**Patriarchy in Disguise: Burke on Pike and World Rugby**

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**Introduction**

World Rugby (WR) announced in 2020 that transwomen should not be competing at the elite level because of safety and fairness concerns. WR and Jon Pike, a philosopher of sport advising them, adopted a lexical approach to get a grip on the three values in play: safety, fairness, and inclusion. Previously, governing bodies tried to balance these competing values. Michael Burke recently published a paper taking aim at Pike’s lexical approach.

Here, I reply to Burke. His paper suffers from two major faults. Rather than treating safety, fairness, and inclusion as values which are on a par (a common but wrong assumption), Burke compounds the error by subordinating safety and fairness to inclusion. This means he is reversing the ranking (lexicality) adopted by Pike and WR. But inclusion is merely a function of eligibility; it is not a value in its own right, unlike safety and fairness.1

Burke’s second error is to align with a particular brand of feminism, which is trans-inclusive *ab* *initio*. He believes that women and transwomen have common interests, because they experience (Burke 2022, 224) ‘the controlling force of hegemonic masculinity’. Therefore, female athletes should form alliances with transwomen athletes, because this will further the feminist cause. It turns out that his suggestion will only appeal to said brand of ‘transfeminism’. It is unlikely that female athletes and fans, as well as other feminists, will buy into Burke’s account, because what he offers is just more patriarchy –but in the guise of feminism.

**The World Rugby Policy**

In February 2020 WR formed a transgender working group and held a transgender workshop, inviting independent experts in the fields of performance, physiology, medicine, law and socio-ethics. The aim was to develop a rugby-specific transgender policy that would be equitable, safe and evidence-based. This involved wide and inclusive consultation as well as reviewing the respective research. In October 2020 WR published their transgender guidelines.

Among the many experts at the workshop was the philosopher Jon Pike, who advised on ethical issues. Pike (2021) recommends a ‘lexical order’ of values, when it comes to the inclusion of transwomen2 in rugby. This simply means that the three values need to be ranked in order of importance – just like in a lexicon (see Rawls 1999 [1971], 37). In collision sports safety should come first, the next consideration is fairness, and once these two issues have been settled, then we can think about inclusion. Pike and WR argue that allowing transwomen into the female game would impose greater risks of injury on players. According to research by WR the increased risk for female players is 20– 30%. Secondly, transwomen benefit from a physiological advantage: having gone through male puberty. For these reasons WR recommended the exclusion of transwomen from elite and international level rugby.3

Burke, in his critique of Jon Pike’s position, claims that it is informed by the ‘spirit of radical feminism’ (Burke 2022, 225). I take Burke’s radical feminist stance to mean that the patriarchy needs to be dismantled in order to eliminate the social domination of women by men. It is the existing social roles and institutional structures that perpetuate this domination (Thompson 2001, 8).4

What drives his account is the idea that inclusion is paramount, and Burke claims that this will be good for women, transwomen and feminism. His overall strategy is to weaken those aspects of the WR policy (and Pike’s position) which stand in the way of trans-inclusion, as well as to highlight the negative outcomes of the WR policy for transwomen athletes. My discussion will centre on these aspects.

**Negative Experiences by Transwomen Athletes**

Burke writes (Burke 2022, 216): ‘The hardline exclusion of trans women players from women’s rugby will likely result in their practical elimination from the sport, at least until the men’s rugby community becomes more tolerant, and less misogynistic and sexist [and probably transphobic]’.

Burke seems to vacillate when it comes to the question: where do transwomen athletes belong? Using the adjective ‘hardline’ suggests that their home is in the female category. But the latter part of the above quote implies that they belong in the male category. Perhaps the best interpretation for now is that for Burke transwomen are transwomen, i.e. in a class of their own. Later on we will see that Burke keeps vacillating.

WR excludes transwomen because of safety. This is a sufficient reason, because the safety of the competitors should be paramount. By admitting transwomen into the female game the risks of injury are increased – beyond the parameters which the traditional sex-based categorisation would provide. What could outweigh these considerations for the health of female athletes? 1. The idea that we need to validate/affirm the gender identity of transwomen athletes; or 2. that the sexist, misogynist and transphobic attitudes in male sports make transwomen feel unwelcome there; or 3. that it somehow furthers the feminist cause. I doubt that any of these three considerations, whether singly or jointly, are strong enough to outweigh our concern for the safety of athletes. But let’s see how Burke addresses these issues.

He (Burke 2022, 216) describes the difficulties of transwomen athletes:

‘As Bialystok and Kingwell argue, given ‘the toxic climate women may find when they enter desegregated but male-dominated athletic spaces, they [trans women] may wish to play with other self-identified women for reasons that have nothing to do with athletic rivalry’ (. . . , my insertion). Additionally, the immediate experience of exclusion from a sporting competition that the trans\* individual had previously been participating in was both privately humiliating and embarrassing, and socially dislocating (. . .).’

In the first part of this quote Burke, via Bialystok & Kingwell, seems to suggest that having an Open category would not suit women (nor transwomen, which he inserts into the quote) because of the toxic male climate. As a result, women (and transwomen) would prefer to play with women. This poses no problem for women, since it is uncontroversial that they belong in the female category. But why should the female category be open to transwomen, just because they experience toxic masculinity and transphobia in an Open category, dominated by male athletes?

This passage illustrates how trans allies centre the negative experiences/hurt feelings of transwomen, but completely ignore how inclusion will affect female athletes. It’s as if they don’t count. Burke’s argument amounts to this: female athletes should make up for the failures of men to integrate transwomen into male sport or in an Open category. Meaning, female athletes have to compensate transwomen for male toxicity and intolerance. Rather than being radically feminist, this is actually radical patriarchy – in a rather transparent guise of ‘feminism’. The role of women is to be ‘support workers’. The more obvious solution would be to put the onus on men; they need to change and make transwomen (and women) more welcome in the male category, in mixed sports or in the Open category.

