

What is the Work of Sportsmen and -Women; and (When) Should it be Paid Equally?

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Robert Kowalenko
Philosophy Department
School of Social Sciences
University of the Witwatersrand
robert.kowalenko@wits.ac.za

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ABSTRACT Professional sport like most human activities undertaken for pay is subject to Article 23(2) of the Universal Declaration of Human Rights (“Equal Pay for Equal Work”). An athlete’s ‘work’ can be variously construed, however, as entertainment/profit generation, athletic performance, or effort. Feminist arguments for gender wage parity in professional sport based on the former two construals rely on counterfactual assumptions, given that most actual audiences and performances of athletes identifying as female do not (currently) equal those of athletes identifying as male. But both philosophical and scientific accounts of the truth-conditions of counterfactual conditionals of the form ‘If conditions *X* obtained, then the entertainment value/performance of female athletes would equal that of male athletes’ remain uncertain. Construing athletic ‘work’ as effort, on the other hand, ties remuneration to a quasi-unobservable quantity, with paradoxical outcomes when varying levels of athletic or social disadvantage are taken into account. Appeal to procedural justice, finally, does not yield wage equality unless we make the same counterfactual assumptions, or postulate a right to equal remuneration on unrelated grounds of substantive justice. On either of these approaches, the case for gender wage parity in professional sport requires strengthening.

1. Introduction

Article 23(2) of the U.N.'s Universal Declaration of Human Rights states that 'Everyone, without any discrimination, has the right to equal pay for equal work' (United Nations 1948, 75). This principle has grounded calls for gender wage equality for almost two centuries now,¹ and seemed an obvious enough human right in 1948 to make its inclusion in the Declaration relatively uncontroversial (Morsink 1999, 127-129). Of course, sport *per se* cannot be considered 'work,' as it is in truth a rather idiosyncratic human activity: theorists have associated it with artful play, playful art, training for war, hunting, education, a form of self-reflective contemplation, a means to promote excellence and the good life, and much else. But contemporary professional sport shares sufficiently many attributes with other types of gainful employment to justify the expectation that Art. 23(2) would play a key role in efforts to enforce gender wage equality among professional athletes, just as it does in the fight for equal pay in many other sectors. In fact, the U.S. Women's Soccer team recently made international headlines by filing a gender discrimination lawsuit against the U.S. National Soccer Federation, using the Art. 23(2)-inspired slogan "Equal Play, Equal Pay!" (Salam 2019); and similar legal battles have taken place in Australia (Associated Press 2019) and elsewhere.

Yet, contemporary philosophers of sport make surprisingly little use of feminism's historical rallying cry when addressing the presumptive injustice of the gender pay gap in professional sport.² And opponents of gender wage parity in sport can also appeal to Art. 23(2), to *deny* the justice of equal pay. The principle's application to sport clearly raises a number of questions: if Art. 23(2) is to govern professional sport as it does most other activities undertaken for pay, then what is best thought of as the 'work' of a professional athlete; when is the work of two athletes *equal*; and what would be the appropriate *metric* by which to establish equality? Could it be that gender justice in professional sport requires suspending Art. 23(2) until conditions are right for its

¹ The first explicit demands for gender wage equality in the UK date back to 1832 and 1834 (Trades Union Congress 2020), (Frow and Frow 1989, 136); in the U.S., the Women's Trade Union League officially started to demand equal pay in 1907 (Jacoby 1975, 132).

² With the notable exception of (Archer and Prange 2019), who will be discussed in Section 6.

application to the sector, or interpreting it in a particular way—perhaps even rejecting it? I will argue that answers to these questions require counterfactual reasoning, the role of and theoretical difficulties with which are often ignored or glossed over by both supporters and opponents of gender parity in sport remuneration. The present paper aims to address this lacuna.

2. Entertainment and Performance

In 2016, the C.E.O. of a professional tennis tournament, Raymond Moore, sparked public indignation that ended with his resignation when he said that women in professional tennis ‘ride on the coat-tails of the men. If I was a lady player, I would go down every night on my knees and thank God that Roger Federer and Rafa Nadal were born, because they have carried this sport’ (Rothenberg 2016). The controversy continued to simmer when Novak Djokovic, the men’s Nr. 1–ranked tennis player at the time, weighed in and said that male players deserved more prize money than female ones, because men ‘[attract] more attention, spectators, [sell] more tickets and stuff like that’ (Boren 2016); John McEnroe, a former top player turned commentator, opined that Serena Williams was the ‘best female [tennis] player ever—no question,’ albeit not the best tennis player *tout court*, because ‘if she played the men’s circuit she’d be like 700 in the world’ (Garcia-Navarro 2017); and Rafael Nadal, when asked whether it would be just if women in tennis earned as much as men, chimed in: ‘It’s a comparison we shouldn’t even make. Female models earn more than male models and nobody says anything. Why? Because they have a larger following. In tennis too, who gathers a larger audience earns more’ (Nadal 2018). Moore, Djokovic, McEnroe, and Nadal’s comments translate into two arguments against gender wage equality in professional sport.

2.1 ‘Equal Pay for Equal Audience’

Professional athletes do not produce a tangible object or contribute their share of labour to the output of a factory. They are, however, members of the sports entertainment industry, which yields a ready criterion for determining appro-

priate remuneration levels for their ‘work:’ like star entertainers, top athletes receive contractual wages for appearances at events in stadia and other facilities that control spectator access through the sale of tickets, TV, radio, and internet streaming rights, etc. Their value in the professional sports labour market is a function of their capacity to attract and entertain paying audiences.³

Moore, Djokovic, and Nadal’s comments amount to the argument that the job of a professional athlete is profit generation through entertainment, and that application of Art. 23(2) yields the result that equal pay for athletes identifying (or identified) as ‘female’ is, in most cases, unjustified. Indeed, average audiences and revenues in professional tennis are greater in the men’s game than in the women’s game (Kaplan 2015), and greater on average for top male players such as Federer or Nadal, than for top female players such as Williams ((Czermak 2020), (Badenhausen 2020)). The same is true, *mutatis mutandis*, for most other disciplines, where interest in the men’s side of the sport far outstrips that in the women’s side, a fact widely used to rationalise corresponding editorial and business decisions (see e.g. (Hardin 2010; Lee, Westcott, Wray et al. 2020)). Even the 2019 FIFA World Cup Final Game, often hailed as a breakthrough moment for women’s football with a record audience of 263 million, was still eclipsed by a factor of 4:1 by the previous year’s Men’s Final (FIFA 2018, 2019). I will refer to this as the argument from entertainment.

2.2 ‘Equal Pay for Equal Performance’

From a different perspective, sport is neither about entertainment, nor profit. According to the ‘internalist’ school of thought it is, rather, a social activity that lives by its own values, norms, and rules essentially related to the striving for bodily excellence.⁴ There is much to be said for this perspective. Humans have, after all, engaged in sport long before there were entertainment markets, the Olympic Games being the most well-known example. The ancient Greeks clearly valued outstanding athleticism, honouring victors in the various Olympic disciplines and preserving their names on records that survive until

³ For details on how this market rewards performance attributes—in particular, how returns on athletic training, interpreted as human capital investment, are calculated—see e.g. (Antonietti 2006), (Disney 2007).

⁴ E.g. (Simon 2000, 2015), (McDonagh and Pappano 2008), and others.

today. The ethos of the Olympic Games supplies a plausible alternative metric for just reward in professional sport: for what ultimately mattered to the Greeks was *performance* as an expression of bodily excellence, and the contribution of the latter to the flourishing of the human soul—not how many spectators would pay to see it. So why not adopt the principle that those athletes shall obtain the highest wages who are the most excellent, as defined by the rules of the game?

McEnroe's comment on Williams translates into the claim that if we viewed the 'work' of professional athletes as the production of outstanding athletic performances, then gender wage parity in sport would, again, be unjustified. Art. 23(2) on this interpretation says 'Equal Pay for Equal Performance'—or, indeed, 'Equal Pay for Equal Play'—and Williams' play is not equal to that of the best male players. Tennis is a competitive one-on-one sport with a point scoring system and an emphasis on speed, strength, and stamina (apart from other tennis-specific skills), and comparison of individual performances via direct matchups or by observing serve and forehand speed, ball rotation, etc., is relatively straightforward. Women, or athletes who identify as female, do significantly less well overall. McEnroe's remark that Williams would rank below Nr. 700 in the men's game is somewhat speculative, but not unfounded.⁵ The same is true, *mutatis mutandis*, in most relevantly similar sports (Chalabaev, Sarrazin, Fontayne et al. 2013, 137). I will refer to this as the argument from performance.

