic rules and processes? Where did this approach come from? These are more than just questions about Title IX. They are questions about inequality in America—how new understandings of it emerge, become illicit, and effect social change. This book answers those questions.

Title IX as a Case of Modern Legal Transformation

In *Unlawful Advances*, I have three goals. The first is to explain how and why Title IX came to bar sexual harassment. The short answer is that feminist students transformed both the “law in books” and the “law in action,” to borrow legal scholar Roscoe Pound’s famous phrase.⁴² The longer story starts amid an era of intense social, political, and cultural upheaval both within and beyond the academy. The period spanning the mid-1950s through the early 1970s saw protests against McCarthyism, the rise of the Civil Rights and Black Power Movements, mass mobilization against America’s involvement in the Vietnam War, the emergence of second-wave feminism and gay liberation, a sexual revolution, and the resurgence of environmentalism. The New Left generated support for much of this activism, and college students formed one of its largest and liveliest contingents. Students demanding political freedom at Berkeley kicked off waves of unrest that broke out first at large urban schools and elite institutions, including Cornell and Yale, which, along with Berkeley, would later serve as key sites for the transformation of Title IX. There was a sense throughout the long 1960s that higher education was a force for liberation that could move the whole country toward justice and equality.⁴³

Against this backdrop, in the mid-1970s, a group of women staff at Cornell coined “sexual harassment” and helped build a national movement against its incidence in the workplace. They did so by broadcasting the term: They organized speak-outs, mobilized the media, and sent letters to feminist groups across the country. Through one of those letters, Yale women discovered the concept of sexual harassment, which they thought might also apply to their experiences in education. After uncovering the prevalence of the problem at Yale—and administrators’ failure to address it—students there joined forces

with feminist lawyers. This *creative coalition* between distinct networks of feminists generated an opportunity for fresh thinking about what counts as “sex discrimination” in education and how best to fight it. In *Alexander*, these students and lawyers deployed their innovative interpretation of Title IX for the first time.

This novel use for the law took root at Berkeley next. Having already spent months mobilizing against sexual harassment on campus, students at Berkeley learned from one of the plaintiffs in *Alexander* that Title IX could help. She also introduced the Berkeley feminists to feminist lawyers in the Bay Area. In coalition with these legal experts, the students filed a federal OCR complaint against the school, alleging that Berkeley, like Yale, had violated Title IX by mishandling sexual harassment claims.

Both the Connecticut District Court and the OCR recognized the Yale and Berkeley students’ claims as legitimate. They agreed that faculty-student sexual harassment *is* a form of sex discrimination under Title IX and that schools must address it to comply with the law. Administrators responded by creating versions of the bureaucratic structures and processes that the students wanted. They established offices for people to make sexual harassment complaints and appointed faculty to manage these offices. They assembled boards to adjudicate complaints through fact-finding, mediation, and formal hearings. They endowed these boards with the power to discipline individuals accused of misconduct. Ultimately, these school officials initiated a new and highly specialized arena of academic administration dedicated to managing sexual harassment on campus.

This transformation of Title IX was consequential. It gave rights to victims and made visible the harms of sexual harassment as a form of discrimination. Surveys from the 1970s to the 2010s have consistently shown that most American women who attended college experienced sexually harassing behavior there.⁴⁴ Roughly 20 percent experienced its more extreme forms, including sexual assault.⁴⁵ Victims of campus sexual assault are at greater risk for post-traumatic stress disorder (PTSD), depression, and substance abuse.⁴⁶ They are also more likely to experience a decline in motivation and academic performance and to drop out of college altogether.⁴⁷ These academic consequences suggest that the effects of sexual misconduct follow victims into their lives well beyond college. The experience may adversely affect work and health outcomes as well as other important domains of well-being. The expansion of Title IX to encompass sexual harassment was a crucial first step toward confronting this problem and its potentially devastating consequences.