The second part of the quote focuses on how ‘humiliating and embarrassing, and socially dislocating’ it would be for transwomen to be excluded after having previously played on a women’s team. ‘WR invited trans women into the women’s game only five years ago’ (Burke 2022, 215). It is true that this would be disappointing for anyone: to have something taken from you, which you thought belonged to you.

But this appeal to the hurt feelings of transwomen is misguided. The inclusion in collision sport (but also in other disciplines) was a mistake in the first place. Many sports governing bodies and clubs did not understand that the societal recognition of trans people, as reflected in many legislations, does not easily transfer into the realm of sport. In sporting competition the gender-identity of the athlete is not relevant; we test bodies, segregated by sex – not by gender identity (Martínková, Parry, and Imbrišević 2021). For this reason, British and Australian legislation permit the exclusion of transwomen to ensure the safety and fairness of competition.5 But many other legislations do not have such exemptions, and this has led to confusion among governing bodies (but also in society).

Burke states (Burke 2022, 217): ‘Given this historical and sociological analysis of the possible effects of this reversal of orientation in transgender regulations in WR, we should witness strong justifications for the removal of an existing right to participate for trans women players in women's rugby’. Burke qualifies this statement in endnote 7: ‘This is not suggesting that such a right should have been given in the first place or that this right to participate in the women’s category is a human right. It is only saying that an existing right to play has been withdrawn’.

Burke leaves open the possibility that the ‘right’ was wrongly granted in the first place. Such caution is commendable. But reversing this decision doesn’t require a strong justification; it is merely the correction of a wrong decision, as we can see in the recent policy reversals by FINA, British Triathlon, the Rugby Football Union (RFU), and Rugby League. Things are different when a right, that people naturally possess or that was justly granted, is revoked (e.g. the deprivation of rights for the German Jewish population during the Nazi era).

Burke wrongly believes that the revocation of the ‘right’ to compete in the female category amounts to an injustice, and because of this, he misinterprets the significance of the Open category for Pike. Burke (2022, 216) assumes that the Open category has a ‘compensatory’ function. But for Pike and World Rugby (but also for FINA and others) the Open category is not compensation for ‘losing an existing right’. It is simply a better solution – no compensation is necessary, because no injustice occurred. So, it turns out that Burke’s qualification in endnote 7 is just window dressing.

Something that is rarely discussed in this context is the sense of responsibility players have to their sport.6 Even if the regulations permit transwomen to compete in the female category, they need to ask themselves whether this would be safe for their teammates and/or opponents, as well as being fair (Imbrišević 2021). And, more generally, would it be good for their particular sport? Thus, the loss-of-an-existing-right thesis ignores these aspects. Burke’s appeal to the hurt feelings of transwomen is not a good enough reason to permit inclusion into the female category. Even if it were, it would still be important to consider the feelings of women, and to balance competing claims.

**The Open Category**

Pike (2021, 165) favours an Open category to accommodate transwomen. Burke (2022, 217) argues that ‘the suggestion of an open competition being able to capture trans women players in rugby is unlikely to be successful’. The mistake here is to think that the culture of intolerance in male sport cannot be changed, so the burden of inclusion must be placed on women. But cultural change is possible and Burke himself is advocating for it when he recommends alliances between transwomen and women in sport. Furthermore, women are used to this pattern: men imposing an inequitable distribution of burdens (and benefits) in society on women. And Burke seems to repeat this pattern.

He (2022, 8) gives another reason why an Open category would not be desirable:

‘the suggested solution of placing all trans women into an open competition with men, demonstrates a lack of good faith in this argument. WR’s own biomechanical research explained the increased forces associated when colliding with male bodies, its injury data showed that injuries were more frequent in the men’s game, and its physiological data demonstrated that trans women athletes endured losses of strength, stamina and physique after hormonal treatment or surgery.’

The question is, does hormone treatment make transwomen more prone to injury when playing in an Open category (dominated by men), and if so, by how much? The other question is: in which category is the risk of injury greater? Meaning: do men in the Open category pose a greater risk to transwomen than transwomen do to women (an increased risk of 20–30%, according to WR) in the female category? Sports scientists tell us that the loss of performance after hormone treatment is small and that transwomen retain their considerable performance advantage over women (RFU 2022, 8):

‘the lowering of testosterone removes only a small portion of the biological advantages. There is no change in bone mass or density, and only 5% to 10% reductions in lean muscle mass and strength. The reversal of performance advantages is thus only one-fifth of the initial advantage, which leaves a significant remaining advantage, particularly for attributes of strength and mass.’

Thus, it would make more sense to go for the Open category solution.7

There is an important aspect in this context that Burke has overlooked. In the Open category no mitigation strategies are required. Mitigation has been problematic since 2004, when the IOC required cross-sex hormone treatment and gender-confirming surgery in order for trans athletes to compete in the sex category that aligned with their gender status. These mitigation strategies8 always were, and still are, a violation of bodily integrity and, consequently, a human rights violation. 9 Even though gender-confirming surgery has been abandoned by the IOC and most national governing bodies, changing the natural hormonal balance of your body can have serious (long-term) health implications.

Today, some (but not all) novice trans athletes may voluntarily opt for cross-sex hormone treatment.10 This will put them at a competitive disadvantage when competing against men in the Open category, due to a loss of performance compared to their pre-trans state. However, this loss is relatively small in relation to the competitive advantage they would have in the female category, but it would still give them (on average) a considerable advantage over any females competing in the Open category. Transwomen who opt for cross-sex hormones, even though the Open category doesn’t require it, consent to this competitive disadvantage (*volenti* *non* *fit* *injuria*).11

Because of the disparities in size or physique Burke supports mitigation strategies ‘at the individual athlete level’; I take this to mean a case-by-case assessment. Taking his cue from Windholz (2020), Burke (2022, 219) argues:

‘disparities in size or physique between players that result in increased risk to workplace safety must be assessed at the individual athlete level, and risk management should include mitigation strategies that may change the way the sport is played to deal with these disparities. Exclusion of all trans women athletes would be a capricious overreach, that does not eliminate size mismatches.’