3. Gender Differences, Counterfactuals, and Counterfactual Gender Differences

3.1 Gender differences and discrimination

An earlier generation of authors in the philosophy of sport used to speak of objective gender differences in athletic performance, with the exception of a few disciplines and sub-disciplines, such as dressage or the balance beam in gymnastics. Jane English, for example, wrote in an influential paper that 'men

⁵ Williams herself has said that playing former top player Andy Murray would be 'embarrassing,' because she would lose in 'five to six minutes' (Chase 2013).

and women are physiologically different in ways relevant to performance in sports,’ and observed that some of these differences ‘appear to be permanent’ (English, J. 1978, 271, 269); see also (Boxill 1993-94, 28). She took the fact that almost all existing sport disciplines are segregated into ‘male’ and ‘female’ competitions to testify to this apparent reality (op. cit., 272-273). (Loland 2010) explains that the very rationale of separating sports into different competition classes by age, weight, and gender, is to ‘eliminate or compensate for essential inequalities between persons that cannot be controlled or influenced by individuals in any significant way and for which individuals cannot be deemed responsible’ (op. cit., 218).⁶

It is comparatively rare to see mention of ‘permanent physiological differences’ or ‘essential inequalities’ in sports performance between the sexes today. Feminist theory generally adopts an anti-essentialist approach to sex and gender, and many authors in the philosophy of sport now rather explain the performance differential between men and women as due (in part or entirely) to women’s relative disadvantage in terms of *support* and *access*: limited opportunities for female athletes in sport, such as smaller budgetary allowances, prizes, and wages, unequal access to facilities and institutions, unequal social support, recognition, and respect, in conjunction with negative views regarding female athletic ability, sexist stereotypes, and the prevalence and overvaluing of masculine markers of athletic ability, are seen as a significant factor in women’s inferior athletic performance and spectator appeal. Women, or athletes who identify as female, are the subject of numerous micro- (as well as macro-) aggressions in androcentric sporting environments, and their apparent inferiority is considered (in part or entirely) the product of sexist bias, discrimination, and society’s patriarchic value system—while at the same time further entrenching the latter.⁷

⁶ See also (Boxill 1993-94, 27), (Brake 2010, 35). Readers of Rawls will recognise the concept of justice as fairness at work.

⁷ The authors embracing this analysis or elements of it are too many to list. We can mention, *pars pro toto*: (English, J. 1978), (Postow 1980), (DeSensi 1992), (Boxill 1993-94), (Hargreaves 1994), (Burstyn 1999), (Schneider 2000), (Travers 2008), (McDonagh and Pappano 2008), (Brake 2010), (Capranica, Piacentini, Halson et al. 2013), (Chalabaev, Sarrazin et al. 2013), (Sailors 2014), (English, C. 2017), (Burrow 2018), (Archer and Prange 2019).

If this analysis is correct, then it stands to reason that if women obtained truly equal access and support to perform at their full capacity, then observed athletic performance differences should disappear, or at least decrease. (Capranica, Piacentini et al. 2013, 99) refer to this as ‘the long-standing issue of whether women’s performance will eventually “equal” that of men’s,’ premised on the view that the gender gap is (at least partially) due to non-biological factors, and therefore susceptible to change via the right kind of socio-cultural intervention (ibid.). Much contemporary feminist work aims at further substantiating this view,⁸ and most authors appear to agree with (Travers 2008, 89) that male athletic superiority must at any rate no longer be taken for granted, as there are ‘gendered overlaps’ in performance that would increase further if sports journalists ‘rendered the gender continuum visible,’ and female athletes were ‘nurtured to the same extent that male players are’ (ibid.). Finally, disparities in the quantity and quality of the media coverage of men’s and women’s events tend to further marginalise and stereotype female athletes (Duncan, Messner, Williams et al. 1990; Higgs, Weiller and Martin 2003; Eagleman 2013), naturalise gender differences (Koivula 1999, 602), and further reinforce the perception that women’s sports are inferior or “naturally” less interesting (Greer, Hardin and Homan 2009, 173, 185). Here, too, it stands to reason that if these disparities disappeared or decreased, then so would differences in audience interest and entertainment value.

3.2 Actual vs. Possible Performance, Actual vs. Possible Entertainment

Note that the above line of thought, as sketched so far, does not directly engage with the argument contra gender wage parity from entertainment or performance, however. For Moore, Djokovic and Nadal referred to women’s current ticket sales and TV audiences; and McEnroe compared Williams’ actual performance levels with those of male players. Most of the above claims, on the other hand, are based on *counterfactual* reasoning. They assert conditionals of the form

⁸ See e.g. (Chalabaev, Sarrazin et al. 2013, 137ff), who study the effects of *stereotyping* on sex differences in athletic performance; also (Kane 1995), (Cahn 2015), and many others.

(W_P) ‘If *X*, then the performance of professional female athletes would equal/approximate that of professional male athletes,’

or

(W_E) ‘If *X*, then the entertainment value of professional female athletes would equal/approximate that of professional male athletes’

(depending on which conception of athletic ‘work’ is adopted). Since conditions *X* typically are not fully or not yet realised, both (W_P) and (W_E) are counterfactual conditionals.

This observation may not be obvious at first. After all, few feminist authors writing on gender wage parity in sport explicitly engage in counterfactual reasoning, or make explicit conditional claims of the form (W_E) or (W_P). The latter are nevertheless always right below the surface. (Burrow 2018), for example, makes it clear that it is wrong to assume the athletic inferiority of women as a group, although she does not explicitly claim their athletic equality, either. Rather, she denounces masculine bias in our ideals of athletic excellence, and suggests that this bias ‘interferes with [women’s] athletic success’ (op. cit., 13). This implies a counterfactual conditional claim, with ‘absence of masculine bias in our ideals of athletic excellence’ taking the place of ‘*X*’ in a version of (W_P) that substitutes ‘athletic success’ for ‘performance.’ Burrow leaves it open if her counterfactual, let us call it (W_S), implies (W_P). Of course, if sport be the pursuit of athletic excellence, however construed, then it is almost a truism that

(W_S) ‘if ideals of athletic excellence did not discriminate between men and women, then the athletic success of professional female athletes would equal that of male athletes.’

But the question remains whether (W_S) means that, given the right ‘*X*,’ women would also be athletic equals with men, or narrow the gap, in terms of current notions of athletic excellence? If (W_S) does not imply some instance of (W_P), then Burrow risks granting women’s athletic inferiority in terms of ‘performance’ as currently understood, and thus the argument from performance, after all (for more on this, see *infra*).

(Sailors 2016), too, asks if women are capable of competing against men, and identifies four types of reply that range from a straight ‘No’ to a straight ‘Yes.’ Only the straight ‘No’ is based on a non-counterfactual argument, as it cites current physiological and performance statistics (op. cit., 1126; (Messner 2007, 42)). ‘No, but women should make the attempt anyway’-answers are based on the thought that even though not *all* women can currently compete against men, those who can could serve as role models, sending a message of equality and empowering others to follow suit, thereby helping to diminish the inequality (op. cit., 1127; also (McDonagh and Pappano 2008, 20ff) and others). This implies an instance of (W_P): ‘if female athletes were allowed to compete with male athletes, then the gender performance gap would decrease (or disappear).’ The third type of answer, ‘Yes, but there are good reasons not to allow it,’ points to the risk of ‘potentially causing a lack of female role models’ and prefers to rule out direct competition, because this ‘allows women to be the overall winners more often, thereby modelling success’ (op. cit., 1129; see e.g. (Schneider 2000, 137)). Here, the underlying worry is the negation of the above instance of (W_P). The ‘Yes, so mix all the competition’-reply, finally, is based on the assumption that ‘it is because of [a] socially constructed and rigidly maintained sport structure that females are truly at a disadvantage in sports, not because of biology’ ((Kane 1995, 201), cited in (Sailors 2016, 1129)). The implied conditional is: ‘if the socially constructed and rigidly maintained [two sex] sport structure were eliminated, then the gender performance gap would decrease (or disappear),’ another version of (W_P).

