

Title IX's Failed Experiment: Why Accommodating Sex Differences Beats Engineered Parity

Scott Yenor

Title IX has evolved from a seemingly modest anti-discrimination statute into a powerful engine of feminist social engineering, complete with proportionality mandates. The result has been two systemic distortions that rest on a false premise—that differences in competitiveness and interest between the sexes are stereotypes to be engineered away through state action and cultural revolution. Equality under Title IX does not require identical outcomes or the erasure of sex differences. It requires opportunity rooted in human nature that will reveal genuine differences between the sexes. Recovering an approach that accommodates the partly natural, partly cultural differences between the sexes can sustain vibrant women's sports, protect and perhaps expand male opportunities, and contribute to a healthier, more humane social order.

Introduction

In 2024, a Tunisian man defeated a Chinese woman for the Olympic women's boxing gold medal. The spectacle of a biological male pummeling a female athlete shocked many and led to renewed calls to keep men out of women's sports. However, under today's civil rights regime, efforts to define and uphold the physical differences between men and women are dismissed as reflections of benighted stereotypes. Even Supreme Court nominees

famously seek to evade answering the simple question, “What is a woman?” To protect single-sex women’s sports, we must therefore revisit the deeper feminist settlement that has governed athletics for decades.

The predominant brand of American feminism successfully expanded female participation in competitive sports with appeals to fairness, equality, and opportunity. All of these retail terms were used to sell a deeper transformative vision.¹ The language of “opportunity” has usually been deployed selectively. The ultimate aim of feminist thinkers was a new kind of woman who would be more independent and even dominant and less deferential and less oriented toward motherhood and traditional female graces.

This radical ambition, articulated by Simone de Beauvoir and continued by her epigones, found bureaucratic expression in the expansive application of Title IX, the 1972 civil rights law that prohibits discrimination based on sex in any federally funded education activity.² Title IX evolved from a seemingly modest anti-discrimination statute into a powerful engine of feminist social engineering, complete with proportionality mandates. The result has been two systemic distortions: a prejudice in favor of a male-normed competitive model for women’s sports and a prejudice against men’s non-revenue programs.

These distortions rest on a false premise: that differences in competitiveness and interest between the sexes are stereotypes to be engineered away through state action and cultural revolution. Evidence from psychology, recreational participation, club sports, and cross-cultural studies shows that when it comes to sports, as elsewhere, differences between men and women are partly natural and only partly cultural.

A better approach is possible. By unwinding our current regime and accommodating real sex differences, public institutions can expand genuine opportunity for women, improve lifelong habits of participation for women and men, and serve the broader goods of health, family, and human flourishing. True equality under Title IX requires policies that are grounded in human nature, not a world without sexual difference.

The Feminist Educative Project

For leading feminists inspired by thinkers like Beauvoir and others, expanding competitive sports for women was never merely about fairness or “opportunity.” Promoting assertive athletics formed a core element of a broader project to remake female character itself—producing a new woman who would be more aggressive, assertive, dominant, and less deferential, less graceful, and less oriented toward motherhood and traditional feminine graces.

Beauvoir, the intellectual godmother of second-wave feminism, articulated this vision with striking clarity in *The Second Sex*, first published in France in 1949. She lamented how traditional femininity denied women the “free and habitual resort to force” that boys naturally develop through rough play. Beauvoir held up wrestling as a paradigmatic activity through which a girl could learn “the conquering pride of a boy who pins his opponent’s shoulders to the ground.” In physical confrontation, a young woman could finally experience what it means to confront another as a “free being” seeking to “vanquish” her opponent, to “force an arm to yield and bend,” and “to assert one’s sovereignty over the world in general.”³

Beauvoir observed that the “*competitive* attitude, most important to young men,” remains little practiced among young women.⁴ To the contrary, women’s traditional sports rarely involve real violence or domination. An emphasis on femininity made women the second sex. True transcendence—the existential goal of becoming a sovereign subject rather than an immanent object—required women to embrace the physical aggression and will to power that patriarchy had long reserved for men. Sports, especially combative ones, were part of this liberation. Without participating in competitive athletics, a woman would remain trapped in passivity, defined by her body as something to be protected or adorned. Instead, the body must become an instrument of conquest. Beauvoir’s message was unmistakable: The docile, graceful, relational feminine character of the past must be destabilized and replaced.

Underlying Beauvoir’s analysis is a radical understanding of the human—one that informs both gender ideology and our predominant approach to female sports. As I have argued elsewhere, Beauvoir separated “sex” from “gender” radically.⁵ Traditional society, she argued, defined women by their bodies: their reproductive capacity, their physical vulnerability, their immanence in the domestic and biological realm—in short, their sex. Gender, in this telling, is not the natural outgrowth of sex but a socially imposed set of expectations designed to keep women subordinate. Woman is condemned to “immanence,” trapped in the repetitive, species-bound tasks of child-bearing and homemaking, while man has achieved “transcendence” through projects, conquest, and creative action.

