Fair Play

Fair Equality of Opportunity, Luck Egalitarianism and Categories in Sport.

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Abstract
Standard pre-competition categories in sport are biological sex, weight, age and disability categories. Justifying the use of these categories is important for sports policy, and turns on how fairness in sport is understood. A widely accepted account of fairness in sport is provided by Sigmund Loland, who, drawing on John Rawls' theory of justice as fairness, appeals to 'fair equality of opportunity' and 'luck egalitarianism' to justify these pre-competition categories. I suggest that this is the wrong approach. Fair equality of opportunity and luck egalitarianism are important for organizing certain forms of handicap sport, which use performance and potential-performance categories, or which seek to handicap or compensate athletes for physical characteristics that are deemed unfair. However, in championship sport, such as the Olympics and World Championship Athletics, fair equality of opportunity and luck egalitarianism have little to do with justifying pre-competition categories. In championship sport, pre-competition categories are used to distinguish different types of athlete, with different sorts of body, so that excellent athletes can be identified.

Keywords: Categories in sport; fair equality of opportunity; luck egalitarianism; Sigmund Loland

Resumen
Las categorías estándar precompetitivas en el deporte son el sexo biológico, el peso, la edad y la discapacidad. Justificar el uso de estas categorías es importante para la política deportiva y depende de cómo se entienda la equidad en el deporte. Sigmund Loland ofrece una explicación ampliamente aceptada de la equidad en el deporte. Basándose en la teoría de la justicia como equidad de John Rawls, apela a la "fair equality of opportunity" y al "luck egalitarianism" para justificar estas categorías precompetitivas. Sugiero que este enfoque es erróneo. La justa igualdad de oportunidades y el igualitarismo de la suerte son importantes para organizar ciertas modalidades de deporte con hándicap, que utilizan categorías de rendimiento y rendimiento potencial, o que buscan perjudicar o compensar a los atletas por características físicas consideradas injustas. Sin embargo, en deportes de campeonato, como los Juegos Olímpicos y el Campeonato Mundial de Atletismo, la justa igualdad de oportunidades y el igualitarismo de la suerte tienen poco que ver con la justificación de las categorías precompetitivas. En el deporte de campeonato, las categorías precompetitivas se utilizan para distinguir diferentes tipos de atletas, con diferentes tipos de físico, de modo que se puedan identificar a los atletas excelentes.

Palabras clave: Categorías en el deporte; igualdad justa de oportunidades; igualitarismo de la suerte; Sigmund Loland

1. Introduction

In work spanning more than two decades, Sigmund Loland has developed an influential account of fairness in sport (Loland 2002, 2018b, 2020a, 2021). He provides a highly valuable description of the ethos of sport: a shared agreement amongst participants about how and why to play a sport properly (Loland 2002:6–9, 103–4). This work has been described as the "standard account of fairness in sport" (Pike 2023) and "the most established ethical model for understanding and evaluating fairness and fair play in sport" (McNamee, Parnell, and Vanlandewijck 2021). Many scholars have used Loland's work as a starting point for their own work on fairness in sport (Camporesi and Hämäläinen 2021; Cooper 2023; Jennings and Braun 2024; Martinkova and Parry 2024; Parry and Martínková 2021), especially regarding the justification of "pre-competition categories" such as sex, weight, age and disability categories (Parry and Martínková 2021). In particular, Loland's appeal to 'fair equality of opportunity' and 'luck egalitarianism' have been influential in framing the philosophical conversation about the fairness of pre-competition categories in elite sport.

Loland connects his ideas about fair equality of opportunity in sport to John Rawls' political philosophy, and Rawls' account of justice as fairness (Rawls 1999). He argues that fair equality of opportunity is an expression of luck egalitarianism (Loland 2020a). Loland uses these ideas to argue that certain characteristics that provide advantages in sport, such as sex, age, weight and disability, are not relevant when deciding who should be rewarded in sport, and should be controlled by categorization (Loland 2002, 2018b, 2020a, 2021). For example, Loland says:

> "Rawls points to the ideal of fair equality of opportunity (FEO) prescribing that individuals with similar endowments and talents and similar ambitions should be given similar opportunities and roughly equivalent prospects for competitive success. In most matters of distributive justice, inequalities in factors such as age, biological sex, ethnic and religious background, colour of skin, or sexual orientation are considered arbitrary and non-relevant. These are all inequalities in what we may call stable background variables that individuals cannot control or impact in any significant way. They are matters of luck (good and bad). FEO, then, is an expression of what Anderson labelled 'luck egalitarianism'" (Loland 2020a).

I argue here that this approach does not lead to the correct analysis of fairness in sport, nor to the correct justification for the use of pre-competition categories in Olympic-type sport. There is a misinterpretation Rawls' fair equality of opportunity principle, which is not an expression of luck egalitarianism. Neither fair equality of opportunity nor luck egalitarianism explain why pre-competition categories such as sex

and weight are used in Olympic-type competition.

Before I criticize Loland's position, I will take two liberties. Firstly, I will summarize Rawls' theory of distributive justice, of which the principle of fair equality of opportunity is a part (section 2). As a misinterpretation of this principle has, in my view, become widely accepted in the philosophy of sort literature, I believe that it is worth taking a moment to reconsider what fair equality of opportunity is and how it functions in Rawls' theory. I hope that this short summary will be of benefit to the philosophy of sport literature.

Secondly, I believe that the debate about eligibility and fairness in sport has been hampered by a failure to recognize that there are multiple kinds of sporting contest, each of which has its own account of fairness. Intuitions about what constitutes fairness in one form of contest might be correctly described by a philosopher, but then applied to a form of sport where they do not belong. In particular, I suspect that Loland has correctly identified intuitions about fairness in what I call handicap 2 (potential-performance matched) contests, but applies them to Olympic and World Championship sport where they do not belong. So, the second liberty I want to take is to describe four different types of sporting contest (section 3). These are championship contests (which includes Olympic-type sport) and three forms of handicap contests (which I call performance matched sport (handicap 1), potential-performance matched sport (handicap 2) and particular dis/advantage compensated sport (handicap 3).

I go on to critique Loland's account of fairness in sport (section 4). I will argue that fair equality of opportunity has nothing to do with justifying standard pre-competition categories in Olympic and World Championship sport. Luck egalitarianism does provide a basis for fair competition in potential-performance matched (handicap 2) contests, but not for championship contests such as the Olympics. I suggest that Loland and others have latched onto an intuition about fairness that govern one form of sport, but then have applied this to another form of sport where it does not belong.

2. Rawls' Account of Justice as Fairness

John Rawls' theory of justice is amongst the most influential works of political philosophy from the twentieth century. Rawls was concerned with how a society should distribute "primary social goods": things that anyone would need to pursue whatever

they thought was good in life (Rawls 1999:54, 79, 2001:58–59). These are 1) basic rights and liberties (e.g. freedom of conscience, freedom from assault, freedom from arbitrary arrest, property rights, and the right to vote and hold office) (Rawls 1999:53–54, 2001:58), 2) freedom of movement and free choice of occupation, 3) powers and prerogatives of offices and positions of authority and responsibility, 4) income and wealth, and 5) the social bases of self-respect (e.g. who is thought of and treated as a respected citizen, whose fulfilment is an end in itself) (Rawls 1999:156, 2001:60).

Rawls objected to utilitarian theories for distributing these primary social goods, as utilitarianism could in theory justify enslaving some people so long as this produced the greatest good for the greatest number (Rawls 1999:27, 45, 137). Instead, Rawls argued that people should consider what the principles of a just society should be from what he called "the original position" (Rawls 1999:15–19, 102–60). People in the original position do not know their position in society, their talents, their values or their level of wealth. Rawls argued that people, not knowing whether they were advantaged or disadvantaged in society, would only agree to organize society in a way that is fair for all (Rawls 1958, 1999:17, 104). To avoid the possibility that they would be enslaved, Rawls thought people would organize a society in which no one was enslaved. He argued that, from the original position, people would agree to some basic principles that should govern society.

The first basic principle regulates the distribution of basic rights and liberties (primary social goods 1 and 2 above). All people in a society should have the same basic rights and liberties – the principle of equal liberty (Rawls 1999:53–54). Rawls also thought that this principle of equal liberty goes a long way to securing the social bases of self-respect (primary social good 5), as in an important sense all citizens are recognized as equal citizens (Rawls 1999:478).

The second basic principle regulates income and wealth, powers and prerogatives of offices and positions of authority and responsibility (primary social goods 3 and 4), and comes in two parts: the difference principle and fair equality of opportunity.

Rawls rejected the idea that income and wealth should be equally distributed, as he thought liberties and opportunities should be (Rawls 1999:53). However, he did not think that some people deserved to be more wealthy than other people simply because they were more talented at doing something valuable than others were. Rawls reasoned

that people only deserve what they worked to acquire, and people do not work to acquire the "natural assets" with which they are born (Rawls 1999:63). These are allocated by a "natural lottery" (Rawls 1999:64). Rawls formulated the principle of redress: "that undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for" (Rawls 1999:86). Consequently, Rawls is often credited with formulating an early form of luck egalitarianism, which is the view that "it is unjust if some are worse off than others through no choice or fault of their own" (Lippert-Rasmussen 2020; see also Anderson 1999; Elford 2023; Knight 2013). On this view, unearned inequalities are unjust. As a person having less natural talent and ability than others is not that person's fault, if luck egalitarianism is accepted, then it is unjust for them to be worse of than others as a consequence (Elford 2023).

