Justice as Fairness or as Inclusion: Putting Rawls in Conversation with the Bans on Transgender Athletes

Nicole Player

Follow this and additional works at: https://scholarship.claremont.edu/pomona_theses

Part of the American Politics Commons, Feminist Philosophy Commons, Lesbian, Gay, Bisexual, and Transgender Studies Commons, Political Economy Commons, and the Social Justice Commons

Recommended Citation
Player, Nicole, "Justice as Fairness or as Inclusion: Putting Rawls in Conversation with the Bans on Transgender Athletes" (2024). Pomona Senior Theses. 321.
https://scholarship.claremont.edu/pomona_theses/321

This Open Access Senior Thesis is brought to you for free and open access by the Pomona Student Scholarship at Scholarship @ Claremont. It has been accepted for inclusion in Pomona Senior Theses by an authorized administrator of Scholarship @ Claremont. For more information, please contact scholarship@claremont.edu.
Justice as Fairness or as Inclusion: Putting Rawls in Conversation with the Bans on Transgender Athletes

Thesis by
Nicole Player

In Partial Fulfillment of the Requirements for the Degree of Bachelor of Arts
In Philosophy, Politics, and Economics

POMONA COLLEGE
Claremont, California
2024
ACKNOWLEDGEMENTS

When I made the choice to write about this topic, I knew it would be a daunting thesis, and it has been a long and twisted road to the end. Along that road, though, I have received so many helpful questions, insights, and votes of support from faculty, friends, and family; these people are the reason I have a final product that I can be proud of.

I am eternally grateful to my readers, Professors Malte Dold and Jordan Daniels. Professor Dold, who has been a delight to have as an academic advisor here at Pomona, was an immense help in getting me to my core arguments using a PPE framework by providing me with helpful philosophical, economic, and even psychological theories to combine within the project. I had the pleasure of meeting Professor Daniels for the purpose of this thesis, and she was an immense help in providing me with the language I was missing regarding feminist and transgender theory. I am so glad that I walked into her classroom one day and talked her ear off about my prospectus to get her to read for me.

I am also thankful for two people who allowed me to interview them for this thesis, Ezra Adasiak and Drew Hyland. Hyland, author of Philosophy of Sport, taught the subject to my mom in college and was more than willing to help me translate some of his 1990 book’s ideas to my current topic while I was in my early stages. Ezra is a friend and philosophy whiz who I’ve been so grateful to learn from and with these past couple of years, and who gave very helpful insights to the parts of my thesis that I could not give as many insights to. Thank you, Drew and Ezra!

I will never forget the many friends who let me bounce ideas off of them and gave me support throughout this semester. I want to especially thank Dylan for always saying my thesis was the one he was the most excited to read (no pressure…), Elle and Dave for staying up with
me to grind, and Riley for listening to me attempt to re-gather my thoughts on a daily basis and for putting down his own thesis at times to help me with edits.

Finally, I want to thank my parents, Sam and Angela, my sister, Tessa, and my Uncle Tony for having the “fairness” debate with me in the first place. They helped me realize that this was an issue I cared about and wanted to understand more, and I hope I can come out of this thesis more ready to confidently and reasonably advocate for inclusion when this hot-button topic arises at the dinner table. I love all of you and thank you for this discourse.

With Gratitude,

Nicole Player (she/her)

April 19, 2024
PREFACE

The last decade has seen a flurry of anti-transgender bills introduced and passed in the United States, and the topic that has likely been the most hotly debated regards the dozens of state bans on transgender athletes. While most discussions of these bans go straight to a debate about physiology, this thesis centers instead on a question of justice. In the debate of whether to allow a transgender girl to compete in girls’ sports, is it more “just” to prioritize fairness in women’s sport, as these bans do, or is it more just to prioritize inclusion? This essay, in finding that the transgender bans’ “fairness” argument attempts to mirror John Rawls’ theory of “justice as fairness,” proceeds to question whether this is the correct approach to the matter at hand. It does so by determining what is really targeted by arguments of fairness in women’s sports, which continue to be deeply inferiorized by patriarchy, and by arguments of fairness in youth sports, which are rapidly being pushed out of environments of “play” into reward-focused environments by modern capitalism. It determines what is truly at stake for transgender athletes and for cisgender girls in this debate, and utilizes Amartya Sen’s “Capability Approach” and theory of comparative justice to find that justice as inclusion is the better choice in the grand scheme of improving liberty and equality in America.
Table of Contents

Key Terms ................................................................................................................................. 6

Introduction ............................................................................................................................... 7

Chapter One: The Myth of Sex Segregation as “Fairness” ................................................. 18
  A History of Women’s Sports in America ............................................................................... 21
  The Prevalence of Essentialism in Modern Sport ................................................................. 24
  The Rigid and Invasive Enforcement of Sex Segregation .................................................... 29
  The Villains, the Victims, and the Protectors of Women’s Sports .................................... 36

Chapter Two: Follow the Money Away from Play in Youth Sport .................................... 42
  The Rise of Uber-Sport in America ....................................................................................... 43
  Pay-to-Play in Youth Sports .................................................................................................. 47
  College Sports: Where’d the “Student” in “Student-Athlete” Go? ................................... 51
  The Road from Extrinsic Motivation to Exclusion ............................................................... 53
  The Right to Play in Youth Sport .......................................................................................... 60

Chapter Three: True Justice as Inclusion for the Few Trans Youth in America ............ 65
  The Denial and Mistreatment of Trans* Bodies in America ................................................. 67
  Personal Experiences of Transgender Athletes in Sport ...................................................... 71
  A Return to Rawls .................................................................................................................. 77

Concluding Remarks and A Call for New Perspectives .................................................... 88
  Proposed Attempts to Reconcile Fairness and Inclusion .................................................. 89
  The Impact of Policy and Judicial Action ............................................................................ 93
  Reframing of Feminist Politics and Perspectives Around Sport ........................................ 97
  Final Reflections .................................................................................................................... 100

Bibliography ............................................................................................................................ 102
Key terms:

**Cisgender (or “Cis”):** an adjective to describe a person whose gender identity is aligned with the sex they were assigned at birth

**Gender Binary:** An ideology that categorizes gender into two distinct forms, such as man and woman, and posits that all people fit into one of these two genders.

**Gender Identity:** A person’s internal, deeply held knowledge of their own gender

**Nonbinary:** an adjective used by people who experience their gender identity and/or gender expression as falling outside the binary gender categories of “man” and “woman.”

**Transgender:** An adjective to describe people whose gender identity differs from the sex they were assigned at birth

**Transgender Man (or Trans Man):** A man who was assigned female at birth may use this term to describe himself. I use this term for clarification in this thesis, but it is preferable to refer to trans men simply as men.

**Transgender Woman (or Trans Woman):** A woman who was assigned male at birth may use this term to describe herself. I use this term for clarification in this thesis, but it is preferable to refer to trans women simply as women.

**Trans*: a more inclusive short form of “transgender”. Originally used to include explicitly both transsexual and transgender, or (now usually) to indicate the inclusion of gender identities such as gender-fluid, agender, etc., alongside transsexual and transgender.

**Transition:** the process a person undertakes to bring their gender expression and/or their body into alignment with their gender identity

---

1 “Glossary of Terms.” GLAAD.

Introduction

In March of 2020, Idaho became the first state to pass legislation banning transgender individuals from participating in school sports consistent with their gender identities. Lindsay Hecox, a talented runner and transgender woman, was quick to challenge the passage of the bill, H.B. 500, in her endeavor to run for Boise State’s women’s cross country team. Her message: “I'm just a 20-year-old girl, and I just want to be able to compete. It was just so blatantly wrong for politicians to legislate this.” Cisgender runner Madison Kenyon responded in support of the ban with her own message: “To step on the field and have it not be fair and to get beat by someone who has advantages that you'll never have, no matter how hard you train — it's so frustrating. What I'm fighting for is to preserve the integrity in women's sports and to make sure that it's a fair playing field.”

Hecox continues to be involved in a lawsuit and case in front of the Ninth Circuit challenging the signed H.B. 500, *Hecox v. Little*, but Idaho’s ban was only the beginning. As of early 2024, 23 more states have passed regulations issuing similar bans, some overtly targeting the participation of transgender girls in women’s leagues. These actions join hundreds of bills introduced over the last ten years that reflect a conservative political agenda to block trans* people from receiving basic healthcare, education, legal recognition, and the right to exist publicly. The “issue” of trans* youth in sport, however, has risen as a particularly hot-button topic in households and public debates over the last few years. Everyone seems to have an opinion when it comes to possible changes to “America’s favorite pastime,” and those opinions

---

4 ibid.
7 “2024 Anti-Trans Bills,” *Trans Legislation Tracker*. 
often turn to what allowing trans girls to compete would mean for women’s sports. In the summer of 2023, politician Nikki Haley called “biological boys playing in girls’ sports” the “women’s issue of our time.”

Whether or not they choose to deny transgender girls’ identities as girls and continue to call them “boys” as Haley did, the vast majority of the bills seeking to ban young transgender athletes have branded themselves with the mission of “protecting” the “fairness” of women’s sports. Idaho’s original H.B. 500 was nicknamed the “Fairness in Women’s Sports Act.” H.R.734, which was passed by the U.S. House last April, was titled the “Protection of Women and Girls in Sports Act of 2023.” Generally, “playing fair” in a sports context simply involves abiding by the rules of the game. But the idea of fairness that these bans employ requires athletes to abide by a more general, taken-for-granted rule: that they must be segregated by their sex assigned at birth. The bills tend to cite examples of differences in hormones, bone structure, and muscle mass between the male and female sexes, using these examples to show that banning trans girls will keep women’s sports safe from male domination. They also claim, “having separate sex-specific teams furthers efforts to promote sex equality” due to more opportunities for cisgender women to receive accolades and scholarships for their athletic prowess when kept separated from anyone who was born with XY chromosomes and a penis.

Centering this legislation around the concept of “fairness” in women’s sports has effectively advanced it beyond just a conservative talking point; it has become a national

---

feminist issue. Two known nonpartisan feminist groups, the Women’s Liberation Front and Women’s Declaration International USA, were among several that joined Republicans in declaring their support of H.R. 734 in April 2023, with the board chair of the Women’s Liberation Front saying in a statement, “Single-sex sports are critical to ensuring equal opportunity, scholarships, and careers, and new ‘gender identity’ policies threaten to set women back decades in progress.” In efforts to further the goals of gender equity via equal pay and recognition for cisgender women athletes, many self-proclaimed feminists seem to have come together with conservatives to further the trans-exclusionary sports agenda and keep strict sex segregation alive.

Many supporters of LGBTQ+ rights have pushed back against this agenda with vigor, arguing that trans women are women and have a right to inclusion on women’s teams under Title IX’s anti-discrimination policies. They note that transgender athletes have been permitted to compete on the teams that correspond with their gender identities for several decades, and yet pushback has only come now amid a greater anti-trans agenda and a couple of incessantly referenced cases of a transgender woman winning, such as Lia Thomas’s 2022 NCAA championship title in the 500-yard freestyle. To these supporters, many of whom are self-proclaimed feminists as well, the inclusion of trans* athletes will benefit everyone, including cisgender women, in the greater scheme of toppling the sport industry’s role in upholding patriarchy and male domination, and there is no evidence that keeping trans* athletes out will actually do anything to improve gender equity. The ACLU has sued multiple states to halt as

much of the anti-trans athlete legislation as possible; the organization’s efforts in Idaho led to an injunction against the enforcement of the H.B. 500 that is still in effect today.\textsuperscript{17}

A war of ideologies has thus developed in which fairness and inclusion in sport have been placed head-to-head. Currently, it appears that fairness is winning; even many progressives have been swayed by the argument, with the share of Americans who said trans athletes should compete on the teams of their choosing falling from 34\% to 26\% between 2021 and 2023.\textsuperscript{18} Legislation to ban trans* athletes seeks to ensure that fairness comes out on top, and the rate at which these bills are introduced is only growing faster.\textsuperscript{19}

Sports scientist Ross Tucker has called this a “colliding rights” issue: a transgender woman’s right to play her sport with fellow women is seen to collide with the right of a cisgender woman (who is perceived to always have a physical disadvantage) to attain success and recognition in the sport.\textsuperscript{20} When rights collide in legislation, it is left up to our justice system to decide which right must be prioritized in a manner that most stays true to a nation striving for “liberty and justice for all.” The question of whether a transgender girl should be allowed to play her sport on a girl’s team is therefore a question of justice, and the legislated bans are taking on a “justice as fairness” approach to that question. True to its name, this approach aims to mirror that of one of the most influential political philosophers of the 20th century, John Rawls, and his lauded theory of \textit{Justice as Fairness}.

Rawls’ theory of justice argues for a principled reconciliation of liberty and equality that is meant to apply to the basic structure of an ideal well-ordered society, and his ideas have influenced many of today’s political and philosophical theories of distributive justice and human

\textsuperscript{17} Strangio, Chase & Gabriel Arkles, “Four Myths About Trans Athletes, Debunked” \textit{American Civil Liberties Union}, April 30, 2020.
\textsuperscript{19} “2024 Anti-Trans Bills,” \textit{Trans Legislation Tracker}.
rights. Rawls describes in his book *A Theory of Justice* that, in a democratic and liberal society, two principles are necessary for that society to be a just one:

**First Principle:** Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;

**Second Principle:** Social and economic inequalities are to satisfy two conditions:

A. They are to be attached to offices and positions open to all under conditions of *fair equality of opportunity*;

B. They are to be to the greatest benefit of the least-advantaged members of society (*the difference principle*)."\(^{21}\)

In explaining what he means by “fair equality of opportunity,” Rawls says that people should generally be afforded opportunities in accordance with their natural abilities and skill. He writes: “assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system.”\(^{22}\) Rawls’ difference principle, however, adds that a person with natural advantages may only gain from these advantages when doing so also improves the situation of those who have lost out.\(^{23}\)

While scholar opinions differ on exactly what Rawls might have thought about transgender athletes in sport, Norwegian Professor Sigmund Loland’s work on the subject echoes a common sentiment that Rawls’ difference principle and goal of “fair equality of opportunity” would uphold the bans on transgender athletes when considering modern majority perspectives.

---


\(^{22}\) ibid

\(^{23}\) ibid
on sport, women, and transgenderism in America. This society has deep-seated beliefs in a sex binary in which one sex is sufficiently larger, faster, and stronger than the other on average, to the extent that it observes men and women to be on two different tiers of “natural assets” when it comes to sport. Because they are deemed the weaker sex, cisgender women are seen to be the “least-advantaged members of society” in a sport context, and so the “inequality” that is created when trans women are banned from participation is seen as permissible by Rawls’ second principle because it allows cisgender women to attain equal “prospects of success” within athletics. This Rawlsian definition of fairness has also been titled “competitive fairness,” as it promotes an equal chance of competitive success for those who strive for it.

If competitive success is applied in a context of sport, most will immediately think of winning. When taking a Rawlsian stance, sports would promote a level playing field so that everyone has a relatively equal shot at the gold. The ideal of a level playing field, that sport must involve as little difference in skill as possible between competitors for it to be “worthwhile,” is rarely questioned, and it focuses on spectators in sport as much as participants. The economic incentive for sports leagues to minimize obvious athlete differences within them is high due to a perception that paying spectators will get more excited about a game in which they aren’t certain of the outcome. For cisgender women and their families, there is also an economic incentive involved: H.B. 500 states that sex-specific teams “accomplish” sex equality for cis women by “providing them with opportunities to obtain recognition and accolades, college scholarships,

and the numerous other long-term benefits that flow from success in athletic endeavors.” In short, a Rawlsian fairness ideal in these bills promotes the fair equality of opportunity to win by prioritizing a positive economic and social impact for the perceived “least-advantaged” group in sport: cisgender women.

When fairness comes to be about the equality of opportunity to win, the debate of whether transgender athletes should be allowed to participate becomes predominantly about physiology, centering around the question, “Can a transgender girl lessen her assumed physical advantage enough to compete on a ‘level playing field’ with cisgender girls?” Placed on the defensive, trans* rights activists have scrambled to run studies and find data showing that at least one year of HRT (hormone replacement therapy) can adequately reduce the effects of puberty to the point where a transgender woman’s physical advantage over other women is sufficiently minimized, a claim that the International Olympic Committee based its standard for entry off of from 2015 to 2022. Dr. Joanna Harper was the first person to publish a peer-reviewed study on the performance of transgender athletes on HRT in 2015, and she found that taking hormone blockers quickly and significantly decreased the speeds of transgender women distance runners until they were in the same percentile compared to other women as they had been compared to men. However, this study was only considering a running sport, and other sports scientists have conducted studies showing that once a male body has gone through puberty, no diminishment in testosterone will fully take away the cumulative biological advantages in speed, strength, and size it has over female bodies. On this basis, says Ross Tucker, “fairness and inclusion are no

---


30 Bailar, Schuyler, interview with Joanna Harper, “But really: should trans women be included in women’s sports?” Dear Schuyler, podcast audio, May 1, 2023, 1:06:05.

longer compatible.”32 The physiology debate continues to dominate narratives of the trans-athlete
discussion, which threatens a slippery slope argument; as soon as the science decides one way or
another, the argument over fairness and inclusion would seem to be settled.

Alas, this debate is not that simple, because it is not actually about science. I will not be
delving much further into the physiology discussion in this paper because I cannot agree with the
basic premise it rests on: that justice in youth sports should be primarily about fairness as the
equality of opportunity to win. In professional sports, it is understandable that women’s sports be
adequately regulated and isolated so that women can achieve economic success and recognition
for their abilities and representation in media for young girls to aspire to, even when the ideas of
a “level playing field” in sports are shown to be largely a myth. However, the legislation of the
last four years has not focused on professional sports. It has focused on kids. Many of the new
state laws extend to sports in elementary school, before most students have reached puberty, and
to intramural sports at public colleges, which are often coed anyway.33 For these children, sport is
not and should not be just about winning.