For Beauvoir, the gendered social script that defined women by their body left women to be the second sex. To become fully human, woman had to refuse the destiny written in her sex or biology and instead define herself through sovereign projects of her own choosing. By distinguishing and thus separating gender (the cultural script) from sex (the brute biological fact), Beauvoir opened the door to the radical claim that biology has nothing to do

with destiny. As applied to sports, girls and women could learn to experience themselves as free beings rather than as objects defined by their bodies through combative and competitive sports.

Beauvoir's maximalism contrasts with earlier visions of women's sports, which in their extreme form denied women a place in competitive athletics altogether. The feminist villain was Pierre de Coubertin, founder of the modern Olympics, who opposed extensive female participation in the Olympics and in sport generally. Women's bodies, he argued, were not "cut out to sustain certain shocks," and their poor performance would diminish the spectacle of sport.⁶ Most important, he thought an emphasis on competitive female athletics would undermine women's "special dignity" and highest calling as "the companion of man, the future mother of a family." At a minimum, Coubertin hoped to preserve a distinctly feminine ideal, not to assimilate women into Beauvoir's male model of conquest and domination, but his maximal claim freezes women into their essential biological purpose and finds little room for sport.

Later feminist scholars and activists built directly on Beauvoir's foundation. Leslie Heywood and Shari L. Dworkin, in their influential *Built to Win: The Female Athlete as Cultural Icon*, celebrated the rise of aggressive, muscular, competitive female athletes as "shattering the Victorian 'frail/docile' stereotype."⁷ They saw the new cultural ideal—powerful women dominating on the field or in the ring—as a feminist triumph that fused strength with a new independent identity. Similar themes appear across feminist advocacy for women's boxing, wrestling, football, and rugby: These sports do not merely allow participation; they actively forge a less deferential, more confrontational female character.

This educative intent extended beyond individual empowerment. It was hoped that competitive sports would disrupt the old sexual division of labor. By cultivating daring, risk-taking, physical dominance, and a desire for victory, athletics would prepare women for careers, leadership, and independence rather than homemaking and motherhood. The gentle, graceful, cooperative tendencies historically more common among women were seen under the feminist lens as products of oppression to be overcome. Opponents of this traditional vision thus hoped that sports would make the traditionally feminine woman less thinkable and less tenable.

Crucially, this deeper project was almost never articulated openly in legal or policy arenas. In courts, congressional hearings, and administrative proceedings, activists spoke the neutral language of anti-discrimination, equal opportunity, and leveling the playing field. Opponents who raised concerns about character formation, sex differences in interests, or the

loss of distinctively feminine approaches to physical activity would soon be dismissed as defenders of benighted stereotypes. This rhetorical strategy allowed the vision of the aggressive, sovereign female to advance under the cover of value-neutral civil rights enforcement and alternative visions—participation-oriented, pluralistic, or difference-respecting models of women’s athletics—to be marginalized as reactionary.

The result was a slow, decisive cultural and institutional shift accomplished under the cover of a false liberal neutrality. Sports moved from a domain that largely accommodated natural sex differences in interests, competitiveness, and physicality to one that engineered greater female aggression and competitiveness. What began with Beauvoir as a philosophical project became administrative and judicial reality under expansive interpretations of Title IX.

Title IX: From Accommodation to Engineered Parity

Title IX of the Education Amendments of 1972 stated simply that “[n]o 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....”⁸ Sports received almost no attention during the largely uncontroversial congressional debates. Only 15 Senators voted against the bill.

From its passage in 1972 until roughly 1990, Title IX was hardly enforced at all, though what it meant and how it applied to sports were subjects of some controversy. The initial implementing regulations, issued by the Ford Administration in 1975, were flexible. They required only that schools “effectively accommodate the interests and abilities” of both sexes.⁹ A wide range of activities—interscholastic and intercollegiate athletics, club sports, intramurals, exercise classes, and even cheerleading—counted toward compliance, and separate teams based on competitive skill or contact sports were permitted by statute. This approach sought genuine accommodation rather than revolutionary transformation of female character or numerical outcomes.

Female participation prospered during this period of light enforcement. Cultural shifts were already increasing interest in the early 1970s. Schools were meeting new demand. In high schools, the number of female varsity athletes rose from about 300,000 in 1971–1972 to 1.8 million in 1986. In colleges, the number climbed from roughly 15,000 in the late 1960s to 96,000 by 1992.¹⁰ Much expansion occurred voluntarily without heavy federal pressure.¹¹ Schools also changed their offerings based on threats of lawsuits or predictions about the future direction of the policy.¹²

In retrospect, a Policy Interpretation issued during the Carter Administration in 1979 pointed the way to much more heavy-handed federal oversight. Responding to pressure from women's groups, the Department of Health, Education, and Welfare (HEW) narrowed the definition of athletic opportunities to varsity competition only.¹³ Clubs, intramurals, and exercise classes could no longer be used to prove a school's compliance with the law even if undergraduates or high schoolers preferred such involvement. The HEW document introduced the now-famous three-part test for compliance with the "effective accommodation" requirement. Schools could demonstrate compliance by proving one of the following:

- Substantial proportionality between athletic participation and undergraduate enrollment by sex;
- A history and continuing practice of program expansion for the underrepresented sex; or
- Full and effective accommodation of the interests and abilities of the underrepresented sex.¹⁴

Although the three parts were presented as alternatives, proportionality became the de facto safe harbor when enforcement tightened in the 1990s. Whatever flexibility there had been simply evaporated. Institutions that failed to achieve near-parity risked costly lawsuits and loss of federal funding. Standard 3—actual interest accommodation—was increasingly marginalized.