Even though Rawls' principle of redress is an expression of luck egalitarianism, when it came to distributing primary social goods, Rawls was not a luck egalitarian. Indeed, his theory of distributive justice is often contrasted with luck egalitarianism (Anderson 2010; Arneson 2015; Elford 2023; Morozov 2024; Scheffler 2003; Tomlin 2012). Rawls thought that people should be able to profit more than others on account of their winning the "natural lottery", even though they do not deserve this good fortune. He thought an unequal distribution of income and wealth can be justified, so long as this inequality benefits those who have the least.

> "No one deserves his greater natural capacity nor merits a more favorable starting place in society. But, of course, this is no reason to ignore, much less to eliminate these distinctions. Instead, the basic structure can be arranged so that these contingencies work for the good of the least fortunate" (Rawls 1999:87)

Rawls argued that inequalities in wealth and income can be justified so long as this results in those who have less having more than they would have done if the inequality did not exist. He called this the "difference principle", and emphasized that it was not the same as the principle of redress. "Now the difference principle is not of course the principle of redress. It does not require society to try to even out handicaps as if all were expected to compete on a fair basis in the same race" (Rawls 1999:86). The difference principle is used to justify undeserved inequalities.

To illustrate this perhaps difficult idea, consider how to pay an exceptionally gifted athlete who is considering playing in a professional sports league that has poor viewership and limited sponsorship. Without this athlete playing in the league, the other

athletes in the league are poorly paid, as their league attracts limited interest from spectators. However, once the exceptionally gifted athlete starts to play in the league, the viewership increases dramatically, and the league attracts much more sponsorship. Now, there is much more money with which to pay the players, and everyone profits considerably. But, the exceptionally gifted player has other options. Perhaps she can play in another league, or play another sport altogether. If she is not paid more than the other players, then she might not play in the league at all. Rawls thought that it would be acceptable to pay the exceptionally gifted player more than the others, not because she deserved it, but because paying her more leads to all the players being paid more than they would have been paid if she did not play in their league.

Rawls did not want to prevent people profiting from their talents, even if they had done nothing to deserve them. He wanted to harness the talents available in a society for the benefit of everyone, especially the least well off.

Rawls also wanted all members of society to have equality of opportunity to get a position of wealth or power. However, he wanted equality of opportunity in a special sense. Rawls did not just want *formal* equality of opportunity, in which all candidates "have at least the same legal rights of access to all advantaged social positions" (Rawls 1999:62). Formal equality of opportunity, in this sense, may allow that the best candidates for a job are unaware that there is a job to apply for. Furthermore, Rawls did not just want *meritocratic* equality of opportunity either, in which the person who is best at the job gets it. Meritocratic equality of opportunity would allow people who would have been the best at a job, but who do not have access to the education and training facilities they need to develop their talent, to be rejected (Elford 2023). Rawls thought that people in the original position would agree that society should be organized so that "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" (Rawls 1999:63). Rawls wanted a *substantive* equality of opportunity, in which everyone with the potential to be good at the job could develop their talents fully if they wanted to (Elford 2023). He called this "fair equality of opportunity" (Rawls 1999:63). Rawls argued that everyone in a just society should have fair equality of opportunity to get a position of power or authority, or, indeed, any job at all.

These, then, are Rawls' principles for distributing primary social goods. Basic rights

and the freedom of employment are secured by the first principle of equal liberty, which also provides some social bases of self-respect (Rawls 1999:478). Fair equality of opportunity and the difference principle are used to distribute positions of authority and jobs, as well as to allocate differences in wealth and income (Rawls 1999:53–54).

It is understandable that philosophers of sport, when considering what fairness means, would turn to Rawls' prominent account of justice as fairness. It is also understandable that luck egalitarianism and fair equality of opportunity would be seen as related, as Rawls endorses both principles. Some even argue that Rawls tried to achieve luck egalitarian ends using the difference principle and fair equality of opportunity, whereas others deny this (Freeman 2006; Knight 2013; Kymlicka 2002:74–75; Lippert-Rasmussen 2020; Scheffler 2003). Even so, rather than trying to spot analogies between sport and Rawls' political philosophy, it may be better to study the forms of fairness found in sport. It is important to establish that there are different sorts of sporting contest, which make use of different ways of understanding fairness.

3. Different Types of Contest Use Different Types of Fairness

Philosophical work that tries to provide *the one* correct account of fairness in sport is confounded by there being *several* different types of sporting contest, each with their own account of fairness. Following Binney (2024), championship contests and handicap contests can be distinguished. However, there are several forms of handicap contest that also need to be distinguished, which I call performance matched contests (handicap 1), potential-performance matched contests (handicap 2), and particular dis/advantage compensated contests (handicap 3).

3.1 Championship contests

The purpose of championship contests is to find the best athletes or teams. It is to identify the most exceptional athletes. The people who win a championship contest are deemed the best at their event. A fair championship contest is one in which the performance of any competitor is not enhanced or restricted in comparison to any other competitor, such that winning the contest shows which athlete or team is better at the event. In a fair championship contest, all competitors have the same distance to run, start at the same time, are allowed to use the same equipment, compete under the same rules, using the

same scoring system.

Examples of championship contests include events at the Olympics and World Championship athletics. However, championship sport is not limited to elite sport. Championships are found at every level of sport. In addition to Olympic and World champions, there are continental champions, national champions, county champions, college champions, and school champions. There are also junior and masters champions at these levels. The key thing about championship contests is that they are designed to find the best athletes in a certain domain. These athletes do not have to be elite. The distinction between championship and handicap contests is about the purpose of the contest, not the level of ability.

3.2 Performance matched contests (Handicap 1)

In contrast to championship contests, the purpose of handicap contests is not to find the best athletes. The purpose of some handicap contests, which I will call handicap 1 or performance matched contests, is to produce a close competition. This can be done by enhancing or restricting the performance of athletes such that their level of performance is similar, or by classifying athletes into groups stratified by performance. A fair handicap 1 contest is one in which all competitors have the same chance of winning, or at least a 'sporting chance' of winning.

So, while restricting or elevating the performance of an athlete to produce a closer competition would be considered cheating in a championship contest, this is considered essential to fairness in handicap 1 contests. These forms of sport accept totally different practices as fair.

Examples of performance matched (handicap 1) contests include the use of handicaps in golf, in horseracing, and the Universal Squash Rating in squash. Notice that while handicap 1 contests may use classification by sex into male and female contests, as amateur golf tends to, this is not integral to handicap 1 sport. The Universal Squash Rating, for example, applies to men and women, and to young and old players (US Squash 2022). The same rating system is used to find players of similar ability, regardless of their age and sex.

3.3 Potential-performance matched contests (Handicap 2)

Potential-performance matched (Handicap 2) contests are similar to performance matched (handicap 1) contests, but they do not try to match competitors according to their *current* performance. Rather, handicap 2 contests match competitors according to their *potential* performance using their physical characteristics. The distinction between performance advantages (the relative performance of an athlete) and property advantages (the physical characteristics that make that performance possible) is useful here (Hämäläinen 2012). Being able to run 100 metres in 9.6 seconds, 0.2 seconds faster than any competitors, is a performance advantage. Having long legs and a high density of fast twitch muscle fibres are property advantages that make this possible. Handicap 2 sport seeks to classify or compensate athletes according to the property advantages with which they are endowed, so that the athlete who trains most effectively to maximize their potential performance, and to develop the most skill at their event, wins the contest. Accepting luck egalitarianism in sporting competition would produce a potential-performance matched contest, as athletes would be prevented from benefitting from unearned property advantages. A fair handicap 2 contest is one in which all property advantages are controlled, so that the athlete who trains most effectively will win.

As all athletes presumably will be training very hard, this may well produce close contests. Nevertheless, in potential-performance matched (handicap 2) sport, a contest that is not close is not necessarily unfair, as would be the case in performance matched (handicap 1) sport. If two athletes have similar potential performance, but one does not train very hard, then the contest between them will not be close, but it will still be fair in handicap 2 sport.

The clearest example of this, at least in theory, is found in proposals made by academics about how to organize sport. Several scholars have suggested handicapping or classification systems that would take account of unearned physiological and sociological advantages, allowing the athletes who developed the most skill through their training to win (Anderson, Knox, and Heather 2019; Bianchi 2017; Jennings and Braun 2024; Knox, Anderson, and Heather 2019). Such systems may make use of biological sex as a relevant variable, or they may not. More fine-grained physiological parameters, such as lung capacity, VO2 Max, testosterone levels, muscle mass, bone

density and haemoglobin levels are suggested for use instead (Anderson et al. 2019; Jennings and Braun 2024; Knox et al. 2019). Although such systems are not implemented in able bodied athletes, the account of fairness accepted by these scholars – that a fair contest is one between athletes with the same potential performance – is found in handicap 2 contests.