Athletics provide youth with opportunities to develop many basic benefits of the body
and mind, such as learning to work on a team, make friends, enjoy physical activity, develop
bodily awareness and appreciation, and so much more. Rawls’ theory, however, focuses on
equality of opportunity to achieve success through the attainment of primary social goods such as
liberties, income and wealth. On elite levels of sport, the Rawlsian framework might apply
better, promoting economic and social success for the most physically skilled as long as they use
their platforms to support and inspire those with less advantage. In youth sport, however, justice
must be framed more accurately around the basic benefits that every child, not just the most

32 Tucker, Ross & Mike Finch, “S3 E8: Why Transgender Athletes Threaten Fairness in Women’s Sport,” Real
Science of Sport Podcast. podcast audio, May 2021, 1:16:44.
skilled, can attain from athletics, and Rawlsian competitive fairness cannot apply anymore. Instead, this country’s conception of justice in youth sport must shift from “justice as fairness” to “justice as inclusion,” or rather, to the equality of opportunity to *play*. To do this, sport itself must be recognized as an unjust institution, and steps need to be taken to change it.

Throughout this thesis, I will demonstrate that these bills reveal far more than a transphobic, conservative America hell-bent on restricting transgender bodies. In addition, they expose modern sport for what it really is: an institution deeply entrenched in old patriarchy and new capitalism that refuses to respond gracefully to broader understandings of gender and gender capabilities. I will explore in greater detail how the “fairness” outlined in these “Fairness in Women’s Sports” acts has triumphed over inclusion in many of the American public’s eyes, and proceed to illustrate why this fairness approach fails to lead to a just outcome when it fosters exclusion of trans* youth who just want to find social and bodily acceptance in a society that continues to reject them as normal human beings. The thesis will remain in conversation with Rawls’ theory of justice throughout, seeking to show that Rawlsian fairness, while still possessing many merits as a theory, is inapplicable in practice in the cases of youth sport and fails to properly address systems of oppression and the demands of modern feminism.

In Chapter One, I conduct a historical and descriptive analysis of the pervading mindset surrounding women’s sports in America. Sport segregation by sex is a practice that has come to be rarely questioned in this country, but once the background of Title IX and feminist movements in the 20th century are better understood, one can see that reductive views of gender essentialism have prevented women from equal opportunities and respect in sport far more than their genetics and ovaries have. When a history of separation and sex testing in professional and amateur sports is uncovered, one realizes that the policing of trans* bodies is part of a broader
policing of sex and women’s bodies, and that inclusion will actually bring greater hopes of gender equality and respect than exclusion. The narrative being pursued in anti-trans legislation is of the oppression of cisgender women by transgender women, but we cannot overlook what is really doing the oppressing: a perpetuated system of white, cis male privilege and domination.

In Chapter Two, I turn to a historical and descriptive analysis of American youth sports. In doing so, I explore the second key reason for why fairness in youth sports has come to focus more on winning than anything else: money. I illustrate the rise in “uber-sport,” a phrase coined by David Andrews to encompass the multi-billion dollar commercial industry of modern sport, and how its promises of money and fame for athletes have trickled down to youth. This capitalist sport model has molded youth and college sports into an industry that mirrors the elite, focusing on winning as a goal over intrinsic motivations for sport such as enjoyment and exercise. I will show how the privatization and competitive focus of youth sport is leading to a loss of its key element of “play,” the freedom to explore the capabilities of one’s body in a creative, childlike fashion, while simultaneously making sport into an exclusive and reward-centered space long before it needs to be and making Rawls’ justice as fairness seem applicable when it is not. I will argue further that all youth have a right to the basic benefits that a playful sporting environment can bring, whereas there is no basic right to win in these environments. Bringing youth sports, in schools and outside of them, back to more recreational and fun-focused goals will help every child find more internal fulfillment and growth from playing them while also opening the door to inclusion for all.

Chapter Three will turn the attention of these thesis back to transgender youth and their struggles in a society that denies them basic dignity. It will also tell the stories of individual transgender athletes in this country and the life-saving benefits that they have attained from their
experiences playing sports in gender-affirming spaces. It will do what the bans in 23 states have
failed to do: recognize the oppression that a transgender person faces in today’s America, and
include the gender affirmation and bodily harmony that can come with sports participation as
critical arguments on behalf of a transgender person’s right to participate in those spaces. The
chapter will conclude with a return to Rawls’ justice as fairness, making a deeper critique of how
his ideal theory of justice cannot properly apply when we acknowledge the systems of gender
identity discrimination that exist in the United States and consider what youth sport is really
supposed to be about.

In the Concluding Remarks, I address some possible solutions, policy changes, and
incentives that may help shift American ideas around trans* athletes in sport and lead this
country closer to full inclusion. I reiterate the current gaps in past and present feminist theories
that have led to America’s divide on this topic, and push for Americans (and all people) to
develop a more empathetic and holistic understanding of transness over the coming years. I
conclude by reminding the reader that for transgender youth to be acknowledged, included, and
enabled to reap the benefits of youth sports, the institutions and mindsets of youth and women’s
sports themselves must be changed.
Chapter One: The Myth of Sex Segregation as “Fairness”

As we aim to think critically about the meaning of “Fairness in Women’s Sport,” we must first go back and ask ourselves: what exactly does it mean, presently and historically, to be a woman in sport? As I’ve noted, the bills that ban transgender athletes do so with the assumption that it is “fair,” and therefore just, to keep females on a separate athletic tier (usually explicitly or implicitly deemed a second-rate tier) to males so that women can obtain “equivalent” accolades within that tier. Cisgender women are said to be “protected” by the recent legislation, but what exactly are they being protected from? This chapter seeks to challenge the widely unchallenged rule of strict sex segregation in sports and show that this segregation actually hurts women much more than it helps them in the fight for gender equality. The inferiority complex of women’s sports and their separation from men’s sports finds basis in every other aspect of American culture, which has never ceased to privilege the male perspective.

Sport is one of the very few spaces still segregated by gender, other than more private spaces such as public bathrooms. It should be no secret that in past centuries of American history, gender segregation has been far more prevalent. Before 1920, women could not vote, much less hold a congressional office.34 Boys and girls were kept in different schools, held different jobs, and participated in very different activities. This is still true in many cases today. All of this was normalized within a male-dominated society that perceived women as second-class in intelligence and general capability – scientific theories maintained that because women’s heads and brains were generally smaller, they must be naturally less intelligent.35 This

segregation of the genders has fostered unequal pay, education, and opportunity between the sexes that this country still struggles to address and recover from.

Since the mid-1800s, feminist movements have worked tirelessly to address these flawed theories of female inferiority and fight for gender equality. These movements have been loosely compiled into four “waves” of feminism. The first wave had the simple goal of making society recognize that women are people, not property, and it fought for specific basic rights for women such as voting and reproductive rights.\(^{36}\) The second wave, taking place in the 1960’s and 70’s, found that the first wave fell short by glossing over the underlying institution of patriarchy that oppresses women. Faced with continued discrimination and efforts to keep women confined to motherhood and domestic life, this second wave of feminism questioned traditional gender roles, promoted equality, and in its more radical sectors, wanted to reshape society entirely to eradicate patriarchal structures. To achieve these goals, the second wave tried to create a concrete definition of “woman” that feminist politics were fighting for, tailoring its fight for equality as not merely a fight for equity, but one for reproductive and maternal rights as well.\(^{37}\)

Third-wave feminism, which began around the late 1980s, became more conscious of the intersections of identities within womanhood, such as race and sexuality. This wave critiqued earlier feminist movements for centering the fight and the image of womanhood around straight, white women and therefore often achieving victories only for that subgroup. For example, getting women out of domesticity and the sole role of motherhood was a primary goal of the second wave of feminism, but this was only primarily an issue for wealthier white women; many women of color were already working many hours, and actually saw home life and motherhood as a welcome break from the alienating workplace.\(^ {38}\) The third wave continued to challenge

---


\(^{37}\) ibid.

gender roles and took an additional step in challenging the man/woman binary, questioning what actually made men and women all that different from one another other than societal expectations and stereotypes. Since then, this wave has been correlated with an uptick in explorations of gender identity that go far beyond the bounds of what has been seen as traditional “femininity” and “masculinity” in females, males, and intersex individuals. Younger generations today have found it easier, and often freeing, to blur widespread perceptions of the gender binary, a process that has bewildered many second-wave feminists (and older generations generally). Fourth-wave feminism, which is more of a growth upon the third wave than a shift, has taken this movement further in spurring on the #MeToo movement and taking up the fight for transgender rights and inclusivity.\(^{39}\)

A key difference between the first two and the second two waves of feminism lies in their acceptance and rejection, respectively, of a theory called gender essentialism. In second-wave feminists’ fight for gender equality, they maintained a belief of natural differences between men and women. They built their political agenda off of a paradigmatic “woman” and idea that there are inherent cultural and/or biological traits that all women possess and that all men do not possess, and vice versa.\(^{40}\) In contrast, the third wave of feminism brought with it many defenses of gender anti-essentialism, which finds that nothing about the concept of “womanhood” can be universalized without privileging particular, concrete types of women.\(^{41}\) Though anti-essentialists do not agree on everything, most believe that gender is not determined by biological sex but rather by social construction, rejecting the naturalistic conception of gender that many of us are taught growing up.\(^{42}\) While many of today’s feminist philosophers share different versions of this


\(^{40}\) ibid


view, much of American society as a whole still finds itself back in the biological essentialist views of the 1970s. Female youth are still deliberately steered into a culture of soft, cooperative “girlhood,” while male youth are steered into a culture of aggressive, competitive “boyhood.” This enforced sex/gender binary continues to be deeply normalized, with exceptions to it such as transgender and intersex individuals labeled as anomalies.43

Now that these waves and the issues they tried to address are better understood, we can look into how they manifested within the realm most heavily dominated by ideals of masculinity and physical superiorit: athletics. As shown in the following sections, themes of gender essentialism have both influenced and been influenced by the institution of sport since its creation, leading to a failure by feminism to adequately challenge widespread athletic segregation.

**A History of Women’s Sports in America**

Most theorists agree that professional and recreational sports rose in popularity in the US as a response to growing industrialization and the confinement of working American men to more stationary jobs. The increased play of ball games in leisure time by young men was frowned on at first by the Church, but the founding of YMCAs (Young Men’s Christian Associations) throughout the country turned around the Protestant faith’s mindset by promoting an ideal of “Muscular Christianity” that sport could bring. “Muscular Christianity” encompassed a religious line of thought that strong bodies contribute to strong minds and strong abilities to serve the Lord, and it appealed especially to industrialized America in a time when boys were being kept increasingly behind desks and there was a fear that they would grow weak, or even

---

worse, “feminized”\textsuperscript{45}. President Theodore Roosevelt heavily endorsed muscular Christianity in the early 1900s, working hard to keep American football alive despite the numerous injuries and even deaths it was causing at the time.\textsuperscript{46} Throughout this early build-up of sport into the uber-economy it has become today, women were kept largely out of the picture; sport was not seen to be meant for their “fragile” bodies. Sport was seen instead as a way to “re-masculinize” the men of America; as a concept, it was gendered male.

Prior to 1870, “sports” for women consisted of recreational play activities in which they were not encouraged to exert themselves. By the turn of the 20th century, women were forming more informal clubs for sport, but women’s educators in schools tried to keep women’s physical activity solely for educational purposes and out of the competitive realm, which was slowly growing into big business. For men, competitive sport was seen as an inevitable advancement for talented individuals, but women were restrained to a belief that sport was only good for them for educational and fun-focused benefits.\textsuperscript{47} As men went off to fight in the two world wars, a perception was maintained that they were predestined for strength and physical fitness and thus the “fighters” and the “protectors” of the two sexes, which also kept women out of athletic spaces because no one thought women had a need for physical capability. The first wave of feminism resulted in modest gains for women in sports and intercollegiate competition, but these gains were negated by the Great Depression in the 1930s and would remain dormant for nearly fifty years\textsuperscript{48}.

These early years of women’s sports also saw the beginnings of numerous changes in men’s sports to make them “suitable” for women. Take the invention of softball, for example.

\textsuperscript{47} Bell, Richard C. “A History of Women in Sport Prior to Title IX,” The Sport Journal (blog), March 14, 2008.
\textsuperscript{48} Ibid.
Softball was invented by a group of young men in Chicago originally as “indoor baseball,” with a smaller field and a softer ball that would keep players safe from injury. As it grew, the game was belittled with names such as “kitten ball” and “sissy ball,” titles that helped it to quickly be approved for women. The sport was taught in physical education classes and women rapidly took to it. As basketball grew in popularity in the early 1900s, indoor baseball was moved outdoors. Many women enjoyed playing regular baseball as well when they could find the opportunity, but when the modified version was officially approved as “softball” in 1933, Little League was developed shortly after to designate youth baseball solely as a boy’s sport, banishing girls altogether into the realm of softer balls.49 Today, there are a few women who manage to get into baseball and compete mostly with boys until they find a way to compete on the single Team USA women’s baseball team. But those women face a constant squeeze toward softball and a lot of singling out and discrimination in their sporting careers, just to play the sport they are more comfortable with.50 Softball is one of many examples of drastic separations and rule changes in men and women’s sports due to the perceived inferiority and weakness of women.

And so the narrative went, that sport is for the boys and girls should only play versions that are easier and “softer” if they get to participate at all. However, along with the Civil Rights Act of 1964 and the rising second wave of feminism came a push for change. Title IX of the Civil Rights Acts was signed into law in 1972 to prohibit sex-based discrimination in any school or any other education program that receives funding from the federal government. Sports was not originally a large part of this act, but it soon became the most contentious, as Title IX called for an equal number of boys’ and girls’ teams at each federally funded school at a time when the numbers of boys and girls playing sports, as well as the funding for those sports, were largely

disproportionate. Since Title IX has been passed, however, women participation in sport has increased dramatically and become far more mainstream, if still somewhat smaller and less funded than boys’ sports.

Title IX has thus been praised as a beacon of gender equality in youth sports. However, in pushing for an addition in women’s teams, Title IX made no effort to integrate men’s and women’s sports. It instead opened a sex-segregated door, pushing for equality of opportunities for women’s sports by adding separate spaces for them. There was actually some debate over whether sex segregation should be upheld within the policy, with organizations such as National Organization for Women (NOW) maintaining that moving toward sex-integrated sports over time would best challenge the sexist presumptions such as that all girls and women would fail in competition with all boys and men. In the end, though, Title IX chose to promote sex segregation, and few people seem to have questioned this choice since.

The Prevalence of Essentialism in Modern Sport

The continued segregation between boys’ and girls’ sports, while perhaps attempting to give both equal opportunities, has exacerbated the perceived physical superiority of one sex over the other and maintained a perception of males and females as categorically different specimens. Despite the third wave of feminism bringing in perspectives that challenge a gender and sex binary, our sports have continued to be rooted in second-wave ideas of fundamental differences between the bodies and mentalities of boys and girls.

To be sure, girls and young women today (myself included) are brought into a world in which sport is far more accessible for us than it was for our mothers and grandmothers. This new

---

52 Ibid.
generation of athletic women is at times referred to as a generation of “alpha females” – women who have embraced their leadership ambitions and are more confident and comfortable in their talents than their predecessors.\textsuperscript{54} This has not, however, led to sport being seen as a girl’s space. There has instead been an advanced narrative that girls are “masculinized” by taking part in sport, and that this is what leads to their increased confidence.\textsuperscript{55} The reasons for why boys and girls choose to partake in sport are thus perceived as drastically different from each other.

Sociologist Michael Messner has termed the pervasion of differing narratives for why and how boys and girls should participate in youth sports as “soft essentialism,” an apt term for illustrating the continuation of second-wave feminist theory into today. A “hard essentialist” view would keep boys and girls in entirely different kinds of spaces, such as when a rise in football saw boys on the field and girls as cheerleaders on the sidelines. The soft essentialist view, Messner writes, puts boys and girls in similar activities, but valorizes the liberal feminist ideal of individual choice for girls and women while retaining a largely naturalized view of boys and men\textsuperscript{56}. Messner’s research in the year 2000 involved asking adult volunteers in modern youth sports how they perceive young athletes and the impact that sport has on them. He noted that the adults found it easy to outline the value of sport for young girls as a source of health enhancement and empowerment. They saw girls as “flexible choosers” who don’t have to do sport, but often find that doing so gives them more “masculine” traits (confidence being considered one of them) that will benefit them in public life.\textsuperscript{57} By contrast, the adults struggled to articulate a narrative about boys in sports, often opting to say that sports are natural for boys and

\textsuperscript{56} Messner, Michael A. “Gender Ideologies, Youth Sports, and the Production of Soft Essentialism.” In No Slam Dunk: Gender, Sport and the Unevenness of Social Change. Rutgers University Press; 2018.
\textsuperscript{57} Ibid.
allow them to run around and get out all of their pent-up testosterone. They saw, Messner writes, boys’ “aggressive and competitive traits as simple expressions of nature, played out within (but not constructed by) sports, while girls were viewed as malleable, their softer natures reformable through sports participation.”

There are many factors that contribute to the continued essentialist view that boys are naturally made for sport and women are curious outsiders within the space, resulting in desires for segregation. One obvious element is that the vast majority of boys are socialized into sports starting nearly from the womb, giving them an early embodied advantage over women. Dads are expected to play catch and watch games with their sons, young boys are encouraged to play sports and be competitive with each other, and there are rarely other activity options on the table. Girls, on the other hand, are still given a plethora of options. It is considered normal for elementary school girls to spend their lunch time gossiping at a table, making bracelets, playing “fairies,” or, yes, playing tag or soccer with the boys. Sports are a bigger part of women’s lives now, but they are not the only part, as they are for many boys.

