

**Responsible Employees Question the Title IX System: When Civil Rights Programs Adopt
Legal Logics and Blend with Power Interests**

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INTRODUCTION

In 2007, a study revealed that one in five women were victims of completed or attempted sexual assault while in college.¹ In response to violent campus climates, student-led movements began calling on universities to address the issue.² The influential documentary *The Hunting Ground* depicts student survivors of sexual assault searching for ways to motivate universities to take action. In the film, universities are depicted as self-interested institutions, run by powerful, elite individuals who see honest reporting and handling of sexual violence as a threat to branding, public relations, and profit. As a result, students formed a network of survivors who filed federal complaints against their institutions through Title IX of the Education Amendments of 1972. Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities.³ The “Title IX Movement” of the 2000’s framed campus sexual assault as a civil rights issue that jeopardizes safe and equal access to education for women, based on evidence that women are experiencing disproportionate rates of violence on campus. In 2011, the Department of Education’s Office of Civil Rights (OCR) responded to this Title IX movement. It issued its Dear Colleague Letter (DCL), reminding universities that sexual violence constitutes a form of discrimination under Title IX. The DCL calls on universities to designate a Title IX coordinator, and to adopt and publish grievance procedures. It threatens to withhold federal funding from institutions that are found not to be in

¹ Christopher P. Krebs and others ‘The Campus Sexual Assault (CSA) Study: Final Report’ (2007) The National Institute of Justice.

² Kathleen H. Krause and others, ‘Feminist Research with Student Activists: Enhancing Campus Sexual Assault Research’ (2017) 66 Family Relations.

³ Catherine E. Lhamon ‘Questions and Answers on Title IX and Sexual Violence’ (2014) The United States Department of Education Office of Civil Rights.

compliance with federal Title IX policy.⁴ In response to the letter, universities across the country moved forward designating Title IX Offices, which, in student activists' minds, would be separate in form and function from the police and legal systems. Title IX Officers were also imagined to be separate from the powerful and elite at the university; they would be holding those parties "accountable" in reducing sexually hostile climates.^{5,6} Additionally, many Title IX Offices have come to implement policy on "responsible employees," which mandates that university employees and students report instances of sexual violence and harassment to the university's Title IX Officer in an effort to more accurately measure and address violence on campus. Almost all actors at a university are "responsible employees," whether or not they work directly for the Title IX Office – they are responsible to report to the office under their school's violence and harassment policy. Title IX activists and their allies saw the overhaul in university response procedures as a major feminist accomplishment that has provided strengthened institutional pathways for survivors to seek help, especially when vastly inadequate and inappropriate response procedures were previously in place.

After taking a grounded theory approach to understanding the dilemmas of members of the university community in complying with new Title IX responsible employee demands, I became aware of a major trend – that many university employees do not see Title IX Offices as aligned with the interests of the population it was originally meant to defend: specifically, survivors and, in theory, women. Universities have built Title IX Offices into the bureaucratic

⁴ R. Ali, 'Dear Colleague Letter: Sexual Violence' (2011) Washington, DC: U.S. Department of Education, Office for Civil Rights.

⁵ Tierny Sneed "The Hunting Ground' Subjects Defend Title IX Campaign' (2015) U.S. News and World Report.

⁶ Sudha Setty 'Leveling the Playing Field: Reforming the Office for Civil Rights to Achieve Better Title IX Enforcement' (1999) 32 Columbia Journal of Law and Social Problems.

structure of their administrations, leading many of my participants to feel as though the Title IX Office lends more of an ear to institutional and legal pressures than to the needs of those seeking help. As a result, some responsible employees have come to reject their duties to report instances of violence and harassment to this office. The research questions I pursued are as follows: how do responsible employees who support the civil rights of women and survivors frame their critiques of an office meant to administer civil rights to that very population, and how does this impact their reporting behavior? I show that participants with feminist-leaning critiques of the Title IX Office believe that the administration of civil rights should be based more in a cultural human rights logic – offering empathetic, survivor-centered care – rather than a legal logic that relies on overly standardized processes and state-like, paternalistic interventions. I argue that feminist-leaning actors serve as an interest group who draw from the language of human rights logics and legal logics, respectively, as a toolkit⁷ to argue for institutional interventions that give women and survivors increased power, rather than the further decrease in power my participants feel survivors are experiencing. Paradoxically, these frontline workers are resisting the efforts of an office meant to protect the civil rights of women and survivors in the name of advocating for women and survivors. Their arguments highlight the tensions that Title IX Offices (and as an extension, responsible employees) face as gatekeepers of both human rights logics and legal logics as they administer civil rights policies.