(Boxill 1993-94, 28), for her part, reiterates the hope ‘that there will come a time when the best athletes, male and female, compete together’ and notes that it has not yet been reached, because women have not ‘been provided full opportunity to develop in the traditionally male sports’—implying that once the opportunity has been provided, that time would be reached (W_P). (Greer, Hardin et al. 2009), finally, show how TV coverage of the women’s track and field competitions at the 2004 Olympics was ‘encoded as less exciting and entertaining than the men’s,’ and observe that ‘[a] less exciting presentation generates low viewer demand’ (op. cit., 184, 185)—leaving the reader to draw the conclusion that if the quality of women’s TV visuals equalled those of the men, then so would excitement, entertainment, and viewer demand, an instance of (W_E). Examples such as these can be multiplied at will. For the de-

bate over the question whether it would advance the interests of justice to eliminate sex as an organisational category in sport ('integrationism' vs. 'segregationism') occupies a central place in feminist philosophy of sport,⁹ and the answer depends crucially on what, exactly, it would take to eliminate gender differences—a counterfactual. Much of the disagreement driving the debate is caused by divergent assessments of how far removed from actuality the conditions are under which women's athletic performance or entertainment value would equal or begin to equal that of men: segregationists worry that the truth of (W_P) or (W_E) requires an ' X ' that more substantially departs from actuality than integrationists assume.

That counterfactuals play such a central role should not surprise. Feminist analyses of sex discrimination, generally speaking, are analyses of how specific socio-political, economic, ideological, and cultural factors *cause* the gender differences, real or apparent, that are used to rationalise discrimination, while the latter in turn further exacerbates the differences, real or apparent. As Hume taught us, any claim that one thing causes another implies a counterfactual conditional (Hume [1748] 1999, Sec. 7, II, 29). David Lewis puts it as follows: 'We think of a cause as something that makes a difference, and the difference it makes must be a difference from what would have happened without it. Had it been absent, its effects – some of them, at least, and usually all – would have been absent as well' (Lewis 1973a, 161).¹⁰ The same goes for claims about the future, and those about arrangements of physical, political, or socio-cultural affairs that are possible, but not actual. Once we are asking if, when, and how women's athletic performances or profit generating capacity will equal or approximate those of men, it is to be expected that our reasoning will revolve around the truth-value of counterfactual conditionals with the structure of (W_P) or (W_E) —whether explicitly or implicitly.

In the next section I will argue that we currently have little purchase on that truth value.

⁹ For an overview, see (Travers 2008)).

¹⁰ Even those theorists who do not subscribe to Lewis' counterfactual account of causality, or a broadly Humean one—and there are of course many—will typically grant the validity of widely held counterfactual causal intuitions, for example by construing counterfactual dependence as a *defeasible* marker of causation (e.g. (Menzies 2004)); others will agree with the view of causation as a 'difference-making' of *some* kind or other, see (Beebe, Hitchcock and Price 2017).

4. The trouble with counterfactuals

Suppose someone asserted that ‘If Caesar had been in command in Korea, he would have used the atom bomb.’ David Lewis famously noted that she might as well have said ‘If Caesar had been in command in Korea, he would have used catapults,’ and that it might be “right” to assert *either*, although not both simultaneously, depending on a variety of different and inconclusive criteria for resolving the vagueness of counterfactual conditionals (Lewis 1979, 457ff). Lewis’s point applied to our case is that the “rightness” of making a claim of the form (W_P) or (W_E) depends on our account of the truth-conditions of counterfactual conditionals. Much here hinges not only on the precise content of the antecedent X , but also on the nature of X ’s relation to the consequent (not all counterfactuals track causal relations), as well as X ’s relation to actual conditions, and our method for making those assessments.

4.1 (Unsuccessful) Theories of Counterfactuals

It is not actually disputed by anyone, not even opponents of gender wage equality in sport, that there *are* conditions that would bring about gender parity in athletic performance. As Paul Boghossian once observed, it is easy to show that a tortoise could overtake a hare, all we need to “show” is that ‘*if conditions were ideal* for the tortoise—if for example, it were much bigger and faster—then it would overtake it’ ((Boghossian 1989, 529-530), emphasis added). The trouble is that if this form of reasoning were accepted as sound, then we could attribute any unmanifested dispositional property, ability, or potentiality, to any entity. For example, my ability to sing like a diva: everyone including myself could perform like a female opera star, after all, if conditions were *just right* for them, where ‘just right’ means unlimited amounts of training and other interventions—cognitive, physical, and otherwise—including (in many cases) substantial bodily changes. If no limits were placed on the nature of those interventions, for example that they may not violate the laws of nature, then humans or anyone else could also be attributed the “ability” to swim like dolphins, fly like eagles, or indeed, run like hares. Boghossian’s quip re-

minds us that, on pain of rendering counterfactual conditionals trivially true, we cannot accept counterfactuals with just about *any* antecedent condition X . And that many of the more far-fetched antecedents are irrelevant to the truth of a counterfactual, in *this* world.

How, then, to determine the conditions under which a particular counterfactual of the form (W_P) or (W_E) is *true*, given that by their very nature, counterfactuals can never be subjected to direct empirical test? This problem is as old as the theory of counterfactual conditionals itself. (Goodman [1954] 1983) suggested trying this: (a) define ‘relevant conditions’ under which we may hope to infer the consequent from the antecedent with the help of a law, and (b) define natural laws (*op. cit.*, 4). The idea turned out to be a non-starter, because we can assert some counterfactuals with a high degree of confidence even if we know little about the laws of nature (Edgington 1995, 249); and because the task of specifying ‘relevant conditions’ seems impossible. The latter could neither be given by the set of all true sentences (this would contain sentences that contradict the antecedent), nor those sentences, which Goodman called ‘cotenable,’ that would not be false if the antecedent were true (*op. cit.*, 15). For we do not know what is cotenable with Julius Caesar being in command in Korea, or with female professional athletes’ support and access being equal to that of their male counterparts. In order to assess an antecedent’s contribution to the truth-value of the counterfactual we generally need to make further assumptions about the consequences of it obtaining that go far beyond what is explicitly expressed in it. Goodman thought that specification of cotenable statements was impossible without appealing to *further* counterfactuals, and that any such attempt would therefore be circular.

(Stalnaker [1968] 1991) proposed that conditionals of the form ‘If A, then B’ make the assertion that B is true in the possible world selected, for each A, by a selection function f —a ‘possible world’ being the ontological analogue of a set of hypothetical beliefs. He suggested that f be constrained in such a way that ‘there are no differences between the actual world and the selected world except those that are required, implicitly or explicitly, by the antecedent’ (*op. cit.*, 36). This condition is vague and ‘dependent on pragmatic considerations,’ Stalnaker acknowledged, but he believed the selection is ‘based on an ordering of possible worlds with respect to their resemblance to the base world’ (*ibid.*). So, Stalnaker claimed that ‘If A, then B’ is true just in case B is true in ‘a pos-

sible world in which A is true, and which otherwise *differs minimally* from the actual world' (op. cit., 33, my emphasis). (Similarity to the actual world plays the same role in Stalnaker's account as 'cotenability' in Goodman's (Edgington 1995, 251)). But what of those pragmatic considerations? '*f*' is a parameter of the correct *interpretation* of 'If A then B,' Stalnaker suggested, which hinges on utterance context, the purpose of assertion and the beliefs of the speaker and his linguistic community (Stalnaker [1968] 1991, 42). This reliance on a yet-to-be-developed pragmatics for uncovering the rules for the use of conditionals—in particular, the *conventions* that govern our selection of possible situations related in a specific way to what actually happens (op. cit., p. 45)—means that Stalnaker's account of counterfactuals is of little help with (W_P) and (W_E).

