The Personal Is Still Political: A Feminist Critical Policy Analysis of the Rollback of Title IX

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Cover Page Footnote
Thank you, Dad, for a wealth that can never be stolen.

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In November 2016, Republican candidate Donald Trump won the presidential election with 304 electoral votes over Democrat Hillary Clinton’s 227, despite the difference of 2.9 million in the popular vote in favor of Clinton. The discriminatory and hate-filled rhetoric of the Trump campaign raised concerns that the advancements of rights for “sexual and gender minorities” made under President Barack Obama’s administration would be limited or rescinded (Veldhuis, Drabble, Riggie, Wootton & Hughes, 2018, p. 27). The fate of Title IX of the Education Amendments was of concern due to the calamitous appointment of Trump’s nominee, Betsy DeVos as Secretary of Education. DeVos signaled no commitment to upholding the previous guidance during her confirmation hearing. Advocates contend that the Department of Education Office of Civil Rights (OCR) release of the 2011 Dear Colleague Letter rescinding the 2011 and 2014 guidance (United States Department of Education [DOE], 2017) was released, signed by Acting Assistant Secretary for Civil Rights, Candice Jackson. In place of the repealed Obama-era guidance, the new DCL outlined significant changes that provided a glimpse of this administration’s direction. The future of Title IX reform seems dim and uncertain given an administration overladen with “grab her by the pussy” recordings (Fahrenthold, 2016), inexperienced female “inheritors” (Bensimon & Marshall, 2003) inducted into the old boys’ club under President Donald Trump, and the new direction of the Department of Education. Advocates signaled no commitment to upholding the previous guidance during her confirmation hearing. Advocates contend that the Department of Education Office of Civil Rights (OCR) release of the 2011 Dear Colleague Letter rescinding the 2011 and 2014 guidance (United States Department of Education [DOE], 2017) was released, signed by Acting Assistant Secretary for Civil Rights, Candice Jackson. In place of the repealed Obama-era guidance, the new DCL outlined significant changes that provided a glimpse of this administration’s direction. The future of Title IX reform seems dim and uncertain given an administration overladen with “grab her by the pussy” recordings (Fahrenthold, 2016), inexperienced female “inheritors” (Bensimon & Marshall, 2003) inducted into the old boys’ club under the auspices of the Department of Education and the default to fake news to evade responsibility. The purpose of this article is to employ a feminist critical policy analysis (Marshall, 1998) of Title IX guidance from the Department of Education. The Obama-era guidance was heralded as successful in bringing national attention to campus sexual violence, and mobilized universities to update practices to address the issue (Collins, 2016). The current administration, however, has left many worried about the legitimation of mass shootings of exclusion, hate and violence (Veldhuis et al., 2018). The discussion of campus sexual violence from the current administration reflects dominant narratives of rape that “blame the victim, question the victim’s credibility, imply that the victim deserved being raped, denigrate the victim, and trivialize the rape experience” (Ward, 1988 as cited in Nagal, Matsuo, McIntyre, & Morrison, 2005, p. 726). Negative attitudes toward rape victims are exacerbated by perceptions of culture, race, and gender (Collins, 2016; Crenshaw, 1989; Nagal et al., 2005). Feminist analysis using a critical lens recognizes intersections of identities and the impact these have on marginalized groups (Biklen, Marshall & Pollard, 2008; Shaw, 2004). Utilizing feminist critical analysis, I aim to expose the prevailing power relations in Title IX policy for a more complete understanding of its implementation from the perspectives of both the policymakers and those affected by the policy (Shaw, 2004, p. 57).

Feminist critical analysis can be applied to the spectrum of sex-based discrimination defined by Title IX. However, for this analysis, I will focus specifically on regulations regarding sexual violence and rape. According to the Office of Civil Rights, sexual violence refers to “physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent,” including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion (United States Department of Education, 2011, p. 1). In this article, I begin with an overview feminist critical policy analysis and explain its use to analyze Title IX guidance. Next, I will provide discussion points to facilitate future considerations for Title IX implementation.

