

Trans Women Are Women, and Sport Is a Human Right

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I'm really tired of repeating myself. People keep telling me that the topic of including trans and/or intersex women in women's sport is "complicated." But it's not. It's very simple. Are trans women really women, full stop, or not? If you think "Yes," then there's no debate: trans and intersex women, as women, belong in women's sport. If you think "No," then there's absolutely nothing I can say that will change your mind. You didn't arrive at that belief through reasoning, and you won't get out of it that way either. It's a little like arguing with a flat-Earther: if you are convinced that the Earth is flat, then you'll find any reason, no matter how irrational, to hold on to that belief in the face of overwhelming evidence.

But this is what I find myself repeating over and over: to those who already think that trans and intersex women are really, fully women, I don't need to provide further evidence. So, I find myself arguing against people who already think that trans and intersex women are "male" and therefore there must be some unfair performance advantage, despite my repeatedly pointing out that there's no reliable scientific evidence supporting their claim. It often doesn't take much to scratch the surface of their views to find that they really just think that trans women are men in dresses. In fact, the best evidence we have suggests that trans women, in particular, are grossly statistically underrepresented in elite sport; it seems, instead, then that trans women are possibly at a competitive disadvantage compared to their cis counterparts.

I've penned peer-reviewed scholarly articles on trans and intersex athlete rights to inclusion.¹ I've presented detailed arguments about the science, law, and ethics

(particularly regarding sport as a human right). I've penned articles and op-eds for such major news outlets as the *New York Times*, the *Washington Post*, and *The Economist*, and so many others I've literally lost count. I've appeared on all major news networks, including going into the "lion's den" of Fox News's New York headquarters to go toe-to-toe with someone I think I'm safe in calling transphobic, Abigail Shrier. I've appeared in more documentaries than I can even enumerate.

Each time I say the same thing: sport is a human right (just read the first sentence of the International Olympic Committee's fourth Fundamental Principle of Olympism: "Participation in sport is a human right.") and the burden of proof is on those seeking to exclude a group from a human right. That's how human rights law works. And it's very clear that those seeking to exclude trans and intersex women from women's sport have not met that burden. In fact, I've argued in print that I think it's unlikely that they'll ever be able to meet that burden.

But it's like arguing with a wall. You see, the "common sense" position is that trans women are "male" and that they must—even though no evidence supports this—retain an unfair advantage, so the burden of proof is really on trans and intersex women to show that they don't have an unfair advantage. Society has it exactly backwards.

I'm routinely asked to "debate" with a transphobe about my basic human dignity, where they call me a man, male, a cheater (see Martina Navratilova's op-ed in the *Sunday Times*).² I knock down every one of their arguments every time, but still the "narrative" is that despite the lack of evidence, isn't it obvious that trans women have an unfair advantage due to being "male"? So, I repeat myself. I'm tired of it. I'm tired.

In 2019, the International Olympic Committee (IOC) undertook a consultation process with various stakeholders on updating their 2015 "IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism" recommendations.³ These consultations involved day-long meetings at the IOC headquarters in Lausanne, Switzerland, with IOC personnel and trans athletes, and another round for intersex athletes. I was part of the trans athlete consultations. It was mere weeks after I won my second UCI Masters Track Cycling World Championship in Manchester, England.

The history of IOC guidelines around trans and intersex women athletes (trans men are usually an afterthought and non-binary athletes are often not even considered at all) has been one of increasing inclusion. In their 2003 consensus meeting, the IOC recommended requiring trans athletes to undergo unnecessary genital surgery (genitals don't play sports!) and then a two-year waiting period to compete in their transitioned gender.⁴ In 2015, they removed the surgery requirement, recognizing how unnecessary and discriminatory it is (do you even know

how expensive genital reconstruction surgery is!), and recommended instead twelve months (and perpetual thereafter) testosterone suppression below 10nmol/L.⁵

It's worth noting that the 10 nmol/L value was chosen pretty arbitrarily (despite what they will tell you). It wrongly believed that 10 nmol/L was the bottom of the "normal" male range. The problem is that the male range of unaltered endogenous testosterone goes down to next to nothing, well below the average for cis women. Part of this is that such recommendations require rigging the concept of "normal" to exclude all the cases that invalidate the claim. As I commonly say, "Sure, there's no endogenous testosterone overlap between male and female if you ignore all the cases of overlap!"

Since international sport federations (IFs) started allowing trans people to compete in their transitioned gender for the 2004 Athens Olympics, until, but not including, the 2021 Tokyo Olympics, there were over 54,000 Olympians. The number of trans athletes? Zero. Under the more inclusive 2015 update to the IOC transgender recommendation, which many IFs adopted for the 2016 Rio Olympics, the number of Olympians for 2016 Rio and 2018 Sochi, was over 14,000. Much of the news reporting around the 2015 updated IOC recommendation was that trans women would take over and dominate at Rio. How many trans athletes actually participated? Again zero.