Neither is David Lewis's well-known alternative, essentially equivalent to Stalnaker's proposal with the exception of a further elaboration of the concept of similarity, or *distance*, between possible worlds (Lewis 1973b, 1979). The latter, according to Lewis, is to be measured in terms of four general criteria ranked by decreasing order of importance, a 'System of Weights' that has become notorious in metaphysics (Lewis 1979, 47-48). Like Stalnaker, Lewis acknowledges that similarity of worlds is an intrinsically imprecise notion, but so are counterfactuals, and he thought that '[t]wo imprecise concepts may be rigidly fastened to one another, swaying together rather than separately, and we can hope to be precise about their connection' (Lewis 1973b, 60). Unfortunately, being precise about the connection between two imprecise concepts is not the same as being precise about each, and Lewis' proposal no more than Stalnaker's or Goodman's yields a decision procedure or method for accepting or rejecting any particular counterfactual. Feminist theory of sport lacks any reference to these *loci classici* of analytical metaphysics on counterfactuals; nor does it make use of any of the above criteria in supporting (W_P), (W_E), or an equivalent.

To be fair, none of the extant philosophical accounts of counterfactuals are intended for use in the trenches of social theory. Other approaches that, first blush at least, might be more social science-friendly are also inapplicable to our problem, however. Causal modelling approaches, for example, would view the question of the athletic abilities of women in non-actual conditions as

a problem of *causal prediction*.¹¹ While details vary, these accounts say that the answer requires a structural equation model with regressors that have been derived from observational data. The variables of any such model, if feminist theory of sport is correct, must range over human physiology and the interaction of the latter with the political economy, culture, and ideology of a given society. Such a comprehensive causal representation is not just currently unavailable, we have reasons to worry that it might remain so.¹² At any rate, no extant causal model in sociology, political theory, or economics generates accurate enough predictions of counterfactual scenarios involving large-scale and complex social phenomena. The same is true of the modelling of counterfactual reasoning in experimental and developmental psychology.¹³ As far as Stalnaker's pragmatics is concerned, we might expect insight into the role of utterance context and speaker beliefs from linguistics, and some approaches here do indeed promise to move us away from truth-conditions to 'rules for updating contexts' (Gillies 2007). But this science, too, is still busy with scenarios such as 'If Sophie had gone to the parade, she would have seen Pedro' (Moss 2012, 562ff), and other simple models.

This might, in fact, be as far as any formal causal theory of human behaviour gets us at the moment.

4.2 Counterfactual Athletic Performance

When it comes to the possible performance of professional women athletes, philosophers of sport are therefore on their own. Unsurprisingly, feminist arguments in the literature that can be interpreted as lending support to instances of (W_P) are tentative, and elide the underlying methodological and metaphysical issues. Often they are inconclusive, like (Capranica, Piacentini et al. 2013,

¹¹ E.g. (Pearl 2000), (Woodward 2003), (Halpern and Pearl 2005), (Pearl and Mackenzie 2018).

¹² Causal judgments about the impact of society on female athletic performance require significant background knowledge, and a model likely to contain orders of magnitude more than the 50 or so random variables we are able to accommodate by 'compacting' structural equation models (Halpern and Hitchcock 2013, 987); cf. (Russo 2009, Ch. 3.3), (Kowalenko 2017).

¹³ Research here tends to focus on conditionals with simple antecedents describing states of affairs of a local nature, e.g. hypothetical tasks that involve sorting colored balls (Robinson and Beck 2000), or pretend play (Buchsbaum, Bridgers, Skolnick Weisberg et al. 2012).

99, 102)’s observation that progressively more equitable sociopolitical conditions are associated with progressively more equal sporting performances (see also (Hargreaves 1994, 284-288)), accompanied as it is by the large caveat that causes of performance are multifactorial, and that biological factors cannot be measured until the cultural environment is *fully* equitable (ibid.). Some analyses are of narrow scope, like (Archer and Prange 2019)’s argument that national football associations have a moral obligation of redress towards their women’s teams (see *infra*). And if evidence is corroborated that notwithstanding improving sociopolitical conditions the gender performance gap in athletics is not actually closing at all (Thibault, Guillaume, Berthelot et al. 2010), then a number of arguments in this area might turn out to be unsound.

In a different category of case, goalposts are moved. (English, J. 1978, 275ff; Burstyn 1999, 274ff; Burrow 2018, 4ff, 13), for example, claim that the practice and institution of sport in its current incarnation is linked at such a fundamental level to gender inequality that the only way to eliminate the latter is via its replacement with less competitive celebrations of physicality based on cooperation, non-violent play, and a non-gendered model of athletic excellence. Changing the meaning of ‘performance’ in (W_P) amounts to replacing (W_P) with (W'_P) , however, and the truth of (W'_P) may or may not constitute support for the truth of (W_P) . For, as already intimated, we can easily eliminate gender performance differences in *any* sport, if we change its rules for what counts as ‘performance’ with this outcome in mind. But we might then no longer be assured that the resulting activity would still be the *same* sport, or similar enough. The ‘change-the-paradigm-of-sport’ school of thought (see also (DeSensi 1992) and (Highlen 1994)) says, to adapt Boghossian’s metaphor, that tortoises could overtake hares if the rules of the game, which currently favour hares, were changed to make it more tortoise-friendly. But creating a new dance to show that tortoises are as good at dancing as hares would not provide support for the conclusion that they are also as good at racing—even if we called the dance a ‘race.’

There is, in other words, a question of trans-world identity in the philosophy of sport, just as there is one in possible world metaphysics: would any particular non-competitive way of celebrating physicality based on cooperation and a non-gendered ideal of athletic excellence qualify as a *counterpart*, in (Lewis 1986)’s sense, of what used to be called, for instance, ‘tennis’? How

much change can (the rules of) any particular sport undergo before it ceases to be a member of the set of activities, actual or possible, picked out by the word ‘sport’ as used in *this* world? A speaker can use ‘sport’ or ‘tennis’ in any way she likes, of course, and the reference of words often changes in response to changes in circumstances. But if I used ‘tennis’ to refer to, say, prime numbers, and made statements such as ‘tennis is divisible by itself and 1,’ then I would not only no longer be communicating with my audience—what I say about ‘tennis’ would no longer be true of the activity the word picks out in the actual world, and most in its vicinity.

4.3 Counterfactual Entertainment Value

Much of the foregoing applies equally to counterfactual claims about women athletes’ entertainment value as measured by profit generating capacity, i.e. (W_E), for two reasons. Firstly, because of the general vagueness of all counterfactuals; secondly, because if entertainment value is non-randomly related to performance, then counterfactual entertainment value is likely to be non-randomly related to counterfactual performance. I will discuss suggestions for how to decouple the two shortly.

As in the case of (W_P), support for (W_E) in the feminist literature is tentative. (Greer, Hardin et al. 2009, 173), for example, point out that the experience of sport as delivered via mass media is the combined result of the athletic action itself, and its projection to viewers through commentary and visual production: mediated sport is *constructed* as ‘entertaining’ (or ‘boring’) through use of specific production techniques. The demonstrable inferiority of the latter in the case of televised women’s Olympic track and field events ‘could leave the impression that men’s events are more exciting’ (op. cit., 185). The authors argue that the relationship between production quantity/quality and its reception by viewers is circular: ‘[a] less exciting presentation generates low viewer demand; that, in turn, rationalizes decisions by gatekeepers not to increase quantity or quality’ (ibid.), a fact that complicates the simple equation ‘audience size = TV coverage’ typically used to justify greater coverage for men (cf. (Cooky, Messner and Hextrum 2013)). (Greer, Hardin et al. 2009) conclude with a call for ‘mediated [women’s] events that are naturally fair and, perhaps, interesting’ (op. cit., 186)—but they do not say if they expect

fairly, or equally, televised women's events to be *equally interesting*. This question is, however, crucial. The (W_E) counterfactual

‘If the presentation of women's sports were equally exciting as men's sports, then viewer interest for women's sports would be equal to men's sports’

receives little support from the study, beyond the observation that things are ‘complicated.’ For the purported circularity of the production–reception relation only confirms this instance of (W_E), if it is in fact the case that once production values of televised events are identical, TV audiences will no longer find the higher jumps, faster sprints, longer throws, etc., of the men more “naturally interesting” than the lower, slower, and shorter ones of the women. This is indeed a complicated counterfactual, one whose truth-value we do not currently know.