The shift in the law changed social norms in the academy, marking an end to complacency about sexual relationships between faculty and students. It

also reframed a larger class of faculty behavior—from verbal propositions to physical advances, which schools had long excused under the logic of “boys will be boys”—as sex discrimination. This is not to say that the problem disappeared; of course, it did not.⁴⁸ But there was now a strong proscription against sexual harassment, pressure on schools to address it, and legal tools available for confronting it. This transition reflects what legal scholar Cass Sunstein called the “expressive function” of law, or law’s capacity to communicate social norms.⁴⁹ The transformation of Title IX set new standards for gender relations on campus, and because colleges and universities sit at the intersection of multiple domains of the social world, these standards may well have spilled over into other domains, including, for example, the economy and the labor market, the arts and sciences, the philanthropic sector, and politics.⁵⁰

Academic governance also changed with this broader understanding of equal educational opportunity. The prohibition of sexual harassment under Title IX created a need for alternative approaches to managing gender relations on campus, first between faculty and students and then among students themselves. US colleges and universities have long regulated social and sexual conduct. Until the 1960s, for example, they acted “in the place of the parent” by imposing curfews, dress codes, and other restrictions on students’ lives. But the legalistic flavor that infused this work after Title IX’s transformation was new; the policies that administrators created in response to the shift borrowed elements from American civil procedure. Initially, faculty implemented these policies, and at some schools they still do. Today, however, full-time administrators do much of this work, partly because it has become so expansive as initial prohibitions against faculty-student sexual harassment have extended to student-on-student incidents that contemporary sexual harassment response systems now handle much larger caseloads. In 2011 a group of lawyers created an association specifically for the professionals who run these systems, the Association of Title IX Administrators. In 2024 it had more than thirteen thousand members.⁵¹

The expansion of Title IX affected social domains beyond education, changing antidiscrimination doctrine by creating a new class of actionable rights claims applicable to a wide variety of contexts, such as the workplace. Indeed, some of the same women who made sexual harassment unlawful in education also helped make it unlawful in employment under Title VII of the Civil Rights Act of 1964. This new category of claims helped open a new field of legal practice—suddenly, there was a demand for litigators specializing in sexual harassment law—but defining sexual harassment as sex discrimination also reinforced a focus on gender as the primary axis of women’s oppression, deepening existing fissures within second-wave feminism. The movement was diverse along racial, ethnic, and class lines, but some of its branches failed

to fully recognize how these and other identities interlocked with gender in producing inequality. Making sexual harassment into a form of unlawful sex discrimination further obscured this “matrix of domination,” as sociologist Patricia Hill Collins termed it, particularly the experiences of Black women.⁵² At the same time, however, it also provided traction for advances in feminist thought. Kimberlé Crenshaw’s influential concept of intersectionality, for example, emerged in part as a critique of antidiscrimination law’s core assumption that oppression occurs along a single dimension of disadvantage.⁵³ The transformation of Title IX, then, helped push the movement from which it developed in fresh directions.

In addition to explaining this specific shift in Title IX, the second goal of *Unlawful Advances* is to clarify the more general process of modern legal transformation. The case of Title IX exemplifies forms of legal change that leave the letter of the law intact while shifting its meaning in new and unexpected ways. This process of repurposing is especially important for laws that address discrimination. Different interpretations of these laws specify different meanings of equity and equality that can expand or limit the rights of certain groups, transform access to and opportunity within social institutions (e.g., schools, firms), and restructure social hierarchies.

Most of what social scientists know about antidiscrimination law in America is based on a few canonical cases. Title VII of the Civil Rights Act of 1964 is perhaps the most studied.⁵⁴ Title IX has received considerably less attention, which is surprising, given that the law is one of most prominent tools available for confronting gender disparities in education. A transformation in Title IX—or in other laws that regulate education, such as Title VI of the Civil Rights Act of 1964 or Section 504 of the Rehabilitation Act of 1964—can change how schools “sort and sieve” students for upward social mobility.⁵⁵ The prohibition of sexual harassment under Title IX certainly accomplished this by outlawing behavior that could and often did sift women out of college altogether. Understanding Title IX is therefore valuable in its own right, but there is also a greater value to expanding our catalog of cases. This broader view helps us identify the social forces that drive modern legal change and how these forces operate under different conditions. More specifically, the case of Title IX illustrates the people’s power to transform the law. Students asserting their rights under Title IX changed the meaning of those rights by collaborating with lawyers. This creative coalition, spanning different domains of the social world—education and law—produced a new idea about Title IX as well as opportunities to deploy the idea, which in turn allowed it to dramatically reshape these two domains and how they fit together.