The RFU (2022, 1) recently published the following assessment:

‘At present, there are no credible tests that can assess physiological variables (e.g. mass, strength, and power) for the purposes of measuring fair competition or safety when comparing players. The same issue is true for identifying a marker at which a measurement point/ threshold for each variable can be set. The inability to currently identify valid and conduct [sic] reliable tests means that the case-by-case approach is not currently a viable option and may increase liability concerns rather than alleviate them.’

Furthermore, wouldn’t transwomen be closer in size and physique to male players, rather than to female players? Wouldn’t it make more sense to allow them to enter an Open category and apply the mitigation strategies there? So, WR’s policy is neither an ‘over-reach’ nor ‘capricious’.

Burke believes that mitigation through assessment of strength and physique would somehow reduce or eliminate risk of injury. This conflates the variety of bodies within a sex class with the average physiological (dis-)advantage between sex classes.

Burke doesn’t understand that matching players by physique (i.e. height and weight) doesn’t mitigate the risk. This is a common view among the public, but it is naive. We need to consider the greater speed, power, explosiveness and bone density of TW players (RFU 2022, 6): ‘While it is possible to test some simple variables, such as mass and height, this would not alleviate the discrepancy between ciswomen and trans women, because the strength, power and speed advantages exist even after mass is adjusted’.

If the matching-by-physique thesis were right, then we could match female boxers with male boxer within weight classes. We could even specify that the male opponents must not exceed the weight of the female fighter within a weight class (but they may be below it). I predict that the results would be ‘devastating’. In other words, Burke fails to distinguish between ‘competitive advantages’ and ‘category advantages’.12

**Safety: Let’s Change the Nature of Rugby**

In order to reverse Pike’s lexical ordering, Burke must weaken the other two values; he starts with safety (Burke 2022, 214):

‘When a justification for the exclusion of a group of players is buttressed by assertions of the essential features of a sport that has a long history of the exclusion of all women, often on grounds that their bodies were incapable of withstanding some or all of these essential features, then it is politically useful for women to ask: *who* *determines* *the* *essence* *of* *rugby* *[or* *sport* *X]* *and* *does* *this* *essence* *enhance* *our* *[women’s]* *playing* *competitions* *and* *our* *political* *power* *within* *the* *practice* *community?*’

Burke misrepresents what is going on. First, the essential features are not there to keep women out of the game; his assertion is historically false. Second, the problem of adapting the essential features in the women’s game only occurs because some people favour trans-inclusion, which increases the risk of injury. Female players, so far, have consented to the existing risks of their sport, just like any other athlete does. This does not preclude the possibility that governing bodies and/or women decide to change the game to make it safer for women (e.g. by trying to minimise instances of whiplash and concussion). But their initial consent does not transfer to an increase in risk, which the inclusion of trans-women would bring about.13

Burke reasons: If safety concerns lead to the exclusion of transwomen, perhaps we should modify the game to make it safer. This indicates how highly he values inclusion. He asks (Burke 2022, 217): ‘Have we, as an IF [International Federation], done everything that we can to minimize risk of harm, prior to the exclusion of an ”unsafe” category of membership from our inner circle of players?’

Some essential features of Rugby are dangerous. Do we need them? Pike says: Yes, because without them we would change the nature of the game. Burke (2022, 217) says: ‘some of the essential features of rugby that Pike lays out as a ”special duty” that WR has to the game itself, may be questioned as either inappropriate or damaging to both trans women inclusion, and to a broader feminist cause of increasing women’s authority and power in rugby’.

For Burke, if we could change, i.e. adapt or remove, some of the risky features this would have two advantages: it would further both inclusion (of transwomen) and the feminist cause. Transwomen could then – allegedly – continue to play in the female category, and women would have more say about their own game, which up to now has been regulated mostly by men.

This would have the odd consequence that the rules of the women’s game would be different from the men’s game: less dangerous, less aggressive, not as ‘hard’? Such an adaptation to the women’s game might find the approval of transwomen (or not?), but would it find the approval of women? I doubt it.14 It would be a regressive move, because it reinforces the stereotype that women are too delicate for some sports. By tying the second advantage (women exercising autonomy over their own game) to the first (inclusion of transwomen) Burke is trying to make the first more palatable to women. It might also function to distract us from the underlying regressive ‘feminism’ – but I think Burke is underestimating the mental acuity of female athletes. There is actually no need to tie these two issues together; we could have one or the other, or both. It is also not clear to me how including transwomen results in ‘increasing women’s authority and power in rugby’, when governing bodies/clubs are still dominated by men.

Burke (2022, 219) suggests that some of the essential – and dangerous – features of rugby could be challenged from a feminist perspective. We can concede that men may have said to women in the past: *You* *can’t* *play* *rugby,* *it’s* *too* *dangerous!* But that doesn’t mean that the game was designed to contain dangerous elements so that women would be kept out. Reflection on the origins of the game of rugby, which as the name indicates started in a British public school for boys, may shed light on this issue.

Even if women wanted to go down the route of injury mitigation, it would have nothing to do with the inclusion of transwomen; it would simply be an attempt to make the game safer for women. But, again, this looks like an attempt to wrap trans-inclusion into a ‘feminist’ veil. Women play rugby because they enjoy it – including the risk of injury this entails. If this were to be changed, in order to facilitate transwomen's inclusion, then it would actually be women who would be deprived of a ‘right’. There are actually two rights in play here: women are deprived of playing the game they love, and they are deprived of the right to a female-only space. This is something Burke fails to consider.

According to WR (2020):

‘The risk of particularly serious and catastrophic injuries during scrums has led to a number of law changes specifically designed to depower the scrum to reduce injury risk. This risk would be amplified by large mismatches in strength between opposing players, since the force applied must be withstood by a direct opponent. This is an illustration of how mismatches in strength and size are directly responsible for forces that result in injury.’