Even in Tokyo 2021, depending on how one counts, four trans people participated (one did not actually compete as she was an alternate), but no trans woman medaled. The only trans person to medal was Quinn, who is a non-binary member of the Canadian women's soccer team—they won gold.⁶

Every single time people make the fear-mongering claim that trans women will "take over" or "dominate" women's sport, it's not borne out by reality. A trans woman has never won an elite (open) world championship, none hold an elite (open) world record, none have won an Olympic medal, and none have won any major tournament in sports like golf and tennis. This is an irrational fear of trans women. And what do we call that? Transphobia.

It's important to call it what it is. Too many "well meaning" people are afraid of using that word for fear, I guess, of alienating people or being "divisive." You know what's divisive? Making up fantasies about trans women dominating women's sport—despite all evidence to the contrary—and using that fear to deny trans women their basic human right to compete as the women they are.

I never wanted to be an "activist" for athlete rights. Truly, I just wanted to race my bike and see how far I could advance in the sport I love. So far, this has led to two UCI Masters Track Cycling World Championships in 2018 and 2019. I used to have Olympic aspirations until the trauma causing PTSD and other disorders brought on by harassment et cetera put an end to that. It's certainly hard enough to achieve

such lofty goals, but it's a lot harder when people are actively doing everything they can to ban you from competing, even when you're following every rule under the strictest of scrutiny. They still call me a "cheater" just for existing.⁷

There are a lot of arguments being bandied about on whether it's fair for trans women to compete in women's sport. What is often lost in the shuffle is that there are trans men athletes and non-binary athletes. "Where are the successful trans men athletes?" I've read that more times than I can count. But the most commercially successful trans athletes have been trans men: six-time team USA duathlete Chris Mosier had a Nike television ad campaign run during the Rio 2016 Olympics; professional boxer Patricio Manuel has had a feature in *Rolling Stone* magazine. And the first trans person to win an Olympic medal, Quinn, did so at Tokyo 2021 with the Canadian women's soccer team.

Mack Beggs, a trans male wrestler who rose to fame for being forced to wrestle in the high school girls' category, is all too often used as an example of what's wrong with trans women in sport. After graduating, he was happily wrestling on the men's team in college. Now he's focusing on mixed martial arts. Amazingly, people irrationally opposed to trans women in sport think that he's a trans woman. Trans men are often celebrated, but then forgotten. They are vanished from the social imagination since they don't serve the dominant narrative that only focuses on trans women in sport. In some cases, like with Beggs, they're used as pawns against trans women, in contortionist twists of what can at best be loosely called "logic."

And while trans men at least receive some media coverage and accolades for their "bravery"—which is itself an entirely other problem, rooted in misogyny and sexism—non-binary athletes are left out completely. Sport itself is often not structured to include non-binary people. If one isn't easily categorized into the binary man/woman, where should one compete? Many rules require an athlete to choose one, and they then can't change their mind for four years.

Without any justification, World Triathlon will not allow a trans athlete to compete in the women's category if they competed in the male category within four years!⁸ The policy reads: "The athlete must provide a written and signed declaration that she has not competed within the last 4 years in the male category of an official competition in Triathlon or its related Multisport or one of our allied sports of swimming, cycling, athletics or cross-country skiing." They offer absolutely no justification for this. This is effectively a career killer for any elite trans women who want to compete in triathlon.

This binaristic structure of sport comes from on high, from the IOC and the arms-length arbiter of sport disputes, the Court of Arbitration for Sport (CAS). In a landmark 2015 CAS decision about intersex female runner Dutee Chand, the CAS's decision reads in part, "There are only two categories of competition: male and female. These categories are together intended to cover all athletes who wish to

participate in competitive athletics.”⁹ The CAS is effectively the supreme court for sport. And even though their previous decisions do not constitute precedent for their future decisions (in fact, their reasoning in Caster Semenya’s case was effectively a 180 degree turn from their reasoning in Chand’s case), their decisions heavily influence or even constrain what policies IFs may adopt. In this case, athletes wishing to compete in international sport under the CAS’s authority may only do so in either the “male” or “female” categories.

Common “understanding” is that there is at least some rigid distinction between sex and gender. So, one might question why I’m slipping between using man/woman or boy/girl, which are often understood as “gender” terms, and male/female, which are often understood as “sex” terms. The reason is twofold. First, sport does not make any distinction between “sex” and “gender”: they are used interchangeably. In the aforementioned CAS case, the paragraph following the aforementioned quote reads, in part, “A rule that prevents some women from competing at all . . . is antithetical to the fundamental principle of Olympism that ‘Every individual must have the possibility of practicing sport, without discrimination of any kind.’”¹⁰

Second, governments do not make any distinction between “sex” and “gender,” at least not typically. While trans people are not universally able to secure legal recognition of their (transitioned) sex, they are able to in many countries. The United States, Canada, the UK, Australia, Germany, and a long list of other countries have practices of allowing trans people to change the sex designation on their legal documents, including their birth certificates. In Canada, for example, a trans woman can be legally recognized as “female.” As of January 2022, anyone aged twelve or older in British Columbia can have the sex designation on their birth certificate—and therefore all of their identification documents—changed without any medical requirements or even a doctor’s note. British Columbia is entirely a self-identification province!

