

The tenuous inclusion of transgender athletes in sport

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Introduction

Few institutions adhere to a sex-segregated structure more strictly than sport. A system based on a static and binary understanding of sex has presented considerable barriers to the participation of transgender athletes, who often have faced policies of overt exclusion. However, in response to challenges from transgender athletes and activists, many sporting bodies have begun to adopt policies that appear, at least ostensibly, to be more inclusive of transgender participants. The current chapter serves as an update to previous work (Love 2014) in which I examined this wave of seemingly inclusive policies. In the period of 2014–2016, new policies demonstrating increased inclusion of transgender athletes have been adopted at both the elite and amateur levels. At the same time, an upsurge of anti-trans backlash, both within and outside of sport, has emerged. This chapter addresses these contrasting developments. Ultimately, I build on previous calls for scholars and sporting officials to seek more inclusive, non-sex-binary-based models for organizing sport competition.

A note on the author's standpoint and terminology

In this chapter, I write with the understanding that anatomical, chromosomal, and hormonal complexities involved in differentiating men from women make sex, like gender, a socially and historically-constructed concept (Schultz 2011; Wackwitz 2003). My argument for non-sex-binary-based strategies for organising sport is broadly informed by the ideas of queer feminist scholars, such as Burke (1996) and Fausto-Sterling (2012, 2000), whose deconstruction of sex and gender has highlighted ways in which the two-sex system itself reproduces a hierarchy upon which transphobia specifically, and sexism more generally, are based.

In addition, I should clarify that the term *transgender* is used generally in this chapter to include people who have a gender identity other than that assigned to them at birth as well as those who may not identify with a

particular sex entirely. Some transgender persons may desire to seek medical procedures, such as surgery or hormone therapy, to *transition* to a particular sex, while others may not. In contrast to transgender, the term *cisgender* refers to “individuals who have a match between the gender they were assigned at birth, their bodies, and their personal identity” (Schilt and Westbrook 2009, 461). Transgender must also be distinguished from *intersex*, which includes individuals with “atypical combinations of chromosomes, hormones, genitalia, and other physical features” (Buzuvis 2011, 11). Although intersex athletes have often been affected by sporting bodies’ exclusionary policies, the primary focus of this chapter is on policy developments as they impact transgender athletes. The analysis in the chapter is limited by my status as a white cisgender man, who has experienced the privilege of not directly suffering the effects of exclusionary policies in sport. With these points in mind, I begin with a brief overview of the history of overt exclusion encountered by many individuals who do not so neatly fit into a static and binary model of sex.

A history of exclusion

The general hostility of sport policymakers to those who transgress the sex binary is vividly illustrated by the history of sex-verification testing in sport. Because the practice has been more rigorously examined by others (e.g., Pieper 2016; Schultz 2011; Sullivan 2011; Wackwitz 2003), I provide only a brief overview of sex testing here as it directly relates to the participation of transgender athletes. The practice of requiring athletes to verify their sex may have roots dating back as far as the original Olympic games in ancient Greece (Wackwitz 2003), but the formalized policy of sex-verification testing in modern elite sport was initiated in the 1960s. This initially consisted of requiring participants in women’s events to submit to visual and gynaecological examinations at competitions governed by the International Association of Athletics Federations (IAAF). The introduction of chromosomal testing for competitors in women’s events by the International Olympic Committee (IOC) occurred at the 1968 Olympic Games in Mexico City. During the next three decades, the IOC mandated testing to determine who was and was not allowed to compete in women’s events, using testing methods designed to identify the presence of a second X chromosome (Barr Body test) or the presence of a Y chromosome (polymerase chain reaction test). However, due in part to the ineffectiveness and ambiguity involved in determining sex through such procedures, mandatory sex testing for women’s events was abandoned prior to the 2000 Summer Olympics. Organizations such as the IOC and IAAF still allow for testing on a case-by-case basis, although their ability to do so is currently a matter of legal contention, a point I will return to later in the chapter.