Of course, other social forces contributed to this change in Title IX. Coeducation made it possible for women at Yale to develop an innovative

understanding of the right to gender equity on campus. A mutual commitment to second-wave feminism helped the students at both Yale and Berkeley work in coalition with lawyers. University officials even played a role: Their bewilderment encouraged the students to look beyond their schools for relief from sexual harassment. Administrators also promoted feedback effects by initiating policies and procedures to comply with the novel interpretation of Title IX that came out of Yale.

These forces, which link to existing social scientific explanations of modern legal change, took effect in conjunction with creative coalitions.⁵⁶ The concept of *creative coalitions* helps clarify why broad shifts in social structure and culture (e.g., coeducation in American colleges and universities) and social movements (e.g., second-wave feminism) transform laws in certain places at specific times. Schools other than Yale went coed in the 1960s,⁵⁷ and the women's movement extended to campuses beyond Yale and Berkeley, but these two were where the action was when it came to the transformation of Title IX because students there collaborated with lawyers.

The book's third and final goal is to deepen social scientific understandings of what law can and cannot do to create a more just and equitable world. This has been a foundational question for social scientists studying law since the early days.⁵⁸ Title IX promises gender equity in education. The application of the law to sexual harassment, without a doubt, moved schools closer to fulfilling this promise. Even so, the bureaucratic processes that colleges and universities use to address the problem have fallen short.⁵⁹ More than fifty years later, these systems are not working for victims, for the accused, or for schools. Campus sexual misconduct remains all too prevalent. Colleges and universities face lawsuits from all sides pointing to the injustices of their grievance procedures, while administrators confront the challenge of muting the harms of these procedures and reforming them to operate in the spirit of the law.⁶⁰ The present is a mess, and the path forward is unclear.

A historical perspective, however, clarifies that Title IX made and continues to make other worlds thinkable. Generations of students have discovered that the law entitles them to an education free of sex discrimination. The broad and vague language of laws like Title IX gives individuals license to both imagine alternative realities and take political action to make them real. This imaginative capacity is a powerful force for social change. It relates to what legal scholar Martha Minow called "rights consciousness," where rights come to represent "articulations of claims that people use to persuade others (and themselves) about how they should be treated and about what they should be granted."⁶¹ In the 1970s pioneering women used Title IX to try to change how they were treated and what they were entitled to on campus. They also tried to accomplish something bigger—to build a different and more emancipatory future

for women in the academy, a “real utopia,” in the words of sociologist Erik Olin Wright.⁶² Title IX helped these students envision this future, and their vision in turn transformed Title IX.

Creative Coalitions

Making sexual harassment into a Title IX violation was innovative. It marked a new way of thinking about both the statute itself and gender relations on campus more broadly. Since the 1950s American legal scholars have been writing about the process by which the letter of the law comes to serve purposes beyond those it was originally intended to fulfill. Karl Llewellyn explained in 1950, for example: “As a statute gains in age, its language is called upon to deal with circumstances utterly un contemplated at the time of its passage. Here the quest is not properly for the sense originally intended by the statute . . . but rather for the sense which *can be quarried out of it* in light of the new situation. Broad purposes can indeed reach far beyond details known or knowable at the time of drafting.”⁶³ Llewellyn’s contemporary, Arthur W. Phelps, similarly argued that in interpreting a statute “The court . . . must ask itself not only what the legislation means abstractly, or even on the basis of legislative history, but also *what it ought to mean in terms of the needs and goals of our present-day society*.”⁶⁴