Enforcement remained uneven through the Reagan years. In fact, the Reagan Administration partly deregulated sports programs at universities, holding that Title IX applied only to portions of universities receiving federal funds. The U.S. Supreme Court's 1984 decision in *Grove City College v. Bell* limited Title IX's reach to the specific programs receiving federal funds, temporarily shielding athletics, which received no federal funds at many institutions.¹⁵ This is how matters stood until Congress, over President Ronald Reagan's veto, passed the Civil Rights Restoration Act of 1988, which restored institution-wide coverage.¹⁶ For the first time, sports would have to adhere to Title IX regulations from the U.S. Department of Education's Office for Civil Rights (OCR).¹⁷

Aggressive enforcement began only in the 1990s. The first Bush and Clinton Administrations, working with federal courts, transformed the sports regime. New Title IX regulations, promulgated under the George H. W. Bush Administration, melded with equal protection jurisprudence

to guide athletics toward gender parity and, where appropriate, sexual integration. The landmark case of *Cohen v. Brown University* (1992–1996), begun under the Bush Administration and completed during the Clinton years, proved pivotal.

Brown University, facing a budget deficit, demoted two men’s teams (golf and water polo) and two women’s teams (volleyball and gymnastics) to club status. Despite the fact that Brown had one of the highest percentages of female athletes among major universities, several female athletes sued the school. Brown argued that it had to balance athletics and finances; that it could not fully accommodate female interests while ignoring male interest under the law; and that any differences between women’s sports and men’s sports derived from the fact that women, on average, showed less interest in competitive varsity sports than did men.

Federal courts rejected Brown’s defense. According to the First Circuit Court of Appeals, even if empirical evidence showed that women had less interest in sports, such evidence “cannot justify providing fewer athletic opportunities for women than for men.”¹⁸ Women had to occupy as many athletics spots as their proportion of the student body if they wanted to satisfy Title IX’s demands. For Brown to reach a “safe harbor,” if women were 50 percent of its undergraduate population, 50 percent of the athletes must also be women.

When the Supreme Court declined to review the lower court’s decision, proportionality became the practical standard. Then Brown tried to comply, further fleshing out the meaning of the decision. When Brown tried to count unfilled roster slots on the volleyball team as part of its total, courts held that roster spots must be filled; if they are not, it must be that Brown is not really trying. Unfilled roster spots would not help to prove that schools were creating opportunities for women; institutions had to fill roster spots or face liability. As a result, Brown, under court supervision, had to invest millions of dollars upgrading its facilities, hiring coaches, and improving its scheduling to create new prospects for women’s athletics.

Federal courts adopted *Brown’s* reasoning across the country.¹⁹ The fact that women have less interest in sports is, on this reasoning, why Title IX demands that schools create parity between women and men in actual sports participation. Society has conditioned women to be less interested in sports and less aggressive by nature. As one *Harvard Law Review* article held, schools must use “Title IX to fight gender oppression.”²⁰ Public education institutions must create, engineer, and heighten the attractions of competitive sports for women in order to comply with Title IX by creating “opportunity.” Without interest, the court reasoned, then there is no real opportunity.

The Clinton Administration codified and radicalized the *Brown* decision. Colleges would have to conjure up and then satisfy unknown, “unmet needs” among females who did not (yet) know they were varsity college athletes. With further Department of Education guidance and litigation, the parity push was on. If men and women had different levels of interest and wanted to participate in different levels, the school would be liable. Under the Obama Administration, the Department of Education’s Office of Civil Rights applied the standard to high schools as well, challenging scheduling, facilities, and practice times.

A Seventh Circuit case involving scheduling serves to illustrate the point. Boys play on Friday nights, but girls play during the week. Scheduling games on weekdays “creates a cyclical effect,” the judge contended, which “stifles community support, prevents the development of a fan base, and discourages females from participating in a traditionally male dominated sport.”²¹ Girls must play on weekend nights just as often as boys do; any other scheduling policy violates Title IX regulations. Colleges learned that the safest (and often cheapest) path to compliance was cutting men’s non-revenue programs rather than adding women’s teams or controlling costs in football and men’s basketball.

The formative radical project becomes apparent throughout the development of Title IX.

- Should cheerleading, exercise clubs, or competitive dance count as athletic participation? No. Some activities and sports just reinforce stereotypes of women as non-competitive and less interested in sports than men are. Only competitive varsity sports count.
- Should schools define “equal athletic opportunity” as meeting the seemingly different “interests” of men and women? No. The idea that men and women have different interest levels in sports is a stereotype that Title IX must re-engineer. Proportional parity in competitive varsity sports is demanded both in high school and in college.
- Can schools accommodate different levels of public interest in male and female sports? No. Such differences are a vestige of outdated stereotypes.
- Is creating opportunity enough? No. Opportunity, to be real, must conjure up interest.