(Pippos 2017, ch. 14) suggests, similarly, that with equal media exposure and reporting in conjunction with equal investment in grassroots-level sport facilities and programmes and a change in attitudes, women athletes would attract equal audiences. This complex counterfactual is often strongly asserted (see e.g. (McDonagh and Pappano 2008, 250). But Pippos like (Greer, Hardin et al. 2009) struggles to provide supporting arguments for it that, as Goodman might say, do not themselves rest on equally complex further counterfactuals. We seem to find ourselves in a *bog* of counterfactuals, with no firm ground in sight. Unfortunately, inductive extrapolation from actual data does not provide a way out. For while audiences for women are indeed beginning to approach or even surpass those for men in specific events and for particular players and teams, overall average spectatorship of male tennis and other sports still far outstrips female sports ((Kaplan 2015), (Lee, Westcott et al. 2020)), and general trends remain uncertain. There are indications that even women still prefer

to watch men's sports overall (Whiteside and Hardin 2011; Meier and Leinwather 2012, 375).¹⁴

4.4 Entertainment ≠ Performance?

A common feminist reply to this point is that a professional athlete's 'entertainment value' need not and should not be associated with 'performance' as encapsulated in the Olympic motto '*citius, altius, fortius!*' And that audiences' apparent preference for 'performance' thus conceived is nothing more than a syndrome of patriarchy. (English, J. 1978), in particular, notes that '[s]peed, size, and strength, seem to be the essence of sports,' and concedes that 'women are naturally inferior at "sports" so conceived' (op. cit., 276), but she emphasises that these attributes 'are [not] inevitable elements of spectator appeal' (ibid.). English was instrumental in popularising the 'change-the-paradigm-of-sport' strategy that predicts a change in audience preferences, if we adopted an alternative sports model in which aesthetic and expressive attributes are valorised in addition to 'technical' or 'rational' characteristics, such as quantifiable scores and performances; and if athletes no longer competed by sex, age, even national origin (e.g. (DeSensi 1992, 89; Highlen 1994, 320ff; Edwards and Jones 2007). This new model would no longer exclude women's experience, perspective, and consciousness, and would foreground shared humanity, sociability, health, co-operation, participation, self-actualisation, and self-improvement ((Young 1979), (Warner and Dixon 2013), (English, C. 2017), among others).

Note the counterfactual nature of the thought. Even though there is no reason to think that a cultural overhaul along these lines could not be achieved, the above worries remain. DeSensi is explicit that realisation of this new paradigm for sport amounts to the 'creation of a new world' (ibid.), a comment we can take quite literally. To make inferences about this possible

¹⁴ In the words of Stacey Pressman, a female sports journalist for ESPN.com: 'I'm bored out of my skull at women's basketball games [...]. I prefer a few women's events, like tennis, but I refuse to be politically correct about basketball. I'm sorry, but 40 minutes of underhanded layups is not entertaining' (Tierney 2003). Of course, as (Pope 2014, 247ff) would say, Ms. Pressman is merely 'performing 'masculine' femininity' here; cf. (Cooky and Messner 2018, 4).

world and assess its relevance to the actual one by means of a counterfactual, we need to show that the alternative sports model implies a (W_E) with an ' X ' that is sufficiently relevant to the actual world. For that purpose, we need to establish that the possible world in which ' X ' obtains, and in which female athletes equal male athletes in entertainment value, is closer to the actual world than any other possible world where it does, and they do not—to use the Stalnaker/Lewis truth-conditions (Lewis 1973c, 64). Or, to return to Boghossian's metaphor, show that tortoises' being equally entertaining as hares in the new sports model supports the conclusion that they are, or ought to be considered, equally entertaining in the current one.

Some authors who have an affinity to sport in virtue of a professional affiliation, or due to having been professional athletes or at least serious practitioners themselves, do not endorse the change-the-nature-of-sport strategy as a solution to the wage equality problem (e.g. (Pippos 2017)). Neither are current competitors at the coalface of this fight, such as the U.S. women's soccer team, likely to find their interests represented in a proposal like DeSensi's. The U.S. women are, after all, calling for a world where women football players are paid equally, not for a world without football. If the *only* way of achieving wage equality and respect in sport A were to stop playing A and to start practicing B, a sport with only fleeting resemblance to A, then most female practitioners of A might respectfully decline. In any event, few new sports have so far been invented in line with English's recommendation (Sailors 2013).

5. Effort

Some readers will be impatient to object at this point that we have been barking up the wrong tree, for the worth of an athletes' work is determined by neither their actual nor their counterfactual performance or entertainment value; it has nothing at all to do with counterfactuals, or performance, or entertainment. It is, rather, determined by the quantity of an athletes' (actual) *effort*. Not only does this observation take care, in one fell swoop, of both the argument from performance and from entertainment; it has the advantage of bringing the philosophy of gender wage equality in sport in alignment with other areas of crit-

ical theory that reject *ableist* notions of competence and performance, and attempt to replace them with concepts such as ‘growth’ and ‘effort’ (cf. (English, C. 2017).

5.1 A Labour Theory of Athletic Work

How would this work? Taking a cue from the Marxist labour theory of value, we could associate the value of an athlete’s *output* with the amount of ‘socially necessary’ *inputs* that went into it. In other words, with the athlete’s personal labour, her physical and psychological effort in terms of time spent on the exercise court (her “sweat and tears”) as well as the labour of all those who trained her, provided her with social, financial, psychological, support, etc. Clearly, men and women athletes are, from this point of view, roughly equal. As (Pippos 2017) puts it, ‘the path to the top for male and female [tennis] players involves a similar amount of practice hours, blisters, forehands, backhands and dummy spits’, because ‘women work just as hard as men’ (op. cit., ch. 14). In fact, given the obstacles in their way, one could argue that successful female top athletes necessarily need to work *harder* than men.

On this view, if the efforts of both male and female athletes are at least equal, but due to no fault of the latter the outcomes of those efforts are not, and wages are determined by outcomes, then this is unfair. Justice would require removing women’s handicap, and this is exactly what many feminist policy proposals in this domain aim at. But removing entrenched structural, possibly partially biological, disadvantage is often not possible in a reasonably short time frame, or in a reasonably close possible world. We are hence morally obligated, in the meantime, to account for women’s unfair disadvantage by detaching remuneration levels from outcomes and paying equal wages. For sporting ‘excellence’ is a relative, not an absolute property: Williams has expended at least as much effort as Federer to get to the top of her game, even though as a woman she may never be able to beat him on a tennis court or, in a sexist society, attract equal audiences.

The argument that undeserved inequalities are key obstacles to justice is an old chestnut of political philosophy. (Rawls [1971] 1999) famously held that on an egalitarian conception of justice, ‘undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved,

these inequalities are to be somehow compensated for’ (op. cit., 86). Contemporary left-libertarian philosophers are exploring principles for achieving equality without compromising liberty through a compensation method that “reverse-handicaps” the undeservedly advantaged in proportion to their advantage (see e.g. (Otsuka 2003)). But not all moral judgments and intuitions about justice that govern other human activities might apply in equal measure to sport. What does ‘equal opportunity’ mean, English asked, in a field where the sexes cannot be known or assumed to have equal potentialities (English, J. 1978, 269)? We usually assume sexes, races, ethnic, religious, and other important social groupings to be equal in all the attributes that *matter* for purposes of justice and political and socio-economic rights. The ‘athletic work = effort’ theory tries to avoid complications associated with assuming that sports-women have equal athletic and commercial potential by taking their equal potential for effort to be the attribute that really matters (for wage equality). Unfortunately, we encounter difficulties once we attempt to develop the intuition into a workable alternative.