Some of these scholars take the Paralympics as a blueprint for potential-performance matched (handicap 2) contests (Jennings and Braun 2024; Knox et al. 2019). It is certainly true that the Paralympics is not a form of performance matched (handicap 1) contest. The International Paralympic Committee states that improvement of performance through training should not result in reclassification of the athlete, as would be required in handicap 1 sport.

> "Paralympic sports require selective classification systems so that athletes who enhance their competitive performance through effective training will not be moved to a class with athletes who have less activity limitation, as they would in a performance classification system" (quoted in Loland 2020a; Tweedy and Vanlandewijck 2011).

It may be that Paralympic classifications are potential-performance categories. It is true that in some paralympic events, athletes with many different disabilities are placed in the same category, according to the effect of their disability on their potential performance, rather than according to the particular disability they have or their level of performance. Paralympic swimming, for example, places competitors with physical disabilities into nine or ten categories, according to the stroke they are swimming and their level of disability (World Para Swimming 2022). For freestyle swimmers, category S1 is for the least able swimmers, and S10 is for the most able swimmers. Athletes with disabilities as diverse as double limb amputation, cerebral palsy and short stature due to achondroplasia may compete together in the same category, if their level of ability to swim is assessed as similar. Especially when combined with sex classifications, these categories might be attempts to match competitors with different sorts of disability according to their potential performance.

However, the scope of paralympic classification may not be as wide as this. The International Paralympic Committee states that the purpose of classification is to group people with the same level of *disability* together, rather than people with the same level of *ability*. Only some physical characteristics count as disabilities: those caused by a disabling medical condition. The categories at the Paralympics should "comprise athletes who have impairments that cause the same amount of difficulty in a given

sport" (Tweedy, Beckman, and Connick 2014). This suggests that many stable inequalities that do not result from impairments are not to be controlled in Paralympic sport, meaning that these categories are not understood as potential performance categories. Rather, they might take a fair contest to be one in which all athletes have the same level of disability.

I suspect different events at the Paralympics use different ways of understanding fairness in sport. For example, some events may be championship contests, designed to find out 'how quickly can a blind human female sprint 200 metres?' or 'how quickly can a human in a wheelchair complete a marathon?' Such events would not try to match athletes with different disabilities together. They would only be for blind athletes, or athletes in wheelchairs, seen as kinds of athlete, and would not be a form of handicap sport. Even so, Paralympic sport seems to have inspired academics to suggest forms of handicap 2 contest, where all athletes in a category are similarly able and have the same potential performance.

3.4 Particular dis/advantage compensated contests (Handicap 3)

In contrast to this, particular dis/advantage compensated (handicap 3) contests seek to address one particular physical characteristic that is understood to provide an advantage or a disadvantage to an athlete that has come to be seen as unfair. Here, sport is fair if this particular physical characteristic does not contribute to success or to failure.

For example, the question of whether athletes with prosthetic limbs should be allowed to compete with able bodied athletes has been addressed using this account of fairness (Edwards 2008; McArdle 2008; Marcellini et al. 2012; Burkett and Potthast 2011). Such athletes are seen as at a disadvantage, and this is seen as unfair. This raises the question of whether the use of the prosthetic limb simply compensates for the disability, or if it goes beyond this. If the prosthetic limb merely compensates for the disability, such that the performance of the athlete is raised to where it would have been if their disability did not exist, then this is deemed fair. Indeed, World Athletics regulations on the use of mechanical aids states:

> "Whether use of the Mechanical Aid will, on the balance of probabilities, provide the athlete with an overall competitive advantage when comparing (a) the performance that the athlete who uses a Mechanical Aid is capable of achieving while competing with their impairment and their Mechanical Aid; and (b) the performance that that same athlete would

hypothetically have been capable of achieving in the same event if they were competing without their impairment and without that Mechanical Aid. If the Mechanical Aid will provide the athlete with an overall competitive advantage, its use will not be authorised" (World Athletics 2022).

A similar approach might be taken with female athletes who identify as men and wish to compete in the open or men's category. As these athletes are female, they have not been exposed to the high levels of androgen hormones experienced by males as they grow into adulthood. This places them at a disadvantage, and this disadvantage is deemed unfair. Some argue that such athletes should be allowed to take supplemental androgen hormones to reduce this disadvantage (Harper et al. 2018; Jones et al. 2017) . The action of the androgens is seen as doing something similar to the effects of male puberty, and is thus seen as a fair way to compensate female athletes wishing to compete with males.

Notice that only the disadvantage resulting from the disability is seen as unfair and in need of compensation. If these athletes have low lung capacity, or limited muscle mass, etc., this is not understood as unfair. The objective in handicap 3 contests is not to compensate the athlete for all their physiological disadvantages, as would be the case in handicap 2 contests, or to produce a close contest with other athletes, as would be the case in handicap 1 contests.

Furthermore, the form this compensation takes seems to matter in handicap 3 contests. Simply giving the athletes using prosthetic limbs a head start to compensate for their missing limbs, rather than letting them use their prosthetic limb, is not suggested as a fair way to organize sport. Taking 12% off the female swimmer's time to compensate for the absence of androgens during their adolescence is similarly not seen as a fair suggestion. In this form of particular dis/advantage compensated (handicap 3) sport, the compensation needs to come in a similar currency to the disability. The objective is to compensate for a particular disadvantage by doing something as close as possible to correcting the disability in question.

Discussions of whether males who identify as women can compete fairly in women's sport also understand fairness as found in handicap 3 contests. Instead of trying to provide an advantage that an athlete does not have, however, the goal here is to eliminate an advantage that an athlete does have. In the case of transgender women wishing to compete in the women's category, the objective is to eliminate an advantage that adult males have over adult females: "male advantage" (Heather 2022; Hilton and

Lundberg 2021; Pike 2023). Some have suggested that this might be possible to do by suppressing the testosterone levels of transgender women, while other disagree. Both sides in this discussion assume, however, that if male advantage could be eliminated then it would be fair for males to compete in the women's category, making the account of fairness accepted here that found in handicap 3 contests.

The form of fairness accepted in handicap 3 contests is different to championship contests. In handicap 3 contests, it is fair to enhance or diminish the performance of an athlete to compensate or handicap them relative to the other competitors. In championship contests, it is not. The objective in championship contests is to find out how good an athlete is at an event, not to estimate how good they would have been if their body had been different in some way. In championship contests, as all athletes compete in the same event, the same rules must apply to everyone. Either all competitors get to use the prosthetic limbs, or none do. Either all competitors get to use androgens, or none do.

As I have described it, particular dis/advantage compensated (handicap 3) sport tries to compensate or handicap the athlete for a particular physical characteristic that influences their performance. It is also possible to estimate the difference in performance that the physical characteristic produces, and to put athletes with similar estimates into a category together. That way, the effects of the unfair physical characteristics would be nullified. Success would be determined by the distribution of other physical characteristics, as well as by the training and effort of the athlete.

Although paralympic sport has inspired academics to propose forms of handicap 2 sport (see above), it may be that events that use categories of athletes with similar levels of disability are better understood as a form of handicap 3 sport, in which sport is fair so long as particular physical characteristics do not contribute to success or to failure. This is still not what happens in championship sport. The categories in championship sport pick out athletes who are seen as having the same type of body, to see how well people with that sort of body can perform athletically. In this form of handicap 3 sport, athletes with different sorts of body are grouped together, so long as the level of physical impairment they have is the same.

3.5 Why use pre-competition categories in championship sport?

Both handicap and championship contests may use pre-competition categories, but for different reasons. So, as long as the relevant performance or property advantages are properly compensated for, handicap contests can do away with sex, weight, age and even disability categories altogether. If they use them at all, handicap contests use pre-competition categories as a rough guide to actual or potential performance. In championship contests, pre-competition categories are used for a totally different reason: to define different sorts of body so that the most excellent athletes with those different sorts of body can be identified. This is done by posing "athletically interesting questions" (Binney 2024). These are questions about the athletic performance of different sorts of athlete, defined using physical characteristics that influence athletic performance. We want to know: 'how quickly can a human female run 100 metres?' 'How much can a small human male lift above their head?' 'How far can a fifteen-year-old human female throw a javelin?' Age, sex and weight influence athletic performance, and at least some people are interested in how humans with different sorts of body defined using these physical characteristics can perform athletically. So, contests are organized to find out.

The organizers of contests have considerable freedom when defining groups of athletes, but this freedom is not infinite. Groups must be defined using physical characteristics that influence performance in the sport in question. So, organizers of a boxing tournament might use sex, weight and reach to define categories of boxer, but not hair colour. These physical characteristics would be understood to define a sort of boxer, and the contest would be designed to answer questions such as 'who is the best under 75kg male boxer with a reach of less than 195cm?'