The inclusion of transwomen makes the women’s game less safe. Any mismatch in strength and size in the men’s game would be amplified in games where women face transwomen. But in the women’s game we might not just encounter an intra-category mismatch in size and strength between female players – as also happens in the men’s game – in addition, there would be a mismatch in physiology (male versus female). Transwomen are on average able to withstand and exert greater forces than women, even if matched by size, and this explains and justifies the policy change by World Rugby.

If we really wanted to eliminate/minimise some areas where there is risk of serious injury in the women’s game, then, the better – and feminist – policy would be to consult female players. Note, that this would not justify trans-inclusion, because transwomen will still increase the risk of injury (albeit to a lesser degree than before any rule changes).

Burke (2022, 218) considers an objection to changing the women’s game: ‘This is, of course, fraught from a feminist perspective, as modifications to game rules have been one of the ways that men have retained authority in sport’. However, the more pressing objections would be: 1. women do not want to play ‘girly’ rugby; 2. such changes would not take care of all cases of increased injury risk, posed by the inclusion of trans-women in the female category; 3. even if you could change the rules to make trans-inclusive rugby as safe as it would be without transwomen, we are still faced with the issue of fairness – and that would be insurmountable: it is unfair to permit transwomen players to bring category advantages (i.e. the physiological advantages of male puberty) into the female category.

Burke (2022, 219) has an interesting reply to my second point: ‘if the scrum is considered to be essential to either the ”nature of rugby” or one of the ”inherent risks of the game” then it will remain as a dangerous, but allowable part of the women’s game, whether trans women players are present or not’. Sports scientists specialising in rugby will have to rule on this, but it seems implausible that the presence of transwomen wouldn’t make a difference when it comes to risk of injury, particularly if more than one is on the field.15

**Attack on Fairness Arguments**

Having dealt with the safety objection, Burke (2022, 217) then turns his attention to the other value: ‘Are there different perspectives on fairness that we, as an IF, can adopt that will be less likely to result in the exclusion of currently included trans women players from women’s rugby?’ He employs a similar strategy as before (on safety) and asks: how can we reframe fairness to make inclusion of transwomen more likely? Note that in both strate-gies inclusion is given great (greater?) importance, because safety and fairness are subject to adaptation in order to accommodate transwomen. He retains Pike’s lexical priority model but reverses the ranking. But why privilege the demands of transwomen athletes? One may well ask: *Should* *we* *not* *consider* *the* *concerns* *of* *female* *athletes* *first?* Burke is trying to circumvent this issue by claiming that a greater good for female athletes ensues: it helps the cause of (radical) feminism.

We might agree that our policy should be guided by (radical) feminism, which is a worthy conception of justice. However, Burke’s account doesn’t further the feminist cause; it subordinates what women want to the demands of a subgroup of males. Burke’s account sidelines the issues of fairness and safety, because inclusion is treated as if it were a master-value.

Pike (2020, 156) highlights Pam Sailors’ (2020) conception of fairness, because she declares what her basic assumptions are: ‘Pam Sailors makes it clear that her position comes from a mutualist perspective, and an assumption that fairness is fundamental’. Burke, mistakenly, takes this to mean that Pike has adopted Sailor’s position on fairness.

Pike writes at the end of that section: ‘But there may be an alternative approach based on a different understanding of sport. I attempt to illustrate this in what follows’. This means that Burke’s subsequent cogitations about Sailor’s (and Pike’s) account of fairness are redundant.

Burke doesn’t just ask: ‘are there different perspectives on fairness’, he also mounts an attack on common conceptions of fairness. This, of course, will make it easier to argue for trans-inclusion. His first target was Pam Sailor’s account of fairness, but he also takes aim at ‘the level playing field’. However, nobody actually believes that it is perfectly level. This metaphor merely expresses that we aim for the best and most practical approximation to fairness in sport – in spite of any socio-economic differences, and in spite of any competitive advantages. If we wanted to equalise all differences, there would be no winner. All racers would finish at the same time. All games would end in a tie.

Quoting Donnelly and Kidd (2020), Burke (2022, 221) charges WR with using a ‘preemptive strike’ against transwomen by excluding transwomen players ‘*before* an uneven playing field was revealed in competitive play’. I take it that he refers to their claim that there is no evidence for any physiological advantages by transwomen athletes. Donnelly and Kidd call this move by WR ‘the weaponization of fairness’. However, their claim ignores our common sense judgements (i.e. the rationale for having male/female categories; see Coleman and Shreve 2018), as well as the mounting scientific evidence confirming that transgender athletes retain a good deal of their physiological advantages (Harper et al. 2021; Hilton and Lundberg 2021; Roberts, Smalley, and Ahrendt 2021; World Rugby 2020). But, most of all, it ignores the efforts by WR to bring all stake-holders to the table and come up with a fair and practical solution.

Burke then tries to find support from Leslie Francis (2019, 140) on the lexicality of fairness: ‘we make judgements of unfairness in particular contexts and then work to see what improvements of fairness might look like’. He (Burke 2022, 220) claims that her constructivist account ‘suggests a different decision-making process in debates about competition fair-ness’ – in contrast to the account by Pam Sailors (i.e. fairness as reasonable chance of winning).

Inclusion should be the default position (i.e. having lexical priority), according to Burke, and he believes that the quote from Francis provides a justification for this.16 If any unfairness ensues, then we can work out how to remedy this – later. This is an imprudent policy, because it suggests that we wait for unfairness to manifest itself (e.g. Lia Thomas and Laurel Hubbard) and then we will adjust our policy. But we can foresee that unfairness will arise, so our policy should pre-empt negative outcomes, rather than letting them develop. We can let things develop and change our policies later, of course, but the downside is that we cannot restore podium places, scholarships, and rankings to female athletes who have lost out to transwomen.

Since we can foresee bad outcomes from trans-inclusion in the female category, we would, after deliberation, conclude that it would be unfair to include players who carry a category advantage (albeit slightly reduced in cases of hormone treatment) into the female category – and that is what WR have done.