Laws that set out new normative frameworks for social policy and public culture are especially prone to dynamic interpretation.⁶⁵ The Sherman Antitrust Act of 1890, for example, sought to ensure competition in a free market; Title VII of the Civil Rights Act of 1964, equal opportunity in employment; the Endangered Species Act of 1973, biodiversity; and Title IX, of course, sought to establish gender equity in education. Broad principles like “gender equity” mean different things against different sociohistorical backdrops.⁶⁶ The generic language of these and other statutes—in addition to the multiple levels of delegation involved in their implementation—allows the laws to take on new meaning over time.⁶⁷

The application of Title IX to sexual harassment illustrates this process—and the people’s power to effect it. The term “sexual harassment” did not exist at the time of the law’s passage; most university administrators treated sexual advances from male faculty as a routine part of life for women on campus. But when some of these women discovered the concept of sexual harassment and its applicability to their own experiences, they started to think that things could be different. The following chapters trace how the people claiming the right to an education free from sexual harassment repurposed Title IX to extend that right through what I call “creative coalitions.” In brief, creative coalitions are networks of people situated in different social domains who, by coming together, generate opportunities for innovative ideas about law and

policy that can disrupt durable, taken-for-granted ways of organizing social life. The concept of creative coalitions draws from social networks research on the emergence and transformation of institutions. It builds on two works in particular: Harrison C. White's *Identity and Control* (2008) and John F. Padgett and Walter W. Powell's *The Emergence of Organizations and Markets* (2012). Both books emphasize interactions between distinct networks as a powerful force that can give rise to new institutions and reconfigure existing ones.⁶⁸ I bring this perspective to the study of modern legal change. In the case of Title IX, networks of feminist students combined with networks of feminist lawyers. These two networks were embedded in different social domains, which is why I refer to their collaboration as a coalition; creative coalitions span boundaries delineating distinct arenas of society.⁶⁹

The interactions between these activist networks allowed them to share and transfer resources, from education into law and vice versa. Their encounters also created opportunities for new ways of synthesizing the resources that each network brought to the coalition. This synthesis produced a new use for Title IX. These coalitions' capacity to cobble together diverse resources is one reason why I call them "creative"; the second reason is to emphasize the emergent quality of what the networks created together.⁷⁰ The students and lawyers did not intend to develop an innovative interpretation of Title IX. They came up with the idea by trying to solve a concrete problem in the world: faculty-student sexual harassment. Because the social networks that make up creative coalitions originate from different domains, what they create can also flow back into and reshape those domains. The idea that Title IX prohibits sexual harassment transformed both education and law.⁷¹

Creative coalitions repurposed Title IX through three sequential, if overlapping, stages. Stage one was *interpretive*, centering on the emergence of a new understanding of the law's text. This part of the process occurred once. After multiple failed attempts to work within the university to resolve sexual harassment complaints against faculty, the Yale students turned to lawyers to puzzle out the next step. They formed a coalition of people, which enabled a coalition of resources. The students came to the table with the capacity to make formal rights claims under Title IX, firsthand knowledge of campus sexual misconduct, and social ties to other students who had experienced it. The lawyers brought their capacity to formally mobilize the law through, for example, the courts, expert knowledge of the law, and social ties to other legal professionals. The students and lawyers synthesized these resources in a new way by applying Title IX to sexual harassment.

This synthesis was not deliberate, much less visionary. A new use for the law emerged as the students and lawyers worked together to devise a path forward. Social scientists Walter W. Powell and Kurt Sandholtz aptly described this

problem-solving process: “Put simply, when established routines . . . prove limiting, people begin to search and experiment. In so doing, they draw on their stock of existing knowledge . . . and look around their social worlds for cues about appropriate steps. With this stock of information, they forge new tools for coping with situations without precedent.”⁷² Seeing opportunities to recombine resources and knowing how to do so in workable ways requires social skill; but such recombination is not a strategic end in itself.⁷³ The feminists who repurposed Title IX did not intend to do so. At the same time, however, the shape of people’s social worlds and where they sit within those worlds condition what they envision as plausible next steps. It was no accident that women from Yale and Berkeley were the first to turn to Title IX to confront sexual harassment. Connecting with legal professionals may not have been a desirable or even feasible option for students who lacked the social standing that comes with—and is often required for—attending elite schools.⁷⁴