REVIEW OF THE LITERATURE

In order to address campus sexual violence, the federal government and the universities under their mandates have created structures establishing responsibility, putting Title IX Offices

⁷ Ann Swidler, *Talk of Love* (Univ. of Chicago Press 2005).

in charge of tracking and reducing this issue. Kalev et al.⁸ define structures establishing responsibility as organized action plans, committees, and specialized staff positions. Weber⁹ argues that executives must appoint specialists and give them authority in order to achieve specialized goals. Other scholars^{10,11} suggest that specialized staff members and task forces better facilitate organizational goals through coordination and oversight. However, institutional scholars argue that a decoupling of formal goals and daily practice is actually common in programs responsive to regulatory demands, such as civil rights programs.^{12,13,14,15} Literature on frontline workers^{16,17} suggests that this occurs in part because workers most responsible for the survival of an organization must negotiate between the demands of clients they interact with every day and upper management, confirming the findings of other literature that law in practice

⁸ Alexandra Kalev and others, 'Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies' (2006) 74 *American Sociological Review*.

⁹ Max Weber, 'Sociological Categories of Economic Action' (1978 [1968]) 1 *Economy and Society*.

¹⁰ Barbara F. Reskin 'Including Mechanisms in Our Models of Ascriptive Inequality' (2003) 68 *American Sociological Review*.

¹¹ Susan Sturm, 'Second-Generation Employment Discrimination: A Structural Approach' (2001) 101 *Columbia Law Review*.

¹² Frank Dobbin and others, 'The Expansion of Due Process in Organizations' (1988) *Institutional Patterns and Organizations: Culture and Environment*

¹³ Lauren B. Edelman, and Stephen M. Petterson, 'Symbols and Substance in Organizations' Response to Civil Rights Law' (1999) 17 *Research in Social Stratification and Mobility*.

¹⁴ Richard Scott, *Institutions and Organizations: Ideas and Interests* (Thousand Oaks: Sage 2002).

¹⁵ John Sutton and Frank Dobbin, 'The two faces of governance: responses to legal uncertainty in U.S. firms, 1955 to 1985' (1996) 61 *American Sociological Review*.

¹⁶ Michael Lipsky, *Street-Level Bureaucracy: Dilemmas Of The Individual In Public Services* (Russell Sage Foundation 1980).

¹⁷ Michael C. Musheno and Steven Maynard-Moody, *Cops, Teachers, Counselors: Stories from the Front Lines of Public Service* (University of Michigan Press 2009).

is quite different from law on the books.^{18,19,20,21} I examine a population of frontline workers – responsible employees – whose investment in the interests of their clients – women and survivors – completely supersedes their sense of duty to the civil rights office to which they are responsible: an office that was intended to defend their clients’ interests. How do they frame their resistance of an office when they should – in theory – at least agree with its purpose? How does this impact the connection between law in practice and law on the books for a reporting system that relies on its frontline workers in administering civil rights policies?

In sociology, an institutional logic is a set of connected beliefs that influences the behavior of an actor in a given organization.^{22,23,24,25} Literature on institutional logics describes how organizational actors engage in practices that combine (sometimes discrepant) logics such as legal and medical logics, causing them to experience role conflicts.^{26,27,28} Chiarello²⁹ looks at health care providers such as pharmacists who are required to heal patients, while at the same

¹⁸ John W. Meyer and Brian Rowan, “Institutionalized Organizations: Formal Structure as Myth and Ceremony” (1977) 83 *American Journal of Sociology*.

¹⁹ Kristin Bumiller, *The Civil Rights Society: The Social Construction of Victims*. (Baltimore: Johns Hopkins Univ. Press. 1988).

²⁰ Beth A. Quinn, ‘The Paradox of Complaining: Law, Humor, and Harassment in the Everyday Work World.’ (2000) 25 *Law and Social Inquiry*.

²¹ Anna-Maria Marshall, ‘Idle Rights: Employees’ Rights Consciousness and the Construction of Sexual Harassment Policies’ (2005) 39 *Law Society Review*

²² Philip Selznick, ‘Foundations of the Theory of Organization’ (1948) 13 *American Sociological Review*.

²³ Philip Selznick, *TVA and the Grass Roots* (Berkeley, CA: University of California Press 1949).