There is no legal distinction between being “female” and “a woman” (or “a girl”). Of course, different governments require different things of trans people to acquire this legal recognition, and there can be differences at the federal and state/provincial levels. There are many examples. Consider the language of the UK’s 2004 Gender Recognition Act: “Where a full gender recognition certificate is issued to a person, the person’s gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman).”¹¹ Note the use of “male gender” and “the person’s sex becomes that of a man.” The “gender” and “sex” terms are used in combination and interchangeably. Legal identification documents only list “Male” or “Female” or their abbreviations “M” or “F.” One’s passport doesn’t say “Woman” or “Man.” The idea that either sport or “female-only” social

spaces such as bathrooms are segregated on the basis of sex and not gender, leaning on a rigid distinction between sex and gender, is simply not the case.

It's simply the case that sport and governments do not make a rigid distinction between sex and gender. Why does this matter, though? Some people who oppose trans women's inclusion in women's sport are increasingly, begrudgingly willing to grant that trans women are women in terms of gender but remain steadfast in their denial that trans women are female in terms of sex. The idea is that we segregate sport on the basis of sex and so, begrudgingly, while trans women may be women, they are not female and thereby shouldn't be permitted into female-only sports categories.

My point here is to call attention to the lack of any such distinction in organized sport—including at the Olympic and Commonwealth levels—or in governments. So those who seek to argue for trans women's exclusion on the grounds that they (wrongly) think that sport is segregated on the basis of sex are, well, totally wrong.

But it gets worse for them. Prior to 1999, and in practice before the Atlanta 1996 Olympic Games, the IOC had various "sex verification" policies to determine whether an athlete was male or female, irrespective of their legal sex.¹² However, this only ever applied to those seeking to compete in the women's category. We never scrutinize men and those competing in the men's category. Women's sport is the "protected" category. And in the early days, an athlete thought to be too masculine—which was differentially applied to women of color, since norms of femininity were set by white women's femininity¹³—would be required to appear before a panel who would inspect her genitals. Anything other than a (white) normative vulva was deemed sufficient evidence that the athlete was not "really" a woman, and so the athlete would be excluded from competition.

Eventually, genital inspection was deemed to be insufficient, so the IOC introduced the practice of chromosomal testing. Specifically, they applied the Barr Body test, which merely tests for the existence of a Y sex chromosome. The presence of a Y chromosome constituted a "failure" of the test, and the female athlete would be deemed ineligible and barred from competition (with women). Over time, as scientific understanding of the prevalence of intersex conditions increased, test cases increased. Humans are not sexually dimorphic, meaning that people fall neatly into "XX" (female) and "XY" (male).

Rather, humans are bimodally distributed around XX and XY configurations, but there are many other possibilities including XXY, XYY, XO (a null chromosome), and others. Moreover, some XX people have Congenital Adrenal Hyperplasia (CAH), which causes much higher production of testosterone, typically leading the person to develop phenotypically male. Conversely, some XY people have Complete Androgen Insensitivity Syndrome (CAIS) where while their body produces "typical" male levels of testosterone, their testosterone receptors are insensitive to the hormone, and this typically leads the person to develop phenotypically female.

Recognizing this, the IOC last engaged in chromosomal testing of athletes at the 1996 Olympic Games in Atlanta, and formally abandoned the practice in 1999. Since then, and noted explicitly in the 2015 CAS decision, all sex verification policies are banned. Sport organizations are no longer in the business of determining whether an athlete is male or female. Instead, the CAS panel notes, “The distinction between male and female is a matter of legal recognition,” whereby “whether a person is female is a matter of law.”¹⁴

Sports organizations are thereby required to respect an athlete’s legally recognized sex. If a trans woman’s identification documents say “female,” then she is really female. Those who oppose trans women’s inclusion in sport typically say that trans women are not “really” female, but they have no legal standing. They can scream “but biology” all they like: it doesn’t change the facts. Sport takes an athlete’s legally recognized sex. In many jurisdictions, trans women are legally female.

To reiterate, the first line of “argument” from those who oppose trans women’s inclusion in women’s sport is that sport isn’t about gender, it’s about sex. And while they may begrudgingly grant that a trans woman is a woman, they deny that she is female. But sport and governments make no such sex/gender distinction.

The second line of argument is that trans women are not “really” female and thereby should be excluded from “female” sport. But sport—from the IOC down and all sports under the auspices of the CAS—must respect an athlete’s legally recognized sex: they may not have their own sex verification policies. And since trans women can be legally recognized as female, they are really female for the purposes of sport.¹⁵

In my reading of things over the years, these are the primary arguments of those opposing trans women’s inclusion in women’s sport. And neither argument holds any water. More recently, some have become at least a little responsive to their losing this battle and have transitioned into what is now the most prevalent argument used against trans women’s inclusion in sport: alleged performance advantages.