Feminist Critical Policy Analysis

Feminist critical policy analysis problematizes policies to reveal sexism and discrimination, including racial, sexual, and social class biases, inherent in commonly accepted theories, constructs, and concepts (Bensimon & Marshall, 2003; Marshall, 1999). According to Marshall (1997 as cited in Shaw, 2004), White, well-educated males dominate approaches to policy analysis; therefore, the worldview of this group is valued and widely accepted. Feminist critical analysis reveals androcentrism (centered on male or masculine interests) in the ways policies exclude women or proclaim neutrality, essentially disenfranchising or denying women opportunity, agency, or power (Biklen, Marshall & Pollard, 2008). Simply adding sex, or women, as a protected class is not in itself transformative (Bensimon & Marshall, 2003; Shaw, 2004). The key tenets of feminist critical theory are the principle of analysis toward the goal of challenging dominant structures that deny access to power and further oppress marginalized groups. First, gender must be the center of analysis, whereby assessment of structures and policies is gender conscious, not gender blind or neutral (Bensimon & Marshall, 2003; Shaw, 2004). As in critical theory, lived experiences are essential in data collection. Feminist critical policy analysts rely on the “lived experiences of women, as told by women, and they also utilize discourse analysis to uncover the ideologies and assumptions embedded in policy documents” (Shaw, 2004, p. 59). Analysis must be viewed from the counter narratives and voices of those disenfranchised or discriminated (Bensimon & Marshall, 2003). Critical feminism recognizes the intersections (Crenshaw, 1989) of gender, race, sexuality and social class; thus, the purpose of this approach is not to develop a generic universal understanding of the human experience, rather it is to underscore the ways in which these identities vary the effects of policies (Shaw, 2004). Finally, feminist critical policy analysis must be transformative, a form of action research (Bensimon & Marshall, 1997 as cited in Shaw, 2004).

Using Feminist Critical Analysis with Title IX

One could assume that a feminist critical policy analysis framework was applied at all levels of amending Title IX because sex is a variable in the policy. Or perhaps a rulemaking process of notice and comment (Ridley & Marshall, 2008; Veldhuis et al., 2018). The discourse of campus sexual violence trivializes the rape experience” (Ward, 1988 as cited in Shaw, 2004). Analysis must be viewed from the counter narratives and voices of those disenfranchised or discriminated (Bensimon & Marshall, 2003). Critical feminism recognizes the intersections (Crenshaw, 1989) of gender, race, sexuality and social class; thus, the purpose of this approach is not to develop a generic universal understanding of the human experience, rather it is to underscore the ways in which these identities vary the effects of policies (Shaw, 2004). Finally, feminist critical policy analysis must be transformative, a form of action research (Bensimon & Marshall, 1997 as cited in Shaw, 2004).

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"Feminist critical analysis problematizes policies to reveal sexism and discrimination, including racial, sexual, and social class biases, inherent in commonly accepted theories, constructs, and concepts."
haps because sex is embedded in the policy, gender biases are not a concern. Conventional policy analysts would argue that because sex is the basis of this anti-discrimination system, it is not necessary to analyze its potential for gender bias toward males. A close examination of perceptions of rape is paramount in the analysis of the current status and direction of Title IX. The current administration’s approach in repealing previous Title IX guidance mirrors patriarchal and racist relations toward sexual violence and exposes the prevalence of an unwritten threat to power (Crenshaw, 1991; Harris & Linder, 2017; Nagal et al., 2005). DeVos and critics of the Obama-era guidance have focused much of their attention on the negative impact these changes have had on students accused of sexual violence. Many of the examples used support this claim follow the dominant narrative of sexual violence. Implementing Title IX provides a venue for false reporting against innocent White male students (Joyce, 2017; Taylor & Johnson, 2015; Yoffe, 2017). Employing feminist critical analysis has the potential to fully realize the spirit of Title IX by revealing the groups that are not protected under the policy (Collins, 2016; Crenshaw, 1991, 1999; Marshall, 1999; Shaw, 2004). Feminist critical scholarship is limited in regards to realization the spirit of Title IX by revealing the groups are recognized or excluded by the policy (Collins, 2016; Crenshaw, 1991; Marshall, 1999; Shaw, 2004). Feminist critical analysis problematizes the policymakers and assumptions that are currently used to validate Title IX policy. The common denominators in the disproportionate number of women that are sexually assaulted. Even more troublesome is the absence of the impact that race, class, and ability have in the discourse on prevention and intervention of campus sexual violence. Furthermore, the assertion of the dominant narrative where women are victims and men are rapists excludes the experiences of male survivors, transgender survivors or sexual violence in same-sex relationships (Davies & Hudson, 2011; Harris & Linder, 2017; Marine, 2017), which critics can use to counter any attempt toward gender equity. Yet, the same heterocentric, and gender binary assumptions are being used to charge Obama-era guidance with inequitable practice. Exposing and navigating the nuances of patriarchal politics requires the use of a lens that unsets the power dynamics and facilitates transformation.