Equal Protection Clause jurisprudence furthered the war on stereotypes. Laws assuming or tolerating sex differences would violate Title IX and the Constitution's Equal Protection Clause. The Supreme Court's 1996 decision in *United States v. Virginia et al.* struck down the Virginia Military Institute's male-only admissions policy, dismissing the school's "adversative method" and concerns about admitting women as based on "fixed notions" and archaic "stereotypes" about sex roles.²²

Lower courts applied similar logic to sports, striking down boys-only wrestling, football, and other contact programs. Judges reframed safety concerns based on average physiological differences as paternalistic stereotypes.

- When an 8th grade girl was prevented from playing on the boys' middle school football team, a federal district judge noted that under the Equal Protection Clause, any gender-based classifications must be "free of fixed notions concerning the roles and abilities of males and females" and cannot reflect "archaic and stere[o]typic notions."²³
- A federal judge demanded the sexual integration of high school football because rules barring girls from playing football allegedly were based on the assumption that all girls "suffer from an inherent handicap" or are "innately inferior" to boys.²⁴
- A school district in Wichita, Kansas, prevented a girl from wrestling on her junior high team. Again, in federal court, the school district lost for running afoul of the Equal Protection Clause. Its concern to protect young girls from harm was characterized as reflecting "the very sort of well-meaning but overly 'paternalistic' attitude about females which the Supreme Court has viewed with such concern."²⁵

The combined force of Title IX's administrative regime and the law's expansive judicial doctrine locked schools into pursuing numerical parity in high-intensity, varsity-style competition or into integrating girls into boys' sports.

Perhaps boys dropped from volleyball or field hockey teams could play with the new girls' sports. Yet courts have held that boys could not play in girls' sports. As a federal district court held in the early 1990s, although Title IX applies "equally to boys as well as girls, it would require blinders to ignore that the motivation for promulgation of the regulation on athletics was the historic emphasis on boys' athletic programs to the exclusion of girls' athletics programs."²⁶ Boys are not excluded because they are on average

bigger, taller, stronger, and faster than girls. “[U]nsupported assumptions and broad generalizations” about physical abilities, we are told, are part of a “baseless attempt to justify discriminatory policy.”²⁷ Creating and protecting women’s sports compensated for a history of sex discrimination. Efforts to exclude boys from girls’ sports presumably would expire once schools or the country had done enough to compensate girls for past discrimination.

Advocates for competitive female athletics find themselves on the horns of a dilemma. On one hand, sports as implemented under Title IX are designed to educate women toward a new character. Sports policy must make the non-competitive, feminine woman less thinkable and tenable, and competitive attitudes must spread to become more prevalent among women. As a result, advocates insist that varsity sports are the only thing that matters; that only competitive sports count (not cheerleading or dance or exercise); and that all policies and results reflecting enduring sex differences reflect benighted stereotypes.

On the other hand, feminist reformers speak the gender-neutral language of expanding opportunities or leveling the playing field or equity as a means of sneaking in their moral project. Boys wanting to play women’s sports simply appeal to the official, gender-neutral categories of opportunity and equity. Feminists have a tough time protecting the integrity of women’s sports because all references to sex differences are, *ipso facto*, dismissed as benighted stereotypes.

Distortions of the Current Title IX Regime

Title IX’s demand for proportional parity is built on the doubtful assumption that all sex gaps in interest and ability are the products of an unjust patriarchal culture. As a result, today’s approach to sports in public educational settings is out of sync with natural preferences that have nothing to do with imposed stereotypes. Title IX, “originally an antidiscrimination law,” as Steven Rhoads has written, has been “transformed into a federal endeavor to manipulate women’s behavior in ways favored by certain women’s groups.”²⁸ This distortion comes with at least two major costs:

- Because only varsity competition is counted, schools are not encouraged to support broader, recreational, or less competitive activities more aligned with many women’s preferences.
- Title IX has led to the defunding of male sports at the college level, the failure to grow male sports despite obvious interest, and the unnatural

expansion of niche female sports so that schools could try to achieve proportional parity.

The feminist settlement under Title IX has distorted natural patterns of participation by imposing an androgynous, high-competition model on women's athletic endeavors while engineering numerical outcomes that harm men's programs. This regime eclipses a more diversified, participation-oriented vision of women's athletics and creates two systemic prejudices.

The first prejudice favors a male-normed "elite" and competitive vision of women's sports at the expense of broader, more feminine-friendly offerings. The hammer of Title IX compliance has turned everything in women's sports into a competitive nail. As we have seen, early Title IX regulations under the Ford Administration allowed schools to build sports programs with different male and female cultures. Often, men were under the athletic department, while women's sports were under physical education departments. Schools could count intramurals, exercise classes, cheerleading, club sports, and recreational activities toward compliance.

From the outset, this male-oriented vision of female sports was controversial. Many feminists in the Beauvoir mold wanted female sports built on the male model, but other women wanted women-only sporting spaces reflecting a specifically feminine approach to sport and exercise. Not unlike "difference feminists" who valued how women spoke "in a different voice,"²⁹ some wanted an approach to sport that was built on the inherently different character, priorities, psychologies, and bodies of women.