But I want to explain why this is largely irrelevant. Trans athletes’ rights to compete are not contingent on showing that there isn’t a competitive advantage. Additionally, because proving a negative is literally impossible, people who oppose trans women’s inclusion can forever demand “more study” and the need for “more evidence” before they’ll relent. But that day will never come, for they’ll continue to manufacture potential sources of evidence even in the absence of any scientific evidence suggesting such a thing exists. My favorite so far is the claim that trans women have “muscle memory,” by which these people mean that trans women’s muscles “remember” pre-transition endogenous testosterone. This isn’t a thing. They’re making this up.¹⁶

What does matter is the human rights framework. Some balk at the idea that sport is a human right. Others frame this “debate” about trans women in sport as

pitting trans women's rights against (cis) women's rights in a kind of conflict of rights. But I'm here to tell you that there is no conflict of rights. Human rights are not like pie: granting rights to trans women does not take any away from cis women.

Sport is a human right. After a preamble, the IOC's *Olympic Charter* lists seven Fundamental Principles of Olympism. The fourth begins with, "The practice of sport is a human right."¹⁷ That's the first full sentence. And they mean competitive sport: the IOC is only concerned with competitive sport. There is no right to win in sport; there is no right to make a team selection in sport. The right is to participate and try to win, to try to make the team, to strive for your best in the Olympic spirit, of mutual understanding, and of fair play.

Cis women do not have a right to exclude women they don't like or don't feel comfortable with. Sport and society have a long history of excluding women of color, often trading on these same claims of alleged competitive advantage or not feeling "safe." But these are not rights. Thus, extending the right for trans and intersex women to compete in sport with other women is not in conflict with other rights. We can't make up rights and claim a conflict. Rights are socially constructed but institutionally enshrined, often in law or policy. These alleged rights that people claim are in conflict with trans women's inclusion in sport don't exist in any institutional or legal sense.

Suppose that you're now convinced that participation in (competitive) sport is a human right. And suppose that you're now convinced that trans women are legally female, and thereby belong in women's sport. You might still object to trans women's inclusion on the basis of some notion of "fairness" and alleged unfair competitive advantages that you think trans women have. This is why the human rights framing is what controls the issue, not whatever scientific evidence we may want to argue over, allowing us to distract from the core issue. The IOC is an international organization, as is the CAS. When they speak of "human right(s)," this puts us into the realm of international human rights law and principles. Two frameworks are often invoked: the United Nations "Universal Declaration of Human Rights" and the European Court of Human Rights "European Convention on Human Rights." The CAS and the IOC are situated in Switzerland, which falls under both.

Both frameworks require the elimination of discrimination against women on the basis of sex (or gender; remember, these are interchangeable). This isn't to say that discrimination is never justifiable. "Discrimination" can be a neutral term, simply referring to the distinguishing between different groups or categories. In common use, "discrimination" refers only to the unjustified, unethical, or illegal forms of discrimination. But international human rights frameworks include provisions for when we can justify what is otherwise discriminatory.

There's a four-fold test. First, the policy must be in service of a worthy social goal. We have prisons and override the right to freedom of movement, partly on the

grounds that doing so is in service of the worthy social goal of “promoting public safety.” We can argue about whether this is effective, but the first test is merely to ensure that policies are in service of a worthy social goal. In sport, policies are in service of the worthy social goal of fairness. This first test is a very low bar to clear. You’d have to effectively trip over it to fail.

Second, the policy must be necessary for the promotion of the worthy social goal. If we can achieve the worthy social goal without infringing upon human rights, then we must. We can only potentially be justified in overriding human rights if doing so is necessary for promoting a worthy social goal. Arguably, the death penalty is not necessary for promoting public safety, and thus arguably fails this second test.

The core issue is whether excluding trans women from women’s sport is necessary for promoting fairness in competition. More on that below.

Third, the policy must be effective at promoting the worthy social goal. Even if a discriminatory policy might be judged necessary for promoting a worthy social goal, if it isn’t effective at doing so, then it fails to be justified. A primary justification for the death penalty is to deter other crime. Arguably, evidence suggests that the death penalty is not effective at such deterrence. And since there are other methods capable of preventing someone from reoffending, the death penalty is neither necessary nor effective, and so is not justified.

Finally, the benefit from promoting the worthy social goal must be proportional to the harm caused to the group or individuals discriminated against by the policy. Generally, policies that discriminate against already vulnerable or stigmatized social groups, even if they are necessary and effective in service of a worthy social goal, will fail to be sufficiently proportional. Appeal to the small size of a group will not suffice, either: the proportionality test is not a utilitarian calculus whereby a large group can benefit greatly at the expense of a few.¹⁸

For our purposes, another issue is whether the harm to trans women caused by excluding them from women’s sport is proportional to any proposed benefit to (cis) women. More on that below.