Traditional policy analysis believes in a single truth and assumes objectivity is achievable and desirable (Estrich, 1986). “As an environmental variable referring to opposite categories i.e. boy and man or girl and woman,” neutralization to develop, implement and govern Title IX, was perhaps necessary to win the approval of the dominant center. Neutralizing Title IX in this way, however, eradicates the experiences of the disproportionate number of women that are sexually assaulted. Even more troublesome is the absence of the impact that race, class, and ability have in the discourse on prevention and intervention of campus sexual violence. Furthermore, the assertion of the dominant narrative where women are victims and men are rapists excludes the experiences of male survivors, transgender survivors or sexual violence in same-sex relationships (Davies & Hudson, 2011; Harris & Linder, 2017; Marine, 2017), which critics can use to counter any attempt toward gender equity. Yet, the same heterocentric, and gender binary assumptions are being used to charge Obama-era guidance with inequitable practice. Exposing and navigating the nuances of patriarchal politics requires the use of a lens that unsets the power dynamics and facilitates transformation.

Title IX Analysis

Rape

Interestingly, much of the literature used to examine Title IX in this article does not include a definition of rape; it begins with a base for understanding gender and its complexities as an essential component in analyzing Title IX policy. The common denominators in the various legal and civil definitions of rape are sexual penetration and the absence of consent (Estrich, 1986; Hickman & Muehlenhard, 1999 as cited in Jozkowski, 2003; Rainn, 2018). Rape laws have been adjusted over the years to include forms of sexual violence other than penile penetration of the vagina (Corigan, 2013). For example, some statutes vary in recognizing anal penetration, stipulations around statutory rape, oral penetration by a sex organ, digital penetration, penetration with foreign objects, rape between married individuals, and so forth.

Conceptualization of rape follows the dominant narrative in which White cisgender women are victims of rape by straight, cisgender men of color (Crenshaw, 1991; Harris & Linder, 2017). This patriarchal and racist perception constructs stereotypical attitudes toward victims (Crenshaw, 1991; Davies & Hudson, 2011).

Nagal et al., (2005) and disregards the experiences of survivors of color; transgender and male survivors; lesbian, gay, bisexual and queer survivors; and survivors with disabilities (Crenshaw, 1991; Harris & Linder, 2017). In rape law, “the male standard defines a crime committed against women, and male standards are used not only to judge women, but also the judge of the conduct of women victims” (Estrich, 1986, p. 1091). The widely accepted patriarchal view of women’s sexuality places property-like aspects on their body, while men’s sexuality and even sexual aggression is celebrated (Crenshaw, 1991). Additionally, traditional gender roles shape attributions of rape victimization. Consequently, victims that deviate from socially accepted gender roles (i.e. trans-gender, lesbian, gay, bisexual, queer) experience higher rates of sexual violence, but the stigmatization of their identities pushes them further to the margins, limiting access to services and justice (Davies & Hudson, 2011; Grubb & Turner, 2012; Veldhuis, et al., 2018). Racism ascertains who is capable of committing rape and who can be raped. The stereotype that perpetrators of rape are usually men of color is upheld by the sensationalized focus on savage or animalistic representations of Black men (Crenshaw, 1991). The hypersexualization of Black women, and commodification of Asian women, narrows the perception of “true victims” to White females, eliminating the experiences of sexual violence in communities of color (Crenshaw, 1989; Crenshaw, 1991; Harris, 2017; Harris & Linder, 2017). These patriarchal and racist views reinforce misconceptions of what constitutes “real” (Estrich, 1986, p. 1088) rape versus, for lack of a better term, non-traditional rape.