²⁴ See: 18

²⁵ Lynne G. Zucker ‘Organizations as Institutions’ (1983) 2 *Research in the Sociology of Organizations*.

²⁶ Elizabeth Chiarello, ‘The War on Drugs Comes to the Pharmacy Counter: Frontline Work in the Shadow of Discrepant Institutional Logics’ (2015) 40 *Law & Social Inquiry*.

²⁷ John R. Rizzo and others, ‘Role Conflict and Ambiguity in Complex Organizations’ (1970) 15 *Administrative Science Quarterly*.

²⁸ Robert Kahn and others, *Organizational Stress* (New York: Wiley 1964)

²⁹ See: 26

time, to surveil them for illegal behavior and to discipline them by contacting authorities. I argue that responsible employees, as extensions of the Title IX Office, must negotiate two discrepant logics embedded in the administration of civil rights policy. The first is a “human rights logic,” which I expand on as a topic borrowed from Ridgeway’s *Framed by Gender*³⁰. The second is a “legal logic,” defined by Chiarello in her piece on discrepant institutional logics. (Please see **Table 1** for definitions of these terms). Human rights logic can perhaps be best described as the “spirit of the law” for the participants I interviewed – they expected the Title IX office to prioritize survivor-centered care that offered emotional labor, personalized attention, and an extension of institutional power to a population that experiences powerlessness in society at large. In reality, the administration of Title IX policy functions under a legal logic, given 1) the magnitude of assault complaints at a given institution, and 2) the complexity of the system administering Title IX Policy, beginning with the federal government and trickling down through respective university administrations. As I will demonstrate, participants viewed the office’s practices as overly bureaucratic, standardized, lacking empathy, and constrained by institutional pressures, therefore failing to protect the human rights of a vulnerable population, as they believe a civil rights office should. They frame their resistance of the civil rights office they are responsible to by identifying as gatekeepers³¹ of human rights rather than administrators of legal logics.

³⁰ Cecilia Ridgeway, *Framed by Gender: How Gender Inequality Persists in the Modern World* (Oxford University Press 2011).

³¹ See: 26

Table 1 - Discrepant Institutional Logics of Civil Rights Offices: Human Rights and Legal Logics

	Civil Rights Offices	
	Human Rights Logic	Legal Logic
Identity of logic gatekeepers	Defender of the vulnerable/ survivors/ oppressed	Criminal justice actor/ identifier and sanctioner of those who violate the law/ policy; can be viewed as defending the powerful over the vulnerable
Epistemology	Social movements, grassroots efforts; “the people”	Federal policy and large bureaucratic systems
Legitimated patterns of behavior	Empathetic care, listening to wishes of survivor; personalized	Determining interventions based on institution policy and protocol; standardized; rational; paternalistic; lack of transparency in organizational processes

METHODOLOGY

The findings of this study are based on a series of 30 semi-structured interviews with responsible employees at a large public university in Southern California. Responsible employees are designated as such according to their university’s Policy on Sexual Violence and Harassment, developed under the guidelines of the 2011 Dear Colleague Letter. The policy requires that responsible employees report sexual harassment, sexual assault, stalking, dating and domestic violence to their campus’s Title IX Office. This study examines instructors, teaching assistants, union workers, employed undergraduate students, and counseling and medical professionals who are classified as responsible employees. Drawing on street-level bureaucracy theory, I posit that these participants can best be understood as frontline workers, exercising discretion in their roles linking Title IX Officers to “clients” - those who require reporting action.

These employees did not identify with “elite” actors at the university, such as tenured professors, or administrators who work on the Faculty Senate Committee or at the Office of the President. They are key informants on issues of violence and harassment on campus, and they offered feminist-leaning critiques of the Title IX Office that centered the emotional well-being and empowerment of survivors at the heart of their perspectives. Many were women (22 out of 30 participants were women), and many spoke about backgrounds working in domestic violence organizations, rape crisis centers, social work, and counseling. Others had experience with some form of activism, grassroots organizing, or union work. Their backgrounds deeply informed their feminist-leaning critiques of the Title IX Office, which focused on concern for survivors above all else.