5.2 Athletic work as relative achievement

Effort comes in different quantities. To operationalise the concept as a determinant of remuneration, we need to assume that the exertion of different amounts of effort in sport will have different effects in different circumstances. One way to do this is by connecting ‘effort’ with what I will call athletic ‘achievement,’ as follows. Let an athlete’s achievement (A) be given by the difference (Δ) in her athletic performance (P) over a period of time (Δt), i.e. her improvement or “growth” from an arbitrary initial condition:

$$A = \frac{\Delta P}{\Delta t}$$

Correlating (A) with (ΔP) in this way—rather than simply identifying it with (P), as we might pre-theoretically—expresses Rawls’ principle that ‘inequalities of birth and natural endowment are undeserved.’ To illustrate, suppose you were born with exceptional athletic ability and are able to sprint 100m in 10s without any training. On the present account, you would not have *achieved* anything yet, you simply got lucky in the ‘genetic lottery’ (see e.g. (Loland

2002, 54ff; Morris 2015)). If, however, you started out as a teenager with a personal best of 15s and over a 10-year sprinting career filled with sweat and toil gradually improved that time to 10s, then you would have ‘achieved’ an (*A*) of 0.5; twice the accomplishment if you had improved to only 12.5s over the same period.¹⁵

This does *not* mean that the greater the achievement, the greater the effort. For we cannot simply assume that the (ΔP) of one athlete is the result of the same effort as the (ΔP) of another: the latter may be handicapped by having a body that is ‘weaker’ or in other ways less adapted to the relevant sport in terms of some property such as height, weight, age, body shape, etc.; and conversely, the former may be advantaged by having a body that is exceptionally well adapted. For example, the current 100m world record holder and at 1.96m the tallest top sprinter of all time, Usain Bolt, is frequently said to have an advantage over his competitors in virtue of the length of his stride. Presumably, a sprinter who is extremely short, or overweight, or merely of average body shape, would have to exert *more* effort than Bolt to achieve the same (*A*), especially as (*P*) increases. Thus, achievement (*A*) is a function of effort (*E*) and the *handicap factor* (*h*): $A = h \times E$. And effort is achievement relative to handicap:

$$E = \frac{\frac{\Delta P}{\Delta t}}{h}$$

Applying this analysis to gender wage parity in sport, we can argue two things: (1) taking athletic achievement to be a *change* in performance rather than its absolute value levels the playing field, justifies demands for equal pay, and neutralises the argument from performance (cf. (English, C. 2017, 193)). A woman might lose in a direct matchup against a man and still have a claim to greater sporting achievement, if her (ΔP)/(Δt) is greater than his—and if

¹⁵ I am assuming for simplicity that (*A*) is a linear non-exponential function of (ΔP) here, which is likely false in most sports. Furthermore, the units of (*P*) vary from sport to sport, and in some of them it might not be entirely clear or uncontroversial what they are (team sports, gymnastics, boxing, etc.). To the extent that almost every sport has a conventionally agreed upon method for measuring ‘performance,’ however, and that no cross-discipline comparisons are necessary, these complications do not affect the argument in the text.

women on average are capable of the same $(\Delta P)/(\Delta t)$ as men, then they must on average be remunerated the same. (2) core tenets of the feminist analysis of sport can be encoded in the handicap factor (h). For we are under no obligation to share Rawls' nativist assumptions about 'natural endowments,' and do not need to let (h) range over biological factors. Serena Williams had to contend with a strongly disabling environment in her career due to sexism pervading all sporting spaces. The handicap of a generic male tennis player who did not experience significant discrimination can be set at approximately neutral ($h \approx 1$), whereas the greater a women's handicap, ($h \rightarrow 0$), the more effort she needs to exert, while holding $(\Delta P)/(\Delta t)$ constant.

This is unfair to women, because the handicap is unfair. The best way to compensate for the unfairness, in the short run at least, is to remunerate athletes for their effort.

5.3 Problems

Two significant problems would need to be solved if this solution is to address the performance/entertainment arguments against gender wage parity. (1) Effort, as defined, is difficult to directly observe, because handicap is. Feminist philosophers of sport occasionally appear to treat (h) as a fixed vector that affects all women athletes equally, content to let athletic performance/entertainment value—or any other attribute that is easy enough to measure—do the work of differentiating the legitimate wage expectations of individuals. A primary feminist objective in sport is, after all, to achieve wage parity for women as a *group*. Yet, the very theory we use to characterise the structural disadvantages of women as a group implies that the handicap of individual women cannot be expected to be identical; or that female athletes are disadvantaged in virtue of their gender only. The social handicap of black women athletes is greater than that of white ones, that of poor women athletes greater than that of middle-class ones, that of gay, lesbian, bisexual, or transgender ones greater than that of heterosexual ones, etc. Each individual is a member of multiple groups, and mechanisms of oppression and disadvantage based on group membership intersect and overlap.¹⁶

¹⁶ For foundational work on intersectionality, see (Spelman 1988); (Crenshaw 1989); (Harris 1990).

Once we grant that an individual is entitled to wage adjustments in virtue of unfair disadvantages she has suffered due to her membership of one group, she will have equal claim to adjustments in virtue of any disadvantages she might have suffered due to her several other group memberships. But we do not know how to perform sufficiently granular quantitative measurements of the relative social handicap of individuals within the same group, let alone across different groups. What should we measure and compare, what would be the indicators and units, and how do factors combine? Certainly, if gender wage justice requires that women's handicap in *all* its dimensions be taken into account, then our existing ways of measuring excellence in sport fall short. (P) or $(\Delta P)/(\Delta t)$ are the only things we can observe in the stadium—more or less precisely—but both measures are inadequate if we take athletic work to be effort. Since there is currently nothing to replace them, we would be left with no reliable, and therefore *just*, way to determine remuneration.

(2) Even if social disadvantage were objectively and individually quantifiable, and if it were feasible to precisely gauge effort in the context of professional sport, the approach threatens counterintuitive results. The 'effort = achievement relative to handicap' theory is open to a *reductio*: quite simply, the most disadvantaged athletes, who must exert the greatest amount of effort in order to compete, are not necessarily the *best* athletes. Take the most severe social handicap consistent with practicing sport (I will leave it to the reader to imagine a scenario). An athlete disadvantaged by an extreme handicap could be doing quite well, given her circumstances, despite losing every single contest and barely qualifying to compete even at the lowest levels of her sport. She could, in fact, boast the greatest athletic achievement relative to handicap, (E), in the world: *ex hypothesi*, her (h) is close to zero, and although her (P) and $(\Delta P)/(\Delta t)$ are very low, her personal effort could be enormous. If wages were determined by effort, then she would deserve the largest financial compensation of all athletes. It is not clear to me that we are prepared as a society to accept this consequence, or a general application of the principle that generates it. The expression 'Marks for effort!' is commonly used in an ironic way, precisely because we consider it *wrong* in numerous social contexts to give marks, rewards, recognition, or remuneration, for effort alone.

We certainly do not currently do that in sport. Here, we generally value (P) more than $((\Delta P)/(\Delta t))/h$ or even $(\Delta P)/(\Delta t)$. This manifests across the board: adult audiences at elementary school sporting events are typically small and consist almost exclusively of family, friends, fellow students, and teachers; the same is true for most high-school and lower-league amateur events. Low-performing athletes can and do interest and entertain us, if we are emotionally connected to them, or professionally invested. But we are usually less entertained by athletes of modest ability to whom we lack any such attachment or relationship, even if their $((\Delta P)/(\Delta t))/h$ happens to be sky-high.¹⁷ The long-standing efforts to grow audience interest in the Paralympic Games are a testimony to this. The argument for why we *ought not* neglect athletes with a handicap, social or otherwise, that significantly affects their performance appears to be the same in every instance: prioritising actual athletic performance/entertainment over either counterfactual performance/entertainment, or effort, is part of an unjust value system. Yet, it is unclear how this argument avoids the problems discussed here.