The debate between feminist sport and difference sport played out in the pages of *Ms.*, a flagship publication of the feminist movement, in the early 1970s. *Ms.* was replete with typical liberal feminist stories about girls overcoming discrimination and breaking into Little League or playing in boys' basketball leagues or overcoming obstacles to run a mile in record time (for a girl). Other articles reflected the sporting difference.

"The unhappy fact," wrote movement lawyer Brenda Feigen-Fasteau, "is that sports have been designed for men's rather than women's bodies—which means that the emphasis is on strength. We have yet to see a major promotion of sports utilizing women's unique flexibility and better balance."³⁰ Feigen-Fasteau wanted women to reject the male model of sports: "a display of aggression, a proof of toughness, a kind of primitive communication that replaces emotional intimacy." Women, she argued, needed sports of their own and leagues of their own, and *Ms.* published articles about women's soccer and softball leagues forming in the 1970s. The Texas

softball league, for example, emphasized access, participation, fun, and personal growth over winning, and a soccer league in Austin, Texas, experimented with “different types of organization and philosophies about sport” such as not keeping score.³¹

Initially, as we have seen, institutions and regulations supported this sporting difference. The Association for Intercollegiate Athletics for Women (AIAW), which governed women’s college sports during the 1970s, promoted a more balanced vision. Founded and led by female physical educators, the AIAW emphasized participation over elite competition, rejected athletic scholarships at first, maintained fluid rosters, limited recruitment and travel, and avoided the commercial, win-at-all-costs ethos of the National Collegiate Athletic Association (NCAA). As Ying Wushanley has documented,³² the AIAW sought a balanced, feminine approach to sport. It valued wide participation, healthy living, fitness habits, and community rather than elite competition.

This balanced vision gave way first to the NCAA and then ultimately to the proportionality standard. The NCAA’s takeover of women’s championships in the early 1980s, combined with the Carter Administration’s 1979 Policy Interpretation and subsequent court rulings, led to a one-size-fits-all model for women’s sports. The AIAW folded in 1982–1983 after losing members and resources to the better-funded NCAA, which emphasized elite competition.

Much of this was consistent with pent-up female demand for sports competition, but the proportionality standard demanded expansions of high-intensity varsity competition for females. Cheerleading, dance, yoga, hiking clubs, recreational intramurals, and other athletic opportunities more aligned with average female interests and tendencies would not count for Title IX compliance reviews or equity reports. Beauvoir’s aggressive, dominance-oriented female athlete became the mandatory model, and more natural and diverse expressions of female interest in sport were sidelined.

The second prejudice works against men’s sports. Especially after proportionality became the de facto safe harbor for compliance after the mid-1990s, colleges faced intense pressure to balance roster numbers with undergraduate enrollment ratios. The safest and cheapest path for many institutions was not to expand women’s programs dramatically or restrain spending on football and men’s basketball, but rather to eliminate men’s non-revenue teams. Following the *Brown* decision, universities accordingly eliminated hundreds of men’s non-revenue varsity programs.³³ Wrestling, for example, lost more than 170 programs, and the number of men’s gymnastics teams

fell from 79 to 21 at the Division I level.³⁴ Significant cuts also occurred in men’s swimming, tennis, and track.³⁵

In addition, “cuts” in men’s programs often meant either that the number of men’s sports grew at a much slower rate than the number of women’s sports or that their rosters were kept artificially smaller. The number of men’s soccer teams in all NCAA levels grew from 678 in 1995 to 826 in 2022—a gain of 148 programs—while the number of women’s soccer programs grew from 631 in 1995 to 1,035 in 2022—a much larger gain of 404 programs. Similarly, the number of men’s baseball programs grew from 827 in 1995 to 943 in 2022—a gain of 116 programs—while the number of women’s softball programs grew from 735 in 1995 to 986 in 2022—a significantly larger gain of 251 programs. Schools added numerous niche, women’s sports—rowing, equestrian, fencing, squash, beach volleyball, and others—primarily to improve the numbers for calculating proportionality. Women’s crew programs in the NCAA went from fewer than 150 in 2015 to more than 300 in 2022.³⁶

These distortions flow directly from the Title IX regime’s assumption that men and women possess identical interests in competition and the need to implement proportional parity. By treating natural differences as stereotypes to be engineered away, today’s Title IX enforcement distorts the whole sports landscape. Its engineered utopia is less attuned to natural sex differences than was the one that existed before heavy federal intervention with its hard numerical targets.

Partly Natural, Partly Cultural: The Problem with Proportionality and Parity

Athletic departments across the country operate with Title IX’s sword of Damocles dangling over their head. Bureaucrats engineer, but nature is not thereby conquered. Women make up about 60 percent of undergraduates nationwide but only about 45 percent of athletes. Despite a generation under Title IX’s stringent enforcement, proportional parity remains elusive. The OCR and the courts respond with a more-work-must-be-done attitude. At Harvard, women are about 54 percent of the student body, but only 44 percent of the athletes are women. Similar percentages exist at all of the other Ivies with Brown having the smallest gap at 4 percent—more work to be done!