The second stage through which creative coalitions repurposed Title IX was *legal*. It centered on deploying the novel interpretation of the law. Together with their lawyers, the Yale students sued the school under Title IX in *Alexander*. The law’s enforcement structure allowed for this, giving people the option to seek relief through the courts before filing an OCR complaint or grievance with their school. *Alexander* introduced this new interpretation of Title IX into other social networks, exposing judges, federal administrative officials, and other lawyers to the idea. The case also made the legal innovation more widely known across colleges and universities. This exposure helped initiate feedback dynamics—the idea that sexual harassment violates Title IX started to flow back into and reconfigure its domains of origin—explaining why and how the idea became so transformative.⁷⁵ The Berkeley case illustrates this part of the process beautifully: Students there learned about *Alexander*, then mobilized Title IX in the same way, creating opportunities for this understanding of the right to gender equity on campus to further reshape American schools and law.

For this idea about Title IX to produce transformative feedbacks, however, it needed more than just exposure; it needed legitimacy. Deploying the idea in the legal domain made that legitimacy possible, too. The lawsuit against Yale created an opportunity for a Connecticut judge to recognize sexual harassment as actionable under Title IX for the first time. Soon afterward, a federal Title IX complaint against Berkeley—which was also the product of a coalition between feminist students and lawyers—opened a window for the OCR to do the same. This repeated legitimation was important because the courts and the OCR both have authority to sanction interpretations of the law. The OCR is especially crucial, as the statute endows it with the authority to define Title IX. The decisions on the lawsuit against Yale and the federal

complaint against Berkeley changed the normative environment stemming from Title IX by establishing that the law does indeed bar sexual harassment. These coalitions and the decisions they won changed the legal meaning of equal educational opportunity.

Feedback dynamics continued to unfold in the third and final stage, which was *organizational*. When the courts and the OCR both legitimated this interpretation of Title IX, they set new expectations for the organizations that it regulates.⁷⁶ Schools now needed to signal compliance with the law's prohibition against sexual harassment. This shift encouraged organizational change, specifically the creation of sexual harassment response systems within universities. Yale and Berkeley changed first, which makes good sense, given that they were the immediate targets of these new pressures. University administrators created bureaucratic offices and processes for managing sexual misconduct on campus—what the students had called for from the beginning. Some of these students even served on the committees responsible for planning and building these organizational structures. To be sure, the students did not have a great deal of power to design them, which was a source of frustration, but they got something—formal policies for handling complaints. This mode of compliance quickly cascaded through “linked chains of learners” working in academic administration.⁷⁷ Descendants of these initial bureaucracies continue to operate in schools today.

Creative coalitions worked differently across these three different stages of the law's transformation. They generated a new understanding of Title IX in the first interpretive stage and enabled its deployment and legitimation in the second legal stage. The legitimation of the idea established new legal norms that set the third organizational stage into motion. Colleges and universities elaborated their bureaucracies to visibly communicate conformance with this norm. Creative coalitions played a less direct role in this final stage. Still, they defined a model of how to successfully comply with Title IX that took off across the nation.

What I have outlined is a starting point for the concept of creative coalitions. I hope other social scientists build on it and consider its applicability to other shifts in law and policy. There are already indications that the concept explains cases of legal repurposing both before and after Title IX's transformation. Recently, for example, hotel workers claiming protection under Section 7 of the US National Labor Relations Act of 1935 repurposed the law to defend against abuse and exploitation on the job.⁷⁸ In the 1990s and early 2000s, California land developers collaborated with state-level regulators and environmental activists to redefine the US Endangered Species Act of 1973, which now allows developers to do “unavoidable” damage to animals and habitats, so long as they offset it by funding conservation elsewhere.⁷⁹ Much earlier, in the