Additionally, qualitative anatomical differences that produce large effects on athletic performance lend themselves to defining types of body. Human beings have different organs. Some have testicles, while some do not and never have done. These organs have a dramatic effect on the development of the human body, and a dramatic effect on athletic performance in most sports. The reason the women's category exists in championship sport is to investigate and celebrate the athletic abilities of humans whose bodies cannot be shaped by testicular tissue. This cannot be done by allowing people with testicular tissue that can influence the development of their body into the women's

category. Whether their performance is sufficiently low, or if they have been handicapped to reduce their performance, is not relevant to championship sport. As the purpose of championship sport is to find the best athletes, eligibility is not determined by performance or by handicapping. It is determined by having the correct type of body to answer the relevant athletically interesting question. If an athlete does, then they are eligible, regardless of their level of performance or their potential performance. If they do not then they cannot, whether they are handicapped or not.

With these distinct types of fairness and Rawl's theory of justice in mind, I can critique Loland's account of fairness in sport.

4. Loland's Arguments for Pre-Competition Categories

Loland's arguments for using characteristics such as sex, weight, age, and height to form pre-competition categories in sport relies on the distinction between stable and dynamic inequalities. Stable inequalities are those which an athlete largely cannot control, while dynamic inequalities are those which athletes can control to at least some degree. These are mostly physical characteristics, or property advantages, that are either largely uninfluenced by training (the stable inequalities), or are influenced by training (the dynamic inequalities). Sex and height are examples of stable inequalities, whilst strength and VO2Max are examples of unstable inequalities (Loland 2002:56–57, 2021). Loland also places the social circumstances into which a person is born that effect their ability to train in a sport – the system strength – among the stable inequalities (Loland 2018b, 2021).

Loland argues that, as people are not morally responsible for things they cannot influence, people are not morally responsible for the collection of stable inequalities they have (Loland 2002:54, 2018b, 2021). He further argues that a widely accepted ethical principle is that people should not be rewarded or penalised for things which they are not morally responsible (Loland 2002:54, 2021). Loland sees external conditions such as the weather, access to equipment and training facilities, the presence of disabilities and the characteristics usually subject to anti-discrimination legislation such as sex, race and sexual orientation, as stable inequalities (Loland 2018b, 2020a). He argues that athletes should not be rewarded or penalised for the stable inequalities they happen to have, through no fault or merit of their own.

According to Loland, if a physical characteristic exerts a significant influence over performance at a sporting event, and it is a stable inequality that should not be rewarded or penalised, then it should be controlled so that athletes are not rewarded or penalised for having it (Loland 2002:60). Pre-competition categories (of sex, weight and age, etc.) are used to ensure that, as much as is reasonably possible (Loland 2018b, 2021), people only compete with others who have the same stable inequalities that influence performance.

Loland is keen to emphasize that the same stable inequalities are not relevant to every sporting event. In some events, such as wrestling and boxing, weight always has a significant influence on performance. In other events, however, it does not. Elite sprinters come in a wide range of shapes and sizes, for example. Sex has a dramatic influence on performance in most events, but in some, such as shooting or perhaps even ski-jump, it does not. Height is usually not used to define pre-competition categories, but is some sports, such as basketball, Loland argues it should be (Loland 2002:56). According to Loland, only those stable inequalities that significantly influence performance in that particular event should be used to define pre-competition categories for that event. Loland argues that:

> "Where inequalities of body size, sex and age exert significant and systematic influence on athletic performance, such inequalities ought to be eliminated or compensated for by establishing reasonably standardized weight, height, sex and age classes" (Loland 2002:60).

The key question here is: why should this distinction between stable and dynamic inequalities be important for pre-competition categories in Olympic-type sport? Loland offers several lines of argument, and each is connected with Rawls and fair equality of opportunity. These arguments are unsuccessful, however, because 1) fair equality of opportunity is not luck egalitarianism; 2) fair equality of opportunity has nothing to do with pre-competition categories used in championship sport; 3) luck egalitarianism has nothing to do with the pre-competition categories used in championship sport; 4) the Paralympics and the regulation of external conditions do not provide good models for understanding pre-competition categories in championship contests such as the Olympics, and 5) it is not clear that a reasonable person or people in the original position would adopt luck egalitarianism, especially when it comes to the organization of sport.

4.1 Fair equality of opportunity is not luck egalitarianism

In one place, Loland formulates fair equality of opportunity as follows:

> "Rawls points to the ideal of *fair* equality of opportunity (FEO) prescribing that individuals with similar endowments and talents and similar ambitions should be given similar opportunities and roughly equivalent prospects for competitive success" (Loland 2020a).

This is a correct statement of fair equality of opportunity. However, Loland also provides other formulations of this principle. Referring to his 2002 work, Loland gives a general formulation of this principle, claiming that it provides the basis for pre-competition classification in sport:

> "I have argued that classification in sport is best understood as an attempt on levelling the playing field by adhering to the fair equality of opportunity ideal (FEO):
>
> In the distribution of significant goods and burdens we should eliminate or compensate for inequalities between individuals and groups that they cannot control or influence in any significant way and for which they cannot be held responsible" (Loland 2018b).

Loland also gives a formulation of the principle specific to its application to sport:

> "A specific FEOP for sport (FEOPs) can be formulated in the following way:
>
> Inequalities between sport competitors with significant and systematic impact on performance that the competitors cannot impact and control in any reasonable way ought to be eliminated or compensated for" (Loland 2021).

Notice that these last two formulations are not versions of fair equality of opportunity – they are versions of luck egalitarianism. Furthermore, they require that the effects of unearned inequalities are not simply deemed unjust, but are eliminated or compensated for. Fair equality of opportunity requires that people with the *same* endowments and talents, and the same will to use them, should have the same prospects of success. It allows that people with *different* endowments and talents – with different innate abilities – may have different prospects of success. It does not require that people be unable to profit from the talents and abilities that they did not earn and have no control over, as this form of luck egalitarianism does. Very tall people have much better prospects of being professional basketball players than do short people. Such inequalities might be unearned and uncontrollable, meaning that tall athletes do not deserve this advantage. Nevertheless, Rawls says: "But, of course, this is no reason to ignore, much less to eliminate these distinctions" (Rawls 1999:87). So long as all athletes have the same opportunities to develop their talents fully, fair equality of opportunity is satisfied. Accepting the difference principle, Rawls held that it was just for people to profit from their unearned talents and abilities, so long as they were harnessed for the good of society. And the difference principle does not violate fair

equality of opportunity, or it could not be a coherent part of Rawls' theory of distributive justice. A principle that calls for the elimination of success derived from unearned abilities is not Rawlsian fair equality of opportunity. Consequently, the importance of the distinction between unearned stable inequalities and earned dynamic inequalities is not established by appealing to fair equality of opportunity. Fair equality of opportunity and luck egalitarianism should not be conflated.

4.2 Fair equality of opportunity has nothing to do with the pre-competition categories used in championship sport.

Fair equality of opportunity may be relevant to how sport is organized, but it is not clear what it has to do with the formation of pre-competition categories. Fair equality of opportunity is only compromised when the different social circumstances of individuals influence their prospects of success. It is not compromised when two individuals have different life prospects because they have different endowments and talents, such as their sex, weight and age. When differences in sex, weight and age influence athletic performance, this does not compromise fair equality of opportunity. So, there is no need to form pre-competition categories using physical characteristics such as sex, weight and age, to secure fair equality of opportunity.

The social circumstances of athletes does affect fair equality of opportunity, however. As Loland points out, different athletes from different countries, and different regions or communities within the same country, may have different levels of access to training facilities, equipment and different forms of sport (Loland 2002:60). These different levels of access mean that two similarly talented athletes, with similar ambition to succeed in a sport, may have very different prospects of success (Loland 2018a). This violates fair equality of opportunity. Governments and sports organizations may seek to address this imbalance, to have more just sporting contests. Loland discusses how rules governing equipment use and expenditure on athletes might address inequalities in access to resources, for example to standardize ski design and preparation in cross country skiing, or to limit the amount a player can be bought for in professional football (Loland 2002:64). Loland does not suggest, however, that such inequalities can be addressed by pre-competition categorization. It is not clear from Loland's work what fair equality of opportunity has to do with pre-competition categorization, especially in championship contests such as the Olympics.

Some advocates for developing elaborate handicapping or classification systems to eliminate all unearned advantages, producing potential-performance matched (handicap 2) contests, do suggest taking access to resources into account in these schemes (Bianchi 2017; Jennings and Braun 2024; Knox et al. 2019). This involves compensating athletes for having poor access to resources, by allowing, for example, extra physical advantages to compensate for poor access to resources, or allowing a head start. This is not to secure fair equality of opportunity, as Rawls would require in a just society. Rather, this is to accept that unequal access to resources is unfair, and to compensate athletes accordingly. Furthermore, handicap 1 (performance matched) contests have no need to address access to resources directly, as they classify athletes according to performance. As disparities in access to resources are not physical characteristics that provide the athlete with an advantage or a disadvantage, access to resources would not be addressed in handicap 3 (particular dis/advantage compensated) contests either. At best, the idea of fair equality of opportunity is used to inform handicapping and classification schemes in handicap 2 (potential-performance matched) sport.