At the forefront, the combination of sexual penetrations and the absence of consent criminalize rape, yet the vast majority of rape cases are not reported for exclusion by the policy (Collins, 2016; Crenshaw, 1991, 1999; Marshall, 1999; Shaw, 2004). Traditional policy analysts believe in a single truth and assumes objectivity is achievable and desirable (Estrich, 1986). “As an environmental variable referring to opposite categories i.e. boy and man or girl and woman,” neutralization to develop, implement and govern Title IX, was perhaps necessary to win the approval of the dominant center. Neutralizing Title IX in this way, however, eradicates the experiences of the disproportionate number of women that are sexually assaulted. Even more troublesome is the absence of the impact that race, class, and ability have in the discourse on prevention and intervention of campus sexual violence. Furthermore, the assertion of the dominant narrative where women are victims and men are rapists excludes the experiences of male survivors, transgender survivors or sexual violence in same-sex relationships (Davies & Hudson, 2011; Harris & Linder, 2017; Marine, 2017), which critics can use to counter any attempt toward gender equity. Yet, the same heterocentric, and gender binary assumptions are being used to charge Obama-era guidance with inequitable practice. Exposing and navigating the nuances of patriarchal politics requires the use of a lens that unsets the power dynamics and facilitates transformation.

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identities that contributed to the act of sexual violation. Ultimately, the policies and statutes associated with determining whether a crime of rape occurred, not to mention guilt of rape, to Title IX policy and institutional responses to sexual violence.

As anticipated, the potential to hold men and colleges accountable roused opposition of this united federal front. Critics neglected any focus on campus sexual violence, immediately investigating female sexual behavior. Early carnal knowledge statutes and rape laws understood within this discourse to illustrate that the objective of rape statutes traditionally has not been to protect women from coercive intimacy but to protect and maintain a property-like interest in female chastity (Crenshaw, 1989, p. 157).

Campus Sexual Violence and the 2011 Dear Colleague Letter

Despite heightened attention to campus sexual violence recently, rape on college campuses is not a new concept. Sexual violence in postsecondary institutions has remained consistent, with 20-25% of college women experiencing rape or attempted rape (Jessup-Anger & Edwards, 2015). In addition, male college students are approximately five times more likely than their non-student counterparts to be victims of rape or sexual assault (Koss et al., 1987). In the light of what is now known as Title IX reform, I ask you to think back to the landscape of sexual violence education and adjudication on college campuses before 2011.

Sexual violence was adjudicated on a case-by-case basis and school policies described what behaviors did not amount to consent versus what it is and how it is attained (Childs, 2017). Additional factors contributed to how IHE responded to reports of rape: the clout of the accused rapist, the victim’s alcohol consumption, the victim’s reputation, and so forth. Motivation to establish a standardized approach for campuses to investigate and eliminate sexual violence derived from an increasing number of student narratives that claimed their universities refused to investigate reports of sexual violence, “surviving issues under the rug” (Childs, 2017). Additionally, there were a growing number of sexual misconduct cases which university administrators were aware of, but failed to do anything, i.e., Penn State, Michigan State University and University of Missouri.

To clarify and expand its Revised Sexual Harassment Guidance (2001), the OCR released the infamous 2011 Dear Colleague Letter. The Department of Education (DOE) reinforced the school’s obligation to address and eliminate sexual violence. Institutions examined their sexual behavior and culture; 3) effective response to reports of sexual violence; and 4) increase transparency and improve enforcement of Title IX at the federal and institutional levels (Task Force, 2014).

