Twitter Thread by Miroslav Imbrisevic



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Rachel McKinnon/Veronica Ivy's latest: "In deciding whether trans and intersex women should be allowed to compete as women, who has the burden of proof in the debate? The answer is clear: those who seek to exclude." No. If you want to change the status quo, the burden of proof...



...is on you. Secondly, here is the usual attempt to muddy the waters by including intersex people (whose sex characteristics are atypical) in the debate. We know the sex of transwomen and transmen. They are unhappy with the sex they were born with.

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"The International Olympic Committee (IOC), the Court of Arbitration for Sport (CAS), and the UN Human Rights Council (UNHRC) all clearly state that there is a human right to participate in competitive sport." No. What the IOC and CAS say about human rights and sport has...

... has no bearing on international human rights law. I cannot find any mention by the UNHRC that sport is a human right. Instead, there is the idea that you can use sport to further human rights in countries where these are not (fully) upheld. And RM...

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... doesn't not provide any citation for her claim about the UNHRC. What the IOC and CAS are saying is mere hyperbole.

"For the purposes of sport, trans and intersex women are considered fully female. Inclusion is the default." Not in UK and Australian law.

When it comes to competitive (elite) sports, a transwoman can be excluded from the female category according to UK legislation. The UK Gender Recognition Act (GRA) 2004 (Section 19 Sport) states that a trans athlete can be excluded from a gender-affected sport if this measure 'is necessary to secure – (a) fair competition, or (b) the safety of competitors'. The relevant section (195) in the UK 2010 Equality Act (EA) repeals/supersedes the section on sport (19) in the GRA – but retains the substance: fair competition and the safety of competitors can warrant the exclusion of 'transsexual persons'. This exemption (among others) confirms that the state recognises that there is a difference between sex and gender.

Australia lists sex, gender identity AND intersex status as grounds for lawful discrimination. [I think intersex people deserve to be treated separately, as this is much more complicated.] Contrary to McKinnon, inclusion is not the default.

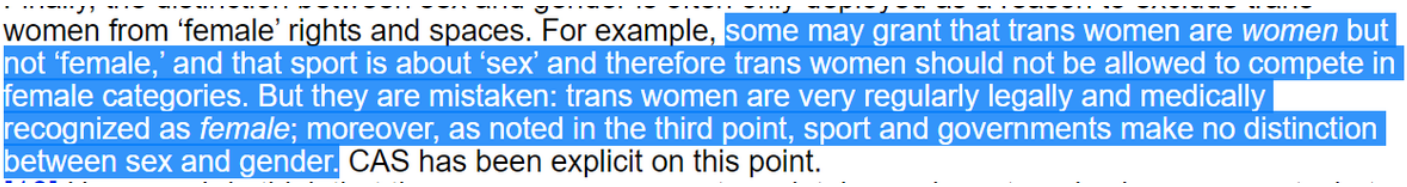
We find similar legislation in Australia. The 1984 Sex Discrimination Act (No. 4, Section 42, Sport) reads:

> (1) Nothing in Division 1 or 2 renders it unlawful to discriminate on the ground of sex, gender identity or intersex status by excluding persons from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.

Here the values of 'fair competition' and the 'safety of competitors' are implicit. If a competitor has an (unfair) advantage, stemming from their sex, gender identity or intersex status over other competitors, in sports where strength, stamina and physique are relevant, then exclusion is justified.

And this is just from the first page of McKinnon's paper. What other undigested cogitations await us in the rest of the paper? More to come...

The legal recognition (as female) is merely a courtesy. The law creates a legal fiction in order to accommodate trans people. But the law (in the UK) insists on exemptions in certain areas. One is sport. These exemptions are proof for the underlying legal fiction. If McK...


women from 'female' rights and spaces. For example, some may grant that trans women are *women* but not 'female,' and that sport is about 'sex' and therefore trans women should not be allowed to compete in female categories. But they are mistaken: trans women are very regularly legally and medically recognized as *female*; moreover, as noted in the third point, sport and governments make no distinction between sex and gender. CAS has been explicit on this point.

... were right (transwomen are legally indistinguishable from women), then the exemptions wouldn't make any sense. McK's problem is that she believes the legal fiction is true.