The pre-competition categories in championship contests (i.e. sex, weight, and age) are used to describe types of athlete and to ask athletically interesting questions about them. To use fair equality of opportunity to define pre-competition categories in championship sport would be to use access to resources to define a type of athlete. If the notion of an athletically interesting question is expanded beyond physical characteristics that influence performance to include social circumstances that influence performance, possible athletically interesting questions might include: 'how quickly can an athlete swim 200 meters freestyle if they did not have access to a swimming pool during childhood?' and 'how high can an athlete jump if they have never had elite level coaching?'. Perhaps the historic restriction of Olympic sport to amateur athletes, which continues today in sports such a boxing, are an attempt to define types of athlete according to fair equality of opportunity. An athletically interesting question might be 'how well can athletes box if they have never been paid to train?' Even so, categories formed to answer such questions are not sex, weight categories.

There is no doubt that women have not had the same access to sport as men. Perhaps fair equality of opportunity could provide grounds for using male and female categories

in sport. If this is the reason for having the female category in many sports, it would not be an especially good way to achieve fair equality of opportunity, as this varies so much according to the particular circumstances of athletes. In some countries, many women's sports are prohibited, whilst in others they are celebrated. To assess fair equality of opportunity, a much more fine-grained assessment of access to sport would be needed beyond sex classification. Nevertheless, even if men and women had equal access to sport, sex classification would still be valuable. As stated, in championship sport, sex categories reflect the fact that humans have different reproductive organs which have significant effects on their athleticism. It would still be interesting to know what people with these different types of body can do athletically, even if men and women have the same access to sport.

It is laudable to promote fair equality of opportunity by developing sport infrastructure globally, but this principle has nothing with justifying pre-competition categories in championship sport.

4.3 Luck egalitarianism has nothing to do with the pre-competition categories used in championship sport

Even if fair equality of opportunity cannot be used in this way, might luck egalitarianism be used to justify pre-competition categories in championship sport? Again, I suggest not. Massive inequalities in potential performance are tolerated within pre-competition categories, and this is not understood as unfair (Georgiades et al. 2017; Issurin 2017). "Sport creates a system of values, virtues, and practices that are designed to hierarchically grade people in terms of their (virtuously perfected) inherited traits and glorifies the best specimens as champions" (Juengst and Moseley 2015; see also Juengst 2013; Jung 2022; Murray 2018). The extraordinary physiological gifts of elite athletes are celebrated at the Olympics, even though they did not earn these gifts. Only a few people are capable of running a marathon in about two hours. No matter how hard they train, no matter how much they work on their technique and mental strength, most people will never be able to get anywhere close to this time. This is why the people who can are revered – because they are exceptional. That we do not see these exceptional people as having an unfair advantage compared to lesser athletes shows that luck egalitarianism is not the basis of fairness in Olympic and World Championship sport.

The anomaly that large differences in potential performance caused by unearned inequalities are tolerated in competition is explained away by Loland, who argues that if all unearned inequalities were used to define categories for sport, then each athlete would have a unique combination of unearned inequalities (Loland 2018b). As each athlete is unique, each category would only have one person in it, making competition impossible. On this view, a certain amount of unfairness is tolerated in order to make competition possible.

Although this view has proved influential (Martínková, Parry, and Imbrišević 2023; Parry and Martínková 2021), it does not seem correct. For one thing, to satisfy luck egalitarianism and form categories of athletes with roughly the same level of potential performance, it isn't necessary to have a category for each stable inequality. It is not necessary to have all the athletes with the same age in one category, and all the athletes with the same weight in another, etc. 50-year-old male sprinters might compete alongside 25-year-old female sprinters, as the difference in age might compensate for the difference in sex. 60-kilogram male weightlifters might be allowed to compete against 100-kilogram female weightlifters, as the difference in weight might compensate for the difference in sex. Each person may have a unique combination of stable inequalities, but they could still be grouped with other people who have similar level of potential performance (Anderson et al. 2019; Bianchi 2017, 2019; Jennings and Braun 2024; Knox et al. 2019). If differences in potential performance are seen as unfair, they do not need to be tolerated. Systems could be developed to produce pre-competition categories in which differences in potential performance are much less that they are at the moment.

The formation of potential-performance matched categories would likely involve regulating physical characteristics such as VO2Max and squat strength. As these can be influenced by training, and are to some extent under the control of the athlete, Loland considers them dynamic inequalities, rather than stable ones. Loland does not think such dynamic inequalities need to be regulated using categorization, because they are to some extent controllable. However, if luck egalitarianism is the goal, it is not clear why this is acceptable. Physical characteristics such as VO2Max and squat strength do not continue increasing forever with training – athletes can reach the limit of their potential. Well-trained athletes presumably come close to achieving this limit, and where this limit is set is outside of their control. Given this, why is it fair to leave these physical

characteristics unregulated? Furthermore, why should weight, which is also under an athlete's control to some extent, be considered a stable inequality and in need of regulation, whereas VO2Max and squat strength be considered dynamic inequalities and not in need of regulation? Can stable and dynamic inequalities be so clearly distinguished? (Anderson and Knox 2020; Camporesi and Hämäläinen 2021) If luck egalitarianism is required for fair sport, then all unearned inequalities should be compensated for or eliminated to have fair sport. Loland says that we don't do this because it would be against the nature of sport (Loland 2020b). I agree, but this only serves to show that the nature of Olympic and World Championship sport is not luck egalitarian.

This does not mean that luck egalitarianism is unrelated to fairness in sport. There is a sense in which it is deeply unfair that an athlete who works as hard as they can for many years, and yet still cannot compete at the level they would like because their potential performance is not good enough. This sense of unfairness is amplified if the

athlete has a disability that restricts their potential performance. Loland may well be correct that luck egalitarianism underlies this sense of unfairness. However, addressing this sense of unfairness by producing potential-performance categories produces a handicap 2 (potential-performance matched) contest, not a championship contest like the Olympics or the World Championships. Mismatches in potential performance are unfair, just not in the sense of Olympic or World Championship sport. That are there several different senses of unfairness in sport should be kept in mind.

4.4 Controlling external conditions, the Paralympics, and efforts to address prejudice, are not good models for fairness in championship sport

Luck egalitarianism may be relevant to the regulation of external conditions in a competition, such as the weather, the direction of the sun, and differences in the playing surface. Loland also provides a sophisticated and thorough discussion of how to handle these inequalities (Loland 2002:47). His starting position is the norm that "All competitors ought to be given an equal opportunity to perform through eliminating or compensating for non-relevant inequalities" (Loland 2002:46). His early work argued that external conditions are not seen as part of the relevant athletic ability being assessed (Loland 2002:46). Consequently, those external inequalities that can be eliminated

should be, through standardizing track surfaces and starting blocks, etc. External conditions that cannot be standardized should be allocated randomly, using the toss of a coin or by drawing lots (Loland 2002:53). Surfaces used by skiers and skaters should be repaired at regular intervals, and the order in which competitors make their runs should be allocated by lot. Football teams should change ends of the pitch at half time, and decide who starts at which end by tossing a coin. These rules are designed so that *formal* and *meritocratic* equality of opportunity are preserved as much as possible.

In later work, however, Loland has presented the regulation of external conditions as necessary to secure *fair* equality of opportunity (Loland 2018b, 2020a, 2021). For example, he states that "Firstly, and most obvious, FEO [fair equality of opportunity] is followed strictly when to comes to external conditions. All runners run the same distances on the same surface and are measured with the same timing technology" (Loland 2018b). Following his interpretation of what fair equality of opportunity is, he states that external conditions are eliminated because they are not controllable by the athlete, making any advantage arising from external conditions unearned (Loland

2018b, 2020a, 2021). Importantly, he further argues that pre-competition categories such as sex, weight and age are *used for the same reason* as external conditions are controlled.

> "Inequalities in external conditions and system strength are hard or even impossible for competitors to impact or control. If a radical change in weather determines the outcome of a skiing competition, or if the same sailor wins again and again due to superior technology, competitions are considered failures. Similarly, if men and women compete together on the 100-metre dash, or a 120-kilogram boxer meets a fighter half his weight, outcomes are due primarily to inequalities outside of athlete control. Again, this is considered to corrupt the competition, and classification is the means to avoid it" (Loland 2021).

I suggest that this is more recent analysis is not correct. We do not try to eliminate inequalities derived from external conditions because athletes cannot control external conditions. As discussed, there are many physical characteristics that athletes make use of to win contests that are not within their control, and yet this is not seen as unfair in Olympic sport. Loland's earlier analysis was correct. We try to eliminate inequalities derived from external conditions because they are not the relevant inequalities when assessing athletic performance. The analogy Loland tries to draw between controlling external inequalities and the use of pre-competition categories in Olympic sport does not seem to be the right one.