While this lack of complete socialization into sports for women is probably better for their holistic mental development, it has been theorized to lead to girls being seen as “worse” in sport, in great part because they have not had competition and a need for athletic skill to demonstrate “manliness” drilled into them from such a young age like men have. Feminist philosopher Iris Marion Young explores in her piece “Throwing Like a Girl” how girls are brought up in passivity more than activity in relation to boys, leading to generally worse spatial

awareness and motility than their male counterparts at similar ages. In reality, there is no clear evidence that there is a natural, predetermined difference in the athletic abilities of boys and girls before puberty. Yet, this lack of early socialization into sport is seen as nature rather than nurture by the American public; girls are seen as less naturally capable of sport than boys long before puberty has any effect on obvious strength or size differences.

Young updated “Throwing Like a Girl” twenty years after writing it to better encompass the increased capabilities of the new generation’s “alpha female” athletes. However, she holds firm to her point that the construction of the body in sport and the rest of American life is oriented around a “masculine, not a gender-neutral, body of action,” leading to an inherent disadvantage for women trying to find success in the space. As Luce Irigaray articulates in her book *This Sex Which is Not One*, we live in a “phallogocentric” society that privileges the male body as the user of its systems. Sport is probably the biggest example of this. The most popular and economically successful sports in America, such football, basketball, soccer, etc., have been developed by men and for men and designed to showcase the qualities particularly characteristic of male musculature and body type: strength, speed, and size. As stated in the introduction, this paper will not aim to dispute the average advantage a post-pubescent male body can have in speed and strength over a female body. Instead, it critiques an institution that highly values and rewards the most extreme possibilities of male bodies above the possibilities of female bodies (such as flexibility or endurance). In efforts to achieve equality, women have aimed to enter and find confidence in mainstream male-created athletic spaces. However, women have had little chance to make those spaces their own because of sports’ inherent centering of masculine traits.

---

62 Ibid.
Simply the titles of the “NBA” (the ‘norm’ of basketball) and the “WNBA” (the women’s version) illustrate how male bodies are and have always been seen as the true bodies of sport. Caitlin Clark’s recent domination in the NCAA has led to a huge boost in viewership for women’s basketball, but she is still viewed as merely “good for a woman” and her starting 4-year salary in the WNBA will be a mere $338,000, compared to last year's NBA draft No. 1 pick’s $55 million dollar 4-year contract. With these ideologies in place, women are fighting a losing battle when it comes to obtaining equivalent recognition and respect in athletics, which is true regardless of whether sports segregate or integrate the sexes.

A final reason why essentialist views keep segregation in sport in place is due to an outdated perception that men are destined to be protectors in some cases and aggressors in others, and women are the victims that need protecting. Likely the most common fear of combining men’s and women’s sports is that if contact sports are integrated, those with male bodies are bound to injure those with female bodies. While this fear of injury to women is shared by men and women alike, it is still harmful in that it continues an essentialist narrative that all women are too weak and fragile to compete against men, and fails to acknowledge the reality that some women in contact sports are just as strong and capable of protecting themselves (and of injuring others) as many men are. As with height and speed, the bell curves of men’s and women’s strength overlap, and there are many women who can hold their own in a physical soccer or basketball game against men if they are permitted to and wish to. But this country’s conceptions of aggressive men and soft women makes this reality seem incoherent, hence a continued belief that no man should ever hit a woman, but that rough-housing between boys is

65 Stump, Scott, “Caitlin Clark Fans Express Shock at Her Salary as WNBA's No. 1 Pick,” Today, April 16, 2024.
perfectly acceptable. This contradiction takes place within many sporting arenas: when we see a smaller man knocked to the floor by a bigger one in boxing, no one bats an eye. But if the smaller man had been a woman, even one the same size as the bigger man, it would have been practically regarded as a crime.

The bans on transgender athletes titled names like “Protection of Women and Girls in Sports Act,” in viewing transgender girls as nothing apart from “biological males,” echo the belief that women (specifically, cisgender women) need to protected from male domination, both in terms of their egos and their physical well-being. Alabama’s 2023 bill, SB211, is one of many that enforces a duty “to provide a remedy for any student who suffers harm as a result of” a transgender girl competing on a girl’s team.68 The “harm” that is referred to here is not just physical harm that may result from a trans woman being physically stronger; it can also be “psychological” or “emotional” according to Idaho’s H.B. 500.69 This advances the idea that a cisgender girl can be monetarily compensated due not only to perceptions that she has faced an unacceptable risk of injury, but also due to a perceived risk of unfairly getting her feelings hurt by competing against a transgender girl. Viewing these harms as only harms a woman can suffer assumes an inherent “nature” of women as emotional and incapable of handling themselves. The realization that women may not actually need protection in a sport that they have willingly entered, knowing it requires contact and aggression and a risk of injury, seems to have slipped policymakers’ minds.

The Rigid and Invasive Enforcement of Sex Segregation

Gender essentialist views of comparative female incapability, inferiority, and weakness have kept sport deeply segregated since and before Title IX. This belief in lesser female capacity

has been widely accepted by men and women alike, and yet such a belief has crowded out
countless voices of girls who are capable of competing with the boys and want to do so. The
exclusion of women in baseball is not the only example. When Bobbi Gibb became the first
woman to run the Boston Marathon, she was not doing so for women to get their own category;
she just wanted to run the race and knew that she could. Gibb had to disguise herself as a man to
get to the startline, but she was met with a lot of support from her fellow runners, and she
completed the race in an impressive three hours, 21 minutes and 40 seconds – faster than
two-thirds of the competitors. Gibb fit in perfectly well in the men’s category, and yet, now that
more women are running the race, there are separate men’s and women’s categories, continuing
the idea that women can only really be measured against other women in order to succeed.

There are numerous other women in history who have had athletic success against or
comparable to men, but whose successes have never led to the entertainment of integration. The
rumors that Brittney Griner, the first NCAA basketball player ever to score 2000 points and
block 500 shots, would get a tryout in the NBA never led to anything. Katie Hnida was a star
kicker on her high school football team, but never saw any minutes at the University of Colorado
team after she was invited to play. Ultra-runner Ann Trason placed first out of both men and
women in six of her races in the early 1990s, but the sport has still generally kept
gender-separate categories. These women can compete with men, but the barriers to entry are
impossibly high, given that Title IX’s creation of more women’s teams gave little incentive to
leagues to include women in men’s categories who can and want to do so.

---

Enforcement of sex segregation has been mostly played off as an effort to keep things “fair” and give women equal opportunities of success. But in the cases where women show an equivalent athletic capability to men, this excuse of “fairness” looks more as though it masks an effort to uphold male dominance in sport. Take Olympic skeet-shooting, which was first introduced as a mixed-gender event in 1968 so as to avoid accusations of exclusion. At the 1992 Olympic games, Chinese shooter Zhang Shan became the first woman to win the competition in Olympic history, hitting all 200 targets. Her victory was celebrated initially but followed quickly by a decision of the International Shooting Union (ISU) to bar women from shooting against men in future events. The 1996 Olympics had a men’s-only category and nothing for women, leaving Shan unable to defend her title. Then in 2000, a separate women’s skeet shooting category was introduced, and this was hailed as an advancement in gender equity rather than a continued prevention of gender integration. The reason the ISU chose to segregate just when women were proving they could compete with and even beat men is widely unknown, and seems entirely counterproductive. It appears as though the superiority of a woman in a traditionally male-dominated event was too emasculating for men to bear, and separation came out of a refusal to acknowledge and accept that superiority.

There are also areas in which segregation of competition and perceived female inferiority are kept so complete that even the influence of a male athlete on a female athlete in her sport is seen as cheating. In 2011, the IAAF (International Association of Athletics Federation) created a rule that if a woman is paced by a man when she sets a marathon record, her record will not be counted as a women’s world record because a man’s very presence in the

---

74 Jackson, Victoria, “In Tokyo, as Was the Case in Previous Olympics, Mixed Gender Events Remain a Mixed Bag,” The Athletic, August 5, 2021.
race would give the woman an “unfair advantage.” This is especially odd because the entire transgender athlete debate centers around fears of a transgender woman with a biological male’s body having the unfair advantage, without any of the same worries that her presence in a competition would help the cisgender women competing with her improve their performances “unfairly.” Regardless, believing that a woman having a man to push her in a race would make her incredible athletic achievement not her own continues to decenter women from athletic prowess and maintain women’s sporting categories as inferior to men’s.

This 2011 ordinance is nothing compared to the actions that the IAAF and the IOC (International Olympic Committee) have taken to root out any sort of “masculine” influence in women’s competitions over the last century. A series of invasive procedures to verify a woman’s sex in the name of “fairness” persisted throughout Olympic and other professional competitions in the 20th century. Female athletes were subjected by the IAAF to an incredibly intrusive “nude parade” in front of a panel of doctors whose job it was to verify their sex via their genitals. After this was finally done away with in the late 60s, genetic tests such as the Barr body test and the polymerase chain reaction (PCR) test of the SRY gene looked at contestants’ genetic makeup to ensure their sex. The IAAF finally abolished gender testing in 1992 after significant debate, but still has many requirements in place to determine that a competitor’s body has no advantages that could make her “too good” to compete in a women’s competition. Today, in verifying transgender athletes as eligible to compete, assessing hormonal balances has become a new method of sex policing.

76 Ibid.
Gender verification in sport has sparked an unending and harmful debate over who counts as a woman and who does not. It has also revealed an important fact that America and many other cultures consistently ignore: that sex is not a binary. We are taught that females all have XX chromosomes, a vagina, and less testosterone than men, while men all have XY chromosomes and a penis. This is simply not true. Some people have XXY chromosomes or just one X, and some women have more testosterone than some men. The penis and clitoris actually exist along a spectrum of length, and the labia can be fused shut or the scrotum split, leading to ambiguity in determining sex at birth. One recent study found that some male Olympians have testosterone in the typical female range, just as some female Olympians have testosterone in the typical male range.

As humans, we are an assortment of 8 billion different bodies, many of them “intersex,” having some biological traits considered “female” and some considered “male.” Up to 1.7% of all people are thought to be intersex, which the medical industry categorizes as having a “disorder of sex development” or “DSD.” Intersex individuals themselves are still often seen in this culture as a “disorder,” something that goes against nature. It is common doctoral practice to subject infants born with atypical genitalia to cosmetic surgical procedures, such as a clitoral reduction, with no purpose other than to make their genitals look more “normal” and determine a clear gender for the child. Rather than taking harmful measures to fit every child into a sex/gender category, it would be far more productive to accept that there is a lot of overlap and fluidity between the two sexes. Details of what’s actually on the X and Y chromosomes, and which tissues respond to the products of these genes, determine the degree of male/female

79 Ibid.
81 Ibid.
difference at the whole-body level, as well as allowing for transgendered and transsexual bodies.\textsuperscript{82} Instead of welcoming this spectrum of difference, however, American culture (and especially American sports) have tried to erase it.

Unsurprisingly, a lot of the best women athletes have been found to have DSDs that can trigger male patterns of development in different parts of their bodies while they continue to live their lives as women. A famous case of this is Caster Semenya, an 18-year-old track star from South Africa who won the gold medal in the women’s 800m at the World Championships in Athletics in 2009. The IAAF subsequently requested the tests because of Semenya’s “deep voice, muscular build and rapid improvement in times,” and she was found to have XY chromosomes and was diagnosed with “hyperandrogenism”\textsuperscript{83}. Caster never grew up thinking of herself as anything but a girl, and is now in a constant battle to run with her peers. Back when verifications were more common, this issue was even more widespread. Helen Stephens, Stella Walsh, and Käthe Krauss, respectively the gold, silver, and bronze medalists in the hundred-meter sprint at the 1936 Berlin Olympics, all faced suspicion around their sex. Stephens was simply a lesbian woman who presented a bit more masculinely—for example, by not shaving her legs. Stella Walsh, however, was found to have small testes and some cells with a single X chromosome and others with XY when she was autopsied after her death years later; all of her past achievements were quickly labeled in the public eye as those of a cheater.\textsuperscript{84}

There are many female athletes like Stephens who have no chromosomal or genital “irregularity,” but simply present themselves more masculinely or have bigger muscles, and this has warranted equal testing and scrutiny in our gender-policing society. Serena Williams, a


visibly strong black woman just out of the prime of her tennis career, has been tested for performance enhancing drugs more than twice as often as other top American women players. Williams might naturally have greater power and strength than some of her peers, but the idea of banning her just because of this advantage continues to take us down the slippery slope of what is “fair” in women’s athletics and what is not. Williams’ and Semenya’s cases highlight the hyper-policing of black female bodies in particular, following harmful stereotypes that black women are inherently aggressive and more masculine. Many critics of sex verification have said that this is “the policing not of athleticism but of femininity,” giving the IOC and IAAF the power to decide who is a woman and who is not. The IAAF, which is now called “World Athletics,” disagrees with this assertion, saying in a press conference that “the regulations exist solely to ensure fair and meaningful competition within the female classification, for the benefit of the broad class of female athletes.” So, essentially, athletic organizations will only question whether you appear to be a “real” woman or a “cheater” if you appear too good to compete against others.

There is no parallel to this in men’s sports. Men have never had to verify their sex in the Olympics because there is no possibility of a man being “too good” to compete unless he is doping, which is a whole controversy in itself. Male competitions in the Olympics are looking for the best of the best, genetic advantage and all. Michael Phelps, with his vast wingspan, double-jointed ankles, ability to produce half the amount of lactic acid as most athletes, is worshipped as the best because of these advantages, while Serena Williams and Caster Semenya

---

are scrutinized. Such is the paradox of women’s sports: the goal is to have as much physical skill as possible, but too much skill is questioned and even criminalized rather than celebrated.

**The Villains, the Victims, and the Protectors of Women’s Sports**

All of this compiled evidence has aimed to demonstrate that “fairness in women’s sports” is not really about protecting women or seeking equality. It is about keeping them inferior to men in a patriarchal world. Second-wave feminists in particular care deeply about “protecting” women in sport because they want equal recognition, pay, and respect for women in sports— the same things they want for women in every aspect of life. But as philosopher Jane English says in her piece “Sex Equality in Sports,” “the very need for a protected competition class suggests inferiority.” What little girls actually need to be “protected” from is environments like this, environments that tell them they can’t do the things a boy can do. Policing who gets to participate in women’s sports so that the playing field stays relatively even is not going to improve anything; all it will do is keep women’s sports rooted in second-tier status.

Sport in the U.S. has always privileged male bodies; this is the fault of the institution, not of men or women or transgender women or any other individual. We have chosen to worship this inherently unequal institution as “America’s greatest pastime,” and women will always struggle to find true equality within it. English’s book ultimately advocates for more sports designed to reward the physical traits that are more commonly possessed by women than by men, which is an important step towards equality in sport, but it is unlikely that these kinds of sport will hold a candle to the ones that are currently multi-billion-dollar industries for quite some time. The aspects we value in sport may not change anytime soon, but we can’t keep coddling women by

---


saying they are good “for a girl,” worshiping that limited win, and keeping anyone who might thwart that success out of their competitions.

In the debate between fairness and the inclusion of transgender athletes, the unceasing narratives of the weakness and inferiority of all cisgender women paint this subgroup as the victims in the discussion. Simultaneously, they portray transgender women as biological male aggressors and as “cheaters” trying to invade women’s sports; in many articles, transgender athlete inclusion has been equated to allowing athletes on performance enhancing drugs to compete. Together, these ideas form a political tactic which advances the narrative that justice should focus on cisgender women in this thesis’ debate rather than on rights for transgender youth. Rawls’ justice as fairness (which, it should be mentioned, only discusses the rights of men and does not mention women as a group except to say once that they are disadvantaged compared to men) seems to support this continued sex segregation and exclusion by calling for those with natural advantages in an institution to “restrict their liberty in ways necessary to yield advantages for all.”

Rawls’ “fair equality of opportunity” must involve the same “prospects of success” for those with similar “natural assets,” so when trans women are seen to have the natural assets of males, Rawlsian theory would require that they relinquish their liberty to compete with cis women in the name of fraternity and justice.

Conservative policymakers have harnessed this ability-based idea of fairness and combined it with the essentialist argument to claim the role of the “protectors” of female athletes and their prospects for success in sport. Some of the bills even claim a goal to “provide protection for any school or institution of higher education that maintains separate athletic teams

---


or sports for students of the female sex,” suggesting that their mission is to stop transgender athletes from threatening the segregated system itself. The focus on “fairness” within anti-trans legislation is more clear now: it represents a desire by policymakers to reinforce a man-woman binary and erase difference in educational institutions. If “fair equality of opportunity” was truly the goal, policymaker’s focus would be on significantly better funding and pay for women’s athletic institutions to ensure that when a woman wins, she enjoys the same benefits of success that a man does. Instead, the participation of a very small subgroup of women and girls has the world in crisis, and no real progress toward gender equality and justice is being made. The subjugation of women in sport is not the fault of transgender athletes; it is the fault of a patriarchal system that continuously polices women's bodies and what “femininity” should look like. Despite this, transgender athletes are the ones being punished.

Women are stronger than policymakers think, both physically and in their emotional ability to handle a second place. If a new mindset of inclusion and personal improvement was pushed for, cisgender women could see that not only are many of them more than capable of competing with the boys, but also that competing against a transgender girl who may or may not have an advantage will push them to want to work harder and be better. Moreover, as this chapter has demonstrated, the world is full of a wide spectrum of bodies, bodies of different genetics, heights, weights, hormone contents, and more. Yet, the only thing that most sports still tend to separate by, other than age, is sex. The United States’ rigid essentialist and binary views of gender have upheld the assumption that separating by sex is the only way to maintain fairness, even though the best women in a sport tend to be more skilled in it than over 90% of men worldwide and the physical gaps within the sexes can be just as great as the gaps between them.91

Male bodies are still privileged in most traditional sports, but this does not give athletic organizations a right to prevent women from competing with them. Once more women have more freedom to compete at the “male” level and inevitably find that they can succeed or at least keep up in those spaces, the door that allows transgender women into women’s leagues – not as aggressors, but as fellow women – becomes easier to open.