For the first time, universities were provided tangible procedures that standardized how to address campus sexual violence. Institutions examined their sexual misconduct policies to find outdated, ineffective and irrelevant procedures. IHE designated individual Title IX coordinators to receive all reports of sexual violence and coordinate services and investigations accordingly. State agencies dedicated more resources to implement the new policies and, with increasing national attention on campus rape, institutions could no longer sweep the issues under the rug. Female students were provided options to report rape and figure out what they could do to take back control in their lives. Going beyond the legal requirements, a handful of institutions allocated resources establishing support services for accused students. The discourse on campus rape began to shift the focus from females making false reports of rape, to Title IX policy and institutional responses to sexual violence.

4. Grievance procedures for students to file complaints of sexual violence must be provided. Procedures must include equal opportunity for both parties to a) present witnesses and evidence, and b) the same appeal rights; 5. The preponderance of evidence standard must be used to resolve complaints of sexual discrimination; and 6. Both parties must be notified of the final outcome of the complaint (United States Department of Education, 2011). The Department of Justice (DOJ) reinforced the responsibility of universities to address sexual violence and intimate partner violence in the 2013 Reauthorization of the Violence Against Women Act (VAWA) under its Campus Sexual Violence Elimination Act (SaVe Act) provision, Section 304 ("American Council on Education, 2014). Under VWA, institutions are required to: 1) Report domestic violence, dating violence, and stalking, beyond crime categories the Clery Act already mandates; 2) Adopt certain student discipline procedures such as for notifying a reported victim of their rights; and 3) Adopt certain institutional policies to address and prevent campus sexual violence, such as to train in particular respects pertinent institutional personnel ("American Council on Education, 2014). The White House Task Force to Protect Students from Sexual Assault (Task Force) followed suit and identified four areas of priority in addition to the OCR and DOJ requirements: 1) conduct campus climate surveys to understand the extent of the problem; 2) prevention education and engaging men to change attitudes, behavior and culture; 3) effective response to reports of sexual violence; and 4) increase transparency and improve enforcement of Title IX at the federal and institutional levels (Task Force, 2014).
them expelled for “regret sex” (Joyce, 2017). Now that schools have the option to increase the standard of proof, there is worry that students held responsible under the previous policy will return to their institutions to have their cases reviewed or file lawsuits (Miltenberg in Joyce, 2017). The Student Affairs Administrators in Higher Education (NASPA) president released a statement soon after the repeal to declare the association’s support of the preponderance of evidence, stating, “singling out sex assault to have higher standard perpetuates rape culture” (Kruger, 2017, para. 5).

Appeal of outcome of campus investigations. Appeals in the current guidance are upheld by the party under two conditions: by the accused, or (b) by both parties if voluntarily agreed upon. The previous guidance allowed for either party to file an appeal, where institutions indicated two conditions in which one could be filed: (a) introduction of new evidence, or (b) a due process violation. The current guidance limits an appeal to the responding party, citing the accused individual is the one who risks penalty and therefore should not be tried twice for the same allegation. (United States Department of Education, 2017). Contrary to the guidance’s commitment to equitable procedures for all parties, the option for a complainant to file an appeal was removed. Finally, the OCR no longer requires a set time frame for campus sexual violence investigations if it is consistent with other misconduct cases. The preponderance standard was utilized by approximately 80 percent of college that had one and it was consistent with civil rights violations like sexual harassment. (Joyce, 2017).

Standard of proof. The current guidance allows institutions the option to increase the standard of proof to clear and convincing evidence in campus sexual violence investigations if it is consistent with other misconduct cases. The preponderance standard was utilized by approximately 80 percent of college that had one and it was consistent with civil rights violations like sexual harassment. The OCR now permits “participation” of either party’s attorney or support advisor, contrary to previous guidance. The debate regarding support advisors and their role is limited to their physical presence and consultation of the use of rape as a tool of power in colonized countries. The discourse of Title IX of the Education Amendments of 1972 within the last decade has brought to attention the need for Title IX to be updated and reevaluated. Title IX: “She’s placing this back where it belongs,” in the purview of the states (Joyce, 2017, para. 24). Though the future of Title IX is somewhat of a mystery, one thing is clear: in regards to campus rape, the presumed innocent White male falsely accused of sexual violence, has priority above all else.