In some instances, sport organizations appear to have implemented sex-verification testing with the specific intent of excluding transgender competitors. The United States Tennis Association (USTA), for example, introduced chromosome-based sex testing in 1977 in response to transitioned woman Renee Richards' attempts to compete in women's events (Birrell and Cole 1990). A decade later, the United States Golf Association responded to the increased success of Charlotte Ann Woods, a transitioned woman, by introducing a policy requiring that competitors in women's events be "female at birth" (Sykes 2006). In some cases, anti-discrimination statutes ostensibly designed to prevent unfair treatment of transgender citizens have specifically exempted sport organisations. For example, the UK's Gender Recognition Act of 2004 allowed sporting organisations to exclude transgender participants to promote "fair competition" or "the safety of competitors" (see McArdle 2008, 47). Sport organisations have also been exempted from a transgender non-discrimination law in New South Wales, Australia (Buzuvis 2011). However, despite this history of exclusion, some sport organisations have begun to adopt policies that are, at least on the surface, inclusive of transgender athletes.

The emergence of policies regarding transgender participants in sport

The "Stockholm Consensus" – a policy approved by the IOC Executive Committee prior to the 2004 Summer Olympic Games – marked an important turn with respect to the potential inclusion of transgender athletes. Prior to the Stockholm Consensus, most sporting bodies either had no policies regarding the participation of transgender athletes or simply relied upon requirements that all competitors in women's events be "female at birth" (Cavanagh and Sykes 2006). However, the Stockholm Consensus only allowed transgender athletes to compete if they had (a) undergone sex reassignment surgery (including external genitalia and gonadectomy), (b) been given legal recognition of their sex by their country of citizenship, and (c) undertaken hormone therapy and lived in their newly-assigned gender for at least two years (Cavanagh and Sykes 2006). The Stockholm Consensus appears to have acted as a model, with numerous sport organisations adopting policies governing the participation of transgender athletes following its implementation. These organisations include the Ladies European Golf Tour, Ladies Golf Union, Ladies Professional Golf Association, USA Hockey, USA Rugby, USA Track and Field, United States Golf Association, and Women's Golf Australia (Buzuvis 2011).

While some have praised the Stockholm Consensus (and subsequent policies modelled on it) for offering a means of inclusion for transgender athletes, many scholars have criticized its restrictive nature. For instance, by relying on the most conservative, medicalized criteria to determine

access, these policies excluded many transgender athletes and ignored “all local, economic, cultural, and racial differences in how transsexual athletes have access to sex reassignment surgeries or hormone usage” (Sykes 2006, 11). The access that such policies provide to some transgender athletes is on terms that are gender-conforming rather than gender-transforming (Travers 2006). Ultimately, such policies reassert the notion that there are “two and only two choices when it comes to one’s sexual identity, thereby ignoring the range of social and biological possibilities that exist along the continuum between these two seemingly pure categories” (Schultz 2011, 235).

A new wave of inclusion?

While policies such as the Stockholm Consensus worked to exclude many, if not most, people who do not identify with the sex they were assigned at birth, recent developments at both the elite and amateur levels of sport signal the potential for a growing inclusion of transgender athletes. At the elite level, two significant policy developments occurred in 2015 regarding the ways in which gender is governed. First, in July of 2015, the Court of Arbitration for Sport (CAS) suspended the IAAF’s policy of “hyperandrogenism” regulation. Shortly thereafter, the IOC Medical and Scientific Commission issued new guidelines concerning “sex reassignment and hyperandrogenism.” Below, I discuss both developments in more detail.