I recruited participants by first soliciting interviews with key informants at the university who gave me insight into the history of campus sexual violence and harassment response. I asked interviewees for referrals to new participants, but contacted participants myself based on information available to the public online, using university websites and the campus directory. After collecting data, I removed all identifiable information from my transcripts, and I use pseudonyms in the interview excerpts in this chapter to further ensure participant anonymity. I began my research with a broad motivating question: how do responsible employees come to understand their new requirements under Title IX Policy? In my interviews, I typically asked participants to explain to me what they do to respond to sexual violence and harassment in their role or roles, what they understand the relevant policy or policies to be, how they learned the policy, how they figure out what they are supposed to be doing, and why they find the rules difficult to understand, follow or navigate (if they brought this up as an issue). Dissatisfaction with and resistance to their roles as responsible employees was a major theme throughout the interviews. I analyzed data with Atlas.ti qualitative coding software using a grounded theory

approach that focuses on creating categories, mapping concepts, and writing analytical memos.^{32,33,34} Throughout the processes of interviewing, I transcribed interview data and used analytical and reflexive memos to develop codes and categories. I conducted an initial coding process using open coding, and subsequently conducted a second round of coding as my research question evolved from the broad motivating question into the specific issue I engage in this chapter.

A discussion of language is essential for clarifying meanings of terms used by participants in their interview excerpts. Instead of referring to themselves as “responsible employees” when explaining their roles under Title IX Policy, participants often referred to themselves as “mandated reporters.” Title IX does not call employees “mandatory” or “mandated” reporters; this term seems to have slipped into colloquial use at the university I studied. It is a term typically employed by California state mandated reporter laws that require certain employees, many in education, to report child and elder abuse, potential self-harm, and potential harm of others³⁵. Some of my participants were classified both as responsible employees under Title IX Policy and as mandated reporters by state law. However, the interview questions made clear that we were discussing Title IX policy specifically; even then, participants called themselves “mandated reporters” and insisted on resisting “mandated reporting policy.”

Notably, this confusion with language contributed to participants’ sense that the Title IX office is

³² Barney Glaser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Chicago, IL: Aldine, 1967).

³³ Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis* (Thousand Oaks, CA: Sage. 2006).

³⁴ Juliet Corbin and Anselm Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Los Angeles, CA: Sage 2008).

³⁵ Child Abuse and Neglect Reporting Act, California Penal Codes 2016.

state-like and treats adult survivors like children, taking away survivors' power in determining if, when, and how to seek institutional interventions.

FINDINGS

How do responsible employees who support the civil rights of women and survivors frame their critiques of an office meant to administer civil rights to that very population, and how does this impact their reporting behavior? I will answer these questions by dividing my findings into two sections. In the first section, I give examples of how my participants offered critiques of the Title IX Office as operating under a legal logic in that they see the office as favoring the interests of already powerful groups and individuals, as they believe legal systems typically do. In the second section, I detail examples of how my participants justify their behavior in resisting the requirements of being a responsible employee, highlighting how they believe that they are gatekeepers of human rights for survivors. In line with Chiarello's definition of gatekeeping, they have the power to give or to withhold information both to their organization (the Title IX Office) and to the clients (the survivors) who report to them. Their choices on what information to forward or keep to themselves is steeped deeply in their identities as gatekeepers of human rights and resisters of legal systems that they feel favor the privileged and the powerful.

A. Critiques of Title IX as operating under a legal logic

What drew my participants to understand the Title IX Office as operating under a legal logic? Given that their requirements of acting as responsible employees are relatively new, they relied on their understandings of other legal systems, like the police and the state, to inform how they felt about forwarding survivors to the Title IX Office for support. Embedded in their concerns is the viewpoint that these systems are enormous, confusing to navigate, overly bureaucratic, lacking in empathy, and structured to favor the powerful – elite university

administrators and perpetrators – instead of the vulnerable. In my interviews, participants were almost completely unable to disentangle their image of the Title IX Office from that of the police. In fact, many did not know how campus police and the Title IX Office were different, or how they worked together. This confusion contributed to a fear that contacting the Title IX Office would trigger an investigation involving both administrators and police officers, causing the survivor to lose control of their case, and furthering the survivor’s sense of a loss of power after their assault. Missy, a graduate student working for the union, spoke to this concern:

“So you can report to the Title IX office and say I don't want an investigation. Now their practice right now is to respect that, is to honor what the [survivor] requests. But they are under no obligation to do so. There is no assurance that the [survivor’s] wishes will be honored... they may be obligated to report it to the police.” – Missy

Other participants elaborated on their lack of trust in the police. Participants associated police with a lack of emotional competence in sensitive cases. One undergraduate student, Rose, who worked as a Resident Adviser, voiced her concerns with police insensitivity:

“Investigations by police can be shallow to avoid traumatization, or can be over detailed, asking too many victim blaming why questions.” – Rose

When asked how she felt about contacting administration in the event that she learned about assault or harassment, Rose said “they’re just as bad [as the police because] they don’t have any empathy.” Her sentiments were echoed in several other interviews.