**Feminist Issues and Feminist Evaluations of Policy**

Burke (2022, 221) explains: ‘My opposition to the expansion of the Pike/WR position to other sports and to sub-elite levels of rugby will focus on the lack of feminist evaluations of policy change in their argument’. Considering that WR opted for transparency and wide consultation (including women, transwomen and their advocates) such a charge is surprising. Burke’s (2022, 222) complaint is that WR did not ‘evaluate whether the exclusion of trans women from separate sporting spaces produces feminist outcomes’. This presupposes that any policy changes *should* produce feminist outcomes, and, more specifically, that trans-inclusion *could* produce feminist outcomes. The latter claim looks counter-intuitive. Why would a policy of trans-inclusion, which puts male-bodied athletes into the female category, and which is pushed by governing bodies, dominated by men, ‘produce feminist outcomes’? On top of that, female athletes who object are routinely told – by men – to shut up.17

How does Burke arrive at this puzzling idea? He writes (Burke 2022, 11): ‘Feminist consciousness raising has historically been about using separate spaces to allow women to voice stories which reveal shared experiences; experiences that often weren’t yet part of normal discourse’. So if we include transwomen in these female spaces then this will promote consciousness raising, because of the ‘shared experiences’ of both groups. This view is a feature of intersectional feminism which centres people whose experiences overlap, and this is how trans-inclusive feminists justify the claim that feminism must include transwomen. However, this is implausible, because the experiences of women and transwomen – in (and outside of) sport – differ fundamentally. Women’s oppression is based on being of the female sex and having a female body (Lawford-Smith 2022, 201): ‘Being female is a discrete sort of oppression’. Transwomen’s oppression is mostly transgender-based.18

Burke (2022, 222) quotes from Katherine Jenkins: ‘Both women and trans women share some of ”the social or material realities that are, in that context [of sport], characteristic of women as a class” (Jenkins 2016, 410, my insertion.)’. Jenkins may be right that those transwomen who ‘pass’, will experience a small slice of what it means to be a woman in this society and the accompanying sex-based oppression (e.g. sexism).19 Thus, there may be a small area of overlap, for those who ‘pass’ as a woman, but this leaves out the vast reality of what it means to be a girl/woman in this society and the embodied experience of being female.20

One could, for example, claim that women and transwomen are routinely ‘belittled’ in society by men. But the predicate has a different basis for each group: women are belittled because of all the stereotypes that men believe about women; the majority of trans-women are belittled and mocked by men because they ‘pretend’ to be women (and fall short), and, by doing so, they violate ‘the norms of masculinity’ (Lawford-Smith 2022, 112). Using the same word to describe something doesn’t mean that the experiences are the same.

In the context of sport the ‘shared experiences’ are dificult to detect. Trans-inclusion in female sport means that a category advantage (male puberty) is taken into the protected female category. This amounts to exercising ‘male privilege’; transwomen are competing in a category for which, strictly speaking,21 they are not eligible. They claim to have the right to change categories, and claim the right to all the – scarce – benefits22 of the female category. One wonders where the shared experiences are. It is hard to see any feminist virtue in such actions; it does look more like male entitlement.

Let us remind ourselves of an insight by Andrea Dworkin23 (1997, 111): ‘Systems of power are capable of reorganizing themselves, and the fact that things look different does not mean the hierarchy has changed. It’s the hierarchy we have to look at, not the fact that some social patterns of behavior are different’. Burke supports a new social pattern, but provides a justification which aims to obscure the underlying hierarchy.

He rejects applying the (Burke 2022, 221) ‘Pike/WR position to other sports and to sub-elite levels of rugby’, because such a policy change would ignore feminist perspectives. However, Burke conflates the gender-critical view that women require separate spaces – in society (prisons, shelters, changing rooms, etc.) – with the rationale for separate categories in sport: fairness (and safety in collision sports). In sport the gender-critical view is not primarily about having separate spaces (to guarantee privacy and safety from male violence), it is about eligibility claims: biologically male athletes are not eligible in the (protected) female category. It is the eligibility criteria (the female category is only open to female athletes, or, exceptionally, to people who did not go through male puberty) that deliver fairness.24 Holly Lawford-Smith (2021, 7) states: ‘Fairness arguably requires e.g. sporting categories in which women compete against each other, rather than against male people’. This is an eligibility claim: male people are not eligible. The gender-critical feminist view is more subtle in the sports context than Burke thinks; it supports the logic of categorisation (see Parry and Martínková 2021).

Burke (2022, 221f.) wants to distinguish spaces where:

‘counterdiscourses that reduce male power can be made stronger with the inclusion of trans women [e.g. the playing of certain sports at certain levels] and spaces where the inclusion of trans women might threaten or undermine the purpose of the separate space without significant architectural redesign [i.e. women’s shelters or refuges].’

The claim that trans-inclusion in female sport could provide counterdiscourses that reduce male power will seem paradoxical to (gender-critical) feminists. Why would push-ing biological males into the female game reduce male power? They retain their own category (male) and ‘colonise’ the female category. This is how it will appear to all those feminists (and women) who don’t take trans-inclusion as a given, because they don’t believe that ‘transwomen are women’.25

Burke’s talk of ‘counterdiscourses’ aims at changing the nature of sport. This is why he quotes approvingly from Gleaves and Lehrbach (2016, 323):

‘We have argued that a better rationale [for the inclusion of transgender and intersex athletes in women’s sport] emphasizes that *sport* *is* *about* *meaningful* *narratives* and that gendered narratives constitute at least one type, and perhaps the most significant type, of sport’s meaningful narratives.’

Gleaves and Lehrbach (2016, 315) are trying to get away from the ‘undue emphasis on physiological equivalance’ between competitors: ‘Focusing on sport’s other meaningful values uncovers a more robust rationale for including transgender and intersex athletes’.26 For them, sport has a meaning-making function.

We could ask: *Why* *should* *sport’s* *purpose* *be* *to* *provide* *meaningful* *narratives* *for* *(transwomen)* *athletes?* This is, after all, a turning away from testing bodies towards giving trans athletes another way to affirm/validate their gender identities. Meaningful narratives are available to trans athletes elsewhere, through legal recognition, and through life outside of sport: work, friends, family, etc. But for Gleaves and Lehrbach (2016, 323) ‘[t]he rationale for inclusion of transgender and intersex athletes must move beyond the idea of fairness’.