In an unprecedented move, the UN Human Rights Council released a statement calling on the UN high commissioner for human rights to look into discriminatory policies in sport, including restrictions on endogenous testosterone in women, calling out World Athletes, then still known as the International Association of Athletics Federations (IAAF), by name.¹⁹ The statement reads in part:

Expresses concern that discriminatory regulations, rules and practices that may require women and girl athletes with differences of sex development, androgen sensitivity and levels of testosterone to medically reduce their blood testosterone levels contravene international human rights norms and standards, including the right to equality and nondiscrimination, the right to the highest attainable standard of physical and mental health, the right to sexual and reproductive

health, the right to work and to the enjoyment of just and favourable conditions of work, the right to privacy, the right to freedom from torture and other cruel, inhuman or degrading treatment and harmful practices, and full respect for the dignity, bodily integrity and bodily autonomy of the person.²⁰

The statement also explicitly refers to the aforementioned international human rights framework:

Noting with concern also that the eligibility regulations for the female classification published by the International Association of Athletics Federations that came into effect on 1 November 2018 are not compatible with international human rights norms and standards, including the rights of women with differences of sex development, and concerned at the absence of legitimate and justifiable evidence for the regulations to the extent that they may not be reasonable and objective, and that there is no clear relationship of proportionality between the aim of the regulations and the proposed measures and their impact.²¹

What's most crucial about sport being a human right is that the default position is inclusion. The default is not "Exclude trans women until we have more evidence about there not being a competitive advantage." Rather, the default must be "Include trans women unless we have sufficient evidence to justify discrimination in an international human rights framework." In my work, I argue that the latter will never happen, since we permit much larger competitive advantages on the basis of natural physical characteristics than what could ever be possibly attributed to higher unaltered endogenous testosterone.

This is why the human rights framework controls this "debate." The practice of sport is a human right (IOC *Charter*), sex is a matter of legal recognition (CAS), and trans women can be legally recognized as female. Therefore, trans women have a human right to participate in competitive sport as women, as female.

Trans women don't have to justify our inclusion. The burden of argument is entirely on those who seek to exclude us. And, as I'll briefly prove, that burden has not yet been met, and is unlikely ever to be met.²²

In order to exclude a group of people based on an alleged competitive advantage, as noted just now, such a policy would need to be in service of a worthy social goal, necessary and effective at promoting that goal, and the benefit to society proportional to the harm caused by the policy. Trans-exclusionary policies fail on every measure except that the policies are at least plausibly in service of the worthy social goal of "fairness in competition." But as I said above, the bar for passing that test is so low you'd have to trip over it to fail.

How much advantage do trans women have in sport? I'm here to say: it doesn't matter. It really doesn't. Let's assume for the sake of argument that there is an inherently biological cause of the gender performance gap where we see an approximately

10–12 percent difference between peak (cis) men’s performances and peak (cis) women’s performances. Let’s just assume this, even though I think it’s false.²³ Let’s also assume for the sake of argument that trans women are physiologically coextensive with cis men. We are going to assume this, even though I think it’s definitely false. My point here is even if we grant these dubious assumptions, this is not enough to justify the exclusion of trans women from women’s sport.

Some will recoil: but isn’t this why we have men’s and women’s sport? Don’t we sex segregate sport because men are stronger and faster? No. The history of sex segregation and banning women from sport (back to ancient Greek Olympic Games) is not because men are stronger: women were originally banned outright. Prior to the 1984 Olympic Games in Los Angeles, there was no women’s marathon event. Prior to the 1972 Olympic Games in Munich, there was no women’s event in the 1500 meters or any event longer than 800 meters. Women weren’t allowed into the Boston Marathon when, in 1967, Kathrine Switzer broke the rules to participate. The event director, Jock Semple, tried to attack her by ripping off her race numbers, only to be tackled by her husband, and she was allowed to finish the race.²⁴ Jock claimed he was trying to “protect the integrity” of the race by doing this.

When asked why women were not originally allowed to compete in the modern Olympics, the founder Pierre de Coubertin said, “I do not approve of the participation of women in public competitions. In the Olympic Games, their primary role should be to crown the victors.”²⁵ He also said that “an Olympiad with females would be impractical, uninteresting, unaesthetic and improper.”²⁶ Because of this, while visiting the IOC headquarters for the 2019 consultation process, I was sure to take a photo with a “power pose” leaning over his desk, which is displayed on the (if I recall correctly) fourth floor of the new building.

In the 1992 Olympic Games in Barcelona, the sports shooting competition was not sex segregated (just like equestrian still is). A Chinese woman, Zhang Shan won the gold medal. In the following 1996 Olympic Games, the IOC sex segregated the event and did not offer a women’s category for the event in which she won gold. The defending gold medalist was thus banned from competition. The current women’s chess world champion is not permitted to compete for the men’s world championship. Billiards, darts, bowling, and a long list of other sports are sex segregated with no plausible physiological explanation.

None of these policies are or were because there’s an alleged fundamental biological advantage that men have over women. This isn’t why, historically, sport is sex segregated. Sport both reflects and leads social attitudes. Societies the world over were and continue to be sex segregated, relegating women to second-class status. Post hoc rationalizations abound, but simple sexism explains why we sex segregate sport. We should have no illusion otherwise.

However, this is all irrelevant. My point, again, is that even if we grant that (cis) men are inherently stronger than (cis) women, and we grant that trans women are physiologically coextensive with cis men, excluding trans women is not justified in an international human rights framework.