Loland also sees luck egalitarianism as the basis of fairness and categorization in

paralympic sport. Loland praises the International Paralympic Committee for being more explicit than other sports organizations about their rationale for classifying athletes as they do (Loland 2020a). He argues, perhaps correctly, that luck egalitarianism underlies the desire to classify Paralympic athletes to eliminate the effects of their disabilities, which they did nothing to deserve. In combination with using categories controlling sex, age, weight and height (when these are relevant to sports performance), Loland argues that using categories to control disability does a pretty thorough job at controlling the stable inequalities. If correct, this would produce a good approximation of potential-performance matched (handicap 2) sport (Loland 2020a, 2021).

Loland further suggests that both Olympic and Paralympic sport share the same basis for fairness, meaning that we can learn about fairness in Olympic sport by looking at the more explicit discussions of what constitutes fairness and appropriate classification systems in Paralympic sport (Loland 2020a, 2021). This assumes, however, that Olympic sport and Paralympic sport are the same sort of sporting contest, and I doubt that this is the case. As discussed, Olympic and World Championship sport are championship contests, designed to find the best athletes and teams. Championship contests are not potential-performance matched contests, and are not based on luck egalitarianism. The assumption that fairness in one sport is fairness in all sport has perhaps made Olympic and Paralympic sport seem more similar than they are. If these forms of sport adopt different ways of understanding fairness, as I suggest, then the Paralympics should not be used as a model to understand fairness or the pre-competition categories found at the Olympics.

Finally, Loland draws an analogy between prejudicial discrimination against people based on superficial characteristics on the one hand, and the failure to use sex categories in sport on the other (Loland 2020a). He argues that, if sex categories were not used, very few women would be represented in elite level sport. He says that, in most matters, inequalities arising from differences in age, sex, skin colour, ethnic and religious background and sexual orientation are not considered acceptable. He says that this is because these characteristics are not within a person's control (Loland 2020a). They are stable inequalities, and people should not be held responsible for them. He says that, in most circumstances, the effects of prejudice can be eliminated simply by ignoring the irrelevant characteristics (Loland 2020a). In sport, however, this would lead to the

underrepresentation of women in elite sport, which is why sex classification is needed in sport to compensate for this inequality.

However, the underrepresentation of women without sex classification and the underrepresentation of women in other fields due to prejudice are not analogous. The underrepresentation of women, black people and homosexuals in certain fields is seen as a problem, not because these are stable characteristics, but rather because these characteristics are not relevant to a person's ability to do the job in question. People should be assessed on a case-by-case basis, according to whether they can do the job, and not according to the presence of these superficial characteristics. This still applies to jobs where physical ability is relevant, such as in the fire service or the military. As physical ability is related to biological sex, it should be expected that a lower number of women than men are able to do these jobs. This is not due to prejudice. If sport was used to find the people most able to carry out certain physical tasks, then selecting many more men than women would not be a problem in and of itself. The purpose of championship sport, however, is not this. It is to find the best athletes with certain sorts of body. Without a women's category, many exceptional athletes whose bodies have not developed under the influence of testicular tissue would not be recognized and celebrated. The women's category is not used in championship sport to represent women as a group, but rather to allow exceptional female athletes to be identified. Protecting people from prejudice is not about eliminating stable inequalities, and the use of the women's category in championship sport does not seem to be either.

4.5 It is not clear that people in the original position would require luck egalitarianism in sport

In addition to the arguments described above, Loland makes principled arguments that draw on Rawls' original position for arriving at fair rules for sport to follow. Although Rawls sought to provide rules for the fair organization of society, Loland thinks that procedures such as imagining ourselves to be in the original position can be used to find fair rules for the organization of sport.

> "Although Rawls aims at a theory of social justice, he hints that circumstances of fairness like those of the 'original position' can be the starting point for norms that prescribe what is morally right in general.

I subscribe to the idea of moral norms as based on some kind of unforced, informed agreement that gains authority by the fairness of the procedures by which they arise" (Loland 2002:31).

Inspired by both Rawls and T.M. Scanlon, Loland argues that the rules of sport should be those that "cannot be reasonably rejected as a basis for unforced, informed general agreement" (Loland 2002:31, 38). He called this principle "meta-norm 1". Inspired by an Aristotelian view of justice, that equal cases should be treated equally, Loland also argues for the principle described above: "All competitors ought to be given an equal opportunity to perform through eliminating or compensating for non-relevant inequalities" (Loland 2002:46). With these principles in mind, Loland considers how to handle inequalities in sport performance that result from "person-dependent matters", such as height, weight, sex and age (Loland 2002:53).

When considering height and weight, Loland says the following:

"If inequalities of body size were to be considered relevant, only these with body height and weight considerably above (for basketball and volleyball) or below (gymnastics) average would benefit from the solution. Many participants would be handicapped from the very outset by virtue of the rules. However, it is irrational for a group of people to agree on something that would disadvantage the majority of them. This solution cannot satisfy meta-norm 1, for it cannot be reasonably accepted as a basis for unforced, informed, general agreement. We ought, therefore, to regard inequalities in body size as non-relevant inequalities" (Loland 2002:56)

According to Loland, people would not give their unforced, informed, general agreement to rules in sport that made it very difficult or impossible for them to win an event. This is especially true because inequalities in sport performance due to height and weight are stable inequalities (according to Loland), meaning that people cannot influence them significantly through their training. As reasonable people would not agree to contests that many people could not hope to win, height and weight should be treated as non-relevant variables when assessing athletic performance, and controlled through categorization.

Loland makes a similar argument for treating sex as a non-relevant variable when assessing athletic performance. Although he is keen to emphasize that sex does not influence performance in every sport, he argues that it should be controlled in the sports in which it does. In some sports, "Women experience disadvantages for which they cannot be held responsible. Sex classification in these sports seems reasonable" (Loland 2002:58).

Again, this does not seem correct. Firstly, people often seem happy to allow sporting contests that they have no hope of winning to be held. Indeed, people find many

sporting contests interesting *because* they provide an opportunity to watch people playing a sport at a much higher level than they could hope to achieve themselves. People gather in crowds to watch elite sportspeople play, and cheer them on as they do. Many people are fascinated by the skill and athleticism on display in elite level sport (Juengst 2013; Jung 2022; Murray 2018). Being naturally gifted is commonly seen as a heroic trait in sportspeople (Kilger 2017). Even when people *know* that they are not elite athletes, they still seem to want to hold contests that only elite athletes can win. Consequently, it does not seem true that people would withhold their unforced, informed, general agreement to hold such contests when in the original position, where the possibility that they might be an elite athlete still exists.

Secondly, there is no particular reason why reasonable people should come to an agreement about the one, proper way of organizing sport. When deciding how to properly allocate primary social goods, people do have to agree about the one way to do this at any point in time. It is not possible to live in a society that has both high taxes and low taxes at the same time. It is not possible to live in a society both does and does not have equal liberty for all. When it comes to organizing sport, however, there is no such issue. It is possible to organize championship contests and handicap contests at the same time. Reasonable people can agree to organize handicap contests alongside championship contests. Indeed, people do. Championship squash contests that have both a men's and women's contest can be organised in addition to handicap 1 contests that use the universal squash rating system, which pays no attention to the sex of the competitors, only their ability. If people want to organize other forms of handicap contest as well, they are free to do so. Indeed, it may be an infringement of basic liberties to prevent people from organizing the sorts of sporting contests they want to, so long as this does not prevent others from doing the same, and as long as such contests do not constitute a form of prejudice.

5. *Some Implications*

These criticisms of Loland's luck egalitarian account of fairness in sport have many implications. There are many examples of philosophers of sport, sport federations and law courts embracing the notion that fairness in sport requires that competitors within a category have similar potential performance (handicap 2 sport). All of these cannot be

discussed in any depth here. It is useful, however, to provide a couple of examples, just to show that this is indeed the case.

One example of a sports federation accepting a form of handicap 2 sport, when perhaps they should not, is the International Olympic Committee (IOC), in their "Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations" (International Olympic Committee 2021). In this framework, the IOC state that state that eligibility criteria should provide "confidence that no athlete within a category has an unfair and disproportionate competitive advantage (namely an advantage gained by altering one's body or one that disproportionately exceeds other advantages that exist at elite-level competition)" (International Olympic Committee 2021). This might be interpreted as agreeing with the account of fairness found in handicap 1 (performance matched) sport, in which a contest is fair so long as no athlete's performance is much greater than that of any other athlete. Or, it may be interpreted as a form of handicap 2 (potential-performance matched) sport, in which a contest is fair so long as no athlete has advantageous physical characteristics that are not balanced by those held by other athletes. However, if the Olympics is not a form of handicap contest, but rather is a championship contest, this would be the wrong way to understand fairness at the Olympics. The IOC should reconsider how they understand fairness at the Olympics.

This analysis of fairness in sport also has implications for legal proceedings. For example, the Court of Arbitration for Sport has heard several cases in recent years regarding whether eligibility rules for athletes with differences of sex development are a reasonable and proportionate way to secure fairness in sport. In one such case, Mokgadi Caster Semenya vs International Association Athletics Federations (Court of Arbitration for Sport 2018), the Court's Panel repeatedly made claims about the purpose of the female category and the meaning of fairness in sport.