At the professional and Olympic levels, where the best men are roughly 10% faster than the best women, it does make sense to maintain a women’s category and potentially require that transgender competitors undergo a span of HRT before playing so that the world’s best women can act as role models to little girls within an activity that is made for male bodies but nonetheless idolized. However, for children, there is no valid reason to keep boys and girls segregated when perceptions of “national skill difference” have little merit before puberty and far less merit than we imagine after puberty; rather, it is the continued segregation itself that brings most of these differences into existence. I would hypothesize that starting to integrate girls and boys in sports will actually give girls opportunities to be challenged to the same extent that boys are challenged so that they might grow in skill at more similar rates. Moreover, a girl’s success against both girls and boys sends a far more powerful message and model to girls and women than merely succeeding in a category deemed second-class. The integration of sport is a critical step in deconstructing the gender/sex binary that has been deeply embedded in the institution since it began.

There are few instances in which contact sports have been successfully integrated enough to see definitive positive or negative results of doing so, but one rising sport is on its way: quidditch. Quidditch, a sport based off of the Harry Potter franchise, combines aspects of dodgeball, rugby, tag, and capture-the-flag. It has gained significant popularity over the last
couple of decades, particularly on college campuses, and it is entirely, non-negotiably co-ed. There are no differences in rules for women to make the game “easier” for them, no special points if a woman scores, or any other inferiorizing elements that are often implemented in traditional co-ed sporting environments. A study of the sport by Cohen et al. found that it fostered a positive coed experience for women and men, which in turn developed an increased desire for inclusivity and equality. In addition, both genders reported stereotype reduction due to participation in the sport, and women also reported feeling increased levels of self-confidence and pride in their abilities.  

Cohen et al. also considered co-ed sports within the framework of “Intergroup Contact Theory,” or ICT, which suggests that, “interpersonal contact is one of the most effective ways to reduce prejudice between majority and minority group members under appropriate conditions.” While ICT has mainly been used to reduce bias between racial groups, applying it to gender proved very appropriate, as both men and women in the study praised each others’ abilities in quidditch and said that they came out of games with a stronger belief that “anything boys can do, girls can do.” While several male players did feel that playing with women made the game “slower” and “less physical,” others were pleasantly surprised at how physical and competitive many women were willing to be. One male player even reported, “I see now that girls don’t mind being treated as equals, even for a very physical and injurious sporting event as quidditch. They don’t mind being tackled, blocked, and run down, as long as they have an opportunity to retaliate.” ‘Alternative’ sports such as quidditch and the predominantly positive reviews of its co-ed participation show us how simple it can be for many ‘traditional’ sports to also integrate at

---

93 ibid.
94 ibid.
95 ibid.
all levels. While there seems to be a fear that integrating sports will crowd women out or reinforce gender stereotypes, real-world examples that don’t treat women with kid gloves show that the opposite is more likely.

Presumptions of the weakness and natural lack of athleticism of girls has inhibited the progress that will actually lead us towards equality. In failing to recognize this, those who continue to express worry that integration will prevent equal opportunities, scholarships, and salaries for cisgender women in sports are trying to uphold traditional segregation and exclude transgender youth. The vast majority of these worries come down to one thing: money. In the next chapter, I will demonstrate and criticize how monetary incentives have seeped their way into youth sport over the last few decades and made “fairness” as the equality of opportunity to win so much more important than enjoyment for young boys and girls alike. As youth sport turns from intrinsically-motivated play into reward-motivated work, integration and inclusion unfortunately have been pushed to the back of everyone’s minds. But as this chapter concludes, it is important to remember that Brown v. Board eliminated segregation because the “separate but equal” doctrine is a myth. Women have been treated unequally in sport because they have been separated, not in spite of it, and work toward integration and an elimination of sex-policing will go hand-in-hand with the equality and the inclusion of everyone.
Chapter Two: Follow the Money Away from Play in Youth Sport

Now that the underlying mechanics of women’s sports are better understood, this thesis turns to thinking about fairness in the second dimension of sport that the bills banning transgender athletes center on: youth sports. Chapter One demonstrated how and why a Rawlsian ideal of “fair equality of opportunity” is pursued in anti-trans legislation, and Chapter Two will show further why that equality of opportunity has been geared primarily toward success and winning in sports rather than toward goals of fun and learning for youth. The push for fairness as an equal chance to win is tied to increased extrinsic motivations for children to excel in, rather than just enjoy, athletics in America. These extrinsic motivations are the rapid flows of money and scholarship opportunities into youth sports leagues.

Important questions to ponder throughout this chapter are: why do we play sports, and what exactly is encompassed by the word “play”? Sport and play have been a central aspect in nearly every culture of which we are aware, and are seen to teach a wide range of culture-mirroring values to the youth who partake in them. Positive values most often associated with youth sports, in school and recreationally, include teamwork, discipline, good sportsmanship, and good bodily health. However, there are also many negative values associated with modern youth sport by critics, including mindless obedience to authority, a win-at-all-costs attitude (to the point of ruining one’s health), and competitiveness to the point of intimidating one’s opponent or cheating. One must consider: do all of these potential aspects of competitive sport still fall under “play”? Play, according to philosopher Bernard Suits, is an autotelic activity, one that is performed for its own sake due to its inherent value to humankind. Suits believed that

97 ibid.
play involves the freedom to choose what one does with one’s body and resources, and it is influenced by intrinsic motivation, which comes from within oneself, rather than extrinsic motivations, such as money or fame.\textsuperscript{98} As will be argued later in this thesis, it is the “play” of sport, rather than its end goals, that should be considered the most important for human happiness and fulfillment and thus be a key consideration in deciding what is “just” and “fair” in participation.

Philosophies behind play and intrinsic/extrinsic motivations will be discussed more at the end of this chapter. But first, we must look at our own history of sport and its entanglement with money, advertising, and idolatry to question how devoted modern youth sport really is to the positive values of play, and how much it has fallen instead into the profit-focused hands of American capitalism.

\textit{The Rise of Uber-Sport in America}

The adaptation of professional sport into capitalist structures through its mass spectatorship and multi-billion-dollar industries is rather ironic, considering that its appeal to Americans initially derived from its function as a “cathartic release” – a source of “escape and diversion” from rapid industrialization and urbanizing capitalist experience.\textsuperscript{99} When sports were played in leisure time after work starting in the 1800s, they began as loosely compiled games rather than with organized sports leagues.\textsuperscript{100} They were a way to move around, have fun with one's peers, and relieve oneself of the stress that work brings: the constant need to make money and support a life for one’s family. Sports were a way to get back in touch with one’s inner child. They were playful.

Inevitably, though, capitalism and its appetite for private markets has eaten up everything in its path. As David Andrews writes in his 2019 book *Make Sport Great Again*, “sport’s popular cultural centrality and prominence hav(e) been commandeered, and increasingly exploited, by the preoccupations and prescriptions of contemporary capitalism.”

Capitalism developed in the United States along with the Industrial Revolution, with Americans embracing Europe’s developing ideals of liberalism, competition in trade, and the development of a free market economy. As America hit the turn of the twentieth century, viewership of sport was recognized to be a lucrative source of entertainment, and the age of the spectator was ushered in. Private, professional baseball, football, and basketball leagues were established, massive stadiums were built, sports betting became commonplace, and the TV was invented, providing a mode to watch sports from one’s home. Leisure time and the use of vacation weeks increased, and in 1958 retail sales of sporting goods passed the $2 billion mark.

As the country grew more attuned to sports, the competitive energy that was encouraged in an industrialized business environment carried over to the fields and courts. Spectators wanted to support winning teams and athletes, literally investing themselves in the institution through betting, and athletes began to be paid based on how well they performed. Expensive broadcasting deals made it possible to make these athletes rich starting in the 60s. Baseball club owners originally tried to use a “gentleman’s agreement” style to avoid competitive bidding for players as a means of forcing down player salaries, but supreme court rulings, federal legislation, and unionization eventually allowed players to bargain for higher contracts. The 1970s saw the first million-dollar sporting contract for NHL player Bobby Hull. NBA star Michael Jordan went

---


from making $2-3 million a season for most of his career to signing a $30 million contract with the Bulls for the '96-'97 season. As we enter a new millennium, salaries have exploded even further; in 2009, golfer Tiger Woods became the first athlete to earn $1 billion in prize money and endorsements.105

Top professional athletes are not only making some of the biggest money in the country; they have also gone from simple entertainment to some of our greatest idols.106 Where it used to worship war heroes, religious leaders, and even political leaders, the general public now worships athletes a great deal more. The best athletes are all over billboards, commercials, and clothing deals, and young children (especially boys) strive to emulate them as they take to sports. The physical prowess, perseverance, and apparent invincibility of these athletes astonish both youth and adults almost aesthetically; older people watch with bittersweet awe at what their bodies could have done, and younger people are inspired to see what their bodies can do. There does not appear to be anything harmful about this upfront, but philosopher Torbjörn Tännsjö has written of his fears that a competitive capitalist value system is solidified within this idolatry: an overwhelming admiration for physical domination, and a contempt for weakness.107 As discussed in Chapter One, this system of unparalleled pay and glory for the most physically gifted bodies continues to prevent women athletes from attaining the same respect as men in sporting arenas. It also makes winning a far more dominant value in sports.

David Andrews has defined sport in its current mode of mass market generation as “uber-sport.” Uber-sport encompasses the concerted reformation of elite/professional level physically based contests by the late capitalist processes of corporatization, commercialization,

---

107 Ibid.
spectacularization, and celebritization.\textsuperscript{108} Within this new age of sport, as historian Christopher Lasch has argued extensively, the “play” that used to be embodied within sports has turned into work.\textsuperscript{109} For professional athletes, even the ones who love what they do, money and fame have become critical motivations to compete and win in one’s sport all day, every day. Sports have turned from leisurely activities between work to the work itself, and in this process they have lost the freedom embodied by childlike play.

It is worth noting that capitalism is not the only system that highly rewards athletic strength and success. During the Cold War, athletic successes were widely politicized and nationalized by Soviet Russia as a way to build an influential communist nation-state. An official Soviet government resolution of 1949 claimed that, “The increasing number of successes achieved by Soviet athletes ... is a victory for the Soviet form of society and the socialist sports system; it provides irrefutable proof of the superiority of socialist culture over the moribund culture of capitalist states.”\textsuperscript{110} Talented athletes often also held high positions in the military, and the state took control of sports facilities and clubs for the sheer purpose of harnessing athletic success to defeat capitalist countries. This modality of sport may have focused on winning as a primary value even more than its capitalist counterpart, but its efficacy in doing so was short-lived in the face of the end of the Cold War and a globalized sport market. The international market for athletic talent has enabled stars from communist states to become entrepreneurs who can choose to leave their home countries and offer themselves for sale to promoters around the world.\textsuperscript{111} Overall, it appears capitalism’s \textit{uber-sport} has proved itself as

\textsuperscript{111} Ibid.
“superior” in history over Soviet militarist nationalizing of athletic talent, though the two systems still find similarity in their basis on winning and their crowding out of play.

It is easy to say that the *uber-sport* win-at-all-costs mentality only affects professionals, the ones making all the money, and not the majority of Americans who participate in sports. However, the widespread idolatry and spectatorship of the elite domain has led youth sports to model their institutions and values *after* these professional sports. Moreover, as professional athletes are paid more and sports become a multi-trillion dollar industry, the incentives to win have trickled down into the amateur domain, leading to the decay of both opportunity and recreation in youth sports.

*Pay-to-Play in Youth Sports*

Youth sports, not so different from those for young adults, used to be mainly pick-up games. Out of the influence of pressures from parents and coaches, these kinds of games have the potential to be more free and fun-focused experiences. A loss or poor performance doesn’t result in the child being yelled at or shamed by authority figures, and there is no reward for winning besides one’s own sense of accomplishment. Moreover, children can learn how to play with and against a range of athletes of all different ages, sizes, and ability levels; gender segregation, for example, can be done away with. A study from the University of Colorado found that children who spent more time in less structured activities (such as pick-up games) develop better “self-directed executive function,” a skill that centers around being able to set your own goals and take action on them.\(^{112}\)

And yet, pick-up games have been all but ousted from mainstream culture as organized sport has taken over. As parents began to feel they couldn’t trust their children to play without supervision, leagues started to be established, and they were respected as ways to teach

cooperation and respect for authority. When those leagues suffered financially during the Great Depression, fee-based organizations such as the YMCA and Little League stepped in, and youth sports became a pay-to-play institution. As the 1960s gave rise to increased competition over college admissions, sports also became a way to obtain admission, and eventually scholarships, to quality universities. Suddenly, parents (and businesses) saw clear incentives to get their children better at sports, and demand for more specialized sports leagues skyrocketed. Today, youth of all skill levels, in virtually every team sport, have been swept up by a youth-sports economy that progressively resembles the pros at increasingly early ages. Youth sports today is an over $19 billion industry, rivaling the size of the $15 billion NFL.

Despite the major economic growth, however, there are actually fewer youth playing sport today than there were 15 years ago. 38% of youth were in organized sports in 2019, a number that has remained low since the pandemic, compared to 45% in 2008. As youth sport is perceived more and more as a road to monetary success, whether through a college scholarship or an MLB deal, children from wealthier families have found their way onto expensive and time-draining travel teams as early as elementary school. When these children move to the travel team, bodies are pulled out of the local town’s recreation leagues and even its school sports, sending a message that those who didn't get onto the advanced track don’t have a future in the sport. When a child’s family can’t pay and recreation leagues and pick-up games are portrayed as “second-class,” the child is essentially excluded from participation, or at least any sort of participation that will challenge them to improve and grow with meaningful coaching. Thus surfaces another way in which sport is not a level playing field; rather, it is a site wherein broader

---

114 Ibid.
115 Ibid.
116 Ibid.
forms of social and economic inequality are accepted, tolerated, and ignored. Through a system of youth sports that increasingly emulates professionalism, children from marginalized communities (and especially children of color) are kept from opportunities early on so that the ones making it to the million-dollar deals are from wealthier backgrounds to begin with, perpetuating a cycle of white male privilege.

Youth sports is facing the same “tragedy of the commons” that has befallen many public spaces as a result of American capitalist privatization. Less money and effort are going into inexpensive community teams and public fields, essentially erasing recreational athletics as an option. In the “State of Play” 2021 report, more than four of 10 families said their community-based sports provider either closed, merged or returned with limited capacity after COVID, and these providers have not bounced back since. In some cities, as many as two-thirds of children are without access to a nearby park to play recreationally, and the deficits are greatest in predominantly African American and Hispanic neighborhoods. Due to these constraints, schools have become one of the only environments in which most youth can participate in athletics. But even in educational environments, high socio-economic schools have, on average, 11.5% more of their students playing sports than low socio-economic schools. Play space has been severely limited for low-income communities in this country, and uber-competitive markets are the culprit.

For the lucky youth that do have enough privilege to join private leagues, early specialization in sport is no cakewalk. For one, there is a severe risk of muscle overuse when a child dedicates themselves to a sport year-round. In a study published in the American Journal of Sports Medicine, researchers followed 1,200 young athletes over five years and “found a significant risk of serious overuse injuries in young athletes who specialized in a single sport,

regardless of age or how much they trained.”\textsuperscript{119} Moreover, there is a strong risk of burnout and
the sport losing its fun for the child. Not only do private clubs tend to have more rigorous
coaching and higher stakes, they also often involve practicing for hours a day, far longer than
what the average pick-up game might be. The time spent competing at tournaments (which
sometimes involve flying across the country), driving to practice and back, and working out itself
puts some youth in sport-centered spaces even more than they are in school-centered spaces. The
intensity, pressure, and time commitment of today’s private teams can lead to sports feeling a
whole lot more like a job than a fun leisure activity for these children.

All the while, parents are going into debt paying for their childrens’ sports teams and
equipment, hoping it will land them a chunk of the $3 billion in scholarships that DI and DII
schools offer each year. In reality, the NCAA says that only 2% of high school are awarded
athletic scholarships to compete in college, and most of them are the ones with the money to get
high-end training.\textsuperscript{120} Sports media loves to produce rags-to-riches stories of a small-town youth
making it big in sport and achieving economic stability and fame. But in reality, this narrative is
an extremely rare one. This media creates issues by convincing children that if they focus on
sports more than on school, they have a better shot at upward mobility. Unfortunately, so few
people become professional athletes that this is a far more difficult goal, and it is undeniably
smarter for these youth to study hard and go to college without using athletics as a hopeful
crutch.

The transition of youth sports from rec leagues and pick-up games to privatized, intense
associations mirrors Andrews’ \textit{uber-sport} in the professional realm. Youth of all ages no longer
see sports as a mere play activity; they see sports as a means to greater ends. Shortly, I will dig a

\textsuperscript{120} “Parents Going into Debt for Kids’ Activities, Club Sports,” \textit{WRAL}, November 1, 2021.
bit deeper into what this means for the moral and cultural values we place in sport, but first I’d like to briefly consider the mode of youth sport that has been taken the most out of the amateur realm: college sport.

**College Sports: Where’d the “Student” in “Student-Athlete” Go?**

It has been completely normalized in this country to see the institution of college sports, especially at the Division I level, as practically professional. Major college programs such as Penn State, Stanford, and Michigan earn between $40 and $80 million in profits each year from ticket sales, licensing agreements, booster donations, and TV rights.\(^\text{121}\) The athletes themselves are far more “athlete-student” than “student-athlete” in essence, practicing hours each day and at times going days outside of courses due to travel games. With college sports operating as big business, academics takes second fiddle for these athletic young adults, even though higher education is the very purpose of college.