Even if we accepted ‘meaning-making’ as *the* value in sport, we would need to consider how trans-inclusion affects female players. Women and girls do already self-exclude from sport for various reasons.27 When they know that they will encounter trans girls/women, this trend will continue, particularly if we take into account that fairness and safety28 are not the guiding principles in sport anymore. And let’s not forget orthodox Jewish girls/women and Muslim girls/women – Burke fails on the intersectionality front.

Take the recent case of swimmer Lia Thomas (Lohn 2022). The narrative her teammates and opponents get is that they just didn’t train hard enough, or lacked in ability, which led to defeat, and some will have lost a spot on the team.29 So, Gleaves & Lehrbach – and Burke – privilege the positive narratives for transwomen athletes, but ignore the negative ‘impact’ inclusion may have on female athletes.

Burke (2022, 222) recognises that women are silenced because of their sex/gender – it is men who make the decisions: ‘Many sporting practices normally have either a long history of male definition [e.g. rugby], or a recent history of male ownership [e.g. women’s rugby]’. Burke wants to use this insight as a springboard to show that there is an overlap of interests between transwomen and women. But, before we consider this possibility, let’s ask: *Who* *is* *pushing* *the* *inclusion* *of* *transwomen* *is* *sport?* Burke himself points to the answer: most clubs and governing bodies are still dominated by men. So even if inclusion were to further the feminist cause (which is implausible, as I will discuss momentarily), it is being thrust upon women by men. Should women ignore this genealogy because trans-inclusion might further the feminist cause? The message is: *Put* *up* *with* *the* *patriarchal* *origins* *of* *this* *policy,* *because* *you* *(and* *transwomen)* *will* *be* *better* *off*. Some feminists might see this argumentative structure as silencing or gaslighting. One of the few organisations who have actually listened to women is WR (also FINA).

Christen Price (2020, 1535) explains that:

‘the transgender rights movement undermines women’s rights by invading women’s spaces. This represents a comprehensive threat to women’s boundaries, and the less control a woman has over her environment, the more this matters. That is, saying that these sex-based boundaries do not matter (or matter less than the wishes of males who wish to cross them) is always going to affect the most vulnerable people the most – such as women prisoners, homeless women, and girls’.

Burke (2022, 222) recommends ‘forming pragmatic alliances between women and trans women, in reorienting the focus of feminist action onto the structures and benefactors of patriarchal oppression, and in repairing the in-fighting in feminism’. He believes that both groups (Burke 2022, 222): ‘share an overlapping consciousness and support the political outcomes of feminism’. Both of these claims are highly contested within feminism; only trans-inclusive feminists will subscribe to them. There is strong disagreement within feminism about the inclusion of transwomen into the feminist cause – hence the ‘in-fighting’. If, as Burke suggests, the pragmatic alliances would lead to the dismantling of patriarchal structures and oppression, then this might stop the ‘in-fighting in feminism’. But this is highly unlikely, as I will argue below.30

However, Burke is aware that WR’s policy could count as a ‘win’ for feminism, although it seems counter-intuitive to him. He states that he could temporarily support the WR policy (Burke 2022, 223) because it would give ‘cis women’ the opportunity to excel:

‘The important consideration in supporting this outcome is not fairness or safety, but a feminist narrative that, given the long history of absence of women from rugby, high level women’s rugby excellence is a meaningful narrative that undermines existing sexed/ gendered narratives in rugby, in sport and in society.’

But Burke's (2022, 223) support for the WR policy is only temporary ‘due to the unfortunate persistence of a dominant and misgendering narrative in sport/society that *trans* *women* *are* *not* *real* *women*’.31 So once we accept transwomen as ‘women’, then Burke will withdraw his support for the WR policy of exclusion? In such a scenario, presumably, it wouldn’t matter who will excel at the elite level (transwomen or women – because they are all the same?). But it is highly likely that it will be predominantly transwomen who will come away with meaningful narratives, rather than women.

Burke then explains that (2022, 224): ‘this same historicized feminist politics also does not commit me to supporting the expansion of the trans women-exclusive policies of WR into other sports with a more inclusive history towards women, or especially into sub-elite levels of rugby’. It appears then that Burke is in line with WR but his justification differs. He will permit transwomen at the non-elite level because it furthers feminism. As far as I see he gives three reasons for this.

The first reason stresses their common experience (Burke 2022, 224): ‘There are areas of experience that women and trans women share in many men’s team sports like rugby. Both groups have experienced the controlling force of hegemonic masculinity through-out a history of non-participation, then trivialization’. What Burke doesn’t acknowledge is that women and transwomen are targeted for different reasons by this hegemonic masculinity. So, what they experience is fundamentally different, as well as different in scope.

The second reason springs from radical feminism, specifically the dismantling of gender oppression (Burke 2022, 224): ‘Both groups are symbolically dangerous to the dominant discourses of hegemonic masculinity that remain part of these sports. Women rugby players are the evocative image that demonstrates the injustice of past narratives’. If female (and transwomen) rugby players were really ‘symbolically dangerous’ to hegemonic masculinity, surely, we would have noticed a difference by now. After all, both groups have been playing for a while. But, oddly, the hegemonic masculinity persists.

The third reason, and I suspect the most important one, stresses that the sex distinction doesn’t matter culturally32 (Burke 2022, 224): ‘Trans women rugby players are the con-temporary image of the overlap of designated-at-birth males and females in sporting performance, and sub-elite rugby competition allows for this counternarrative to be publicly demonstrated’. Burke believes that ‘feminist power’ can be drawn from the inclusion of transwomen in female sports. He writes: ‘Separately sexed competitions allow for the fiction of male [all-male] superiority over female [all-female] performance. Trans women inclusion can reveal the overlap in performance’. To illustrate this, Burke refers to an event in the USA. Chelsea Mitchell (a woman) beat transwoman Terry Miller in 2019 at the outdoor State Open High School championships.

