

Fairness Isn't Fair: Why the Advantages of Transgender Athletes Are Not Unjust

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I. Introduction

- Transgender women athletes (TWAs) may have empirically measurable competitive advantages over cisgender women athletes (CWAs) due to the effects of adolescent androgenization.
 - But research is inconclusive: Hilton & Lundberg 2020, Torres et al. 2022, Harper 2022.
- For sake of argument, I grant these advantages are irreversible and competitively beneficial.
- **But these advantages do not justify barring TWAs' participation in the same categories as CWAs.**
 - **On liberal theories of justice, these advantages are at least as fair as—and in some cases even more fair than—other advantages that are already allowed in professional sport.**
 - **On non-liberal theories, even if these advantages were unfair, they may still lead to justice, which demands virtues other than procedural fairness (e.g., inclusivity).**

II. The Advantages of TWAs are Fair

- Classic Rawlsian liberal-contractarian view, a.k.a. justice-as-fairness: justice is a set of principles derived from a fair deliberative process from a position of imagined initial equality (OP+VOI).
- JAF permits inequalities that: (1) occur naturally; (2) do not result from past or present domination; and (3) can be balanced out via some distributive principle.
 - Many inequalities can be advantageous—innate talent, better training, cheating, etc.—and will be more or less fair according to how they fulfill the three desiderata above.
- Inequality example #1: innate genetic and physiological superiority.
 - Eero Mäntyranta's EPOR gene mutation and Michael Phelps' lactic acid production.
 - Natural, not from domination, balanceable. Fair and must be allowed.
 - **Here TWAs' advantages are *equally fair*: natural, not from domination, balanceable.**
 - **To deny this is to say either that being trans is unnatural, or that trans people have a higher duty than cis people to renounce their advantages.**
- Inequality example #2: socioeconomic privilege.
 - I.e.: some athletes are born poor, but virtually no successful athletes train poor.
 - Global North athletes' privileges are natural... *but they are poorly balanced and they do result from historical domination*. By definition, they're unfair—yet we allow them.
 - **Here TWAs' advantages are *even more fair* than the socioeconomic advantages of the athletes of the Global North. Again, singling out TWAs is needlessly ad hoc.**
- Non-liberal theories posit necessary conditions for justice that transcend procedural fairness.
 - *Inclusivity* on equal terms is popular with theorists as diverse as capability theorists (Amartya Sen), communists (Angela Davis), and communitarians (Michael Sandel).

- Inclusivity may be the guarantee of having a voice in a democratic process (Sen); an equal share of economic power (Davis); or proper recognition of membership in a society of cultural peers (Sandel).
- Even if an inequality were to be unfair, it may still be allowed in the broader interest of justice in order to guarantee a necessary virtue, such as inclusivity.

III. Objections and replies

- "Allowing TWAs to compete in the same categories as CWAs is unfair to CWAs."
 - But these liberal-individualistic feminist arguments typically yield anti-feminist reactionary conclusions (Burke 2022a, Burke 2022b).
 - It is qualitatively identical to be defeated by Michael Phelps vs. by Caster Semenya.
- "Allowing TWAs to compete endangers the protected categories of women's sports."
 - Sensible concern, but alternatives exist: sport-specific testosterone testing, protected non-androgenized categories (Sailors & Weaving 2022), cap-tied policies (Pike 2021), etc.

Selected References

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