Institutions have shown they will go to extreme measures to prioritize revenue-generating athletics, as college sports have been increasingly plagued by reports of academic fraud. The last twenty years have seen football players padding their grade-point averages and remaining eligible through independent-study-style courses that require little or no work at Auburn, athletes recruited to notable universities with questionable academic backgrounds at Birmingham, and grade-changing and forged signatures within an African and Afro-American Studies department at North Carolina\(^\text{122}\). While some of these instances are cracked down on and lead to administration changes, many instances of shady recruiting and phony courses go unnoticed. As a result, many college athletes hardly get any education at all in college; they are too busy

---


\(^\text{122}\) Ibid.
playing their sport and earning profits for their institutions.\textsuperscript{123} Even in Division III and more education-focused Division I institutions, athletes tend to struggle to keep up with academics more than was projected in their high school scores and GPAs; over 80% of recruited athletes playing high profile sports at the Ivies generally graduate in the bottom third of their class.\textsuperscript{124}

Despite fears of academic abandonment, though, college sport is not slowing down; it continues to cross the line into professionalism. College institutions struggle to keep up with each other in skill level and profit, and an arms race has resulted that fuels a win-at-all-costs mentality. The need to attract the best recruits necessitates heavy investments in infrastructure, salaries, scholarships, and marketing, and only a few dozen schools can avoid getting crowded out in this growing market\textsuperscript{125}. All the while, little of the generated revenue trickles down to the athletes themselves. Naturally, college athletes and supporters have been arguing for years for the college athletes to get some of the cut of the profits. The most recent solution to this has been the legalization of NIL (Name-Image-Likeness) deals that individual athletes can make with companies to make money from their sport.\textsuperscript{126} While there is indeed an argument to be made for these athletes earning back some of the $18 billion they bring in, NIL deals essentially make college students into the free agents they would be in the professional leagues, and, like the professionals, the better an athlete does, the more money they are likely to make. In the last few years, several players have been offered large sums of money to uproot their college lives and transfer schools, and athletes are being paid drastically different amounts based on which

\textsuperscript{125} Ibid.
sponsors they have access to\textsuperscript{127}. NIL deals have thus instigated the final push of college athletics from amateurism into professionalism.

As many of us have grown up watching college sports as we would professional sports, it is difficult to see any issue with this. But it is important to remember that college students are still students, and they are also still young people, many of whom have little chance of advancing to the big leagues and hope to go into a career field entirely separate from sport. College sports at most institutions are said to be for the continued enjoyment of one’s sport during one’s studies. In my experience, I’ve treated Division-III track and field as a welcome break from my academics and as a time to enjoy physical activity and build community with my team. In 1980, president Giamatti of Yale echoed these beliefs in saying, “We must remember that it is our obligation to consider our students as students above all else … so that their time to develop as thinking and feeling human beings is not deformed by the demands of athletic pursuits.”\textsuperscript{128} The massive leap away from this that Division I has taken is rather jarring, and the level of burnout that Division I athletes can experience is just as worrisome as the burnout of children in private travel leagues. College sport thus constitutes an extreme case of capitalism’s infusion into youth sport, leading to a win-at-all-cost attitude that turns the focus away from the play and learning of sport and towards the profits it can bring. Questioning the validity of this phenomenon is not within the scope of this thesis, but it’s worth considering in the question of what school sports are really for.

\textit{The Road from Extrinsic Motivation to Exclusion}

As youth sport has followed in professional sports’ footsteps, it is clear that it has adopted a more reward-focused mentality than it had previously. There is always a trophy or a prize at the

end of a tournament, not to mention scholarship and sponsorship opportunities. NIL deals have even started to be extended down to high schoolers, continuing the trickle-down effect of capitalism’s influence. The emphasis on business and entertainment that youth sport has employed has led to a change in the goal of playing the sport; even as children are continued to be told that the most important thing is to “have fun,” winning and performing well are more stressed than ever.

Via capitalist influence, youth sport has joined many American systems of education and labor in becoming an environment of intense “meritocratic competition,” meaning it rewards and advances its members according to their objective abilities and successes. Meritocracy is lauded for a reason similar to Rawls’ theory of justice in that it is “intensely concerned with the matter of equality of opportunity; all competitors should get the same chance of success, regardless of who they are.” It has been widely utilized as a guiding principle for generating wealth and allocating positions, power, and prestige in this country, but its use in educational and other youth-focused institutions has been subject to criticism. This is because an environment of meritocratic competition runs two significant risks, particularly for those whose minds and preferences have yet to fully develop. The first risk is of crowding out an individual’s intrinsic motivations for an activity, and the second is of fostering alienation between competing peers.

Intrinsic and extrinsic motivations for sport and education have been explored in depth by an evidence-based theory called Self-Determination Theory (SDT), which has been developed by Richard Ryan and Edward Deci since 1985. SDT has worked to understand the respective roles of intrinsic and types of extrinsic motivation in cognitive and social development and in human flourishing, and it posits that all humans have three basic psychological needs: autonomy, 

competency, and relatedness. Within SDT, intrinsic motivations to do an activity are the pleasurable feelings of interest or enjoyment that simultaneously accompany and are inextricably tied to doing that activity, and this type of motivation is best fostered under conditions that support an individual’s basic psychological needs. By contrast, extrinsic motivations such as a desire for money, glory, or praise are separate from the activity, and an overemphasis on these motivations tends to be associated with lower wellness and greater ill-being.

In sports, the glory of winning will always be a present extrinsic motivation for young athletes, but there are also core intrinsic motivations for playing sports when it is played in healthy environments. The growth of a team community and cooperative teamwork feeds a sense of relatedness. The development of one’s bodily skills and awareness feeds a sense of competency. And, most critically, a sense of freedom and autonomy is fostered by the experience of play. At the center of the lost intrinsic motivation in sports, then, is a lost sense of play.

A child’s exploration and play are the basic prototypes that SDT uses for ideal intrinsic motivation. “Play” has been defined by 20th-century philosopher Bernard Suits as “the realization of a human capacity … the end being the pleasure consequent upon the realization of the capacity.” Play is generally thought to be about creativity, about discovering more about what one can do with one’s resources in a free space. In analyzing Suits’ theory in comparison to Aristotle’s views on play, Lopez Frias contrasts the philosophers’ views on whether play is an autotelic activity (one that is done solely for itself, ie. intrinsically motivated) or an instrumental activity (one that is done for further external purposes). Aristotle considered play as a potential

---

133 Ibid.
candidate for “eudaimonia,” his term for the ultimate end of a good life, but dismissed it because he considered play to be more instrumental than autotelic due to its implicit goals of “pleasure” and “leisure.” Suits, however, does view play as being for its own sake, believing that “the good life consists in the exercise of human capacities through play” and that the experiences of pleasure and enjoyment intrinsic are consistent with autotelicity. SDT tends to agree with Suits’ proposition that the sense of autonomy and enjoyment achieved while engaging in playful movement makes that movement intrinsically motivated, or valuable in itself. Even if play is not the primary function of a person, it still can be done in an autotelic manner, especially by children who spend their youth figuring out how to coordinate their bodies and minds in an enjoyable fashion.

When we move from the completely free conception of “play” into sport, Suits acknowledges that some instrumental action is required. After all, sports direct play at certain “goals” (sometimes literally, as in soccer), so a player’s “play” seems to become instrumental in the aim to win. It’s like going from building whatever you want with a set of Legos without instruction, to being given an instruction manual outlining an end product. However, Suits finds that sport can be a special exception to the rule splitting autotelic and instrumental activity because every sport involves the creation of obstacles (or “rules”) to make it more difficult to achieve a task (such as using only feet in soccer). In removing, rather than adding, efficiency from the activity, instrumentality adopts a role that is secondary to the autotelic purpose of playing the game for itself; you can still enjoy playing with the legos and make your own structures in the process even if there is something you are directed to build in the end.

---

137 Ibid.
138 Ibid.
the created boundaries of sport, there are opportunities to explore one’s capabilities in new ways and collaborate with one another in new environments. When a person is able to derive pleasure from this exploration and collaboration rather than merely from achieving the end goal of winning, they are still engaging in intrinsically-motivated play.

In systems of intense meritocratic competition, however, a standard of measurable achievement and the reward system that follows these achievements can shift the preferences of participating youth to fully internalize these extrinsic motivations, “crowding out” intrinsically-motivated play. Dold & Gewecke’s piece “The Ethics of Meritocratic Competition” posits that, “When values of personal flourishing are overshadowed by values of competitive success, the intrinsic motivation of students can erode.” SDT has found this erosion of intrinsic motivation to be very harmful to human development and an individual’s sense of self, with studies by Deci, Ryan, and others showing when a participant’s sense of competence becomes more dependent on how they perform, they fall into “ego-involvement, … internalizing external contingencies such that they now define their own worth in terms of competitive success.” These studies have also found that when performance-contingent rewards are emphasized in competition, those who do not perform well are more likely to lose motivation and drop out, but even those who perform well experience a loss of autonomy linked to doing the activity, as their intrinsic motivation is replaced with extrinsic motivation. When winning is over-emphasized and incentivized in sport, therefore, playfulness is under-emphasized and eventually lost.

---


Not only does a hyper-competitive environment impact how an individual views themselves; it can also impact how they treat their competition. A study by Butera et al. has found that the rivalry stimulated by meritocratic competition causes people to “display a higher predilection towards sabotaging, exploiting, and bullying their rivals,” as well as towards cheating. In sport especially, metaphors of war are commonly used to discuss game-playing; players are told to “put up a good fight” on the field, and teams often paint their opponents as “enemies” that they have to “crush” or “destroy.” These metaphors can have a very polarizing effect on children, making “friendly competition” a far more difficult goal. When MVP awards and individual measurements are emphasized, competition can also be fierce and cutthroat between teammates. SDT studies find that when external factors like these are partially internalized as a demanding or controlling force, higher performance anxiety and antisocial behaviors occur in participants, cutting out a sense of positive relatedness to others.

As philosopher Drew Hyland argues in his 1990 book Philosophy of Sport, the overemphasis on meritocratic competition can lead to a sense of “alienation,” a term he takes from Karl Marx’s Economic and Philosophic Manuscripts, that manifests both between athletes and between an individual athlete and their sport. Between athletes, alienation arises as a loss of identification with and sympathy for other people, making it easier to see one’s opponents as unworthy of the same success or benefits as oneself. Between an athlete and their sport, alienation arises as a loss of ownership over one’s bodily achievements, similar to Marx’s discussion of the laborer’s loss of ownership over their product in a capitalist framework. Hyland

---

143 Santos Genta, Benjamin. “How Changing the Metaphors We Use Can Change the Way We Think” Aeon, February 8th, 2024.
emphasizes his belief that sporting competition is not inherently alienating, as a Marxist critique might suggest; often, competition can be friendly and can lead to strong kinship between players. However, when youth sport continues on its current route and entrenches itself in capitalism and meritocracy, it devolves into alienation, a “defective” mode of sport.\textsuperscript{146}

Once sport is in this defective mode, it loses its core sense of play, and it also loses its empathy. Players become so focused on winning that their awareness of and objection to any possible advantage of their opponents is significantly heightened. Winning has become so glorified and critical for recognition and financial support in America at all levels, professional and amateur, that it has become a given for Rawlsian competitive fairness to be heavily advocated for in sport as the equality of opportunity to \textit{win}. On these grounds, capitalism has pitted itself directly against the inclusion of transgender women athletes, who are seen to present the advantage that win-focused competitors have grown so wary of. When youth sport is seen as a competitive meritocracy and these perceptions of transgender girls endure, a Rawlsian framework would say it is only fair to keep transgender girls out of women’s sport so that less naturally-abled cis girls have a “just” shot at winning and the rewards, such as money and scholarship opportunities, that come with it.

To be fair, John Rawls has made it clear that his two principles of justice do not lead to a fully meritocratic society because they add the difference principle, which advocates for those with natural assets only to gain from their good fortune when doing so improves the situations of the less fortunate.\textsuperscript{147} Rawls would consider today’s \textit{uber-sport} model and its tendency to keep youth who are born into marginalized communities out of athletic opportunities to be a very unjust model. However, like meritocracy, Rawls’ theory fails to put the proper emphasis on a

\begin{flushright}
\end{flushright}
goal of human flourishing outside of measured achievement, which he considers to be the development of “natural goods” such as health and vigor, intelligence and imagination. Instead, he focuses justice as fairness on a goal of competitive “success” as the attainment of primary social goods that improve a person’s position in society such as “rights, liberties, and opportunities, and income and wealth.” This might be applicable to sports as a salaried career, but youth sport should be a different story, and the trickle-down effect of the former into the latter has led people to falsely believe that Rawls’ justice as fairness can be applied to both. In working to get youth sport out of its “defective mode,” one must recognize that the core goal of youth sport should not be to provide youth an opportunity for economic or social success; the goal instead should be to provide all youth their basic right to play.

*The Right to Play in Youth Sport*

Regardless of their differences, both Rawls’ theory of justice and meritocracy are the incorrect frameworks to apply to youth sport because youth sport should be far more focused on young human development and flourishing than on climbing the wealth or social ladder. Unfortunately, this focus has not been properly implemented. Children at young ages all the way up through college are not flourishing as a result of a win-and-reward system; instead, they are losing intrinsic motivation, turning against one another, and spending hundred of hours and thousands of dollars on a sport that may never make them a dime. Youth sport is meant to foster play, and focusing entirely on competitive success is doing the opposite of this. Alabama’s law banning transgender athletes claims a desire to protect students from “psychological” harm through exclusion, but psychological harm in young athletes is already being caused by a

---

privatized institution which is losing all aspects of sport that feed childrens’ senses of autonomy, competence, and relatedness.\textsuperscript{149}

The consequences of \textit{uber-sport} in young America are not only that fewer children have a chance to participate in sports, but that even fewer children have a chance to engage in “play,” as I have defined it, at all. This is a problem for all youth, transgender or cisgender, because it strips them of a capacity for fun and exploration that is thought to be essential to development and a positive quality of life. Even further, the play that can be achieved in a healthy sport environment, as well as participation in sport itself, have been considered by numerous theorists and charters to be a human right, and this right is being denied countless youth.

The privatization of youth sports over the last few decades has led to American culture seeing access to sport as a privilege, rather than a right. However, the IOC’s “Olympic Charter” does recognize the practice of sport as a basic human right.\textsuperscript{150} Article 31 of the OHCHR’s Convention on the Rights of a Child in 1989 also clearly outlines a child’s right to play, stating, “States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.”\textsuperscript{151} Moreover, in academic spaces, sports are an extracurricular that is meant to add to a child’s educational and developmental experience. In many high schools, playing a sport counts for academic credit. Not everyone makes the team, but everyone is at least allowed to try out and work hard to make the cut.

While it is critical to push for more unstructured play that everyone can be a part of in the United States, there also must be an acceptance that the vast majority of play that youth will get

\textsuperscript{149} Alabama State Legislature. Senate. AL S.B. 211. Regular Session 2023. Introduced to Senate April 18 2023.
\textsuperscript{150} International Olympic Committee. \textit{Olympic Charter}. In force as from 15 October 2023.
to engage in nowadays, aside from at brief school recesses, will be on organized teams, and schools are pretty much the most inexpensive way to be on a team. This does not mean that schools have to let every student that tries out onto their teams, but it does mean that they cannot cut off spaces of play to entire communities of people. There are countless benefits that come from this participation that are far more important for young minds and bodies than winning and losing, and thus the opportunity to play should not be stripped of some children just to maintain the opportunity to win for others.

Decades of theory and research posit that physical play is an essential aspect of every person’s development and positive quality of life. Project Play, a program launched by the Aspen Institute in 2013, has been working to get as many youth into sports as possible due to the importance of an active community, especially after the pandemic forced many of us inside for long stretches of time. Project Play’s research shows that physically active children are a tenth as likely to be obese, are 15% more likely to go to college, have lower levels of depression and self-derogation, and 7-8% higher annual earnings when they get into the workplace. In particular for women, girls’ participation in sport and physical activity is positively correlated with lower rates of teen pregnancy and breast cancer incidence, as well as self-esteem and positive body image. The confidence and capability that is developed in a fun-focused, supportive sporting environment fuels a student’s cognitive abilities in every other aspect of their life. As discussed in the previous section, SDT has been an influential theory that seeks activities for youth development that are done for their own sake, and sport can be a primary candidate for this when it adequately fosters autonomy and a positive relatedness to one’s peers.

---

153 Ibid.
It is helpful also to return to Jane English’s “Sex Equality in Sports,” in which she divides the benefits that one can reap from athletics into “basic” benefits and “scarce” benefits. Basic benefits of sport, to English, include “health, the self-respect to be gained by doing one's best, the cooperation to be learned from working with teammates and the incentive gained from having opponents, the "character" of learning to be a good loser and a good winner, the chance to improve one's skills and learn to accept criticism – and just plain fun.”\textsuperscript{155} These benefits can be enjoyed regardless of whether or not a person is skilled at the sport, and thus English finds that every person has an equal right to participate to attain these benefits. Scarce benefits, on the other hand, include the “fame and fortune” that some athletes can attain for being skilled at their sport; according to English, not everyone can attain an equal right from these benefits.\textsuperscript{156} Considering the cumulative evidence and English’s addition, it should be clear that there is no basic right to an equality of opportunity to win, as Rawlsian competitive fairness seems to posit. Instead, there is a basic right to an equality of opportunity to participate, or at least to try out, for school sports and reap their basic benefits.

Because opportunities in sport are more difficult to access in private spaces and pick-up games have become few and far between, public schools have a responsibility to keep the door open for marginalized youth to maintain the right to play. All children have a right to play and explore their bodies and capabilities, a need that sport can and should address when it is a more inclusive and recreational environment. This includes more opportunities for students of color, who have been shown to have a relative lack of access to sport compared to white youth\textsuperscript{157}. It also includes LGBTQ+ students, including transgender youth. The next chapter will center on why transgender youth need this capability to play the most as a historically and presently

\textsuperscript{156} ibid
marginalized group seeking dignity and community. It will also advance inclusion as the proper focus of justice rather than fairness in this debate by utilizing Amartya Sen’s Capability Approach and comparative theory of justice to challenge Rawls’ justice as fairness.

