



Caster semanya and a level playing field

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Sport is predicated on the idea of victors emerging from a level playing field. All ethically informed evaluate practices are like this; they require an equality of respect, consideration, and opportunity, while trying to achieve substantively unequal outcomes. For instance: limited resources mean that physicians must treat some patients and not others, while still treating them with equal respect; examiners must pass some students and not others, while still giving their work equal consideration; employers may only be able to hire one applicant, while still being required to treat all applicants fairly, and so on. The 800 m is meant to be one of these practices: a level and equidistance running track from which one victor is intended to emerge. The case of Caster Semenya raises challenging questions about what makes level-playing-fields level, questions that extend beyond any given playing field.

In the Feature Article for this issue Loland provides us with new and engaging reasons to support of the Court of Arbitration for Sport (CAS) decision in the Casta Semenya case. The impact of the CAS decision requires Casta Semenya to suppress her naturally occurring testosterone if she is to compete in an international athletics events. The Semenya case is described by Loland as creating a 'dilemma of rights'.ⁱ The dilemma lies in the choice between 'the right of Semenya to compete in sport according to her legal sex and gender identity' and 'the right of other athletes within the average female testosterone range to compete under fair conditions' (see footnote i).

No one denies the importance of Semenya's right. As Carpenter explains, 'even where inconvenient, sex assigned at birth should always be respected unless an individual seeks otherwise'.ⁱⁱ Loland's conclusions, Carpenter argues, 'support a convenience-based approach to classification of sex where choices about the status of people with intersex variations are made by others according to their interests

at that time' (see footnote ii). Carpenter then further explains how the CAS decision is representative of 'systemic forms of discrimination and human rights violations' and provides no assistance in 'how we make the world more hospitable and more accepting of difference' (see footnote ii).

What is therefore at issue is the existence of the second right. Let me explain how Loland constructs it. The background principle is the principle of fair equality of opportunity, which requires that 'individuals with similar endowments and talents and similar ambitions should be given similar opportunities and roughly equivalent prospects for competitive success' (see footnote i). This principle reflects, according to Loland, a deeper deontological right of respect and fair treatment. As we can appreciate, when it comes to the principle of fair equality of opportunity, a lot turns on what counts as 'similar' (or sufficiently different) endowments and talents and what counts as 'similar' (or sufficiently different) opportunities and prospects for success.

For Loland, 'dynamic inequalities' concern differences in capabilities (such as strength, speed, and endurance, and in technical and tactical skills) that can be 'cultivated by hard work and effort' (see footnote i). These are capabilities that are 'relevant' and therefore permit a range differences between otherwise 'similar' athletes. 'Stable inequalities' are characterises (such as in age, sex, body size, and disability/ability) are 'not-relevant' and therefore require classification to ensure that 'similar' athletes are given 'roughly equivalent prospects for success'. It follows for Loland that athletes with '46 XY DSD conditions (and not for individuals with normal female XX chromosomes), with testosterone levels above five nanomoles per litre blood (nmol/L), and who experience a 'material androgenizing effect' benefit from a stable inequality (see footnote i). Hence, the 'other athletes within the average female testosterone range' therefore have a right not to compete under conditions of stable inequality. The solution, according to Knox and Anderson, lies in more nuance classifications. Commenting in (qualified) support of Loland, they suggest that 'classification according to sex alone is no longer

adequate'.ⁱⁱⁱ Instead, 'all athletes would be categorised, making classification the norm' (see footnote iii).

However, as we have just seen, Loland's distinction between stable and dynamic inequalities depends on their 'relevance', and 'relevance' is a term that does not travel alone. Something is relevant (or irrelevant) only in relation to the value, purpose, or aim, of some practice. One interpretation (which I take Loland to be saying) is that strength, speed, and endurance (and so on) are 'relevant' to 'performance outcomes'. This can be misleading. Both dynamic and stable inequalities are relevant to (ie, can have an impact on) an athletic performance. Is a question of whether we ought to permit them to have an impact. The temptation is then to say that dynamic inequalities are relevant (and stable inequalities are irrelevant) where the aim is 'respect and fair treatment'. But here the snake begins to eat its tail (the principle of fair treatment requires sufficiently similar prospects for success >similar prospects for success require only dynamic inequalities>dynamic inequalities are capabilities that are permitted by the principle of fair treatment).

In order to determine questions of relevance, we need to identify the value, purpose, or aim, of the social practice in question. If the aim of an athletic event is to have a victor emerge from a completely level playing field, then, as Chambers notes, socioeconomic inequalities are a larger affront to fair treatment than athletes with 46 XY DSD conditions.^{iv} If the aim is to have a victor emerge from completely level hormonal playing field then 'a man with low testosterone levels is unfairly disadvantaged against a man whose natural levels are higher, and so men's competitions are unfair' (see footnote iv). Or, at least very high testosterone males should be on hormone suppressants in order to give the 'average' competitor a 'roughly equivalent prospect for competitive success'.

ⁱⁱⁱKnox & Anderson

^{iv}Chambers, Sex, money, and luck in sport

ⁱLoland, Caster Semenya, athlete classification, and fair equality of opportunity in sport

ⁱⁱCarpenter, Caster Semenya's life and achievements are cause for celebration, respect and inclusion; her exclusion is consequential

The problem is that we are not interested in the average competitor. We are interested in the exceptional among us. Unless, it is for light relief. In every Olympiad there is the observation that, in every Olympic event, one average person should be included in the competition for the spectators' reference. The humour lies in the absurd scenarios that would follow, whether it be the 100m sprint, high jump, or synchronised swimming. Great chasms of natural ability would be laid bare, the results of a lifetime of training and dedication would be even

clearer to see, and the last place result would be entirely predictable. But note how these are different attributes. While we may admire Olympians, it is unclear whether it is because of their God-given ability, their grit and determination, or their role in the unpredictable theatre of sport. If sport is a worthwhile social practice, we need to start spelling out its worth. Without doing so, we are unable to identify what capabilities are 'relevant' or 'irrelevant' to its aims, purpose or value. And until we can explain why one naturally occurring capability is 'irrelevant' to

the aims, purposes, or values, of sport, while the remainder of them are relevant, I can only identify one right in play in the Semenya case.

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