6. Procedure, not substance!

There is yet another way in which we might have been barking up the wrong tree, as an anonymous reviewer of a previous version of this paper has pointed out. In fact, we might be in the wrong neck of the woods altogether. For we have a moral obligation to compensate women for their unfair disadvantage in producing the type of outcome currently valued in professional sport, not be-

¹⁷ Sports organised by weight categories appear to be an important counterexample: flyweight-to-welterweight boxer Manny Pacquiao, for example, attracted more attention to his fights in his time than most super heavyweight boxing champions, and was the second-highest paid athlete in the world in 2015—although he obviously would have lost any direct matchup with a heavyweight champion; cf. (Loland 2002, 55). Yet, Pacquiao rarely receives *unqualified* accolades such as ‘Greatest Boxer of All Time’ or ‘Greatest Boxer of His Time,’ etc.; rather, he is variously described as the ‘World’s Greatest Pound-for-Pound Boxer,’ ‘Greatest Left-Handed Fighter Ever,’ etc. Similarly, although many sports leagues award prizes such as ‘Most Improved Player of the Year’ and ‘Best Rookie of the Year’ (acknowledging something like $(\Delta P)/(\Delta t)$ and $((\Delta P)/(\Delta t))/h$, respectively), these are typically considered less prestigious than the *unqualified* ‘Best Player of the Year’ prize; and there are no recognitions named ‘Best Disadvantaged Player of the Year.’

cause their performance/entertainment value *could* equal those of men, if conditions were right; or because their effort *is* equal. But simply because unfair disadvantage is unfair. On this view, a fuller understanding of the letter and spirit of Art. 23(2) must include the reasoning that substantiates the principle, encapsulated in its explicit reference to discrimination. The point of this reference is to acknowledge the fact that not giving women access to *equal opportunity* for equal pay is discriminatory. If this is right, then the core issue in the philosophy of wage equality in sport is not women's *substantive* equality with men, whether in terms of athletic performance, entertainment value, or some other criterion. Rather, it is the injustice that results from *procedural* inequality, i.e. the inequitable institutional rules, practices, and structures in sport that had and continue to have the effect of limiting women's equal access to support, prize monies, sponsorships, salaries, and other financial benefits and privileges. As (Archer and Prange 2019, 419) put it, 'underlying the call for equal pay for equal work is an objection to wrongful discrimination,' an objection from *procedural* justice as relevant to wage inequality in sport as to inequality in any other social institution.¹⁸

6.1 Reparations, Labour rights, Expressive Power

This is exactly the approach of (Archer and Prange 2019)—not coincidentally the only authors in the literature on gender wage equality in sport to refer to the principle expressed in Art. 23(2). They propose three arguments in support of the U.S. Women's Soccer team's demand for equal pay. The argument from 'duties of reparation,' firstly, states that national football associations have moral duties towards women footballers grounded in historic facts of past discrimination. For women's football was officially prohibited in Western countries between 1920 and 1970, which had the effect of frustrating the development of the women's game to such a degree that it is 'unsurprising' that it has less commercial value today than the men's game (op. cit., pp. 427-428). Since these actions by Western national football associations were motivated by an

¹⁸ The distinction between 'substantive' and 'procedural' justice gained currency in discussions of distributive justice led by John Rawls and Robert Nozick. The relevant contrast is between a global distribution of benefits and burdens that we consider just on independent grounds, and a fair process that generates a distribution we consider just in virtue of being thus generated (Nozick 1974, 153ff; Rawls [1971] 1999, 74ff).

attitude of contempt of women athletes that resulted in their degrading treatment, “active oppression,’ exclusion, denigration, and marginalization,’ they amount to wrongful discrimination (op. cit., 428, 432).

Given that national football associations are ‘largely responsible’ for the difference today in the commercial value of men’s and women’s football, they cannot now point to it as an ‘external force beyond their control,’ making it impossible for them to deny that the gender pay gap is at least in part wrongfully discriminatory (op.cit., 428) and therefore procedurally unjust. Moreover, since the institutions guilty of past wrongful discrimination are identical to the institutions responsible for today’s gender pay gap in football (ibid.), it is not the case here—as one might argue in a similar debate involving affirmative action in general—that those responsible for past discrimination are not around today, and that those around today are not responsible. The commonly recognized and uncontentious ‘duty of *reparation*, to help those I have harmed’ thus generates a moral as well as political obligation on national football associations to institute gender wage equality among their teams today, as this ‘may go some small way to repairing the decades of injustice these associations have committed’ (op. cit., 429). A procedural remedy, for a procedural injustice.

This is a strong argument, despite a couple of worries: (1) those harmed by past discriminatory policies in sport are said to be not individual women athletes, but ‘the women’s game,’ and it is the latter that is claimed to be owed reparations (op. cit., 429). While this is helpful in avoiding a number of difficult issues in the theory of intergenerational justice, such as the ‘non-identity problem,’ we are owed an explanation of how the abstract entity denoted by the noun phrase ‘the women’s [football] game’ could be harmed or owed anything, any more than men’s volleyball, junior ice hockey, or chess could. (2) Archer and Prange seem to rely on a claim of the familiar form (W_E)—if there were no discriminatory fifty-year prohibition of the women’s game, then there would be no or a smaller difference in commercial value between men’s and women’s football—without attending to the epistemic and metaphysical issues discussed here.

But even if we granted that the argument from duties of reparation establishes what it sets out to, it is also limited (a fact about which the authors are quite clear) in ways that render it impotent as a *general* objection from pro-

cedural justice to the arguments from performance/entertainment. The limitations illustrate problems with most pro wage equality arguments from procedural justice in sport. The first of these is scope: what is true of national football teams and their national associations is not necessarily true of club teams (op. cit., 431), and no consequences are drawn for sports other than football. The authors admit that they cannot refute the claim that ‘commercial disparity between male and female football means that male footballers and female footballers cannot be said to be performing equivalent jobs’ (op. cit., 423; see also *infra*). For while it is true that not *all* current gender pay gaps in sport are the result of market forces, as the exceptional case of the U.S. Women’s Soccer team appears to illustrate, most gender pay structures in professional sport, specifically those of private clubs, do appear to reflect entertainment markets. And Archer and Prange recognise that the duties of reparation argument by itself does not show that this is morally wrong (op. cit., 423-424).

Neither does their argument from ‘labour rights,’ however. The idea here is that both female and male U.S. national teams represent their country at international events at the highest available level, train comparable amounts, and endure the same public exposure and related stress; and that, therefore, ‘both [male and female] players are doing equal or at least equivalent work’ (op. cit., 420). The labour rights argument interprets Art. 23.2, and by extension ‘Equal Pay for Equal Play,’ as a call to end the wrongful discrimination resulting from paying different wages for equal or equivalent jobs, a straightforward appeal to procedural justice. But the problem is self-evident: like the argument from duties of reparation, the labour rights argument does not apply to commercial sports ventures, who contract players not for the job of national representation, but profit generation; nor does it transfer easily to any non-U.S. context, where male national football teams typically ‘[persuade] more fans and TV viewers to watch them, and more companies to sponsor them,’ and may therefore be seen as ‘effectively doing a *different* job’ (Archer and Prange 2019, 423) citing (Syed 2017), emphasis added). The authors moot ‘a general critique of capitalism’ as well as another instance of (W_E)—if it were not for lack of visibility and positive media coverage, then women’s sports would enjoy greater public interest and commercial value (op. cit., 424)—as potential replies. Yet by re-

fraining from developing either one of these, they fail to take the argument from entertainment head-on.¹⁹

Their last argument, from ‘expressive power,’ also falls short: wages, especially in capitalist societies, have the power of signalling the value of the worker’s labour and thus her “worth.” A gender wage gap in sport expresses the message that female athletes have less sporting and professional worth than their male counterparts, marginalising them and further damaging their respectability.²⁰ Therefore, removing the gender wage gap in football would be a morally good act (op. cit., 426-427). The ‘moral reason’ this provides does not amount to a general and widely applicable moral obligation, however, the authors concede (ibid.). In particular, Archer and Prange do not want to go as far as saying that all commercial sports ventures are morally obliged to pay their female teams equal wages (although the signal that this would send would be far stronger than anything national associations can do), for the simple reason that the claim that clubs are obliged to do so ‘strikes many as implausible.’ This includes avowed supporters of gender wage equality such as the former Olympic swimmer Sharron Davies, who is on record as saying: ‘You can’t pay a female footballer £300000 a week if they aren’t getting the gates to support that’ (op. cit., 427); cf. (McDonagh and Pappano 2008, 250). Exactly the sentiment of Moore, Djokovic, and Nadal, of course. While Archer and Prange do not say if they themselves are part of the ‘many,’ they do not explicitly take issue with the sentiment.