What must be taken first from this chapter, though, is that something needs to change in today’s youth sports culture. We need to find a way back to low-stakes games and friendly competition for youth before we lose them entirely to the influence of *uber-sport* and deprive sports of any sense of enjoyment in the process. We must, above all, let kids be kids. Only when we stop teaching 7-year-olds to dedicate their young athletic lives to a gold medal and a wad of cash, can youth sport be a space that is once again accepting of and beneficial to all communities.
Chapter Three: True Justice as Inclusion for the Few Trans Youth in America

We should now have a much clearer picture of why the bills banning transgender youth, particularly transgender girls, from competing on the sports teams that match their gender identity center their arguments around fairness. There is a deep fear in many Americans’ heads that a transgender girl will naturally dominate cisgender women and, in effect, will ruin their opportunities for financial gain and the glory of winning, which have come to be central to all levels of amateur sports. Of course, this is just part of many peoples’ motivation for supporting these bans, as transphobia – a refusal to acknowledge trans women as real women and trans men as men – is still a strongly backed sentiment in many parts of this country. For those who do not consider themselves to be transphobic, fairness is often the only argument that is given for why these bans are necessary.

A fact that is overwhelmingly overlooked in these bans is that any sense of “domination” by transgender women and girls in sports is nowhere to be seen. Roughly 1% of our nation’s population identifies as transgender, and yet of the 3.24 million girls involved in public school sports in 2022, fewer than 100 were identified transgender girls competing or trying to compete on girls’ teams. This number would be 300 times as high if transgender youth were even properly represented in youth sports, indicating that they are grossly underrepresented in these spaces. This also tells us that the number of people being legislated against is a fraction of the 527 anti-trans bills that have been introduced over the last 10 years, 72 of which are directed specifically at transgender athletes as of June 2023.

---

159 “2024 Anti-Trans Bills,” Trans Legislation Tracker.
Many of these transgender women and girls have flown under the radar of national uproar because very few of them even come close to dominating in their sports. S.C. Cornell outlines in her New Yorker piece “Who Gets to Play in Women’s Leagues?” that “American tennis has been open to trans women since 1977, the Olympics since 2003, and the N.C.A.A. since 2010; that not a single trans girl is known to have been awarded a college athletic scholarship at the expense of a cis girl; [and] that the first American to make an Olympic team consistent with their gender identity after transitioning was actually a trans man, the triathlete Chris Moser.” There is no evidence that trans* people as a group are stealing scholarships, taking over at elite levels, or dominating to any extent. It is only a select few cases, such as Lia Thomas’ NCAA win and the wins of trans runners Terry Miller and Andraya Yearwood in the 100m and 200m dash championships in Connecticut high school track between 2017 and 2019, that have prompted national outcry and a supposed justification for the “Fairness in Women’s Sports” Acts. Multiple congresspeople have admitted that they do not even know of any transgender athletes in their respective states that will be affected by the legislation, saying they are simply passing it to be “proactive.”

The thought process seems to be that as soon as any transgender woman wins, even if fifty transgender women before her did not, she has an unacceptable advantage and is therefore a cheater. It is bad enough that this mindset causes transgender women to only be chastised for their victories rather than celebrated; the bans that result from it go further, forcing trans* individuals out of spaces that can often be very gender-affirming and life-saving, even with the outside hate. The outrage felt by transgender athletes and allies at this is palpable, with common

---

protests by trans* youth being that they “do sports for the love of it” and “just want to play.” Keeping any child out of their right to a space of play where they are able to connect with themselves and others is something that cannot be done lightly; as Chapter Two emphasized, the benefits and values of play have been theorized and celebrated throughout history. For transgender youth in particular, sport can also be a space for comfort, healing, and even much-needed dissociation in a world that continuously refuses to support and respect them.

The Denial and Mistreatment of Trans* Bodies in America

Perhaps an obvious objection to this point could be, ‘But trans* athletes still would have the opportunity to play sports with these bans! They would just have to suck it up and compete with the group that matches the sex on their birth certificate; that’s only fair!’ Taking this position may seem harmless, but it completely invalidates a transgender person’s need to be seen as they see themselves, especially as a growing adolescent. Transgender youth are already statistically going through mental health hardships at a much higher rate than cisgender youth, and adding to their troubles by keeping them out of spaces that validate them will only worsen a very difficult period of transition in their lives. The harms that have been caused to trans* individuals in this country simply for existing, especially in recent years, are far greater than the scope of this thesis can encompass, and I encourage readers to educate themselves about these harms on their own time.

I wish to preface the next two sections with a disclaimer that I am not transgender, and cannot speak with any authority on the trans* experience. I can only and will only cite studies concerning transgender people and share the stories and voices of transgender individuals that I have spoken with, learned about, and listened to over the last few years on trans* identity.

Transgender individuals have faced egregious backlash over the last few decades for simply existing publicly, and before that they were hardly understood to exist at all. In their influential account of trans* theory, “Trapped in the Wrong Theory: Rethinking Trans Oppression and Resistance,” Dr. Talia Mae Bettcher describes how transgender individuals (especially transgender women of color) are subjected daily to extreme scrutiny and violence via an institutionalized process called “reality enforcement.” Reality enforcement construes public gender presentation and private genitalia as “misaligned” in trans* people, and thus views these people as either deceivers (“disguised” as a man or a woman) or pretenders (those who are already recognized as transgender and seen as engaging in a pretense). Within these narratives, trans* people are ideologically criminalized by the American public simply by defying the sex/gender binary, and policymakers have spent the last decade trying to make this criminalization legal. The view of transgender people as “deceivers" also feeds the idea that, if sports were opened up to trans* youth, some men would pretend to “transition” simply to dominate women’s competitions, a theory based on no evidence or understanding of the gravity of transition whatsoever. The perceived “immorality” of behaving and looking like a gender that does not “match” the sex of one’s genetics or genitalia is being codified into laws that deny transgender people access to life-saving healthcare, bathrooms, athletics, and more. In their quests to find radical joy in themselves and their identities, trans* individuals are causing no harm to anything other than a rigid status quo, but they have been met at every turn with hate and denial rather than compassion.

Numerous studies have demonstrated that rejection of someone’s gender identity is a “major driver of mental health problems, identifying higher rates of anxiety, depression, and

---

164 Ibid.
suicidal thoughts among transgender people than among cisgender populations.”165 A 2015 recent large-scale survey of transgender adults in the United States found that 81.7% of respondents had seriously considered suicide in their lifetimes, and the surveyed population had a past-year prevalence of suicide attempts 18 times higher than the general US population.166 This can result not only from outside hatred, but from within, as many trans* people face a constant discomfort within their own bodies.167 The distress or discomfort that arises from the incongruence between the sex and gender a person is assigned at birth and their gender identity is called “gender dysphoria,” and it can cause heightened body image issues and both physical and mental discomfort for trans* individuals, especially those experiencing puberty.168

Sports, however, can act for many trans* youth as a means of escape from this discomfort. We will hear some of the reasons for this in first-person accounts momentarily, but studies have shown that transgender youth who participate in sport have “lower levels of depression and higher levels of self-esteem than non-athletic peers,” which is incredibly important to a group of people generally suffering from very low self-esteem due to intrinsic and extrinsic influences.169 As my friend Ezra, a Pomona College junior and trans man, shared with me, “Historically, my body hasn’t really felt like mine … I have always felt very ‘brain in a jar’.

And I think that doing really physical things gets me out of that and allows me to feel like I’m actually inhabiting my body.”

Unfortunately, many trans* youth have been abandoning sports far earlier than their cisgender peers due to feeling stigmatized within the space; an estimate 12% of transgender girls actively participate in sports today versus 31% of cisgender girls. For the few that remain, the road of opportunity to participate is narrowing as more states ban transgender bodies from sporting spaces. Ezra shared his view on why prohibiting trans* youth from athletic spaces in line with their gender identities can take such a toll:

“I generally don’t think it’s possible for trans* people to feel psychologically safe and at ease in a space that disregards their identity and experience or tells them they can’t show up as themselves. Or even tells them ‘you CAN show up as yourselves, but not with people who are like you. You don’t get to have community with the people you see yourself in.’ … I think [feeling represented and safe in a space is] a precondition for reaping the benefits of those spaces.”

What is most astounding is that most people heading and supporting the bans on transgender athletes in this country have never met a trans* person, much less a transgender child athlete. There hasn’t seemed to be any real urgency to run these bills by the people they most deeply affect, nor to hear their stories. I will highlight a few stories of transgender athletes whose lives have been deeply altered by these bans in this section, the first three of which were featured on a documentary of young transgender athletes called “Changing the Game” in 2019, as there is great need to humanize this issue better and understand that there are real people losing out on critical opportunities as a result of fairness-focused policy.

---

170 Player, Nicole, Interview with Ezra Adasiak. March 28, 2024. 34:46.
171 Player, Nicole, Interview with Ezra Adasiak. March 28, 2024. 34:46.
One athlete whose success sparked a public outcry from 2017 to 2020 was Andraya Yearwood, a black and transgender girl from Connecticut. Yearwood participated on the girls’ track team at her high school, where there was and still is no ban on transgender participation. She and a transgender girl from another school, Terry Miller, placed first and second in the 100-meter dash in the 2017 Connecticut Interscholastic Athletic Conference (CIAC), and soon after a group of parents sued the Connecticut school board pushing for a transgender ban, believing Yearwood and Miller’s participation was unfair and thus should be illegal. CIAC has defended Yearwood and Miller’s right to participate: district executive director Dr. Karissa Neihoff is quoted saying, “We would not support an athletic policy that would say in schools, kids are a gender from 8-2:30, but then when the athletic co-curricular program kicks in, well now that’s a different gender situation, because that would not honor the student as who they are as a person.” For the rest of her high school track career, though, Yearwood continued to face public discrimination, with protestors showing up at her races often to boo her.

Yearwood was just a student who wanted to live as normal a life as she could, enjoyed running, and was supported by her coaches and teammates to do it in a validating and supportive space, which she would not have experienced if she ran with the boys. She said in a VICE documentary “Running While Black” that she runs, “to put [her] mind at ease,” and that when people would boo and pass around petitions to ban her at her competitions, “Running really helped me to put that all on the back burner … really focus on a sport that I love.” But when Yearwood false-started in a critical race the year after the lawsuit began, she could hear only

---

174 Ibid.
cheers in the stands, celebrating that she was no longer racing. Yearwood stayed in her sport because she loved it and felt support and empathy from her mom, her coaches and her teammates, but she felt an utter lack of it from anyone else. Activists supporting Yearwood posit that antitransgender athletics efforts are also motivated by anti-Blackness in that they reflect long-standing gendered racist discrimination toward Black women for being deemed “too masculine.” As a Black and trans woman, she also lives life with a lot of fear, as Black and trans* teens are five times more likely to be murdered in their youth than their cisgender peers. The lawsuit was dismissed in favor of Yearwood and Miller in 2022, but Yearwood continues to work as an activist for justice for trans* youth and youth of color so that her experiences are not felt by other trans* athletes when they succeed.176

Yearwood is one of few examples of trans* youth who have been strong enough in their athletics to warrant national attention, but there are many who struggle just as much from the bans that are not winning consistently, such as runner and skier Sarah Rose Huckman from New Hampshire. Huckman came out as transgender in 7th grade, at a time when the New Hampshire Interscholastic Athletic Association (NHIAA) ruled that an athlete had to undergo surgery before they could participate on a high school team, but state law said you couldn’t undergo said surgery until you were 17.177 Huckman was astounded by these bans, saying, “It’s so demeaning toward my group of people. We’re all human beings. We do sports for the love of it.”178 Huckman and her parents worked with GLAD (GLBTQ Legal Advocates and Defenders) and NHIAA to allow school districts to decide if a trans* person can compete on the team that's consistent with their gender identity, allowing her to compete. When she was still a teenager,

Huckman took the lead on advocating for H.B. 1319, an bill against gender identity discrimination for New Hampshire, and her advocacy helped get the bill signed into law.\footnote{Barnett, Michael. \textit{Changing the Game}. A Hulu documentary, 2019.}

Huckman performed well in her sports but never dominated, taking sixth place and 10th place for her sprints and hurdles events in the Division II indoor state championships her senior year.\footnote{Crary, David & Lindsay Whitehurst. “Lawmakers Can’t Cite Local Examples of Trans Girls in Sports,” \textit{AP News}, March 3, 2021}

Huckman’s parents grew up very conservative, but having Sarah as a daughter completely changed their perspective on the need to support trans* children like you would any other child. Tom Huckman, her father, is quoted in \textit{Changing the Game} saying, “People just need to be who they are, and that doesn’t really have anything to do with your politics.”\footnote{Barnett, Michael. \textit{Changing the Game}. A Hulu documentary, 2019.}

While these bans focus primarily on transgender women, they often also ban transgender boys from competing in men’s division, which has been shown to have equally problematic effects. Mack Beggs is a transgender man who grew up wrestling in Texas, a state that only allows youth to compete with the sex that matches their birth certificate. Beggs was forced to compete against girls throughout his high school career, even after he started taking testosterone to transition. He won the Class 6A girls’ state championship in 2017 by a wide margin, sparking outrage among the crowds\footnote{Babb, Kent. “Transgender wrestler Mack Beggs identifies as a male. He just won the Texas state girls' title.” \textit{The Washington Post}. February 26, 2017.}. Fox News responded to this story saying, “If somebody wants to transition into a boy, maybe that means you have to give up the wrestling, that you can’t have everything, that you should take up the violin instead, not wreck a state-wide sport for all the other participants.”\footnote{Barnett, Michael. \textit{Changing the Game}. A Hulu documentary, 2019.} Viewing Mack as someone who is “wrecking” sport just by wanting to compete as himself reminds us just how fragile sport is when we scrutinize the sex segregation

\begin{footnotes}
\item[180] Crary, David & Lindsay Whitehurst. “Lawmakers Can’t Cite Local Examples of Trans Girls in Sports,” \textit{AP News}, March 3, 2021
\end{footnotes}
within it. The problem was never with Mack, it was the law that was keeping him from doing what he and everyone else wanted him to do anyway: compete with the boys.

Mack finally was able to compete in the TX-USA Boys State Tournament after his high school season ended, after submitting a letter about why he identified as trans to the state and plenty of lobbying. He placed third in the tournament against his peers, saying, “That’s a third place I’m proud of.” He was then recruited to wrestle with the men at Life University, and emphasizes that while he loves to compete for a championship, he is happiest that he can be himself and play his sport. He told his university’s paper, “Living Life,” that “I didn’t do this just because I wanted a gold medal … I want to do this for competition; I want to do this for love of the sport.” Banning transgender men from competing with the boys seems to have no goal other than to keep trans* people out of affirming spaces, as “fairness” is more of an issue when they remain in competition with the girls rather than switching.

Another transgender athlete who has dedicated his work to advocating for transgender rights is Schuyler Bailar, who was the first transgender man to compete on a men’s division I team when he swam for Harvard from 2016 to 2019. Bailar was incredibly competitive in women’s leagues before his transition, such as becoming a two-time All-American in the 100-yard breaststroke and setting a USA Swimming National Age Group record in the 400-yard Medley Relay at the 2013 USA Swimming AT&T National Championships with teammates Katie Ledecky, Janet Hu, and Kylie Jordan. But after being recruited to the Harvard women’s team, Bailar knew he couldn’t keep competing or even living unless he transitioned and lived as his full self. The coaches and athletes at Harvard were supportive in welcoming him to the men’s team, and Bailar worked hard to compete at a D1 men’s level. His senior season, he was the

184 Ibid.
185 Living life. “Interview with Mack Beggs”.
3rd-fastest men’s breaststroke swimmer, and his final time ranked him in the top 15% of all NCAA men's swims for the season.¹⁸⁶

Since graduating from Harvard, Bailar has become a leading activist, author, and educator for LGBT rights. He has been open about his own experiences with gender dysphoria, his eating disorder, and his feeling of growing “away from [himself]” when he developed curves during puberty. While he was going through this time, he has said, “the only thing that kept me alive and kept me here was swimming … because I was able to dissociate.”¹⁸⁷ Bailar has a podcast called “Dear Schuyler” in which he answers questions about sport, gender, and allyship and calls in guests of all different backgrounds to touch on these subjects with him. One individual that he spoke with in an early episode was the transgender woman swimmer that has become a household name, Lia Thomas.

Lia Thomas was recruited to the men’s swim team at University of Pennsylvania in 2017, and in the 2018-2019 season she recorded the top UPenn men’s team times in the 500 free, 1000 free, and 1650 free. She then began to undergo her medical transition, undergoing hormone therapy starting in 2019. By 2021, when she started competing with the women, she had more than met the NCAA 1 year of hormone therapy requirement to swim.¹⁸⁸ Her 500 freestyle time was over 15 seconds slower in the 2021-22 season than it had been before her transition, and in a race in January 2022 against Yale she finished in 6th place in the 100m freestyle race, losing to four cisgender women and Iszac Henig, a transgender man, who transitioned without hormone therapy.¹⁸⁹ In March 2022, Thomas became the first openly transgender athlete to win an NCAA Division I national championship in any sport after winning the women's 500-yard freestyle with

¹⁸⁶ “Schuyler Bailar”. Wikipedia.
¹⁸⁷ Bailar, Schuyler, interview with Joanna Harper, “But really: should trans women be included in women’s sports?” Dear Schuyler; podcast audio, May 1, 2023, 1:06:05.
¹⁸⁹ “Lia Thomas”. Wikipedia.
a time of 4:33.24. She did not break any college records, coming 9.18 seconds short of Katie Ledecky’s college record several years prior. At the same finals, she placed fifth in the two-hundred freestyle, and last in the hundred freestyle finals. However, many news stories reported only on her victory, and her success still sparked national outrage.