Why is this? First, because claims like “men are stronger than women” are, strictly speaking, false. There are many women who are stronger than many men. These claims, instead, are either: the average man is stronger (taller/faster/etc.) than the average woman; or the best man is stronger (taller/faster/etc.) than the best woman. At present, these latter claims are true. But both elide the massive ranges within men and women. The shortest, weakest, slowest man is often the same as the shortest, weakest, and slowest woman.²⁷

Elite women athletes are considerably stronger than the average cis man, and certainly the average trans woman. The average height of the Rio 2016 Olympics women’s high jump podium was 6’1.7”. The tenth place woman in the final is 5’5”; the gold medalist is 6’3.6” and was the tallest in the competition. The global average height for men is around 5’9”. Moreover, height is not uniformly distributed around the world. The average Dutch woman is 5’6.5”, whereas the average Indonesian woman is 4’10.”

We permit huge differences in natural physical traits within sport and call that “fair.” So even if we say that the average trans woman is 4” taller than the average cis woman, we already permit much larger height differences within women’s sport and call it fair. This is true for any natural physical trait one selects, including endogenous testosterone. And while there’s no evidence of a relationship between unaltered endogenous (internal, natural) testosterone and performance, my point is that even if there were, it’s insufficient to justify excluding trans women.

We demonstrably permit competitive advantages within women’s sport that are far greater than 10–12 percent. “Fairness” does not require that no athlete have a competitive advantage over her competitor. In fact, that’s the entire purpose of training, coaching, equipment, nutrition, and so on. And fairness does not require us to exclude those who have considerable performance advantages. We allow (cis) women athletes to dominate their sport, like Simone Biles, Katie Ledecky, or Serena Williams. Although, that is often not without some claiming that they are secretly trans women (there is often a tinge of racism involved, too, with women of color being disproportionately subject to such nonsense).

So where does this leave us? The “fairness” claim is that trans women are like cis men, and cis men have a 10–12 percent performance advantage over women. If we simply assume that this is true, it’s not enough to justify excluding trans women. Such a policy, while in service of the worthy social goal of fairness in competition, is not necessary for fairness: we permit even larger advantages within women’s sport.

It also thereby can't be effective. It's failed two of the required tests to justify a discriminatory policy under an international human rights framework.

And finally, trans women are a heavily stigmatized and marginalized group, particularly trans women of color, and particularly trans women of color from the global south.²⁸ And since the benefits to society of discriminatory policies that further harm an already marginalized, stigmatized group tend not to be proportional, excluding trans women also fails the proportionality test.

Excluding trans women is not justified under an international human rights framework, under which the participation in sport as a human right is subsumed. And given the comparably huge competitive advantages within (cis) women's sport we permit under fairness, I think that it's unlikely (to impossible) that any new evidence will ever change this. The default is inclusion, not exclusion. We don't need "more study" or "more evidence" in order to decide to grant what is everyone's human right: the right to participate in competitive sport.

So, the scientific evidence is ultimately irrelevant. Let that sink in. No competitive advantage that could ever be found to be attributed to trans women will be enough for an exclusionary policy to be both necessary and effective at promoting fairness in sport, given the massive competitive advantages we already permit in women's sport. The human rights argument is the one that controls this "debate." And there is no debate.

But there was another shift in 2021 when the IOC released their latest "Framework on Fairness, Inclusion and Non-discrimination on the Basis of Gender Identity and Sex Variations" (Framework), which was the output of the consultations I was involved in in 2019.²⁹ While the Framework is even more progressive and inclusive than their 2015 consensus statement, it has had the unfortunate knock-on effect of making it clear to IFs that the IOC does not—and truly has never had—have a policy on trans inclusion.

Instead, the Framework tells IFs to make up their own policies and that the IOC will have nothing to say about full trans bans, even without a scintilla of evidence. Why? The IOC doesn't want to involve itself in telling IFs how to run their sports. The Olympics is not actually an IOC "event" per se: the IOC merely hosts the IFs at the Olympics, under the individual IF rules of competition. So, the World Rugby trans ban was upheld at the 2021 Tokyo Olympics.

This has caused a number of IFs to scramble to create new trans policies when, previously, they had adopted the 2015 IOC consensus statement, mistaking it for a policy. And in the intervening years, none of these federations has seen an influx of trans women dominating competition. But swimming's FINA banned trans women after a lone non-Olympian trans woman Lia Thomas won a single NCAA Division I event (even though she was nowhere near multi-time Olympic gold medalist Katie

Ledecky's record). In fact, the person with the world's fastest fifteen times in the 500-yard event Lia won are all held by Katie Ledecky. World Triathlon has effectively banned trans women for four years if they happened to compete in the male category prior to transition—a policy not based on any scientific data.

As part of World Triathlon's policy consultation process, I had this conversation (nearly verbatim):

Q: Did you have a trans policy before now?

A: Yes.

Q: Were there any problems with it?

A: No.

Q: Do you have any trans women winning international races?

A: No.

Q: Then what's the problem? Why do you need to change the policy to be more restrictive?