6.2 Procedural justice and substantive equality

To sum up, (Archer and Prange 2019) acknowledge that if ‘it is permissible for the salary of sports players to be at least partially determined by their commercial value, then there is a good reason to think that paying female players less is not discriminatory’ (op. cit., 424). Only in the narrow case of national football teams, however, do they have a cogent argument from procedural justice that it is *not* permissible. Archer and Prange are not fazed by

¹⁹ Cf. (Giordano and Harris 2005, 214) for a similar critique of (Tamburrini and Tännsjö 2005).

²⁰ See e.g. (English, J. 1978; Burrow 2018) who argue for equal pay on the grounds of women athletes’ right to equal *respect* and *recognition*; also (McDonagh and Pappano 2008, 250) and others.

this. They suggest that the *combination* of their arguments ‘works best to argue in favor of ‘equal pay for equal play’’ (op. cit., p. 432). But arguments while easily juxtaposed are less easily combined, and we have not been shown how to do this. In particular, given that duties of reparation apply only narrowly, and the labour rights and expressive power arguments falter, we have not been shown how to interpret ‘equal pay for equal play’ in a way that furthers the interests of women in contexts where their play is not equal. Few women athletes enjoy the comparative commercial success of the U.S. Women’s Soccer team, after all, and even fewer can compete with men. Like others, Archer and Prange appear tempted on occasion to simply declare *all* gender wage inequality in sport wrongful discrimination in itself (op. cit., 431), (Travers 2008, 93)—a position that, short of rejecting it outright, would require interpreting Art. 23(2) in such a way that the athletic ‘work’ of men and women *always* comes out equal.

That would no longer be in the spirit of procedural justice, however. In what Rawls called ‘perfect’ procedural justice, the nature of our procedures, rules, practices, institutions, etc., does guarantee a just outcome (Rawls [1971] 1999, 74ff). But in ‘imperfect’ procedural justice it does not, and while ‘pure’ procedural justice allows us to define the outcome of a procedure as ‘just’ in virtue of being its outcome (ibid.), to simply name a ‘just procedure’ the one that yields the outcome we consider just on independent grounds, would be to pursue substantive justice. Procedural and substantive justice are often pursued in conjunction and not always clearly distinguished, especially in contexts where the former issues in the latter either as a matter of fact (‘perfect’) or by definition (‘pure’). The claim that gender wage equality in professional sport is called for by the demands of procedural justice is ambiguous with respect to the concept of procedural justice that is operant, as well as the question whether application of Art. 23(2) falls under that concept, and how it should be interpreted; and whether the truth of (W_E) or (W_P) is relevant to that interpretation. Often, the claim is mixed with appeals to substantive justice.

(English, J. 1978), for example, advocates for the abolition of what she argues are unjustified gender divisions in sport—a rule and institutional change in the interest of procedural justice. But she also calls for the development of new types of sport on grounds of the ‘right of women to roughly half of the scarce benefits [of fame and fortune],’ a right she believes ‘stems from

the right for self-respect' shared equally by all human beings (op. cit., 273, 277). English thereby explicitly endorses gender wage equality in sport as a demand of substantive justice, for equal wages would over time generate the specific (egalitarian) distribution of financial benefits in sport that she accepts as just on independent grounds. (Boxill 1993-94, 27), similarly, states that 'gender equity seeks the equal opportunity for women to participate in the goods of our society'—a principle of procedural justice—and like English demands that 'females must be allowed access to more kinds of sports.' But she, too, takes the right of women and girl athletes to equal institutional budgets, sports scholarships, etc., to be grounded in their equal entitlement to self-respect and self-esteem (op. cit., 30), i.e. in their substantive equality.

Substantive and procedural justice can clash, depending on the facts of the matter. The arguments from performance/entertainment are 'perfect' procedural justice arguments, insofar as they assume that the 'work' of male and female athletes is *de facto* unequal, and that application of Art. 23(2) guarantees a procedurally fair and therefore just—albeit unequal—outcome. Equal opportunity for equal pay will not produce equal pay, after all, any more than procedural equality will produce substantive equality, if athletes are not (substantially) equal. If current athletic and commercial inequalities between men and women can be shown to be the effect of unfair discrimination however, then application of Art. 23(2) would amount to 'imperfect' procedural justice, if it did not take the fact of discrimination (historical or current) into account. And from the substantive equality point of view, all unequal wages in sport are unjust. We therefore have three options to object to the conclusion of the argument from performance/entertainment: (i) deny the relevant inequality, (ii) deny the perfection of the procedure, or (iii) argue that substantive justice trumps procedural justice in this case.

Option (iii), not being based on procedural justice, seems to carry a price tag in terms of plausibility, as we have seen: the argument from expressive power, for example, is 'unconvincing to many' probably for the simple reason

that it violates widely held intuitions of procedural justice.²¹ (i) requires counterfactual reasoning to show that current inequalities in performance/entertainment value are an artefact of discriminatory conditions, difficulties with which we have seen in Section 4. And (ii) implies showing that application of a procedural justice principle like Art. 23(2) to sport is unfair, if our notion of athletic ‘work’ is not the right one (work = effort), problems with which were the subject of Section 5. The argument from duties of reparation held promise, precisely because it seemed to point to a *better* way of denying that the argument from performance/entertainment is procedurally just. But it turns out that the relevant duty only arises if a counterfactual of the form (W_E) is true; and its scope appears to transcend national football associations only if we ground it in an appeal to *substantive* equality. Given that (W_E) and (W_P) ask precisely the question of the substantive equality of sportsmen and -women—namely, of the equality under non-actual conditions X of their athletic ‘work’—it does not matter if we choose option (i), (ii), or (iii). Either way, we advance little over the concerns over counterfactuals in Sec. 4, and/or we are no longer arguing from procedural justice alone. Objections based on procedural justice therefore fail.

Conclusion

‘The essential cause of discrimination [in sport is] the idea that men’s sports are better and more entertaining than women’s sports,’ observes (Hargreaves 1994, 206). Feminist philosophers of sport argue that the idea is *false*, and born of patriarchy; but the retort requires them to wrestle, explicitly or implicitly, with the merits of certain counterfactual claims, for professional athletes identified as male do currently perform better on average and entertain more

²¹ Elementary schools often award all participants of a sporting event the same medal regardless of results, presumably in order to preserve winners’ and losers’ equal entitlement to self-respect and respectability. However, children are rarely fooled by the tactic, in my experience, and distribute (sporting) respect according to results nonetheless. Less anecdotally, evidence in social psychology suggests that procedural justice is considered more important in resource allocation decisions than non-fairness criteria, and that being treated fairly by institutions is more important to people than final outcomes (Barrett-Howard and Tyler 1986; Lind and Tyler 1988).

people than those identified as female. To show that this is the unjust outcome of unfair discrimination, like the skewed reading on a scale that has been tampered with, we need to be able to demonstrate what the scale would have read, if it had not been. Unfortunately, the theory of counterfactual conditionals is a treacherous bog, as I have shown. Analytic metaphysics is trapped neck-deep, yielding no practically usable accounts of their truth-conditions, and (social) science is still busy with preliminaries, not ready to wade in. This leaves the status of counterfactuals such as (W_P) and (W_E) uncertain, as the ‘integrationism’ vs. ‘segregationism’ debate illustrates. Yet, the bog cannot be circumnavigated either, for example by construing the business of athletes to be effort rather than performance or entertainment; or by appealing to procedural justice. Effort cannot be put on a scale, and it does not seem to be all we are concerned with in what we currently call ‘sport.’ And procedural justice does not guarantee wage equality, unless we assume the substantive equality of female and male athletes on the basis of either (W_P) or (W_E) , or independent considerations of substantive justice.

Perhaps the best solution is, indeed, to appeal to the latter. For example, by arguing, à la Jane English, that gender wage inequality in sport is disrespectful, because all human beings are entitled to equal respect. The argument’s initial implausibility and apparent violation of the current ethos of sport—procedural as it is—might be overcome by showing, à la John Rawls, that gender differentials in average athletic performance or spectator appeal are due to undeserved inequalities in natural endowments, and therefore ought to be compensated for. But this would carry the price of acknowledging the existence of ‘natural endowments,’ import a number of well-known problems with Rawls’ argument, and risk the essentialism feminist theory denounces. Either way, philosophy of sport has its work cut out. Prior to its completion we cannot consider the case for gender wage equality in professional sport to successfully have been made.

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