Thomas has been mentioned over 600 times in Fox News articles since her 2022 win. People have come from all over the world to watch her races simply to protest her participation. Among a barrage of insults and denials of her womanhood, she has been accused of “stealing” the championship and “forcing” her way into women’s sports. She has become the primary example for those supporting the bans on transgender athletes that all transgender women have a clear advantage if they compete against cisgender women and thus they must be banned. In reality, Thomas was a very strong swimmer among men when she transitioned. In world rankings, she didn’t actually change that much; she went from being in the 88th percentile for men to the 91st percentile for women in 3 years, which must also take into account all the training she did between age 19 and 22. Like the rest of the transgender athletes that have been discussed, Lia just wanted to keep doing and enjoying her sport, and knew that she could not fully be herself without transitioning. She followed all the requirements to compete, and only won one of several of her races at the championship meet, but became the target of controversy rather than celebration. In March 2024, sixteen college athletes filed a lawsuit against the NCAA for allowing Lia to compete, and simultaneously Thomas has been fighting to overturn World Aquatics’ effective ban on most trans women competing in the highest levels of the sport.

Andraya, Sarah Rose, Mack, Schuyler, and Lia are just a few known individuals that have

190 Ibid.
192 Bailar, Schuyler, interview with Joanna Harper, “But really: should trans women be included in women’s sports?” *Dear Schuyler*, podcast audio, May 1, 2023, 1:06:05.
had to get involved in a political and public sphere to fight for their right to play. Their stories help us understand that a trans* person cannot truly engage in the “play” – the freedom, fun, and exploration – that youth sport is all about unless they do it in a safe, identity affirming environment. Most of them never wanted to go into politics to fight for this; they just wanted to play their sport. But they have faced constant backlash in that quest, all in the name of “fairness” and, often, its masking of hate. And yet, there is no hate in the hearts of these youth; there is only bravery to be unapologetically themselves. Rather than applaud this bravery and celebrate the diversity and dedication these youth can bring to sporting communities, the bans in this country have sought to silence them.

**A Return to Rawls**

Having outlined why young transgender girls are being banned from girls’ sports, as well as how these youth are impacted by the bans, we now return to Rawls to answer the central question of this thesis: should Rawls’ “justice as fairness” be the theory that is employed to decide whether transgender athletes can be included? The answer, we must find, is a resounding no. Rawls’ theory of justice has different goals from youth sport, and at a more fundamental level, it fails to understand and redress the systems that deny people opportunities for reasons that are based not in differences of natural ability, but in histories of oppression.

Rawls claims to formulate his principles of justice by imagining an “original position” for a society behind a “veil of ignorance,” meaning that he envisions an ideal, hypothetical “just” society in which everyone is similarly situated and treated the same regardless of identity differences. Within this just society, Rawls assumes a “strict compliance theory,” in which everyone is presumed to act justly and to do their part in upholding just institutions. Rawls finds it inevitable that people are born with different natural talents and abilities. Thus, he recognizes
that some will have easier access to the “primary social goods,” which he categorizes generally as rights, liberties, opportunities, and income and wealth, than others. To account for these natural disparities, Rawls uses his difference principle to require that “those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out” so that everyone has a “fair equality of opportunity” to attain the primary social goods.194

It has been argued by one Rawlsian theorist, Sigmund Loland, that this kind of fair equality of opportunity is necessary “to enable measuring, comparing and ranking of competitors according to athletic performances as defined in the rules of each sport.”195 Because of the average of a 10-12% difference in speed between the best male and female competitors, as well as significant strength differences, Loland concludes that men and women have significantly different “natural assets” and so, in line with Rawlsian thinking, should be given a different set of “prospects of success.” When adding in Rawls’ difference principle, which says that such inequalities “are to be to the greatest benefit of the least-advantaged members of society,” Loland and the bans on trans* athletes clearly identify women, particularly cisgender women, as the “least-advantaged members of society” that need further protection under Title IX. Loland adds himself to a growing group of people saying that if testosterone level is determined to be an adequate measure of athletic capability, he is conditionally open to a transgender woman competing after lowering her testosterone levels. Otherwise, he could not condone it on the grounds of fairness for athletic success and doesn’t believe that Rawls would either.196

196 Ibid.
Youth sport, however, does not have the main goal of success through social goods attainment, as much as modern perceptions of it want us to believe. Instead, it has key goals of basic human development and flourishing through play, which, unlike primary social goods, can be attained regardless of a person’s “natural abilities.” Play, which we have shown to be a basic right for all youth, can be accessible to everyone as long as they are given a space for freedom, collaboration, and exploration – a space to participate.

The type of opportunity that focuses on a child’s choice to participate, rather than on their ability to win, is employed by philosopher-economist Amartya Sen in his influential Capability Approach (or CA for short), which he outlines in a series of essays critiquing prominent economic models and evaluative accounts such as Rawls’ Theory of Justice. The CA focuses on raising the quality of life that individuals are actually able to achieve by shifting attention to the actual opportunities and freedoms a person has, as opposed to Rawls’ suggestion of using a person’s collection of “primary goods” such as wealth as a measure of well-being. The CA stresses the effective access to doings and beings a person has reason to value; the more of those doings and beings a person has access to, i.e., the more things they are able to do and be (the more they are “capable of”), the freer they are to define their own path. The CA regards this freedom as intrinsically valuable but also as an important source of subjective well-being. This approach is highly praised in its ability to promote equity while acknowledging human diversity and agency; it does not advocate for the same resources for everyone, but rather the same opportunities for everyone to obtain doings and beings they have reason to value. In sport, having the exact same opportunities to win is not possible, as there is just one winner. But it is very possible for everyone to have the same opportunities to participate.

---

To Sen, Rawls’ approach fails to acknowledge the diversity of this nation and its varying needs, and in doing so it fails to consider properly what he sees as critical aims of justice: collective and individual well-being. Sen writes in his piece *Inequality Revisited*, “the relationship between primary goods (including incomes), on the one hand, and well-being, on the other, may vary because of personal diversities in the possibility of converting primary goods (including incomes) into achievements of well-being.” He believes that focusing on people’s *freedoms* and ability to *choose* what they do with their lives will be far more helpful in achieving true justice for all.199 In youth sports, a child’s play is precisely about this ability to choose and explore, rather than about social or economic achievement. Sen’s capabilities framework, which advocates for an opportunity to participate, is thus more adept to encompass youth sports than Rawls’ framework is.

Feminist philosopher Martha Nussbaum is one of many academics that has expanded on Sen’s CA, and arguably the most influential. She goes further by specifying ten “central capabilities” that are required in order for a human life to be “not so impoverished that it is not worthy of the dignity of a human being,” naming these capabilities abstractly as moral entitlements for all humans and arguing that they should be applied at a local level.200 While Sen has critiqued this approach of narrowing down capabilities, saying it may limit personal agency and decision-making about what is valuable, it is still worthwhile to consider Nussbaum’s arguments about which capabilities are worth fighting for in policy.

Three of Nussbaum’s central capabilities are “play,” “bodily health,” and “affiliation.” Nussbaum defines the capability of play as being able to “enjoy recreational activities,” and

---

affiliation as being able to “live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction.” She goes further with affiliation to say, “Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation.” All three of these capabilities are listed in Jane English’s compilation of the basic benefits of sport participation that are generally unaffected by unequal abilities, giving further support for an institution of sport that is more open and accessible to all youth. Youth sport should be about expanding a person’s capabilities, not restricting them.

Due to Rawls’ focus on social and economic success, his theory of justice is not what we should be applying to youth sport. But there is a deeper critique of Rawls, endorsed by both Sen and Philosopher Charles Mills, that goes further to say his theory is incapable in tackling the transgender athlete topic in any respect. According to Sen’s piece “What Do We Want from a Theory of Justice,” Rawls impractically seeks a “transcendental” approach to justice, assuming a perfect society and inferring what justice would look like within it. Sen argues instead for the use of “comparative” theories of justice that ask which option is “more just,” rather than starting with a cure-all theory that is inapplicable in the current world. He writes, “even after vested interests and personal priorities have been somehow ‘taken out’ of consideration through such devices as the ‘veil of ignorance,’ there may remain possibly conflicting views on social priorities.” A transcendental theory expects everyone to “rationally” make the same decisions that will lead to a just society, which we can already see is not happening with the debate on transgender athletes. Sen’s comparative approach allows instead for discourse and disagreement on what is the most just action to take when neither action is ideal, as in the case at hand where

201 Ibid.
202 Ibid.
204 Ibid.
someone will be harmed regardless. In thinking about justice comparatively, we can think about which option, justice or inclusion, will minimize the harm suffered by all social groups involved, rather than choose one group to prioritize entirely like Rawls’ theory might push for.

Charles Mills, in his 2005 piece “‘Ideal Theory’ as Ideology,” critiques Rawls’ justice as fairness even more fundamentally for being an “ideal” theory, meaning a theory that completely idealizes and abstracts human beings and systems. Recall how Rawls’ theory demands one take a hypothetical position in an ideally just society; the elaboration of this ideally just society, on Rawls’ view, is necessary for providing the norms that inform worldly, nonideal practices. As Mills describes, however, “morally, idealization involves the modeling of what people should be like (character), how they should treat each other (right and good actions), and how society should be structured in its basic institutions (justice).” Crucially, he adds, “what distinguishes ideal theory is the reliance on idealization to the exclusion, or at least marginalization, of the actual.” Mills suggests that the political project of justice is only possible when one begins with the nonideal, i.e., with the real, historical conditions of the unjust world. Beginning with the nonideal conjures details of unjust social oppression that may only appear to nonideal subjects – perspectives that are unavailable to ideal, abstracted subjects. It is for this reason that the very method of constructing an ideal society in thought is expressive of an actual, nonideal, social position, one that is not particularly aware of racialized or gendered oppression. Rawls’ theory of justice, with its veil of ignorance and its ideal of strict compliance theory, is openly an example of an ideal, transcendental theory. His mode of abstraction from the real world not only ignores diversity of reason in the way Sen discusses, but it also ignores the way in which the history of America – including the very logic of political theory – is built on inequalities it fails to substantively address.

---

Rawls’ theory presumes a single ideal and self-evidently “rational” way of human thinking, and in doing so assumes what nearly every white male philosopher before him assumed: that we all think like a white man when we are rational. His writings show inherent sexism as well, always using the phrase “men” to refer to the members of a society. 206 To Mills, then, Rawls’ theory of justice is really “a distortional complex of ideas, values, norms, and beliefs that reflects the nonrepresentative interests and experiences of a small minority of the national population – middle-to-upper-class white males – who are hugely over-represented in the professional philosophical population.” 207 Mills also points out Rawls’ comment in his introduction that strict compliance theory can be contrasted to “partial compliance theory,” which is more applicable to real-world matters by highlighting situations where one group is not respecting the other’s basic liberties. At this mention, Rawls claims that he must begin with ideal, strict theory to get a “systematic grasp of these more pressing problems.” 208 But, as Mills notes, Rawls never seemed to advance past this ideal theory into discussing real-world inequalities in the thirty-plus years up to his death, nor did most of his followers. As a white man who was not experiencing these inequalities, this advancement did not need to concern him. His theory of justice thus remains a lofty goal of equality of opportunity, with little acknowledgment of the differing needs and freedoms of real people in modern America. A Theory of Justice cannot be purely ideal in these circumstances.

Looking at the non-ideal, actual conditions transgender people face, one can see that the needs of Americans differ very much indeed, for entire groups of people have been denied basic rights and liberties for centuries. Today, trans* individuals are in a constant battle for proper

healthcare, the ability to use public restrooms, and a basic level of respect and humanity from their fellow humans, all because they have rejected the gender roles that dominant social institutions have forced upon them. Cisgender women still face many modes of discrimination today, but it is undoubtedly transgender individuals who are the most vulnerable in our current systems, or rather “the least-advantaged members of society.” Rawls’ second principle of justice may ask for a transgender woman to compete with the men and not interfere with cisgender women’s success, but it will fail to acknowledge the level of harm it will cause to the transgender woman in the process. This is because Rawls views inequalities as centered around present “natural abilities," and does not properly consider the systemic inequality that persists in this country after centuries of white, heterosexual, cisgender men deciding what is “ideal."

Critically, the interpretation of justice as fairness in these bans fails to understand what it means to be transgender. Rawls has stated that “the principles of justice shall serve the elimination of involuntary disadvantages," which the public has determined to be the disadvantages of cisgender women.\(^{209}\) By contrast, being trans* is seen as a voluntary disadvantage, with athletes like Lia Thomas being perceived as choosing to transition and subject themselves to marginalization. But transitioning is not a choice for this community; as we have seen from accounts by Schuyler Bailar and others, it is a medical, life-saving necessity. Therefore, transgender youth do have a significant involuntary disadvantage in society, including in sport, due to structures that oppress and deny them. When a Rawls-endorsed focus on “natural ability” becomes the measurement for this disadvantage, cisgender girls are still prioritized, even though their right to win should not come above any child’s right to play.

At one point, Rawls’ derives his idea of justice from Aristotle’s writings on the concept, which say that practicing justice means “refraining from pleonexia, that is, from gaining some advantage for oneself by seizing what belongs to another, his property, his reward, his office, and the like, or by denying a person that which is due to him, the fulfillment of a promise, the repayment of a debt, the showing of proper respect, and so on.” If we were to ban transgender athletes using this definition of justice as fairness, what grounds would we have? How have transgender youth wanting to participate with those matching their gender identity truly seized what belongs to another girl or denied what a cisgender girl is due? Is a championship title or a scholarship ever really something that belongs to or is owed to a person before they’ve received it? Not only does saying that a trans woman is stealing a scholarship deny her womanhood, it also entitles a cisgender girl to say that winning is her right.

Winning is not a basic right; it is something you have to work for, regardless of your competition. Participating is what should be the basic right for all youth, which is outlined far better in Sen’s CA than in Rawls’ theory. Sen reminds us that “capability means the opportunity to select”; to him, justice involves providing people with the opportunity to choose their own paths. Winning has nothing to do with this, but getting the opportunity to compete against who you feel safe and happy competing against does. To clarify, if a cisgender man wanted to compete against women just so he could win, this would be impermissible, as his social status in society creates no justification for creating this opportunity at some expense of a cisgender woman. But a transgender woman who wants to participate with women is greatly improving her capability to play and develop herself in a safe, identity-affirming environment, which we can see from our examples is far more critical to her well-being than the well-being that is taken

210 Ibid.
away from a cisgender woman placing 2nd in a race. This is not valuing transgender rights over cisgender rights, either; it is valuing the right to play over the right to win.

As we must remember from Chapter Two, losing in youth sports should not be as deep as we’ve made it to be. The pathway to inclusion comes with an acknowledgment that the basic benefits of sport must be guaranteed to all, including and especially trans* youth, before the scarce benefits of sport are even taken into consideration. And even with scarce benefits, Jane English posits that the approach to who gets these should be a proportional representation of the population of relevant groups. This is an argument for women to receive equivalent accolades for their sporting prowess, but it is also an argument for transgender women to do the same (if we are talking proportionally, to win roughly 1% of the medals in girls’ sports). As mentioned previously, we are not nearly at this point with trans* representation, and thus fears of transgender “domination” in women’s sport continue to be completely baseless.

As for Rawls’ theory of justice, it is a larger philosophical question whether its ideal nature makes it unusable in other areas of modern America. Mills advocates for theories of justice that do a better job of recognizing the non-ideal, utilizing abstracted non-idealized terms such as “patriarchy” and “intersectionality” in their formation, because “by assuming the ideal or the near-ideal, one is only guaranteeing the perpetuation of the nonideal.”\(^{211}\) For this thesis, though, all that can be said is that Rawls’ justice as fairness is not the correct theory to use when making a ruling on allowing transgender athletes to compete in youth sports. Transphobia is another non-ideal aspect of this country’s culture that will take time to disengage from, but for now, banning any individual from an activity they derive significant wellness from in the name of an entirely idealized theory of justice is a very obvious step in the wrong direction. Instead, when we see trans* people as people, see their marginalization in society as far deeper than a

woman's physical marginalization in sport, and consider how working towards integration can actually better foster equality for women, a “comparative” model of justice would argue that inclusion is the better move.
Concluding Remarks and A Call for New Perspectives

This thesis has aimed to understand the elements and perceptions of modern American sport that have contributed to its prioritization of Rawlsian justice as fairness over inclusion in youth spaces. Subsequently, it has criticized and rejected this prioritization in the 72 bills introduced to ban transgender athletes from participating with those of their corresponding gender identity. While policymakers have utilized a “justice as fairness” model to say that athletic segregation by biological sex is the only “fair” option to protect women, they have failed to understand the underlying systems of sexism and meritocratic competition that have the real negative impact on youth sport, and that banning children will get us nowhere in fixing these.

To be sure, Rawls’ theory of justice is still an incredibly powerful theory of what justice can look like. Its difference principle, which ensures that no one is made better off if doing so does not also benefit those that are worse-off, promotes a democratic society that balances liberty and equality, and I find it to be an ideal principle to live by. But Rawls’ theory is just that: an ideal. It does not adequately theorize the systems of oppression that marginalize transgender youth, and nor does the legislation banning them, as both are the brainchilds of mainly white, cisgender men. Moreover, it focuses on the goals of being a productive citizen in society by attaining the primary social goods to do so; this is a task that is meant for adults in spaces of work, not for children in spaces of play. In sport in general, the Rawlsian difference principle doesn’t work well because there are typically no limits placed on how much an athlete can achieve, and no obligation to give up one’s advantage to support the successes of others. Yet now, through a legislated “justice as fairness” model, these limits and obligations are being placed solely on transgender youth. As this thesis has established, justice as fairness is not meant to be applied to youth sport, nor to the policing of transgender bodies.
In recognizing the legislation’s failures and the institutions that have led to them, we must move now from theory into praxis and ask ourselves: how can policies and mindsets around American youth sport be altered in order to better prioritize inclusion? In the context of the bans, there have been many proposed solutions that aim to reconcile fairness and inclusion. The next section will outline the pros and cons of some of these options.

**Proposed Attempts to Reconcile Fairness and Inclusion**

The most commonly suggested solution to the transgender athlete debate is the Open Category Solution. This suggests that all sports, professional and amateur, add an “open category” on top of the men’s and women’s categories that anyone can compete in regardless of gender identity. Currently, numerous nations around the world already allow a “third legal gender,” and so a more narrow “third legal gender” category has been introduced as well, but the open category is more commonly endorsed to support the inclusion of non-binary, transgender, and genderqueer groups of individuals in sports competition. This is currently being implemented already in spaces such as Ultra-running; 2023 was the first year that the Boston Marathon had a non-binary category, with qualifying times the same as those for women. There are definite benefits for this category as a way to include people who identify outside of the gender binary.