Similarly, participants used their understandings of state mandated reporting laws to inform how they felt about their reporting duties as responsible employees. They used a familiar policy to understand their new, unfamiliar requirements, and framed their rejection of their responsible employee roles by highlighting how “mandated reporting” of adult survivors applies legal logic in an unjust manner. “Mandated reporter” is a term employed by California state

penal codes³⁶ that requires certain employees, many in education, to report child abuse (among other forms of abuse). In almost all of the interviews, participants used the terms “responsible employee” interchangeably with “mandated reporter” or “mandatory reporter” when referring to their reporting duties under the university’s Title IX Policy, even though Title IX policy exclusively uses the term “responsible employee.” By connecting these policy requirements, participants felt that reporting a survivor to the university against the survivor’s will was similar to a state-like intervention in a child’s life, taking away the “autonomy” or “agency” of the adult survivor. Adrian, an employee at the university’s Student Health Center, said:

“That was the really sticky point. If you have a mandatory reporting role – we’ve had that in California education for decades now – that’s for intervening on behalf of a minor, right like, you are intervening on behalf of someone who doesn’t have the agency or the wherewithal to do so, but here, like, 99% of the people in the campus community are adults. They are 18 or older, they should be able to make that call for themselves.” – Adrian

Many other participants voiced the same concerns, and defended their points by asserting that people in the campus community “are not children.” While participants felt that they wanted those who come forward to be able to seek institutional support, they rejected the idea that the institution should decide for the survivor when and how to intervene in an abusive situation. They saw their duties to report as state-like, paternal interventions that prioritized the maintenance of institutional power over survivors’ power.

Relatedly, my participants viewed the Title IX Office as serving the interests of elite university administrators and as purposefully evading action that would hold perpetrators accountable. They saw these behaviors as connected – it is to the benefit of the administration, they assert, to brush assault and harassment cases under the rug. In this way, they see the Title IX

³⁶ See: 35

Office as taking on the identity of a gatekeeper of legal rights – one who protects the powerful over the vulnerable. Participants - who I did not identify as “elite” - spoke about the Title IX Office and elite university administrators collectively as “the university” and used phrases like “them versus us,” to signal that they do not align in status or priorities with these organizational actors. In general, participants viewed “the university” as self-interested, and run by administrators who see honest, survivor-centered reporting and handling of sexual violence as a threat to university branding, public relations, and profit. They believe that “the university” is invested in providing an illusion of compliance while being purposefully ineffective in handling cases. Participants’ perception that the Title IX reporting system is ineffective contributes to their thinking that the actors working within the Title IX Office are complicit in “the university’s” intentions, which they believe include protecting the elites from liabilities and quietly letting perpetrators off the hook. Many participants called the Title IX Policy a “CYA” or “Cover Your Ass” policy.

In one interview, a union worker, Chris, gave an anecdote in which he heard an elite administrator suggest that, in the creation of university-specific Title IX policy, administrators valued the input of their lawyers more than they did of advocate experts.

“Kind of the best WHAT THE FUCK moment was one of the union officers was you know questioning [the administrator]... did you first of all consult any advocacy groups for survivors? [The administrator] said yes, well you know, [we asked] what did they say? Like what did they advise you on? And all this back and forth and so they consulted with advocates, they also consulted with lawyers, of course. I mean the really important thing to know about this policy is that it's first and foremost the university trying to cover its own ass. That's its function. And [the administrator] all but admitted to that... So this is about legal protection for the University, and if they're throwing survivors under the bus in the process, well that's a shame. You know, collateral damage. You know, survivors and TA's and student employees. You know. Well that sucks, but they [the elite administrators] feel nice and comfy and legally protected.” – Chris

My participants felt that university administrators are using the help of lawyers to craft university-specific Title IX policy in order to defend themselves in the event that a case of sexual violence turns into negative press for the university. These responsible employees fear that they will take the blame for poorly handled cases rather than high level administrators at the center of policy creation and enforcement. In their interviews, they reinforce the dichotomy of Title IX administrators who are out to protect themselves, versus responsible employees who care about survivors and their human rights. One graduate student said:

“Basically, we're gonna be the scapegoats. So when the next [big scandal] comes along, oh my gosh this professor has been sexually harassing everyone, and [the University] gets a ton of bad press... they get to say oh, well, only if graduate students had reported this - our system works! Don't worry, we've gotten rid of that graduate student.” - Rod

An instructor voiced related concerns:

“It's legal protections for them and protecting their images, as opposed to actually doing things that would combat sexual assault and sexual harassment, like you know, comprehensive training for professors and instructors... I think they would actually solve the problems, and yeah, they're just sortof, protecting itself legally and in terms of their image.” – April

The instructor, April, also understood the Title IX Office to be connected to elite university actors such as the Privilege and Tenure Committee who deal with sexual violence reports in which tenured professors are the alleged perpetrators. She sees the Title IX Office as complicit in this committee's ability to preserve the jobs of high-level perpetrators, and to do so in secret. She says of the committee:

“For students [a complaint] goes all to student conduct... On the other hand, if you are a tenure track professor, it goes to the Privilege and Tenure Committee, and the privilege and tenure committee is like a black hole. Like, it has no time tables, and, it operates in secret!” - April

As in this interview, the large, confusing bureaucracy and the lack of transparency of the processes within it contributed to a distrust in the reporting channels for participants. There was a

sense that “the university” was intentionally hiding information from its frontline workers. Furthermore, the lack of clarity on how reporting channels and large bureaucratic systems are separate or connected led participants to see them as all coordinated, and invested in the preservation of elite interests.

As these participants draw comparisons and connections among bureaucratic organizations like the state, the police, the university administration, and their Title IX Office, it follows that they see the Title IX Office as purposefully letting perpetrators off the hook. They propose that the Title IX Office’s role in removing perpetrators should be simple, given that, while it adopts legal logics, it should be handling scenarios for survivors with which the criminal justice system is unconcerned. For example, a Title IX Office might remove an alleged perpetrator from the hostile environment they are creating. The individual could be removed from a dorm, classroom, or from a university altogether - consequences that are much less severe than in a police investigation. Based on this thinking, these low-level consequences are not an infringement of respondents’ rights, and participants who believe that the Title IX Office fails to act in these seemingly modest ways then strengthen their perception of the office as intentionally passive for the sake of protecting the interests of the institution. Logan, a union worker, said:

“The accusation is that... the accused have no rights, you'll hear this argument a lot, generally from right wing news sources, that you know, what do you do if you're accused... the problem with this complaint about a lower burden of proof is that, it's not a criminal proceeding, like the stakes in a Title IX case are not you go to jail, the stakes are you lose your job, right? They're much lower stakes, and similarly in a civil case, you don't lose your freedom in a civil case, like you pay money. That's why there's a lower standard of evidence there. This is more like an internal proceeding is saying, you fucked up, your conduct is unbecoming of someone in this community, and you're not in this job anymore.” – Logan

Participants overall felt dissatisfied with how the Title IX Office neglected to offer tangible action that would help survivors escape hostile climates. Drawing from legal logics, they see the

Title IX Office as infringing on the rights of the vulnerable, while simultaneously enabling abusive behavior by refraining from taking action against perpetrators.

B. Participants resist Title IX requirements using a human rights logic

Participants expressed feeling an enormous amount of conflict in their duties to comply with the Title IX Office's responsible employee requirements. They want survivors to be able to seek institutional support in instances of sexual violence and harassment, and they want to be compliant workers. However, they also feel that the Title IX Office acts in a way that takes away power from survivors, rather than extending support to those who need it. Georgina, a graduate student, said the following:

“One of my friends put it really well when he learned about this policy making these mandatory reporters. Like ‘oh hey, that sounds like compounding violation upon violation’ like, right, somebody goes through this experience and then that information is disclosed against their will, that really takes away their autonomy and that's not a helpful response to especially a recent survivor of sexual assault.” - Georgina

Lisa, an employee of the Counseling Center, mirrored these sentiments, and felt that her role as a responsible employee led her to feel conflicted between being compliant and advocating for survivors' power:

“That's the thing, is they should be allowed to decide that for themselves and what's best for themselves, and it's just, it's icky, the whole idea of me telling an adult I know what's best or I'm covering my ass because I don't want to lose my job.” - Lisa

Many other participants felt conflicts between reporting obligations and the emotional well-being of the survivor. One counselor, Philomena, felt that the preservation of her mentor role in her students' lives was more important than her obligations as a responsible employee. She wanted students to feel comfortable coming to talk to her about their issues, free from anxieties about having the Title IX Office intervene in their healing process. She said:

“I think it's important that I maintain some level of confidentiality so they can have a conversation with me, right, and so often it's more of a mentor mentee thing, people just want to come in and talk... so they're not to the level of having to be mandated and reported.” – Philomena

Responsible employees worry about the emotional well-being of survivors, and feel that their role as reporters puts this in jeopardy. This is linked to their concerns that the Title IX reporting system, like the police, lacks emotional competence in sensitive cases. It reinforces their perception of Title IX as patriarchal and state-like, and serves as the foundation upon which they justify their resistance of office requirements – namely, through seeing themselves as defenders of survivors’ human rights.

How do participants evade reporting requirements? I found that they do so in two main ways: by finding policy loopholes that help them to at least appear compliant, and by outright protesting the Title IX Office, the reporting system, and their duties. In each case, they defend their behavior by identifying as gatekeepers of human rights for survivors. For some participants, appearing compliant while respecting the needs of the survivor meant forwarding the survivor to receive institutional support from offices on campus that could ensure confidentiality. For those who send survivors to receive institutional support outside of the Title IX Office, a majority felt that the campus’s confidential Victim Advocates Center (VAC) was a preferred resource over Title IX. Others also said they preferred referring survivors to the Counseling Center. Participants felt that these resources would give the survivor the emotional support that the Title IX Office would not provide, and would allow survivors the ability to seek help while maintaining power and control over their information and case. Deciding on which resources they *would* recommend to a survivor helped responsible employees reconcile role conflicts between being gatekeepers of human rights and complying with legal demands. In their minds, they could comply with their responsibility to report by forwarding survivors to at least some

campus resource, while also maintaining the trust of their clients in a way that was personalized, and survivor-centered. One student health worker, Lauren, said:

“I want to put myself out to you, you know me enough, that when I say I think it would be good for you to talk to one of the counselors at this place, you can then trust that I trust these people, and that if you know I keep your confidence here you know they'll keep your confidence there. It's huge, people are very worried about whether someone will keep their confidence, and what does that actually mean, you know? If you want to pursue a conduct charge or take it to [Title IX], what does it mean?” – Lauren

Another participant, Selena, said that if someone disclosed to her, she would pretend like she didn't hear the disclosure, but would still try to get the survivor to a trusted resource:

“You know, at least if someone were to tell me about a harassment situation, I could be like, uh, I do not hear that. I get that you are speculating about a possible future scenario, but if that were to happen to you, you should talk to (lowers voice to a whisper) the victim advocate office. (laughs). But, yeah, so hopefully that's not the case.” – Selena

Yet another participant suggested that she would be upfront with her students and clients about her role as a responsible employee, deterring survivors from reporting to her “if they don't want to be reported.” This allowed her to seem as if she had put some effort into being compliant, while also assuring that survivors fearful of the reporting system would not disclose to her. In this way, participants withheld information from the Title IX Office using methods that could seem compliant, while giving helpful information and emotional support to those who needed it.

As some participants quietly evaded their responsible employee reporting duties, others engaged in protests against both the reporting system and their roles. The worker's union fought their reporting duties by arguing that they were never in the contract that they negotiated through the university. The university, they explained in their interviews, is not on the side of the vulnerable, like low level workers and survivors. As in Rod's quote, they felt that low-level workers were given responsible employee duties only so that they could be used by elite

administrators as dispensable scapegoats in the event that outspoken survivors brought bad press to their university. They refused to be an excuse for the Title IX Office to continue to be passive in its investigations and their outcomes. Other groups of union workers and graduate students worked on a petition to refuse to comply with the responsible employee policy. Some of these participants spoke directly with high-level administrators in meetings, voicing their concerns and making their acts of protest known. As in Chris's quote, they interrogated administrators on why advocates of women and survivors are not consulted in the crafting of their Title IX Policy. If anything, they are the leaders in feminist-leaning mobilizations against their university's Title IX Office, criticizing its lack of attention to human rights in its administration of civil rights.