nineteenth century, railroad corporations repurposed the US Constitution's Fourteenth Amendment to secure for themselves the same rights that it guaranteed to formerly enslaved people.⁸⁰ In addition to illuminating the process of modern legal transformation, then, the concept of creative coalitions helps clarify enduring sociocultural changes and material shifts in the balance of rights and powers in society at large. It deepens our understanding of the dynamic and ever-evolving nature of American law, the broader standards it sets for social behavior, and the formal protections it extends to us as citizens. Legal texts mean and do different things in different contexts and historical moments; creative coalitions help us understand why this is possible. The concept reveals how regular people—even students—can shape the law's evolution. It shows us how movements and their ideologies figure into this process, too. It was *feminist* students who made sexual harassment illegal in education, and they did so by collaborating with *feminist* lawyers. Through their actions, the movement redefined the meaning of sex discrimination under American civil rights law and its capacity to enhance equal opportunity.

The Study

Historical sociology can be a lot like detective work. At the start of a project, it is not often clear where one will find their first trail of breadcrumbs, much less where they will lead. Initially, I was not aware of Yale's central role in the application of Title IX to sexual harassment, even though I was a graduate student there. What I did know—through my job as a research assistant in one of the offices responsible for implementing the law—was that administrators focused almost exclusively on sexual harassment and assault. This puzzled me. I had always understood Title IX as the law that mandated gender equity in athletics.

I quickly learned that, in 2011, shortly before I had moved to New Haven, students and alumni had filed a federal Title IX complaint against Yale alleging that “a sexually hostile environment existed on campus.”⁸¹ These events helped explain why administrators seemed so preoccupied with the issue. The complaint was a harbinger of the wave of mobilization against campus sexual misconduct that would soon sweep across the country.⁸² While much of this mobilization centered around Title IX, the wave was only just building when I started in that office at Yale, and this use for the law still seemed unusual—or what sociologist Robert K. Merton would have called “anomalous.”⁸³ I spent the next ten years trying to understand it.

To uncover how and why Title IX came to bar sexual harassment, I looked to the courts, the OCR, and schools—the three primary organizational settings where the text of Title IX takes shape on the ground. When it comes

to interpreting and implementing the law, the courts, the OCR, and schools look to each other. What happens in one setting can affect the others. For this reason, it was important to understand the political dynamics operating not just *within* these settings but also *among* them.

I started by tracing the history of this use for Title IX in the courts and the OCR. I reviewed all Title IX lawsuits with Notes of Decision in Westlaw, a database for legal research. Lawsuits with Notes of Decision interpret the language of the law in important and sometimes novel ways.⁸⁴ At the time of my initial search in 2015, there were close to seven hundred of these cases. I updated this analysis by reviewing decisions issued through 2020. I also reviewed all available federal policies effectuating the law.⁸⁵ There were just over seventy of these in 2015. I used the OCR's new online policy library to update my analysis. I used the lawsuits and the federal documents to construct a timeline of top-down changes to Title IX. In the process, I discovered *Alexander et al. v. Yale*.⁸⁶ But before the Yale feminists could mobilize Title IX to confront sexual harassment, they needed the language of sexual harassment. Existing historical and legal scholarship pointed me to Cornell as its point of origin.⁸⁷ By naming sexual harassment, feminists at Cornell laid the foundation for *Alexander*, thus enabling the transformation of Title IX. The Cornell case also further clarified the causes of this transformation. Given that the concept was developed there, Cornell arguably should have been where Title IX was repurposed to address sexual harassment, but it was not.⁸⁸ Identifying what was missing from Cornell helped me understand what mattered at Yale.⁸⁹

The Cornell and Yale cases supplied the material I needed to explain how and why a new use for Title IX came into being. They did not, however, fully account for how and why the innovation took root. This was crucial to understand, too; new ways of thinking about and applying law and policy arise all the time without being taken up or producing transformative effects. The court decision that first legitimated the idea that sexual harassment is sex discrimination in education applied only to the state of Connecticut; it very well could have faded into oblivion.⁹⁰ But it did not, largely because of what happened at Berkeley. The actions of feminist students there compelled the federal agency responsible for implementing Title IX to acknowledge, for the first time, that the law proscribes sexual harassment. The Berkeley case, then, allowed me to observe the processes that helped make this interpretation of Title IX so important.