In this context Burke weighs up the positive narrative (and the rewards) that a protected category brings for female athletes against ‘feminist’ gains of inclusion (Burke 2022, 13): ‘Miller’s exclusion from such an event may assist some individual athletes achieve results, and perhaps, scholarships, but leaves in place the infantilizing ”protected status” of women’s sport. Miller’s inclusion produces a much more powerful feminist counternarrative’. Here we have a clash of narratives, and Burke values the trans-inclusionary narrative more. Secondly, the protected status is ‘infantilizing’ because it maintains ‘the fiction of male [all-male] superiority over female [all-female] performance’. This chimes with the early radical feminists who thought that sex differences should be eliminated and shouldn’t matter culturally.

Here, Burke seems to accept that transwomen are physiologically male. His great insight is that sometimes elite (or non-elite) females can beat mediocre males in sporting competition. And if we allowed transwomen to compete in the female category, this would be (repeatedly?33) demonstrated. But all we need to do is compare the statistics between male and female performance; we will discover that far, far down the line a woman will beat a man. The lifetime best of the World champion 400 meters runner Allyson Felix is 49.26. ‘Just in the single year 2017, men and boys around the world outperformed her more than 15,000 times’. (Coleman and Shreve 2018)

The problem with Burke’s insight is that he conflates the social level (as well as the sports governance level) with the physical/sporting level. Men are on average physically stronger – but this is not a problem for feminists. The problem is their social dominance (sometimes helped by their physical strength). Burke is missing the target of radical feminism; it is the dismantling of social roles and institutional structures (which perpetuate male dominance and the oppression of women). Seeing a woman (occasionally) beat a transwoman in a race will not cause these structures to crumble. And we don’t need to include transwomen into the female category to illustrate the point that there will be some overlap at the margins. It’s a trivial bit of information that sometimes girls/ women are physically stronger, faster, etc. than men. I think Burke overestimates the ‘revolutionary’ potential of this observation.

He is certain that ‘a focus in policy on maintaining biological categories in sport, buttressed by assertions of the essential features of these sports, is unlikely to change the organizational dominance of men’. He believes that keeping a protected female category, combined with the (male?) essential features of Rugby would be detrimental to feminism.

The last two sentences in Burke’s essay reveal the feminist import of his text (Burke 2022, 224):

‘Separately sexed competitions allow for the fiction of male (all-male) superiority over female (all-female) performance. Transgender inclusion with a softening of the boundary maintenance in some women’s sport contexts can reveal the overlap in performance, an important starting point in challenging male power in sport.’

No reasonable person believes the fiction anymore, particularly not women. There is no need to try to reveal the occasional ‘overlap in performance’ through trans-inclusion, because in most cases this will be to the detriment of female athletes. Male – social – power, in and out of sport, is still the norm. So the evidence suggests that Burke’s approach is doomed to failure, and we should keep to categorising by sex. The true feminist position is to resist the colonisation of the female category by male-bodied persons.

**Conclusion**

Burke’s paper is a multi-pronged attack on the WR policy and on Pike’s lexical priority of values, as well as a rejection of the ‘Open category’ solution. He reverses the lexical priority of safety and fairness by making inclusion his ‘master-value’. Burke contends that before we exclude transwomen from the female category we must make every effort to make the game safer and fairer for women and transwomen. If Burke can reassure athletes that safety and fairness are not an issue any more, then there are no more obstacles to trans-inclusion.

Burke centres the transwoman athlete’s experience and the opportunity for meaningful narratives which inclusion could provide, whereas exclusion allegedly leads to humiliation and hurt feelings. He suggests a new rationale for sporting competition: meaning-making. Furthermore, if women and transwomen formed pragmatic alliances this could help dismantle patriarchal oppression and stop the in-fighting in feminism. At the end of his paper he reveals the radical feminist import of trans-inclusion in the female category: it would destroy (Burke 2022, 225) ‘the fiction of male (all-male) superiority over female (all-female) performance’. But that fiction is a tale that no reasonable person believes anymore. Burke’s claim that the protected status of the female category is ‘infantilizing’ will strike women as an example of gaslighting.

Because of his vacillation when using the term ‘transwoman’, it isn’t always clear what Burke’s position is, but in the end he does appear to accept that transwomen are male (otherwise the overlap-thesis wouldn’t make sense). His ‘feminism’ will only appeal to those feminists who are trans-inclusive anyway. Burke would need to state in his paper that his account will not find approval among all (radical) feminists, and is limited in that respect. If feminism means that women are fighting for their rights as women, then it is difficult to see why it should be trans-inclusive. Why fight for the right of males to identify into the sex-class ‘women’, or into the female category in sport? Why fight for the right of transwomen to replace/sideline women within protected categories (women-only prizes, shortlists, podium places, awards)? The upshot of Burke’s account is that women are submitting to the demands of a subgroup of males (pushed by governing bodies which are largely dominated by men), and this is just another way in which patriarchy exerts its domination over women. I wouldn’t call this ‘feminism’, and I certainly wouldn’t call it ‘radical’.

But more importantly, women, whether players or fans, will reject Burke’s account because their conception of sport centres fairness (and safety), rather than meaning-making. They realise that inclusion is a function of eligibility, rather than a default position – or a master-value.

What is noticeable, though, is that there is very little concern for how the inclusion of transwomen will affect female players in the short and medium term. Burke’s ‘feminist’ ideas are regressive, because they subordinate the needs and dreams of female athletes to the demands of transwomen. His ideas seem to be straight from the ‘patriarchy playbook’. Thus, what Burke is doing, is (Price 2020, 1553) ‘coopting feminism to promote largely male interests’.