In one place the Panel said that "The purpose of having separate categories is to protect a class of individuals who lack certain insuperable performance advantages from having to compete against individuals who possess those insuperable advantages" (Court of Arbitration for Sport 2018:146). This indicates that it is unfair for an athlete to have an insuperable performance advantage, which is the case in handicap 1 (performance equalized) sport. However, in another place, the panel said that "If the "protected" category's existence is founded on the significant impact of particular

performance-related biological characteristics, in specific events, then it is legitimate to regulate participation in the "protected" category in those events by reference to those characteristics" (Court of Arbitration for Sport 2018:147). Taken with the above comment, this indicates that it is unfair for an athlete to have a physical characteristic that influences performance so much that others in the category who do not have that physical characteristic are not able to match that performance. This would be the case in handicap 2 (potential performance equalized) sport.

In a different case, Dutee Chand v. Athletics Federation of India & The International Association of Athletics Federations (Court of Arbitration for Sport 2015), the Panel said that in order to demonstrate that the presence of a physical characteristic is unfair:

> "the IAAF needs to establish that the characteristic in question confers such a *significant performance advantage* over other members of the category that allowing individuals with that characteristic to compete would subvert the very basis for having the separate category and thereby prevent a level playing field" (Court of Arbitration for Sport 2015:152–53).

Again, it is only fair for an athlete to have a physical characteristic if other athletes without that characteristic can match their potential performance. The female category is understood here as a sort of potential-performance category, in which the physical characteristic of being male is excluded to prevent males dominating females in competition. The view that Olympic and World Championship Athletics are a form of handicap 2 (potential-performance matched) contest is often expressed in legal proceedings.

One problem with this view is that being male clearly does not provide an *insuperable* performance advantage over female athletes. Even though elite males outperform elite females at almost every sport, it is still the case that elite females outperform the vast majority of non-elite males at almost every sport. Consequently, the advantage provided by being male is not insuperable. Accepting that Olympic and World Championship sport are a form of performance (handicap 1) or potential-performance matched (handicap 2) sport, this would suggest that there is no need to have sex segregated sport, as many sub-elite males should be able to compete fairly with elite females. For example, on this view males who can sprint 100 metres in about eleven seconds should be allowed to compete with elite female sprinters. Even so, the Court of Arbitration in Sport has also stated that having male and female categories in sport is well justified and widely accepted as necessary for fairness (Court of Arbitration for Sport 2015:147, 2018:120), which is confusing. Sex segregation might be required

in championship sports that see males and females as having different types of body, but not in handicap 1 or handicap 2 contests.

I suggest this confusion has arisen because intuitions about fairness in handicap contests are tangled up with intuitions about fairness in championship sport. Courts and sports federations should pay attention to the accounts of fairness that they adopt, and ensure that they are appropriate for the kind of sport they are considering. When dealing with Olympic and World Championship athletics, courts should recognize that they are considering championship sport, not handicap 2 (potential-performance matched) sport. This is important, because if the contest is a handicap 2 contest, the potential-performance advantage as athlete has are important for eligibility, whereas the type of body the athlete has is not, but if the contest is a championship contest, then it is the type of body the athlete has that is important for eligibility, not the athlete's potential-performance advantage.

6. Conclusion

Loland's work on the justification of pre-competition categories in sport has been influential. He draws on Rawls' theory of justice as fairness, especially the principle of fair equality of opportunity and the view that just rules should be reached by unforced, informed, general agreement. Loland argues that just rules for pre-competition categories in Olympic and World Championship sport can be derived from these principles.

I have argued that Loland's approach is unsuccessful. The argument that the stable inequalities that influence sport performance should be controlled is based on luck egalitarianism, and yet fair equality of opportunity is not an expression of luck egalitarianism. Fair equality of opportunity allows (and even encourages) people to benefit from innate characteristics that they did nothing to deserve, whereas luck egalitarianism does not. Fair equality of opportunity in sport, although a laudable aim, is to do with access to sport and training facilities, and has little to do with the justification of pre-competition categories that use age, weight and sex. The unearned endowments and talents of elite athletes are not seen as unfair – Olympic and World Championship sport are not luck egalitarian. The reasons for controlling external conditions, for categorization at many Paralympic events and for protecting against prejudice are not the same as those for the formation of pre-competition categories at the Olympics. We

shouldn't try to learn about athlete classification at the Olympics by studying the Paralympics, as these contests use different accounts of fairness. Reasonable people would not necessarily withhold their unforced, informed general agreement from the organization of contests that they have no chance of winning. People do not need to agree on one set of rules that should apply to all sport, as they are free to organize many different sorts of contest.

Trying to find the basis of all pre-competition classification in sport is fruitless, as there are many different forms of sporting contest, each with their own account of fairness. I have described championship sport, and handicap 1, 2 and 3 sport. In several places, I suggest Loland has drawn on the account of fairness in handicap 2 (potential-performance matched) sport, which may be based on luck egalitarianism, and applied it to championship sport, where it does not belong. This has produced some confusion in the philosophy of sport. The assumption that Olympic sport and World Championship Athletics are performance or potential-performance contests is found in sports federation guidance on fairness and in legal proceedings. Recognizing that these are championship contests would refocus attention away from questions of whether an athlete has a disproportionate or insuperable advantage, and onto the question of whether the athlete has the relevant sort of body for a category. Several different forms of sport are worth pursuing, but when sport is a championship contest this should be clearly identified.

Bibliography

Anderson, Elizabeth. 2010. 'The Fundamental Disagreement between Luck Egalitarians and Relational Egalitarians'. *Canadian Journal of Philosophy Supplementary Volume* 36:1–23. doi:10.1080/00455091.2010.10717652.

Anderson, Elizabeth S. 1999. 'What Is the Point of Equality?' *Ethics* 109(2):287–337. doi:10.1086/233897.

Anderson, Lynley C., and Taryn Rebecca Knox. 2020. 'On Loland's Conception of Fair Equality of Opportunity in Sport'. *Journal of Medical Ethics* 46(9):595–96. doi:10.1136/medethics-2020-106748.

Anderson, Lynley, Taryn Knox, and Alison Heather. 2019. 'Trans-Athletes in Elite Sport: Inclusion and Fairness'. *Emerging Topics in Life Sciences* 3(6):759–62. doi:10.1042/ETLS20180071.

Arneson, Richard. 2015. 'Equality of Opportunity'. in *The Stanford Encyclopedia of Philosophy*, edited by E. N. Zalta and U. Nodelman. Metaphysics Research Lab, Stanford University.

Bianchi, Andria. 2017. 'Transgender Women in Sport'. *Journal of the Philosophy of Sport* 44(2):229–42. doi:10.1080/00948705.2017.1317602.

Bianchi, Andria. 2019. 'Something's Got to Give: Reconsidering the Justification for a Gender Divide in Sport'. *Philosophies* 4(2):23. doi:10.3390/philosophies4020023.

Binney, Nicholas. 2024. 'Fairness in Handicap and Championship Sport'. *Journal of the Philosophy of Sport* 0(0):1–20. doi:10.1080/00948705.2024.2409821.

Burkett, Brendan, Mike McNamee, and Wolfgang Potthast. 2011. 'Shifting Boundaries in Sports Technology and Disability: Equal Rights or Unfair Advantage in the Case of Oscar Pistorius?' *Disability & Society* 26(5):643–54. doi:10.1080/09687599.2011.589197.

Camporesi, Silvia, and Mika Hämäläinen. 2021. 'The Construction of Categories in Sport: Unfair Advantages, Equality of Opportunity and Strict Attainability'. *European Journal of Sport Science* 21(11):1492–99. doi:10.1080/17461391.2021.1943714.

Cooper, Jonathan. 2023. 'Fair Competition and Inclusion in Sport: Avoiding the Marginalisation of Intersex and Trans Women Athletes'. *Philosophies* 8(2):28. doi:10.3390/philosophies8020028.

Court of Arbitration for Sport. 2015. 'CAS 2014/A/3759 Dutee Chand v. Athletics Federation of India (AFI) and The International Association of Athletics Federations (IAAF).'

Court of Arbitration for Sport. 2018. 'CAS 2018/O/5794 Mokgadi Caster Semenya v. International Association of Athletics Federations and CAS 2018/O/5798 Athletics South Africa v. International Association of Athletics Federations.'

Edwards, Steven. 2008. 'Should Oscar Pistorius Be Excluded from the 2008 Olympic Games?' *Sports Ethics and Philosophy* 2:112–25. doi:10.1080/17511320802221802.

Elford, Gideon. 2023. 'Equality of Opportunity'. in *The Stanford Encyclopedia of Philosophy*, edited by E. N. Zalta and U. Nodelman. Metaphysics Research Lab, Stanford University.

Freeman, Samuel. 2006. 'Rawls and Luck Egalitarianism'. Pp. 111–42 in *Justice and the Social Contract: Essays on Rawlsian Political Philosophy*. New York: Oxford University Press.