DISCUSSION

The Title IX Office exists to offer institutional pathways for survivors to seek help, and to address a major civil rights issue: that women face disproportionate rates of sexual violence and harassment on college campuses, hindering their access to education. However, feminist-leaning critiques of Title IX expose how the office must balance its operation in legal logics with its supposed promise to defend human rights. Understanding how responsible employees see themselves as gatekeepers of human rights rather than administrators of legal logics helps us to resolve a paradox in which defenders of civil rights resist the mandates of a civil rights office. Additionally, it opens up questions for further theoretical examination: how do other civil rights offices and organizations balance operation under legal logics with defending human rights? Do their frontline workers face these same tensions between logics, and how do they negotiate them? In this case, frontline workers prioritized care for their clients over compliance with their organization, in a way, hindering the specialized office in achieving its end goals. Participants justified their actions by arguing that the Title IX Office does not extend its power to the

vulnerable, but rather, takes further power from survivors who have already been violated. This concept has been written about in literature across disciplines: sociologist Gregory Matoesian calls this “reproducing rape”³⁷; psychologists call this “the second rape,”³⁸ and “institutional betrayal”³⁹; and philosopher Donald Vandever might call this a “paternalistic intervention”⁴⁰. Because the Title IX Office was built into the bureaucracy of university administration, participants saw it as more invested in protecting the institution than the vulnerable. Political scientists and legal scholars refer to this concept as “institutional capture,”^{41,42} and scholars of law and the social sciences have found that institutions do perform symbolic compliance – creating offices and policies with little tangible knowledge or power – when rushing to meet new requirements^{43,44,45}. Because of the office’s perceived inaction in defending women and survivors, the responsible employees I interviewed came to see the Title IX Office as aligned

³⁷ Gregory M. Matoesian, *Reproducing Rape: Domination through Talk in the Courtroom* (University of Chicago Press 1993).

³⁸ Lee Madigan and Nancy C. Gamble, *The Second Rape: Society’s Continued Betrayal of the Victim* (Lexington Books 1991).

³⁹ Carly Parnitzke Smith and Jennifer J. Freyd, ‘Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma’ (2013) 26 *Journal of Traumatic Stress*.

⁴⁰ Donald VanDeVeer, *Paternalistic Intervention: The Moral Bounds on Benevolence* (Princeton University Press 1986).

⁴¹ Rachel Barkow, ‘Insulating Agencies: Avoiding Capture Through Institutional Design’ (2010) 89 *Texas Law Review*.

⁴² Matthew Zinn, ‘Policing Environmental Regulatory Enforcement: Cooperation, Capture, and Citizen Suits’ (2001) 21 *Stanford Environmental Law Journal*.

⁴³ Lauren B. Edelman, ‘Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law’ (1992) 97 *American Journal of Sociology*.

⁴⁴ See: 13

⁴⁵ Lauren B. Edelman and Shauhin A. Talesh, ‘To comply or not to comply – that isn’t the question: how organizations construct the meaning of compliance’ (2011) *Explaining Compliance: Business Responses to Regulation*.

with patriarchal values^{46,47,48}, defending the university elite, and allowing perpetrators to go unpunished. Furthermore, participants relied on what was familiar – reporting to the police and to the state as mandated reporters – to guide their understandings of new, unfamiliar requirements.^{49,50} They see these systems as inherently patriarchal as well, and this perception, in part, informed their views that the office was not aligned with the interests of women and survivors. Ultimately, participants became gatekeepers of legal information and emotion work⁵¹, using their perceptions to decide what kinds of information to give to survivors and legal authorities, respectively. They used legal logics and human rights logics as a toolkit to defend their behaviors. While some participants at least attempted to appear compliant as they bent the rules, others outright resisted policy mandates in a way similar to Agamben’s *State of Exception*⁵² – they chose to transcend the rule of law in the name of public good.

⁴⁶ Raewyn Connell, ‘Advancing Gender Reform in Large-scale Organisations: A New Approach for Practitioners and Researchers’ (2005) 24 *Policy and Society*.

⁴⁷ Albert J. Mills and Peta Tancred, *Gendering Organizational Analysis* (Newbury Park, CA: Sage 1992).

⁴⁸ Joan Acker, ‘Hierarchies, Bodies, and Jobs: A Gendered Theory of Organizations’ (1990) 15 *Gender and Society*.

⁴⁹ Douglas J. Orton and Karl E. Weick, ‘Loosely Coupled Systems: A Reconceptualization’ (1990) 15 *Academy of Management Review*.

⁵⁰ See: 23

⁵¹ Arlie Hochschild, ‘Emotion Work, Feeling Rules, and Social Structures’ (1979) 85 *American Journal of Sociology*.

⁵² Giorgio Agamben, *State of Exception* (The University of Chicago Press 2005).