

**“Social Justice in Intercollegiate Sport:  
A Critical Examination of Racialized, Gendered and Disabled Bodies”  
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**“I am a lady...”  
Intersex and transgender athletes and educational opportunities.  
Complex problems and simple solutions**

“They said I am not a lady... But I will tell them... I will show them... I am a lady...” The words of Santhi Soundarajan before a group of law academics and practitioners in Istanbul, Turkey, September 7, 2010, echoed in the room during the first public appearance (Sengupta, 2010a) for the athlete from India who had been stripped of her medal at the pinnacle of athletic competition success and found out about it via the Indian media (The Times of India, 2007). As her eyes filled with tears watching a video of parents and friends commenting on the case and its muddled process, researchers and lawyers were left wondering... Is it Caster (Buzuvis, 2009), then Santhi, and then...?

With the advent of Caster Semenya’s reinstatement in international athletics’ competitions and the impending overdue handling of Santhi Soundarajan’s case, more attention has been drawn toward the entangled web of law, policy, science, and politics impacting athletes whose gender status in the traditional model of sport governance and competitions has been questioned or does not conform to norms (Buzuvis, 2010; O’Reilly, 2010; Saria, 2009; Boylan, 2008; McArdle, 2008). The advocacy work of athletes with the lived experience, Kristen Worley, and the Coalition of Athletes for Inclusion in Sport, has contributed in raising awareness (Sengupta, 2010b), and led to key policy shifts [International Olympic Committee (IOC), 2004], which progressively gain more positive reception (Masand, 2007), starting from Canada (AthletesCAN, 2010; Play the Game, 2010) and currently expanding to several states and international sport governing bodies (Griffin, 2007).

Intercollegiate athletics policy pertaining to intersex types and transitioned athletes remains elusive (Buzuvis, 2010). The absence of inclusionary principles for these student-athletes at NCAA member institutions that may currently select to forego athletic participation and its inherent educational component is further underscored by the fact that intercollegiate athletics eligibility is a very brief window of opportunity (NCAA, 2010). Thus, such students may have to opt for their gender identity over their athletic identity. Current practice may exclude these norm-defying athletes, forcing them to bypass receiving recognition for their talents, an opportunity afforded to their peers.

Policy changes within the IOC and many other sport governing bodies (USA Track and Field, Ladies’ Golf Union, etc.) have been instigated by new discoveries in the world of genetics as well as individuals such as Renee Richards, who fought for their rights for equality in sports, despite the potentially negative public attention (IOC, 2004; *Richards v. United States Tennis Association*, 1977). The combination of science and pioneering athletes has made it possible for those in similar situations to showcase their abilities and compete among their peers. The NCAA has yet to see such a public example as those of Renee Richards or Caster Semenya, which makes it ever more pertinent that policy revisions be made to prevent legal challenges against the NCAA or the public humiliation of its young student-athletes.

Scientific advances in medicine, biochemistry, and genetics yield insight, which is beneficial for future policy drafting actors (Gooren, 2008). As genetic inconsistencies surface, the differentiation between male and female becomes increasingly difficult. A fluid mosaic of complex possibilities and rare occurrences substitutes an outdated definition of gender. This research studies the malleable concept of gender, investigating contemporary methods and problems in gender identification, and examines recent extraordinary cases of Therapeutic Use Exemptions (TUEs) (Wagman, 2009), hormone treatment for gender reassignment (Gooren & Behre, 2008; Handelsman & Gooren, 2008), risks and pitfalls of chromosome karyotyping, medical conditions, i.e. Klinefelter’s Syndrome, Turner’s Syndrome, complete Androgen Insensitivity Syndrome, and the difficulty applying universally accepted hormone levels (Shy, 2007).

An overview of scientific developments, emboldened by legal theory and policy analysis, leads to important conclusions toward necessary amendments in IOC and sport federations’ policies. The legal research portion handles applicable discrimination theory, privacy rights, and case law from the US, UK, and other jurisdictions, i.e. *Richards v. United States Tennis Association* and *Smith v. City of Salem*. Sport policy, which tries to maintain competitive balance as well as fair treatment of athletes, may benefit through a wave of deregulation for these athletes. In sequence, NCAA policy modeling IOC policy may need to encompass particular inclusion principles that are now missing from the context of intercollegiate athletics. Intercollegiate athletics policy-drafting entities may have had the opportunity to anticipate related developments in international sport settings, however at this time it may be feasible for NCAA stakeholders to be in the forefront of contemporary inclusion policies and provide benchmarks for other governing bodies to consider.

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