Georgiades, Evelina, Vassilis Klissouras, Jamie Baulch, Guan Wang, and Yannis Pitsiladis. 2017. 'Why Nature Prevails over Nurture in the Making of the Elite Athlete'. *BMC Genomics* 18(8):835. doi:10.1186/s12864-017-4190-8.

Hämäläinen, Mika. 2012. 'The Concept of Advantage in Sport'. *Sport, Ethics and Philosophy*. https://www.tandfonline.com/doi/abs/10.1080/17511321.2011.649360.

Harper, Joanna, Giscard Lima, Alexander Kolliari-Turner, Fernanda Rossell Malinsky, Guan Wang, Maria Jose Martinez-Patino, Siddhartha S. Angadi, Theodora Papadopoulou, Fabio Pigozzi, Leighton Seal, James Barrett, and Yannis P. Pitsiladis. 2018. 'The Fluidity of Gender and Implications for the Biology of Inclusion for Transgender and Intersex Athletes'. *Current Sports Medicine Reports* 17(12):467. doi:10.1249/JSR.0000000000000543.

Heather, Alison K. 2022. 'Transwoman Elite Athletes: Their Extra Percentage Relative to Female Physiology'. *International Journal of Environmental Research and Public Health* 19(15):9103. doi:10.3390/ijerph19159103.

Hilton, Emma N., and Tommy R. Lundberg. 2021. 'Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage'. *Sports Medicine* 51(2):199–214. doi:10.1007/s40279-020-01389-3.

International Olympic Committee. 2021. 'IOC Framework Fairness Inclusion Non-Discrimination on Basis Gender Identity Sex Variations'.

Issurin, Vladimir B. 2017. 'Evidence-Based Prerequisites and Precursors of Athletic Talent: A Review'. *Sports Medicine* 47(10):1993–2010. doi:10.1007/s40279-017-0740-0.

Jennings, Katerina, and Esther Braun. 2024. 'Beyond Suppressing Testosterone: A Categorical System to Achieve a "Level Playing Field" in Sport'. *The American Journal of Bioethics* 24(11):4–17. doi:10.1080/15265161.2023.2232750.

Jones, Bethany Alice, Jon Arcelus, Walter Pierre Bouman, and Emma Haycraft. 2017. 'Sport and Transgender People: A Systematic Review of the Literature Relating to Sport Participation and Competitive Sport Policies'. *Sports Medicine* 47(4):701–16. doi:10.1007/s40279-016-0621-y.

Juengst, Eric, and Daniel Moseley. 2015. 'Human Enhancement'. https://plato.stanford.edu/entries/enhancement/?fbclid=IwAR1_d_Dpf0aJhIWE6aWY0xlO3ZprY0DfUwa7ZcVyJSpD99frn6HAnXz95GI.

Juengst, Eric T. 2013. 'Subhuman, Superhuman, and Inhuman: Human Nature and the Enhanced Athlete'. Pp. 89–103 in *Athletic Enhancement, Human Nature and Ethics: Threats and Opportunities of Doping Technologies*, edited by J. Tolleneer, S. Sterckx, and P. Bonte. Dordrecht: Springer Netherlands.

Jung, Jae Yup. 2022. 'Physical Giftedness/Talent: A Systematic Review of the Literature on Identification and Development'. *Frontiers in Psychology* 13. doi:10.3389/fpsyg.2022.961624.

Kilger, Magnus. 2017. 'Talent Stories in Youth Sports: Discursively Shared Narratives of Success'. *Narrative Inquiry* 27(1):47–65. doi:10.1075/ni.27.1.03kil.

Knight, Carl. 2013. 'Luck Egalitarianism'. *Philosophy Compass* 8(10):924–34. doi:10.1111/phc3.12077.

Knox, Taryn, Lynley C. Anderson, and Alison Heather. 2019. 'Transwomen in Elite Sport: Scientific and Ethical Considerations'. *Journal of Medical Ethics* 45(6):395–403.

Kymlicka, Will. 2002. *Contemporary Political Philosophy: An Introduction*. Second Edition, Second Edition. Oxford, New York: Oxford University Press.

Lippert-Rasmussen, Kasper. 2020. 'Rawls and Luck Egalitarianism'. Pp. 133–47 in *John Rawls: Debating the Major Questions*, edited by J. Mandle and S. Roberts-Cady. Oxford University Press.

Loland, Sigmund. 2002. *Fair Play in Sport: A Moral Norm System*. Psychology Press.

Loland, Sigmund. 2018a. 'Morgan, the "Gratuitous" Logic of Sport, and the Art of Self-Imposed Constraints'. *Sport, Ethics and Philosophy* 12(4):348–60. doi:10.1080/17511321.2018.1493530.

Loland, Sigmund. 2018b. 'Performance-Enhancing Drugs, Sport, and the Ideal of Natural Athletic Performance'. *The American Journal of Bioethics* 18(6):8–15. doi:10.1080/15265161.2018.1459934.

Loland, Sigmund. 2020a. 'Caster Semenya, Athlete Classification, and Fair Equality of Opportunity in Sport'. *Journal of Medical Ethics* 46(9):584–90. doi:10.1136/

medethics-2019-105937.

Loland, Sigmund. 2020b. 'Response to Commentaries on "Caster Semenya, Athlete Classification, and Fair Equality of Opportunity in Sport"'. *Journal of Medical Ethics* 46(9):599–600. doi:10.1136/medethics-2020-106755.

Loland, Sigmund. 2021. 'Classification in Sport: A Question of Fairness'. *European Journal of Sport Science* 21(11):1477–84. doi:10.1080/17461391.2021.1923816.

Marcellini, Anne, Sylvain Ferez, Damien Issanchou, Eric De Léséleuc, and Mike McNamee. 2012. 'Challenging Human and Sporting Boundaries: The Case of Oscar Pistorius'. *Performance Enhancement & Health* 1(1):3–9. doi:10.1016/j.peh.2011.11.002.

Martinkova, Irena, and Jim Parry. 2024. 'Eligibility Rules in Sport'. *Movimento* 30:e30055. doi:10.22456/1982-8918.143565.

Martínková, Irena, Jim Parry, and Miroslav Imbrišević. 2023. 'Transgender Athletes and Principles of Sport Categorization: Why Genealogy and the Gendered Body Will Not Help'. *Sport, Ethics and Philosophy* 17(1):21–33. doi:10.1080/17511321.2021.1974530.

McArdle, David. 2008. '"Just One of the Challenges of 21st-Century Life": Oscar Pistorius in the Court of Arbitration for Sport'. *SCRIPT-Ed* 5(2):404–13. doi:10.2966/scrip.050208.404.

McNamee, Mike, Richard Parnell, and Yves Vanlandewijck. 2021. 'Fairness, Technology and the Ethics of Paralympic Sport Classification'. *European Journal of Sport Science* 21(11):1510–17. doi:10.1080/17461391.2021.1961022.

Morozov, Konstantin. 2024. 'In Defense of Rawlsian Egalitarianism'. *Politeia* 113(2):62–75.

Murray, Thomas H. 2018. '"Natural" Talents and Dedication—Meanings and Values in Sport'. *The American Journal of Bioethics* 18(6):1–3. doi:10.1080/15265161.2018.1474014.

Parry, Jim, and Irena Martínková. 2021. 'The Logic of Categorisation in Sport'. *European Journal of Sport Science* 21:1–9. doi:10.1080/17461391.2021.1943715.

Pike, Jon. 2023. 'Why "Meaningful Competition" Is Not Fair Competition'. *Journal of the Philosophy of Sport* 50(1):1–17. doi:10.1080/00948705.2023.2167720.

Rawls, John. 1958. 'Justice as Fairness'. *The Philosophical Review* 67(2):164–94. doi:10.2307/2182612.

Rawls, John. 1999. *A Theory of Justice: Revised Edition*. Cambridge, Mass: Belknap Pr.

Rawls, John. 2001. *Justice as Fairness: A Restatement*. Harvard University Press.
    Scheffler, Samuel. 2003. 'What Is Egalitarianism?' *Philosophy & Public Affairs*31(1):5–39.

Tomlin, Patrick. 2012. 'Can I Be a Luck Egalitarian *and* a Rawlsian?' *Ethical Perspectives* 19(3):371–97. doi:10.2143/EP.19.3.2172296.

Tweedy, S. M., Emma M. Beckman, and Mark J. Connick. 2014. 'Paralympic Classification: Conceptual Basis, Current Methods, and Research Update'. *PM&R* 6(8S):S11–17. doi:10.1016/j.pmrj.2014.04.013.

Tweedy, S. M., and Y. C. Vanlandewijck. 2011. 'International Paralympic Committee Position Stand--Background and Scientific Principles of Classification in Paralympic Sport'. *British Journal of Sports Medicine* 45(4):259–69. doi:10.1136/bjsm.2009.065060.

US Squash. 2022. 'Ratings | US Squash'. https://ussquash.org/ratings/.

World Athletics. 2022. 'C2.1B - Mechanical Aids Regulations'. https://worldathletics.org/about-iaaf/documents/book-of-rules.

World Para Swimming. 2022. 'World Para Swimming Classification Rules and Regulations'. https://www.paralympic.org/swimming/classification.