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So, 1. the human rights argument has no legs. 2. The law in the UK and in Australia recognises that there is a difference between sex and gender, and because of this exclusion of transwomen from the female category in sport is lawful. The IOC values inclusion higher than...

fair play and the safety of the competitors. But even the IOC treats them differently. For example, they have to declare that they will continue to compete in their declared gender identity for the next four years. There are further conditions (2.1-2.4):

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In contrast, World Rugby recognises that your sex affects fairness and safety. Your gender identity is not a free pass to competing in the female category. I would argue that, particularly in contact sports, this should apply at all levels.
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There is no 'human' right to sport, because playing sports is neither important nor urgent. There may be an ordinary right to sport like the right to eat ice-cream or the right to join a dramatic society. Trans athlete do have this right, but it doesn't follow from this ...

... that they have the right to compete in the sex category which aligns with the gender-ID. According to McK's logic the legislation in the UK and in Australia (allowing for exclusion from the female category) would be an explicit violation of human rights. And this is nonsense.

McKinnon ignores how the quote from the IOC charter continues. It ends in the words 'fair play'. This is a constraint on the unqualified inclusion of transwomen. And that's why the IOC makes demands on transwomen which don't apply to female athletes.

4. The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.

McK. writes: 'Governments and sports organizations make no distinction between ‘sex’ and ‘gender.’ The lawful discrimination between women and transwomen by the IOC and the exemptions in UK legislation tell us otherwise. McK's claim is wishful thinking.

McK: 'CAS has repeatedly ruled that intersex--and by extension trans--women have a right to sport'. Well, nobody is denying this. But it doesn't follow that TW can compete, without any constraints, in the female category. The IOC makes them reduce their testosterone levels.

World Rugby doesn't deny that TW have a right to play rugby either, but not in the female category, because there is an increased risk (20-30%) of injury for the other players. And then there are the physiological advantages of TW to be considered.

Need to take a break now - shaken by the paucity of the arguments.

Brief interlude on style in writing: you should never have two words, which are identical or similar, in close proximity to each other: "Sailors’ focus seems to be entirely on the arguments--and her rejection thereof--of so-called ‘Identifiers.’ " Try reading it out loud.

"The IOC does not have biological criteria for who counts as male or female: they use legally recognized sex." Yes, the IOC go by legal status, but it is more nuanced. Biological criteria are implicit, because the IOC treats transwomen differently. Measuring T is very biological.

Footnote 13: 'Trans women, in many jurisdictions including the US, Canada, Germany, UK, etc. are medically and legally considered female.' Yes, they are 'legally' female, but using the word 'medically' female is an equivocation (calling two different things by the same name)...

'Medical' or 'medically' relates to the science of medicine, and by implication to the physiology of the patient. Women are treated for different illnesses, they react differently to medicines (dosage), their stroke symptoms differ from men, etc. McK. believes that she is...

... also 'medically' female, because her medical records say so. Now, this is truly childish. Prior to transitioning her medical records would have listed her as male. But even now, provided her physician is a responsible practitioner, there will be...

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... a note on her record saying that she is a 'transwoman', so that people will address her accordingly. But her medical treatment will differ from that of a biological woman. She is not eligible for smear tests and other preventive tests (e.g. for breast cancer) which are...

... designed for females. In the medical sense, transwomen are not women. McK. is only legally female, but claiming that she is 'medically' female may cause confusion among the uninformed. This could also lead to bad outcomes in medicine if people believe they have changed sex.

"The concept of ‘physiologically male’ but ‘socially female’ is nonsensical. Indeed, it is transphobic to refer to trans women as male in any sense. What does it mean to be ‘physiologically male’? There are 6’4” cis women. So being tall can’t be it. There are very strong...

... cis women, too." Well, if there are no physiological differences, then we could collapse the sex categories in sport. We would have one big open category. But McK wants to maintain the sex categories, which are based on different physiology. Her reason for being eligible...

for the female category in sport must be self-ID, or perhaps legal recognition (or that her medical records say so). But this would introduce an new criterion for eligibility into sport. Some competitors qualify because of their biology, others because of self-ID or legal status.

Such an inclusion policy, without any attempt of mitigation for physiological advantages, would be category defeating: it would defeat the reason for having categories. A bad side-effect of this policy: girls/women would be discouraged from taking up sports: "What's the point?"

McK's main target is the philosopher of sport, Pam Sailors: 'any arguments based on physiometric comparisons between men and women are also irrelevant: the matter is not about including men in women’s sport, it is about whether it is fair to exclude some women from women’s sport.