In 2011, the IAAF adopted a policy to regulate “hyperandrogenism” – a “condition in which females produce androgens in excess of the range typical for females” (Karkazis *et al.* 2012, 3). The policy set a ceiling of 10 nanomoles per litre in serum as the amount of naturally-occurring testosterone that was allowable for competitors in women’s events; this testosterone level was identified by the IAAF as being “within the normal male range” (Karkazis *et al.* 2012). If a woman had testosterone in excess of this amount, she would be required to lower her testosterone levels, which would necessitate surgery or use of medication (Karkazis and Jordan-Young 2015). However, as the result of an appeal by Indian sprinter Dutee Chand, who had been banned from competition due to the policy, the CAS suspended the IAAF hyperandrogenism regulations in a ruling issued on July 24, 2015. In the ruling, the court allowed the IAAF two years to submit further evidence demonstrating “the actual degree of athletic performance advantage sustained by hyperandrogenic female athletes as compared to non-hyperandrogenic female athletes by reason of their high levels of testosterone” (Court 2015, 160). If the IAAF is unable to provide such evidence in the two-year window, the hyperandrogenism policy will be declared void. While the IAAF hyperandrogenism policy is not about transgender athletes per se, its focus on regulating sex based upon hormone levels has important implications for the inclusion (or exclusion) of

transgender participants. As Karkazis and Jordan-Young (2015) argue, “what looks like a controversy rooted firmly in science is ultimately a social and ethical one concerning how we understand and frame human diversity” (860).

In another important development at the elite level of sport, the IOC adopted new guidelines regarding transgender athletes in November of 2015. Alluding to changes occurring over the past decade, the guidelines state that “there has been a growing recognition of the importance of autonomy of gender identity in society” (International Olympic Committee 2015, 2) since the development of the Stockholm Consensus. In turn, the new guidelines suggest, “it is necessary to ensure insofar as possible that trans athletes are not excluded from the opportunity to participate in sporting competition,” but “the overriding sporting objective is and remains the guarantee of fair competition” (International Olympic Committee 2015, 2). As a result, the guidelines declare that female to male trans athletes should be eligible to compete in men’s events without restriction, but male to female athletes must demonstrate that their total testosterone level has been below 10 nanomoles per litre for at least 12 months prior to competition (International Olympic Committee 2015). Thus, while the IOC’s new guidelines may be less restrictive than those of the Stockholm Consensus, they maintain a reliance on hormones as the ultimate criteria for sorting sex in the context of sport. The focus on hormones is problematic, as there is no evidence showing that athletes with higher testosterone levels perform better than those with lower testosterone levels (Karkazis *et al.* 2012). In addition, rather than being a sexual dimorphism, there is overlap between the testosterone levels of men and women (Karkazis and Jordan-Young 2015). Therefore, while the IOC’s guidelines may signal a new level of inclusion for transgender athletes in some ways, they still work to reinforce restrictive assumptions about sex, hormones, and athletic performance.

Given that testosterone is far from a decisive factor in athletic performance, it is promising that some policies without a focus on hormones have emerged. For example, in 2007 the Washington Interscholastic Activities Association (WIAA) became the first interscholastic sport governing body in the United States to adopt a formal policy on participation by transgender athletes (Buzuvis 2011). Specifically, the WIAA policy allows students to participate in sports “in a manner that is consistent with their gender identity, irrespective of the gender listed on a student’s records” (Washington 2015–2016, 32). In cases where questions arise about whether a student’s gender identity is “bona fide,” the policy outlines an appeals process in which the student must appear in front of an eligibility committee composed of such officials as physicians, mental health professionals, administrators, WIAA staff members, and/or advocates “familiar with Gender Identity and Expression issues” (Washington 2015–2016, 32). The

committee, rather than requiring medical evidence, considers such documentation as affirmed written statements from the student, a parent/guardian, and/or a health care provider. As of the 2015–2016 academic year, a total of 15 states in the U.S. had “inclusive” policies that did not require surgery or medical hormones as criteria for participation by transgender high school students (transathlete.com).

While policies such as that of the WIAA may be promising, they may be subject to change with relative ease by administrators. In the state of California, however, a law actually exists to guarantee the rights of transgender students in athletic competitions. Specifically, the California School Success and Opportunity Act, which went into effect January 1, 2014, “requires that a pupil be permitted to participate in sex-segregated school programs, activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records” (cited in Mahoney *et al.* 2015, 45). Such a law ensures a level of protection for transgender students that is stronger than that offered by an athletic governing body policy. Overall, the policy developments discussed in this section provide some reason for optimism regarding the increased acceptance of transgender participants in sport. However, accompanying these gains in transgender rights, there has been a simultaneous upsurge of anti-trans backlash, which I discuss in the next section.