Discussion

The Personal is Still Political

My personal and professional identities are directly impacted by the complexities of Title IX. The fact that policies that mainly impact women (i.e. reproductive rights, Title IX) continue to be governed by lawmakers maintains my personal identities and experiences as political. I am a woman of color with ethnic origins in a country that was colonized for centuries. Documentation of the use of rape as a tool of power in colonization shapes the way women of color perceive our roles in society and how we experience sexual violence, in particular. As a Title IX confidential advocate on a college campus, navigating the evolving institutional policies to address sexual violence is just as much of a learning experience for me as it is for the students I work with. My professional role on my campus allows me to navigate university procedures that are not accessible to students. I do not mean to point blame at any institution for implementing difficult policies and procedures. Instead I want to shine light on the gap that remains between institutional compliance and the lived experiences of students. Recent Title IX guidance appeared to provide an alternative to the criminal justice system, which was often a barrier for reporting sexual violence. The guidance however continues to mirror the criminal justice system, which has been proven to perpetuate patriarchal and racist structures oppressing marginalized groups. The burden remains on reporting parties to prove victimization, ensuring due process rights for accused individuals. Consequently, critiques of Title IX procedures reflect the expectations of the dominant patriarchal and racist criminal justice system. This paternalistic approach further silences the interests of all the subjects of the law: our students. Political decisions regarding campus sexual violence are extremely personal for the students they are impacting. Therefore, it is imperative that lawmakers and administrators recognize power, privilege and domination in implementing gender-based policies.

Missing Voices

The discourse of Title IX of the Education Amendments of 1972 within the last decade has brought to attention the need for Title IX to be updated and reevaluated. This paternalistic approach further silences the interests of all the subjects of the law: our students. Political decisions regarding campus sexual violence are extremely personal for the students they are impacting. Therefore, it is imperative that lawmakers and administrators recognize power, privilege and domination in implementing gender-based policies.
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voices that must tell (Bensimon & Mar-
to critical feminism to be accountable very political and the personal is still evidence of male sexuality tends to eclipse the use of rape as a weapon of [racial] terror” (p. 158). Critical femi-
nism challenges us to be uncomfort-
able and confront the status quo. This examination of Title IX reveals that the personal is still very political and to be accountable to critical feminism (Bensimon & Mar-
shall, 2003) it is our voices that must tell our story.

Trump and the Trumpeteers

So far, descriptions of the gatekeepers of power are as elite White men, or something to that effect. This allegorical group of White men refers to those who have clout, privilege and influence resulting from patriarchy, not necessarily always White, and not always male. Due to Trump’s election, we have names and faces of those who have hold this power. Feminist critical policy analysis calls upon the disruption of dominant narratives (Biklen et al., 2008) by revealing the assumptions and ideals of said group, specifically President Donald Trump, Secretary of Education Betsy DeVos and Acting Assistant Secretary of Civil Rights Candice Jackson. I believe the bigotries of the 45th President of the United States are common knowledge internationally. For examples of his prejudices, please refer to the 2005 recording (Fahrenthold, 2016) of our current president bragging about “grabbing them [women] by the pussy” and follow his Twitter account @realDonaldTrump.

The same day the Office of Civil Rights released the interim guidance, Democratic National Jess O’Con-
nell tweeted “banner day when Republicans can find women to do their dirty work against other women” (Rothman, 2017). Bensimon and Marshall (2003) refer to the 2005 recording (Fahrenthold, 2016) of our current president bragging about “grabbing them [women] by the pussy” and follow his Twitter account @realDonaldTrump.

For true transformation, there is a need to reframe all steps of policy development, implementation, and analysis. Of utmost importance, is a reminder that the personal is still political, especially when addressing sexual violence. The hostilities in Washington, D.C. are very far removed from the lived experiences of our people’s lives. DeVos has expressed that the spirit of the law of the current administration remains to protect student rights and prevent sexual violence. However the ongoing struggle has created an environment of compliance, overshadowing the intended priorities of student interest. Campus personnel, specifically student affairs professionals, have a significant role in seeking effective best practices to support all students’ well-being. In the spirit of critical feminism, as unset-
tling as it may be, we must seek spaces of resistance (Biklen et al., 2008) to initiate true change.

**References:**

Can be found at the end of this special issue.

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