In universities in the Southeastern Conference (SEC), the gaps are even bigger. At Alabama, women are 57 percent of the undergraduates, and just over 50 percent of the athletes are women. Alabama maintains rough parity

through creative administration: Its women's rowing team (115 members) is almost as big as its football team (132 members). Alabama, however, has no male varsity crew or soccer. The situation is the same at all SEC schools, yet gaps exist in every school.³⁷ Without cash cows of major conference football, schools at lower levels have even bigger gaps and less room to maneuver—still more work to be done!

The post-*Brown* regulatory environment constrains schools with more work to do. They can trim rosters for male sports, but they cannot add male sports. Contrarily, they cannot cut female sports, but they can add female sports. They can increase the roster size for girls' sports. Sports may draw more males to school because schools need more male students to sustain their financial health, but Title IX makes it difficult for schools to lure men into higher education with sports. Bankruptcy seems preferable to falling short of parity.

The current Title IX regime rests on faulty first principles. Its advocates think differences between the sexes in competitive sports are products of outdated stereotypes that can be re-engineered through proportionality mandates. If women are not wrestling and boxing like men and in the same numbers, they will remain the second sex instead of becoming conquering, transcendent subjects. Yet those who decry benighted stereotypes are now peddling new benighted stereotypes. Sex differences in competitiveness, aggression, and the importance of team are, contrary to the assumptions of Title IX, partly natural and only partly cultural. Culture affects the *degree* and *expression* of natural sex differences; it never eliminates them.

As we will see, evidence for this partly natural, partly cultural reality abounds. Generally, women are more interested in sports than they once were (a testament to culture's power) but still less interested than males are (a testament to nature's enduring power). More women golf today than before, thanks to coercive incentives from Title IX and voluntary programs from the Professional Golfers' Association of America (PGA), but far fewer golfers are women than men. It is the same for almost every sport. More women watch sports on television than used to be the case (a testament to cultural power), but men remain much more invested in watching sports on television (a testament to nature's enduring power). Interest can best be gauged when people and institutions are responding to genuine preferences, not bureaucratic mandates.

Even after decades of heavy-handed policy, women's participation lags well behind men's in college and high school where, as we have seen, our institutions must implement parity. Differences in school settings are nothing compared to the persistent yawning gaps in recreational settings where preferences reign and opportunities are equal.

Robert Deaner and colleagues have documented sex differences in sporting behavior and priorities in a series of studies.³⁸ One study, based on American Time Use Survey data, found that women make up 51 percent of those who exercise in a non-competitive way (yoga class, weight-lifting, jogging); 24 percent of people who do individual competitive sports such as tennis, bowling, and racquetball; and only 20 percent of people who participate in competitive team sports. Another study focused on observations in public parks, where they found that women were 37 percent of the exercisers, 19 percent of those participating in individual sports, and 10 percent of those participating in team sports.

A third study focused on intramural college sports registrations in 34 universities, where women were 26 percent of those competing in team sports—a number that, according to historical data at nine of those schools, was stable over time. The authors also studied running.³⁹ In road races (3K or 5K fun runs, for instance, or Turkey Trots) where people compete against themselves and with an emphasis on participation, men and women participate in roughly equal numbers. At competitive meets, however, men participate at a rate roughly three times the rate for women. Deaner et al. conclude that “[p]atterns of sports participation do not challenge the hypothesis of a large sex difference in interest and participation in physical competition.”⁴⁰

Such sex differences pervade America’s sports and exercise landscape. Boys outnumber girls by 2:1 to 3:1 in club basketball competition where entry into college basketball supposedly is often the goal. Men make up over 90 percent of active competitive esports players, though women play almost half of casual games on phones. About 28 percent of on-course golfers were women in 2025—the highest percentage ever recorded.⁴¹ According to the United States Bowling Congress, about 30 percent of its paying members in 2024 were women, and its outreach efforts for women are extensive.⁴² At least 70 percent of the players in recreational basketball leagues for adults are men according to estimates across AI platforms. The same is true with respect to flag football. Other sports have narrower gaps. The United States Tennis Association estimates that 43 percent of tennis players in 2025 were women; the same ratio has been found in pickleball.⁴³

Nor are these patterns uniquely American. Robert Deaner and Brandt Smith’s cross-cultural study of 50 societies with documented sports found many more male than female sports and much greater male participation than female in all kinds of societies.⁴⁴ Hunting and combat sports are almost exclusively male everywhere. Sports with physical contact are almost exclusively male, and men participate in team or individual sports more

than 10 times as often as women do. The gap was larger in more patriarchal societies but present and substantial everywhere. Table tennis, for instance, requires little physical contact, as well as minimal strength, and is mostly played recreationally, yet women make up less than 25 percent of table tennis players in all of the societies for which Deaner and Smith found data. Their conclusion: “A robust sex difference in the predisposition for physical competition” exists across all 50 societies.⁴⁵