Anti-trans backlash

Shortly after the Stockholm Consensus was issued, Cavanaugh and Sykes (2006) suggested that the apparent concern with neutralising alleged masculine advantage in sport is actually more about managing the gender binary at a time when there is growing evidence of its insufficiency and when transgender persons are gaining increased access to basic civil rights in numerous areas of social and cultural life. Similarly, in concurrence with the transgender rights advances noted in the previous section, a new wave of anti-trans legislation has emerged. I specifically discuss some notable developments in the United States below.

One of the primary ways in which legislators have targeted the transgender community recently is in the form of “bathroom bills” that seek to regulate access to single-sex restroom facilities. In March of 2016, the Public Facilities Privacy and Security Act became law in the state of North Carolina. The law bars people from using bathrooms that do not match their birth sex and prohibits local municipalities in the state from establishing anti-discrimination protections for members of the LGBT community (Philipps 2016). As of early 2016, there were more than 100 active anti-LGBT bills being considered by legislative bodies across 22 states in the U.S. (Bendery and Signorile 2016). Some recent policy developments, in

fact, have specifically targeted transgender students who wish to participate in school-sponsored sports.

In contrast to the inclusive policies mentioned in the previous section of this chapter, seven states have policies that require trans students to have their sex changed on birth certificates and/or undergo sex reassignment surgery and hormone therapy in order to participate in high school athletics (transathlete.com). For example, school district superintendents and athletic directors in the state of Texas recently voted in favor of a policy that uses the sex listed on one's birth certificate as the sole determinant for student-athlete eligibility (Wright 2016). In order to change the sex listed on a birth certificate, one must obtain a court order, which is likely to be a difficult and expensive process; in Texas, there is no legal standard for gender-marker changes, meaning that decisions about this matter are left up to individual judges (Wright 2016). Given these facts, such a policy presents a barrier that would make sport participation impossible for many transgender students.

Another example of backlash is demonstrated in response to the previously-mentioned California School Success and Opportunity Act. After the law was passed, opponents organized a signature drive to place a veto referendum on the November 2014 election ballot. Opponents narrowly failed to collect the necessary 504,760 signatures to place the veto referendum on the ballot; while they submitted more than 619,000 petition signatures, only 487,484 were declared valid (Egelko 2014). If the referendum were to have qualified for the ballot, it would have required a simple majority of voters to overturn the School Success and Opportunity Act. Overall, the emergence of such backlash demonstrates that recent growth in the acceptance of transgender athletes is tenuous; given the extent of efforts to roll back recent advances, advocates of transgender rights should not view progress as inevitable or irreversible.

Conclusion

In this chapter, I began by highlighting how the history of sex-verification testing illustrates the extent to which many sport governing bodies have operated with a static and binary understanding of sex, creating a hostile environment for transgender athletes. Indeed, some sport organizations seem to have implemented sex-testing policies with the specific intent of excluding transgender participants. However, shortly following the turn of the century, a growing number of sport governing bodies, exemplified by the IOC's 2003 Stockholm Consensus, have adopted policies that provide a limited level of inclusion for transgender athletes. Such policies have been critiqued for their reliance on specific medicalized criteria for inclusion, such as surgery and hormone treatment, and their insensitivity to cultural and economic differences in how transgender persons have access to such

procedures. More recently, however, developments such as the CAS's suspension of the IAAF hyperandrogenism policy, the IOC's updated policy, and the existence of interscholastic policies that require neither surgery nor hormone therapy, signal the possible emergence of a new wave of inclusion for transgender athletes in competitive sport.