**Notes**

1. I will not expand on this here, but see Imbrišević (2022).

2. Burke spells this as two words, the adjective ‘trans’ modifying the noun ‘woman’. This implies that transwomen are women in all relevant respects, no different from ‘young women’, ‘happy women’, ‘tall women’ or ‘French women’. And if that is the case, then all discussion about inclusion/exclusion would be moot. But this is the point of contention: where do transwomen athletes belong? For this reason, I prefer to use the compound noun: ‘trans-woman’. I have similar reservations about Burke’s use of the terms ‘cis women’ and ‘desig-nated male/female at birth’. I don’t find Burke’s conjoining phrase ‘sex/gender’ helpful in the sports context, because especially here we need to distinguish sex from gender.

3. One year later (September 2021) the UK Sports Councils came to the same conclusion: ‘for many sports, the inclusion of transgender people, fairness and safety cannot co-exist in a single competitive model’. And they also recommend an Open category for transwomen.

4. Note that Burke doesn’t spell out what his conception of radical feminism is.

5. The fact that these exemptions are often not invoked has to do with ignorance, misinforma-tion about the law – and fear of being branded ‘transphobic’.

6. Such considerations would fit in with Pike’s concentric circles.

7. A reviewer pointed out that taking cross-sex hormones affects the performance of trans-women and is a voluntary act. Female players, however, are more prone to neck injuries because of the physiological differences in neck musculature between males and females.

8. One could frame the IOC requirements differently: they are an attempt to adapt the male bodies of transwomen to the ‘standard’ body of females. The rationale would be that the sex categories presuppose having certain body-types. I hope that Jim Parry will eventually publish his paper on ‘The Standard Body in Sport’.

9. See the latest announcement from World Triathlon: [https://www.triathlon.org/news/article/](https://www.triathlon.org/news/article/world_triathlon_executive_board_approves_transgender_policy) [world\_triathlon\_executive\_board\_approves\_transgender\_policy](https://www.triathlon.org/news/article/world_triathlon_executive_board_approves_transgender_policy).

10. Those who have been on the treatment will likely continue to do so to help their transition. 11. If the numbers of trans players go up (there is currently an explosion of young people who identify as trans in Western countries), then we might witness the introduction of ‘trans categories’.

12. On the distinction between ‘competitive advantages’ and ‘category advantages’ see Parry and Martínková (2021).

13. If we had transwomen players on most teams (i.e. if it became the norm), and if female players were aware of the increased risk this poses, then, and only then, would a novice player’s consent encompass this increased risk.

14. And Burke is aware of this problem – see his endnote 8: ‘suggesting different rules for women’s rugby is not without issue. Ezzell’s research of women players in the US College system suggests that these players see the lack of rule-based distinctions between the men’s and women’s game as a ‘source of pride’.

15. It is also possible that we could have an ‘inequitable’ distribution of transwomen during a match. One side could have three or more trans players and the other none. This would, of course amplify the risk of injury for the female-only team. As a result, the existing unfairness due to trans-inclusion, which is based on male physiological advantages, is exacerbated when an action by one or more transwomen results in injuries to opposing female players. Their performance for the rest of the game might suffer, or worse, they may have to go off. Here we can see how the increased risk of injury can also affect fairness in a match.

16. I believe Burke misinterprets Francis, but I will not pursue this here.

17. See: <https://www.reuters.com/lifestyle/sports/females-told-be-quiet-transgender-issue-ex-weightlifter-2021-05-07/>.

18. Talia Mae Bettcher (2017, 9), a trans philosopher, warns: ‘in blending together multiple forms of gender-based oppression under a common umbrella, distinctive forms of gender-based oppression are erased. Indeed, if not handled with delicacy, such a move could lead to the reduction of trans oppression to the oppression of women’.

19. Because they are perceived to be female.

20. On ‘Sex and gender-based discrimination exclusively suffered by women’, see Price (2020, 1553f.), also Adichie (2017).

21. The mitigation of physiological differences required by the IOC (and other NGB) since 2004, is proof that transwomen do not meet the eligibility criteria for the female category outright. The reversal of recent policies of trans-inclusion in other sports proves my point.

22. And Burke (2022: 12) is aware of the scarce benefits in women’s sport, in comparison to men’s sport.

23. Note that Dworkin was in favour of including transsexuals into feminism, but we don’t know how she would view the current phenomenon of transgenderism.

24. As I said before, changing the eligibility criteria to include transwomen was a mistake, resting on confusion.

25. They believe that transwomen are biological males and/or that a change of gender would make them into transwomen, rather than into women (see Germain Greer 2015 or Chimamanda Ngozi Adichie 2017).

26. Trans athletes and intersex athletes (better: people with DSDs) are often thrown together by supporters of trans-inclusion, but these are two fundamentally different issues, which deserve separate treatments.

27. See: [https://files.eric.ed.gov/fulltext/ED603915.pdf.](https://files.eric.ed.gov/fulltext/ED603915.pdf)

28. See: [https://www.washingtonexaminer.com/news/watch-transgender-rugby-player-slams-female-athletes-coach-says-three-injured.](https://www.washingtonexaminer.com/news/watch-transgender-rugby-player-slams-female-athletes-coach-says-three-injured)

29. See: <https://www.telegraph.co.uk/swimming/2022/03/21/transgender-athlete-ban-lia-thomas-should-not-allowed-compete/>.

30. It isn’t clear to me why we cannot live with ‘infighting’. People often reasonably disagree and there is nothing wrong with that. Uniformity of opinion is the death of knowledge and progress, as J.S. Mill reminded us.

31. Confusingly, this suggests that Burke subscribes to this view (transwomen are real women) after all.

32. See Shulamith Firestone (2003 [1970], 11): ‘[T]he end goal of feminist revolution must be, unlike that of the first feminist movement, not just the elimination of male privilege but of the sex distinction itself: genital differences between human beings would no longer matter culturally’.

33. This is unlikely, see Coleman and Shreve (2018). We would also need to look into the problem of ‘tanking’. It is odd that Laurel Hubbard failed in all three attempts to do a lift at the Tokyo Olympics. It has also been suggested that the swimmer Lia Thomas likely underperformed in some events (<https://www.dailymail.co.uk/news/article-10531049/How-trans-swimmer-Lia-Thomas-intentionally-suppresses-performance-pool.html>).

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