Physical and emotional infrastructure support these robust sex differences. Much of this has been well known to anthropologists, sociologists, and social scientists generally for decades and longer. Eleanor Maccoby’s *The Two Sexes: Growing Up Apart, Coming Together* catalogues decades of study about sex differences in childhood and adolescence. Her research on children’s play leads her to the conclusion that “certain aspects of male play, such as dominance struggles and themes of heroic combat, may be cross-culturally universal, or nearly so.”⁴⁶

Girls’ play, by contrast, involves mitigating conflict and building relationships. Among boys across the world, writes Steven Rhoads in *Taking Sex Differences Seriously*, which takes an approach from evolutionary biology, “toughness, a refusal to back down, and athletic ability take one to the top of the strong-male hierarchies.”⁴⁷ Girls’ status hierarchies are based on egalitarian openness and cooperation. Other work from an evolutionary perspective finds that men are “warriors” and women are “worriers.”⁴⁸

Evolutionary biology tries to explain the biological origins of persistent and enduring patterns in male and female behavior wholly in terms of the sifting role of natural selection on random variations. Others may see in these differences evidence of teleology. Christians and other religious believers may see the differences between men and women as part of our Creator’s design plan. Many secular feminists tend to see human nature as malleable or nonexistent and sex differences as changeable.

The partly natural, partly cultural framework recognizes the power of culture to move people in one direction or the other. Human societies can move the needle. A society adhering to Pierre de Coubertin’s cultural opinions would have far fewer female competitors in elite sports than would a society shaped by Simone de Beauvoir. Coubertin’s culture arguably seeks to exacerbate the differences between the sexes; Beauvoir’s culture seeks to eliminate them.

Beauvoir’s world in law, as Title IX jurisprudence manifests it, does not (or at least not yet) engineer a world where many women pursue sports competition and dominance at the same levels as men pursue them. Where choice reigns, differences remain. Even where opportunities and

encouragement are equal, men and boys gravitate to rougher and more competitive sports and women toward less intensely competitive pursuits. Groups of women—Rhoads calls them high-testosterone women, who make up about a quarter of the sex—are drawn more to competitive sports and careers, but the modal and average woman is not much interested in participating in Beauvoir’s favored high-intensity competition.

In fact, we can estimate the rough size of the Title IX social engineering gap. Natural interest as revealed in recreation leagues and television viewership suggests that, at the high end, about 33 percent of participants in most sports would be women. For competitive team sports, the number would be even less. The gap between roughly 33 percent and the percentage of athletes at a school that are women is the Title IX engineering gap. About 25 percent of basketball players in recreational leagues are women; about 50 percent of college basketball players are women. The Title IX engineering gap is roughly 50 percent for basketball. As a result, on this argument, lots of women who are not all that interested or invested in basketball are playing it for reasons outside of natural interest (that is, to receive scholarships). In many such gaps, schools are denying men opportunities while creating artificial ones, inconsistent with chosen behavior, for female athletes.

The current Title IX settlement treats average sex differences as evidence of persistent stereotypical behavior that institutions must engineer away. Evidence from the real world shows that men and women differ in their spontaneous interest in physical play and competition. Title IX specifically imposes a high-intensity, competitive model and demands numerical parity between the sexes. Such differences can be modified but not radically changed. Judges, bureaucrats, and college administrators who assume that all sex differences are simply cultural impose a false view on reality.

Accommodating Nature: Toward a Better Way

The current Title IX regime as applied to sports (and elsewhere) is part of a sustained social engineering effort that is designed to produce a new sort of woman—one that is more aggressive, more competitive, more male, less relational, and less oriented toward the goods of family and motherhood. This project is deeply controversial, especially when viewed through the lens of history. Few societies even today have policies with the ambition and coercion of America’s Title IX enforcement regime. European countries, partly because their sports systems are detached from education, promote women’s sports more than they once did but not at all as the United States does now. Societies of the past, perhaps unconsciously, put their collective

thumbs on the scale in the opposite direction. Far from encouraging forms of physical competition, countries in the past promoted activity and character more consistent with the average tendencies of women and with the social goods secured through sports.

History and the nature-denying extremism of today's Title IX enforcement compel us to consider basic questions: What goods do women themselves get from sports and physical activity? What goods do men get? What goods does society derive from women's participation? From male participation? Podiums, scholarships, or the cultivation of a conquering spirit are hardly the main concerns for most female athletes. Much less of a concern is having a career in professional sports.

Of course, many women enjoy the thrill of competition, as the joy on faces of victorious female athletes shows. Women also benefit from activities that build health, good habits, vigor, bodily toughness, grace, confidence, social connection of teamwork, and beauty. Moderate exercise supports fertility and mental well-being far more reliably than does the high-intensity, elite model of sports, which, as science shows, produces Relative Energy Deficiency in Sport (RED-S) and elevated rates of menstrual disruption in many top-notch female athletes. Between 26 percent and nearly 50 percent of women who exercise intensely stopped having regular menstrual cycles according to several studies.⁴⁹ As one recent review of the literature holds, "evidence demonstrates higher rates of menstrual disturbance in elite athletes."⁵⁰ High-intensity exercise increases infertility;⁵¹ moderate exercise assists fertility more than any other approach to exercise assists it.