A: Well, because the IOC Framework tells us we need to have our own policy.

Q: But you have a trans policy right now, right?

A: Yes.

Q: And there are no problems with it, right?

A: Right?

Q: So why do you need to change it?

A: Well, because the IOC Framework tells us we need to have our own policy.

At this point it's hard not to shrug and just give up. See what I mean when I say it's like talking to a wall. These people can't recognize that there's no "problem" to fix and that they're merely creating policies to restrict equitable access for trans women out of fear. It's an irrational fear, which makes it transphobia.

In summation: trans women are women; trans women are female. But sport federations, and the (generally) cis men who run them refuse to accept this reality. In one trans woman powerlifter's recently winning lawsuit against USA Powerlifting for its discriminatory trans ban, we find a curious email from USAPL's president Larry Maile. Footnote 8 of the summary judgment in Cooper's favor gives us important insight:

In a February 4, 2019 email to fellow USAPL executive committee members, Crystal McGill wrote, "I know this seems ridiculous to many, but transwomen, in the viewpoint of the people we are having these discussions with and are writing this FAQs for, ARE female. When we say, 'someone born a female' they find this incredibly insulting because it is their belief that they WERE born female. . . . While it might seem like semantics to us, we can make huge inroads on this issue if we use the right terms and are careful in all our references to not appear to be discriminatory just by our language alone." Hall Affidavit Exhibit 66. In a February 5 2019 email to the USAPL executive committee, president

Maile responded, “I am cautious about going down the road that ends with our acknowledgement that they really are women and that their physical body is immaterial.” Id. This email exchange highlights that USAPL knew its policy denied some members’, including Cooper’s, self-identification if it conflicted with what, for example, President Maile, believed they “really are.”³⁰

When he was given an “out” to simply adopt less discriminatory language and at the very least accept that Cooper is really a woman (and female), he starkly rejects “going down the road that ends with our acknowledgment that they [trans women] are women.” That, right there, is naked transphobia.

We’re finally starting to see sport federations let their mask slip, as it did with USAPL: the IFs, and even national sport federations like British Cycling, are seeking to restrict or ban trans women’s participation in women’s sport because they think it’s “common sense” that trans women aren’t real women, aren’t really female.

So that’s what this “debate” is really about: are trans women really women, or not? If yes, then there’s no debate. If no, then I’m sorry but you’re just wrong.

We can arbitrarily group women in different ways to find biological “advantages” all day long: Dutch women are about 8” taller, on average, than Indonesian women, and we allow Dutch women to compete against Indonesian women and call that “fair.” And whatever differences there may be between the average trans and cis woman will be far smaller than the range of differences within the category of “women.”

Notes

1. Veronica Ivy, “If ‘Ifs’ and ‘Buts’ Were Candy and Nuts: The Failure of Arguments against Trans and Intersex Women’s Full and Equal Inclusion in Women’s Sport,” *Feminist Philosophy Quarterly* 7, no. 2 (2021): 1–38; Veronica Ivy and Aryn Conrad, “Including Trans Women Athletes in Competitive Sport: Analyzing the Science, Law, and Principles and Policies of Fairness in Competition,” *Philosophical Topics* 46, no. 2 (2018): 103–40.
2. Martina Navratilova published a high-profile op-ed in the *Sunday Times* claiming that rules that allow trans women to compete as women “rewards cheats and punishes the innocent.” See Martina Navratilova, “The Rules on Trans Athletes Reward Cheats and Punish the Innocent,” *The Times*, February 17, 2019, <https://www.thetimes.co.uk/article/the-rules-on-trans-athletes-reward-cheats-and-punish-the-innocent-klsrq6h3x>.
3. International Olympic Committee, “IOC Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations” (International Olympic Committee, 2021), <https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf>.
4. “Transsexual Athletes OK for Athens,” CNN (website), May 18, 2004, <https://edition.cnn.com/2004/SPORT/05/17/olympics.transsexual/>.
5. The IOC replaced the 2004 Stockholm Consensus in 2015 with its “IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism” <https://www.nytimes.com/2016/01/26/sports/olympics/transgender-athletes-olympics-ioc.html>.