In sum, I selected three cases that were incredibly important on their own but also linked together in the larger trajectory of Title IX's transformation. The episode at Cornell shaped the episode at Yale, which in turn shaped the episode at Berkeley.⁹¹ As I will show, specific people threaded the three together.

I conducted extensive archival research on each case, working like both a historian and an ethnographer to examine a range of document collections in

each school's archives, including materials produced by committees on the status of women, equal opportunity and affirmative action offices, top-level administrative offices, women's centers, women's studies programs, and feminist student groups.⁹² I reviewed the schools' newspapers for general discussions about sexual harassment and specific mentions of the events of interest.⁹³ I also examined archival collections explicitly related to the three episodes.⁹⁴ These documents revealed key individuals involved in the Cornell, Yale, and Berkeley cases. Through online public information databases, alumni directories, and personal networks, I recruited as many of these people as possible for interviews, with a focus on the people involved in the events at Yale and Berkeley. I interviewed thirty-nine key informants, including former students, faculty, administrators, and lawyers.⁹⁵ I also spoke with forty-five other people who were involved in the more recent mobilization of Title IX against campus sexual misconduct both at these specific schools and on the national stage. Although their reflections are not the central focus of this book, they helped uncover the continuing effects of the law's initial expansion to encompass sexual harassment.

My interviews supplemented the archival evidence by both providing the stories people used to make sense of this period of their lives and illuminating the intersections of these stories with other narratives in the data.⁹⁶ These narratives did not just consist of material from the case studies. The lawsuits and federal policies told stories about the trajectory of Title IX, too. I analyzed these narratives by tracing how they cohered, conflicted, and connected both within and across the organizational settings where Title IX lives its social life.

The final data source illuminates the legacy of this legal transformation. I constructed an original dataset to understand how people with rights under Title IX mobilize the law today. It consists of all federal Title IX complaints filed against colleges and universities from 1994 to 2018.⁹⁷ With details on more than eighteen thousand claims, it is the most extensive catalog of the law's deployment to date. I present my analysis of the dataset in chapter 4, which discusses the enduring effects of Title IX's application to sexual harassment.

Triangulating these various sources and types of data produced a comprehensive and richly detailed account of Title IX's evolution. They each provided a different lens on the transformation that together clarified the whole. They also allowed me to pry open the more general process of modern legal change, to observe the engines driving it.⁹⁸ My goal in doing so was not to generate a universal theory of the process, but instead to improve our understanding of its articulation through multiple social forces, opportunities, and constraints that both shaped and were shaped by people's actions.⁹⁹

The rest of the book proceeds as follows. Chapter 1 takes the reader back to the early 1970s, when sexual harassment still went unnamed. I explain how

women at Cornell coined the term and set the stage for its recognition as unlawful sex discrimination under Title IX. Chapter 2 turns to Yale, clarifying the emergence of new thinking about the right to equal educational opportunity. Chapter 3 moves to Berkeley, where I trace how this new use for Title IX spread across the country and, in the process, became enormously transformative. Chapter 4 follows the evolution of the law's prohibition against sexual harassment up to the near present.¹⁰⁰ The conclusion takes stock of the book's core claims and what they mean for making sense of modern legal change. It is more important now than ever to understand this process. Many of our nation's laws have recently been reinterpreted to restrict the rights of historically marginalized groups, including, and especially, the rights of women. Clearly, modern legal change is ongoing, but it is now moving in an altogether different—and far more unsettling—direction.

Today, for many Americans, Title IX is synonymous with its prohibition against sexual harassment. Perhaps you are one of these Americans. Perhaps your willingness to question this understanding of the law is the reason why you picked up this book. If so, you are like the feminists who transformed Title IX. They were not afraid to think differently about the meaning of gender equity in education and our legal right to it. When Congress enacted the law in 1972, no one predicted that it would become one of the most prominent tools for confronting sexual harassment in education. And yet it did. Because of these feminists. The following pages tell their remarkable story.

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