Many women are drawn to activities that emphasize rhythm, coordination, community, and graceful exertion. Perversely, key Title IX rulings have prevented most such sports from counting toward a school's compliance. A small but significant number thrive in highly competitive environments, and we are a better country for making those opportunities available (which might well have happened even without Title IX). Our goal, however, should be virtue and health grounded in reality and freedom, not the imposition of a male-oriented competitive ideal.

The early Girl Scout movement may provide a useful model. It encouraged outdoor competence, camping, hiking, swimming, and physical fitness while celebrating distinctly feminine virtues of service, grace, and character. It sought to form capable, healthy young women without pretending that girls were interchangeable with boys. Pre-Title IX women's physical education programs often took a similar approach, prioritizing broad participation, posture, dance, and lifelong habits of health over elite competition.

These efforts remind us that societies have successfully promoted women's physical flourishing without adopting Beauvoir's aspirations and templates.

Educational institutions should be allowed to adopt an approach different from Beauvoir-informed social engineering. A new and more reality-based Title IX jurisprudence would unwind the proportionality regime and its narrow definition of athletic opportunity. Schools would fulfill their obligations if they provided competitive varsity pathways for women who desire them while supporting a wide range of non-competitive and lower-intensity activities. This could include group fitness classes, dance, yoga, recreational intramurals, hiking clubs, and the like. Institutions could drop low-interest niche varsity sports maintained largely for roster padding and redirect those resources toward broader wellness programming. Such an approach would expand actual female participation rather than merely engineering roster counts.

Nor should we forget what happens when we ignore the effects of Title IX on men. Competition is much more central to male identity,⁵² and sports are a main avenue for the safe but real expression of male competitive drive. Sports are also central to male friendships, which generally are more about doing things in common and less about saying things. Of course, men still compete and still form friendships, but both competitive drive and male friendship have suffered under the weaponized application of Title IX—and limiting the growth of male sports cannot be irrelevant to such inimical developments.

What Needs to Be Done: Essential Reforms

Accommodating nature requires changes in regulations. Three overarching principles should guide such revisions.

1. Sports and physical activity are important for both sexes. People of both sexes take part of their identity from athletic competition, but usually in different ways.
2. Differences in interest should no longer be considered reflections of benighted stereotypes. Genuine differences in interest should be accommodated, both as to quantity and as to the qualities of opportunity. Intramurals and exercise should count toward a school's compliance. Acknowledging differences in interest and competitiveness will help both sexes to flourish.

3. Requirements that schools provide resources roughly in line with student enrollments should be eliminated. A female lack of interest is not proof of a patriarchal social environment. Empty roster spots do not mean that schools have not done their jobs. Allowing for natural variation in interest based on desired participation, sports budgets, and the priorities of institutions should guide schools. America must return to a Title IX as it was understood before the Brown University case and perhaps as it was understood in the Reagan Administration.

As a practical matter, realizing these core principles would demand changes in how the OCR within the Department of Education implements these sections of Title IX. Reforms would accomplish the following.

- The judicial finding that sees empty roster spots as evidence of a school's manifest failure to achieve proportionality would be expunged from regulations and overruled in the federal courts. This finding is based on the outmoded assumption that all differences between men and women are traceable to cultural factors.
- The third prong from the 1979 test, later made into the safe-harbor provision, would no longer mandate proportional representation between the student body and competitive varsity athletes. Instead, it would allow surveys about student interest or campus-wide sign-ups in recreational leagues to count as a demonstration of interest. The last such effort was conducted under the Administration of President George W. Bush. It should be revived based on subsequent evidence of natural sex differences on these matters. Data collection for compliance would be based on actual participation motives, retention, and variety rather than on today's one-size-fits-all standard.
- Institutions should be free to experiment with participation-oriented models for the promotion of health, fitness, confidence, and competition. They should be able to have fluid rosters, limited travel schedules, and more recreational approaches to team management.
- Congress should explicitly exempt major revenue-producing male sports from counting toward a schools' underlying totals.

In addition, the Reagan Administration's effort to exempt portions of the educational institutions not receiving federal funds from Title IX

regulations would be most helpful in restoring a flexible approach to athletics. Deregulation of all but the academic portions of education systems would provide welcome regulatory relief. Codifying such efforts would make efforts to disburden schools from regulation permanent.

Reforms would also benefit men. The current regime has led to the elimination of hundreds of men's non-revenue teams and put almost all athletic growth on the women's side. Reducing real male athletic opportunities at the very moment young men are falling behind in higher education has created many harms downstream. Restoring a healthier balance involves protecting and even expanding men's sports while allowing natural variation in program offerings. Such a balanced approach could help to draw more young men to college. Addressing the growing boy crisis in education is not incidental to the health of our institutions or our families; it is central to the recovery of a flourishing citizenry.

Conclusion

Equality under Title IX does not require identical outcomes or the erasure of sex differences. It requires opportunity rooted in human nature that will reveal genuine differences between the sexes. Recovering an approach that accommodates the partly natural, partly cultural differences between the sexes can sustain vibrant women's sports, protect and perhaps expand male opportunities, and contribute to a healthier, more humane social order.

Scott Yenor is Chair of the American Citizenship Initiative at The Heritage Foundation.

Endnotes

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