Despite the possible optimism provided by these developments, I suggest that the potential for greater acceptance and inclusion of transgender athletes is currently tenuous at best. For instance, the CAS decision to suspend the IAAF hyperandrogenism policy is potentially temporary; if the IAAF were to present further evidence prior to the 2017 deadline that the CAS found to be compelling, then the hyperandrogenism policy could be reinstated. Further, the narrowly-failed petition drive to overturn the California School Success and Opportunity Act and the spate of anti-trans legislation that has appeared in numerous U.S. jurisdictions demonstrate that gains made by transgender rights advocates are vulnerable to reversal. Therefore, the future of transgender rights will require continued effort on the part of activists and advocates. While numerous strategies may have potential for success, in this chapter I advocate a strategy of moving away from the sex-segregated model of sport as much as possible in order to advance transgender rights.

Advocates of gender equity should be cautious in supporting the sex-segregated model of sport, given that it often reproduces an ideology of men's superiority and women's inferiority (Love and Kelly 2011; McDonagh and Pappano 2008; Travers 2008). Fortunately, there are a number of alternatives to sex-segregation. One notable example of a sporting activity that has grown with a gender-mixed structure is quidditch, which has developed as a genuine sport adapted from the game in the *Harry Potter* novels. Initiated in the U.S. in 2005, quidditch was founded and remains a non-sex-segregated activity. While the rules dictate that a team may have no more than four players (out of six) who identify as the same gender playing on the field at the same time, there are no other rule adaptations made for men and women. Further, the U.S. Quidditch (USQ) rulebook recognizes that "the gender that a player identifies with is considered to be that player's gender, which may or may not correspond with that person's sex," and "USQ accepts those who don't identify within the binary gender system and acknowledges that not all of our players identify as male or female" (12). Such a strategy creates conditions in which all players can compete together with equal status regardless of gender (Cohen *et al.* 2014).

As another alternative that goes further beyond the two-sex model of sport, Travers and Deri (2011) discuss how some lesbian softball leagues have adopted more radical, non-sex-binary-based policies. These radically-inclusive policies include "transwomen and transmen of all variations and stages of transition (in terms of surgery and hormones) as well as transgender individuals whose gender identities lie between or outside the

gender binary” (Travers and Deri 2011, 493). They suggest that the presence of transsexual, transgender and genderqueer players on teams is important because it provides visual evidence of a shift away from dyadic sex boundaries.

There are many potential benefits provided by non-sex-segregated sporting contexts. For example, trans-inclusive teams can serve as valuable sites of support for transgender persons (Travers and Deri 2011). This is particularly important because members of the transgender community suffer disproportionately from mental health problems (Bockting *et al.* 2013) that could perhaps be ameliorated by sport participation in a welcoming environment (McArdle 2008). Additionally, interaction between transgender and cisgender athletes in a supportive context may work to reduce prejudice against members of the transgender community (Buzuvis 2011). Of course, in addition to the direct benefits for transgender athletes, a move away from the segregated two-sex model of sport may help alleviate the damaging effects of orthodox masculinity in sport (Anderson 2008) and disrupt the ideology of natural male superiority that is frequently reproduced in and through sport. Indeed, participants in quidditch have reported gender stereotype reduction and an increased desire for inclusivity and equality due to participation in the sport (Cohen *et al.* 2014).

I wish to emphasize, however, that gender-integrated sport should not be uncritically viewed as a panacea. For example, researchers have reported that an underlying prejudice toward women still exists among many men who participate in quidditch (Cohen *et al.* 2014). Further, there are important issues to be considered in efforts to move away from sex-segregated sport. In the softball leagues studied by Travers and Deri (2011), some lesbian participants feared that transinclusion might take away from the empowering women-only spaces they valued so much. Indeed, support for Renee Richards in her efforts to participate in women’s tennis often tended to take an anti-feminist and anti-woman tone (Birrell and Cole 1990). These examples highlight legitimate concerns about advocating integration under broader conditions of deeply-rooted gender inequality. Thus, by advocating that we move toward more inclusive ways of organizing sport, I do not call for a careless elimination of sex-segregation immediately in all contexts. However, I do urge scholars and sport administrators to consider alternatives to sex-segregation as policy is developed in the future. Ultimately, moving away from the segregated two-sex system as much as possible is desirable, not only for the inclusion of transgender athletes but also as a means of promoting gender equity more broadly.

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