6. Quinn was assigned female at birth. See Daniel Kreps, “Canada’s Quinn Becomes First Trans Athlete to Win Gold Medal at Olympics,” *Rolling Stone*, August 7, 2021, <https://www.rollingstone.com/culture/culture-news/canada-quinn-first-trans-athlete-win-gold-medal-olympics-1209140/>.
7. See previously mentioned comments by Navratilova in Navratilova, “Rule on Trans Athletes.”
8. World Triathlon, “World Triathlon Gender Eligibility Guidelines,” accessed April 26, 2023, https://www.triathlon.org/uploads/docs/TRI_Gender_Eligibility_Guidelines.pdf.
9. Dutee Chand v. Athletics Federation of India (AFI) & International Association of Athletics Federations (IAAF), CAF/2014/A/3759, https://www.tas-cas.org/fileadmin/user_upload/Media_Release_3759_Jan_2018.pdf.
10. Dutee Chand v. AFI IAAF, 148, para 513.
11. Gender Recognition Act, 2004, c. 7, p. 5, sec. 9(1), https://www.legislation.gov.uk/ukpga/2004/7/pdfs/ukpga_20040007_en.pdf.
12. Vanessa Heggie, “Testing Sex and Gender in Sports; Reinventing, Reimagining and Reconstructing Histories,” *Endeavour* 34, no. 4 (2010): 157–63.
13. This endnote isn’t so much to substantiate what I think is a very well-established point as it is to provide an accessible starting point for the reader to discover this for themselves: Zama Mdoda, “Caster Semenya and the Archaic Gender Ideals of Sports,” *Afropunk*, February 28, 2019, <https://afropunk.com/2019/02/caster-semenya-the-archaic-gender-ideals-of-sports/>.
14. Dutee Chand v. AFI and IAAF.
15. I have a lot to say on the inequities of differential access to legal recognition for trans people. But I want to set that aside for now, at least.
16. And if you link me one particular study on how there are long-lasting performance effects of exogenous testosterone, I will remind you that we’re talking about an athlete’s natural endogenous testosterone. No study shows a link between endogenous testosterone and muscles “remembering” previous levels when suppressed.
17. International Olympic Committee, *Olympic Charter* (Lausanne: International Olympic Committee, 2019).
18. Ursula K. Le Guin, *The Ones Who Walk Away From Omelas* (New York: Harper Perennial, 2017).
19. Dainius Pūras, Nils Melzer, and Ivana Radačić, “Mandates of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health,” September 18, 2018, https://www.ohchr.org/sites/default/files/Documents/Issues/Health/Letter_IAAF_Sept2018.pdf.
20. United Nations Human Rights Council (UNHCR), “Elimination of Discrimination Against Women and Girls in Sport,” March 15, 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/098/67/PDF/G1909867.pdf?OpenElement>.
21. UNHCR, “Elimination of Discrimination.”
22. For an in-depth treatment of this argument, see Ivy and Conrad, “Including Trans Women.”
23. Briefly, we know now that there are powerful sociological determinants of performance. See, E-Alliance, *Transgender Women Athletes and Elite Sport: A Scientific Review* (2021), <https://www.cces.ca/sites/default/files/content/docs/pdf/transgenderwomenathletesandelitesport-ascientificreview-e-final.pdf>. How much of the gender performance gap is due to such sociological determinants? We have no idea, but at least some of it is. That society

- encourages boys to excel in sport (and often punishes them for opting out or failing to excel) and actively discourages girls have as-yet unmeasured lifelong performance effects.
24. Amby Burfoot, "Who Was That Guy Who Attacked Kathrine Switzer 50 Years Ago?," *Runner's World*, April 10, 2017, <https://www.runnersworld.com/news/a20852681/who-was-that-guy-who-attacked-kathrine-switzer-50-years-ago/>.
 25. As cited in Learning Legacies Project, "Case Study: Women's Participation in the Olympic Games," Oxford Brookes University, 2010, <https://radar.brookes.ac.uk/radar/file/9f6e6e89-ff6f-8df8-e1e7-043029bac410/1/CS%2012%20-%20Womens%20Participation%20in%20the%20Olympic%20Games.pdf>.
 26. "An Olympiad with females would be impractical, uninteresting, unaesthetic and improper.'—Baron Pierre de Coubertin," *Irish Times*, August 7, 2008, <https://www.irishtimes.com/news/an-olympiad-with-females-would-be-impractical-uninteresting-unaesthetic-and-improper-baron-pierre-de-coubertin-1.1222948#:~:text=Ireland,'An%20Olympiad%20with%20females%20would%20be%20impractical%2C%20uninteresting%20%2C%20unaesthetic,%20%2D%20Baron%20Pierre%20de%20Coubertin.>
 27. The GH-2000 data is a rich data set on physiological features of 693 elite athletes. See Marie-Louise Healy et al., "Endocrine Profiles in 693 Elite Athletes in the Postcompetition Setting," *Clinical Endocrinology* 81, no. 2 (2014): 294–305; and Peter H. Sönksen et al., "Why Do Endocrine Profiles in Elite Athletes Differ between Sports?," *Clinical Diabetes and Endocrinology* 4, no. 1 (2018), <https://clindiaabetesendo.biomedcentral.com/articles/10.1186/s40842-017-0050-3>.
 28. Katie B Biello and Jaelyn M. W. Hughto, "Measuring Intersectional Stigma among Racially and Ethnically Diverse Transgender Women: Challenges and Opportunities," *American Journal of Public Health* 111, no. 3 (2021): 344–46.
 29. "IOC Framework on Fairness."
 30. JayCee Cooper v. USA Powerlifting and Powerlifting Minnesota, Minnesota District Court, Second Judicial District, 62-CV-21–211, 2023, <https://www.genderjustice.us/wp-content/uploads/2023/02/62-cv-21–211.pdf?fbclid=IwAR0vXSSNUMiEX7WskwNf2qUEt-qq45W3su7J2l1fdBHe7obD8x7e8FxBCBA>.