However, there are several issues with considering an open category as a cure-all for the fairness/inclusion debate. The first is that an open category continues to keep transgender youth, many of whom do identify within the gender binary, separated from the communities they are striving to be a part of. The organization “Athlete Ally” responded to the World Aquatics “open category,” created in 2023, with resistance, finding that the creation of such a category “ignores a
basic fact of [a transgender person’s] struggle to gain social recognition … Being recognized by the gender with which they identify is a fundamental aspect of their gender affirmation process.” Continuing to “other” transgender people in the realm of sport through an open category therefore fails to actually help them reap the benefits that inclusion can offer.

In addition, an open category does not solve the problem of continued oppression of women that is perpetuated by segregation; in fact, it further reinforces a need for strict separation of the sexes. The realization that bodies come on a spectrum should encourage us to be unafraid to integrate, but an open category sends the message that bodies falling in the middle of that spectrum simply need to be isolated too. Even worse, these open categories could open the door for athletic organizations to push women who are deemed biologically “too athletic,” such as those who have high amounts of testosterone, out of women’s sports into the open league, fostering even further exclusion from women’s spaces. Rather than challenging the sex/gender binary in sports, an open category re-normalizes it.

A final critique for the Open Category Solution is that, in most circumstances, it would be desperately under-funded, under-watched, and under-played. Women’s sports get little enough recognition and funding as it is; an open category would receive an even shorter end of the stick. Elite athletes would have meager salaries, and youth would have poor coaching and practice resources. It is simply unfeasible to create an entirely new league in every sport and expect it to quickly be successful on the market. And, even more critically, very few people would participate in these leagues. The genderqueer, non-binary and trans* populations are growing, but they still make up a tiny fraction of this country, and so if they can only compete against one another or against the few cisgender people that might join in solidarity, they could hardly field a

team. Thus, the Open Category Solution is unworkable in practice and unable to cause adequate change in the situations of trans* youth or cisgender women.

Another proposal to reconcile justice and inclusion is to reconfigure sports leagues entirely to sort people “by ability.” A “by ability” approach, which Jane English has endorsed, would “replace binary sex-based categories with sex-blind ones that bring together competitors with similar endowments and talents, ensuring they enjoy similar opportunities for success.”

The “endowments and talents” in question could be properties that could include both biological factors, such as hemoglobin levels or height, and socioeconomic elements, such as access to equipment and facilities. This proposal is as Rawlsian as you can get, thoroughly embodying his goal of “fair equality of opportunity.” However, like Rawls, it is an ideal solution that, for most sports, is difficult in practice. Like it or not, sex is used as a basic category because it is the best way policymakers can think to separate people to some degree by ability without having to get into the weeds of what properties matter most in each sport. In basketball it might be height, but what about in baseball? Could there be some measurement of depth perception and arm strength to decide leagues? Would running in track simply be separated by natural speed? What happens when people train at different capacities and one gets a lot faster? There is simply too much up in the air for a “by ability” approach, especially when a primary goal of playing a sport is improving one’s ability in that sport. What the approach generally argues for, though, is for skilled women to be able to compete with the men if their ability qualifies them to, which is a much more attainable goal.

Jane English also promotes a final idea that can support both fairness and inclusion, which is the introduction and popularization of new sports that diminish the importance of

---

physical abilities possessed on average by one sex more than the other. Quidditch was discussed as one possible sport in Chapter One, and shooting sports and ultra-running also are known to have this quality. A sport that has especially skyrocketed in the last few years, though, is pickleball. Pickleball is played on a smaller court than tennis with paddles and a perforated, hollow plastic ball, and though it was originally thought to be a sport for older communities to engage in without overexerting themselves, it has gained unprecedented popularity in communities of all ages. Strength, speed, and stamina are slight assets, but they are not determinitive of a person’s skill. And here’s the kicker: pickleball is one of few sports that does rank players by ability. Pickleball players have ratings that vary from 1.0 to 6.0+, which determines who they compete against in tournaments.\(^{216}\) While pickleball tournaments are generally still sex-segregated (or played with mixed doubles), this seems to be more of a choice of habit than a separation that is actually necessary when ratings are employed. Of course, sports like pickleball are not attracting the same attention that mass spectator sports are, but emphasizing their value in providing a space for men and women to compete together and equally is a step in the right direction.

There can also be a greater emphasis put on sports that allow more self-expression and spaces for different kinds of talents within them. As Ezra and I discussed, “in a lot of sports, what being a team means is uniformity, eradicating difference and being like ‘we are this cohesive unit.’”\(^{217}\) While many sports involve having different “positions” on the team, similar overall skills tend to be applauded, and organized sports teams are often provided the same gear and uniforms for everyone. Environments like this can make someone whose body is deemed “different” stick out like a sore thumb, making a lot of sports more difficult for a trans* person to


\(^{217}\) Player, Nicole, Interview with Ezra Adasiak. March 28, 2024. 34:46.
assimilate into. But Ezra’s experience on his roller derby team was very different – everyone could show up in their own uniforms and styles, and there were equal benefits of being bigger and stronger and being smaller and speedier. There was a lot of creative self-decoration and space to be different. Ezra added, “Sports that create the space for people to show up as themselves are really positive for trans* people, in my experience.”

Unfortunately, there is not much that can be done about the billions in revenue that big-time male-privileging sports continue to bring in, keeping them rooted in mainstream culture. The ideas proposed above, even the ones with significant merit, are long-term solutions, while bans on transgender athletes are happening NOW. Therefore, we must think of more immediate policy decisions and incentives that will better support the inclusion of trans* youth.

**The Impact of Policy and Judicial Action**

The most critical, though not necessarily the most feasible, action that this thesis demands be taken is a repeal of all legislation that bans transgender athletes, specifically the bans that require a person to compete with those who share the sex on their birth certificate. To do this, there are several routes the American government could take.

On a judicial level, the Supreme Court could rule that the bans are unconstitutional under Title IX and the Equal Protection Clause of the Fourteenth Amendment. To do this, the Court would need to extend the definition of discrimination on the basis of sex to discrimination on the basis of gender identity. Fortunately, the court has already done this in a 2020 case called *Bostock v. Clayton County*, which ruled that LGBTQ+ people fired because of their sexual orientation or gender identity are protected under Title VII of the Civil Rights Act.219 Expanding this interpretation of Title VII, which covers employment discrimination, to Title IX, which

218 Player, Nicole, Interview with Ezra Adasiak. March 28, 2024. 34:46.
covers discrimination within educational institutions, should be straightforward. Unfortunately, the Supreme Court today leans so heavily conservative that a ruling in favor of transgender athletes from them does not seem likely.

On an executive level, the president can issue an executive order on how a law should be implemented. However, this power has little weight when the next president can take it back. The Obama administration gave an interpretation memo during his time in office that included gender identity under Title IX, but the Trump Administration swiftly revoked the memo in 2017 and ushered in an era of anti-trans policies. Among the first presidential acts of his administration, President Joe Biden issued Executive Order (E.O.) 13988 on 20 January 2021, which instructed all federal agencies with administrative responsibilities to implement sex discrimination policies to review existing procedures. That June, the Department of Education announced new policy interpretations of Title IX to these ends that reinstated Obama-era protections for transgender students.220 In 2023, the DOE also issued new rules that work to support inclusion for transgender athletes, though the rule still gave a lot of discretion to schools and used very open language, making LGBTQ+ advocates concerned it will have no substantial impact on the bans.221 Moreover, if Trump is re-elected, the majority of these new rules and interpretations will go right back out the window. Thus, executive support for transgender rights is shaky at best at the moment.

With a Republican majority in the House, a heavy conservative lean in the Court, and a president with little power in the matter, there is little hope for the bans of transgender athletes to

be overturned in government anytime soon. So instead, we must call on athletic organizations, schools, and their students to lead the charge to inclusion.

Students and other members of educational institutions can call for change in their schools’ anti-trans policies by practicing Albert Hirschman’s “Exit, Voice, and Loyalty” strategy, developed in 1970. According to Hirschman, when people are unhappy with a company or institution that they are a part of, they can opt for one of two options to push change. They can “exit” the institution by leaving it or no longer buying its products, or they can “voice” their dissatisfaction through protests or direct messages to the management of the organization. In high schools and colleges, “exiting” could involve transferring schools when a school has discriminatory policies, though it is a lot more feasible to utilize the “voice” option and stage protest in solidarity with transgender athletes. For instance, a team can choose not to play a game and make spectator revenue for their school if a transgender athlete is prohibited from playing with them. Talented athletes, especially the ones at Division I institutions, hold a lot of value and power in the eyes of their schools; thus, we can use the Rawlsian difference principle in this context to say that those with advantages in natural abilities can and should help use their privilege to help lift up others. Institutions can only do so much if the state they are in has a ban in place, but one cannot underestimate the power a college or university has to push for a change in legislation when it benefits them to do so. If a strong enough student voice speaks out against the bans on transgender athletes and condemns institutions that adhere to it, greater America will listen.

As this thesis has argued, changes also need to be made to athletic institutions which go deeper than the question of including transgender athletes, particularly in youth leagues.

---

Integrating youth leagues is one of these changes, especially for ages before youth have gone through puberty. The worry of girls being “harmed” by this integration is erroneously fueled by a view of women as an inferior sex that cannot and should not get their hands dirty; allowing them to participate will show that many girls are more than capable of hanging with the boys when trained and treated the same way. Even if full gender integration is a slow process overall, it should be easy for athletic organizations to allow individual skilled (or unskilled) girls and women to compete in men’s leagues if they so choose. If boys respond to this by refusing to compete against a woman, this choice is either fueled by “an idea of chivalry that wouldn’t allow them to physically overpower and potentially injure a girl,” or by a deep embarrassment at the thought of losing to a girl.\footnote{Konieczny, Julia. “There’s Nothing Worse than Losing to a Girl: An Analysis of Sex Segregation in American Youth Sports.” \textit{Indiana Journal of Law and Social Equality}. Volume 8, Issue 1, Article 3. Spring 2020.} Both responses are motivated by a patriarchal culture that sees men as “warriors” and “protectors” and women as victims, and these views must be contested for gender equity to be a feasible goal in this country. Most importantly, cisgender women must be empowered in sport if they are to eventually reach the realization that competing against a transgender woman will positively challenge them and promote respect for their own athletic talents rather than merely strip away their prospects of success.

Youth athletic institutions must also adopt strategies to return youth sport to an environment of play. The increasing culture of early specialization, year-long commitment, and travel in children’s sports is stripping sport of its basic benefits of health, fun, community, and more. Through its creation of a hyper-competitive, reward-focused environment, \textit{uber-sport} culture is driving millions of youth out of sport due to burnout or a lack of means to pay, and simultaneously promoting exclusion in the process. For youth sport to even be worth fighting about, schools must remember the goals of development and enjoyment that they claim to
promote through sport participation, and emphasis must be put less on the results and more on
the process. One idea that can promote later specialization and an early focus on fun in youth
sports is to make all club and travel teams only for ages twelve and up, and to promote and fund
environments of recreation before the age of twelve, including within schools. An American
Development Model made by the US Olympic committee utilizing long term athlete
development principles states that up until twelve, activities for youth should subsidize the
discover, learn, and play stages of development.224 Pushing children into more competitive
environments early might help them become great at their sport, but it will also never allow them
to enjoy it and truly “play” creatively, and their likelihood of being good enough to make it into a
career is extremely low regardless. When one says that they “play” sports, the goal of enjoyment
and freedom should be implicit in this phrase. Let’s make it that way, and continue to prioritize
the basic benefits of sport for all youth, including and especially transgender athletes, in the
process.

Reframing of Feminist Politics and Perspectives Around Sport

While clear steps by the government and public and private institutions can be taken to
support inclusion in athletic spaces, it will be impossible to take these steps without an initial
perspective shift in the majority of Americans about what matters in sports and what actions will
truly support women’s and LGBTQ+ movements. This paper has taken a more philosophical
than political approach in understanding the bans on transgender athletes; this is because a
mindset shift about what fairness and inclusion truly mean in this debate is needed in this country
before a policy shift is possible. A critical part of this mindset shift must be the reframing of
feminist politics as an inclusive space, rather than an exclusive one.

224 Jones, Benjamin R. & Seung Ho Chang. “The effects of early sport specialization (ESS) on youth
Essentialist feminism, as discussed in Chapter One, has been utilized to gain rights for women that are deemed specific to women, such as reproductive rights. The need for doing this is questionable, as sex-specific laws seem unnecessary; why can’t a law just say all people have a right to an abortion, regardless of whether they need it? Nevertheless, essentialist theory has expanded in policy to all aspects of feminism via the definition of a certain type of woman that must be fought for. This leads to a “gatekeeping” form of exclusion – sometimes called “gender-critical” feminism – that, due to this country’s continued perpetuation of the sex/gender binary, ignores trans* women in efforts for women’s rights. The term for a feminist who adopts this view, such as those of the Women’s Liberation Front, is a TERF (Trans-Exclusionary Radical Feminist), and their ideology came into being via second-wave feminism that radicalized into the lie that trans* people are a threat to women. The fear that TERFs have of trans* domination, however, often comes directly from a general fear of men as a class of oppressors and predators; they take this trait to be essential in the male sex and thus believe that men who transition to women must be doing so with the ulterior motive of harming women. This belief ignores the fact that 47 percent of trans women have been victims of sexual assault in their lives, rather than offenders themselves. In reality, transgender women face dual discrimination of being women and being transgender every day, and receiving hate from fellow women rather than support only adds to this hardship.

Feminist and LGBTQ+ movements have been pitted against each other by policymakers in the transgender athlete debate, a strategy that claims to protect fairness but is actually harmful to both movements. This is not an “Oppression Olympics,” a term coined by Elizabeth “Betita”

---

226 Ibid.
Martínez in a 1993 conversation with activist Angela Davis. Deciding, as feminists, that a cisgender woman’s struggle in sport is worse, and thus more important, than a transgender woman’s, and proceeding to ignore other systems of oppression in the fight to end one’s own, will only keep our society farther away from a just one. Luckily, third- and fourth-wave feminism have countered the bans with a refusal to foster hate between the two oppressed groups and instead an effort to foster solidarity. bell hooks, a well-known feminist author and social critic, worked to rebuild feminist theory as an inclusive space, writing that feminism “is not to benefit solely any specific group of women, any particular race or class of women. It does not privilege women over men. It has the power to transform in a meaningful way all our lives.” hooks adds that “a genuine feminist politics always takes us from bondage to freedom, from lovelessness to loving.” Feminism and its efforts to free women should be about eradicating all structures of dominance and oppression in this country; gender equality has not been attained until everyone is free of gender discrimination. Moreover, transgender girls identifying with and loving womanhood should be seen as a positive thing, and gatekeeping who is a woman only seeks to shut out their joy with hate. Modern feminism’s mission should therefore not be to push anyone out of youth sport, but rather to embrace inclusion and instead take up the fight to reform athletic systems that continue to inferiorize and devalue womanhood.

What can be done so that society reframes how we view sport and trans* youth within it? The answer, unfortunately, is that this country needs time. It needs time for more of society to accept transness as a legitimate identity, and the sex/gender binaries as constructed, flexible concepts rather than biologically rigid. This will take greater education and openness on behalf of all of us. It will also take the participation of more trans* athletes, not fewer, to reduce the

---

stigma around their participation and show that their inevitable domination as a group is a myth. In addition, what this issue has shown thus far is that a lot of people care about youth sport, which shows a promising potential push for more public funding to keep it available as a space of fun for all children.

Final Reflections

This thesis joins a plethora of discourse on the topic of transgender athletes over the last few years, discourse that can be frustrating and harmful when it carries an anti-trans sentiment, but that is needed to create visibility for the struggles of the trans* community nonetheless. In de-centering the issue from the dominating physiology debate and digging deeper into motivations behind its key “fairness” argument, I have tried to show that one cannot talk about transgender athletes in sport without talking about why we have sports and how women have been represented within them. Fairness is an important ideal in many parts of life, but this thesis has aimed to demonstrate that it may not always be the most just ideal.

I write this thesis as a Division-III cisgender woman track and field athlete who grew up loving sports for the communities and confidence that they brought me. This is something I believe that everyone deserves to experience if they so wish, at least as a child, whether they are fast or slow, tall or short, girl or boy, cis or trans. I have been asked before if I would compete against a transgender woman in my hurdles races, and I always respond with a resounding yes. Who am I to get in the way of someone enjoying their sport, finding comfort and capability in their body, and benefiting from an affirming community, just as I have through athletics? While it may be “frustrating,” as Kenyon put it at the beginning of this paper, for athletes like myself to compete against someone born with “superior” physical genes, I’ve been frustrated already. I have lost many races to cisgender athletes with more “natural” speed anyways, and the
frustration that comes with that only drives me to get better and be the best version of myself within my sport. I am not “entitled to win,” nor is any other cisgender female athlete, no matter how hard we work or how naturally talented we are. By contrast, there are many reasons for why a transgender person is entitled to play, and I hope that this thesis convinces some readers of that.

American sport is not a just institution due to its entrenchment in patriarchy and capitalism, so all we can do right now is determine the “more just” option. After properly considering the purpose of youth sport and the basic human rights that trans* youth struggle to obtain, inclusion is a clear winner over fairness for the better framework of justice.


Crary, David & Lindsay Whitehurst. “Lawmakers Can’t Cite Local Examples of Trans Girls in


Hall, Brandon. “Kids Play Fewer ‘Pick-Up Games,’ and It’s Hurting Youth Sports,” Stack


Mikkola, Mari. “Gender Essentialism and Anti-Essentialism.” In *The Routledge Companion to


Player, Nicole, Interview with Ezra Ad asiak. March 28, 2024. 34:46.


