

# The world is not binary. Measuring who is female on a scale sets up all kinds of Olympic-size wrongs

The Olympics and other sporting bodies are pushing nonsensical and outdated gender binaries, and athletes aren't the only ones paying the price.



NEW ZEALAND WEIGHTLIFTER LAUREL HUBBARD, THE FIRST TRANSGENDER ATHLETE TO COMPETE AT THE OLYMPICS (IMAGE: AP)

The Olympic Games are upon us, and reliably they will focus some attention on divisive social issues. They're supposed to be about friendship, but arguably their real value has always been in their ability to draw the highest number of eyeballs to the visible demonstration of the things that divide us.

Ever since Ben Johnson broke the world record for the 100 metres at the 1988 Seoul Olympics — a race in which six of the eight finalists failed drug tests at some point in their careers — the Games have been synonymous with cheating. Performance enhancement, super-suits, backward glances at East German world records: humanity at its best and worst simultaneously.

The ethics of cheating are straightforward enough, assuming the existence of a level genetic playing field. That assumption — or rather the sub-assumption of binary genders — is becoming increasingly shaky, causing conceptions across the sporting globe.

In the lead-up to Tokyo, it looked like Namibia might be banking medals via [two 18-year-old rising stars](#) named Christine Mboma and Beatrice Masilingi. Together they'd run four of the five fastest times in the 400 metres this year.

Mboma and Masilingi are female by birth. They had no idea, until the news broke, that their natural testosterone levels exceeded the “normal” range, such that under World Athletics rules they cannot

compete in women's races unless they take medication to reduce their levels. Both women declined to do that, so they're out of the Olympics.

A person who will be competing in the women's competition is Laurel Hubbard, a transgender weightlifter from New Zealand. She is the first openly transgender Olympic athlete ever. The reason she can do so is that, under IOC guidelines, she has a testosterone level below the set benchmark.

Some people would say that that's all a bit off — by means of an arbitrary dividing line two “real women” are excluded while a “former man” gets to compete? Put aside this offensive stereotyping and think about it in non-discriminatory terms, however, and the outlines of a deeper problem begin to emerge.

What has driven Olympic regulators to the point where they're using the brutally simplistic measurement of a single, naturally-occurring hormone to decide who gets to play, while ignoring the other multiple complexities of gender and transgender status?

The famous case of runner Caster Semenya is instructive. She was banned from competing in athletics in 2018, and her discrimination claim to the Court of Arbitration in Sport failed. The court upheld a rule requiring athletes with “disorders of sex development” (previously called “intersex”) to reduce their testosterone levels if they want to compete as women.

Essentially what it ruled was that discrimination on the grounds of sex or gender identity is allowable if it is a “necessary, reasonable and proportionate means of attaining a legitimate objective” — that objective being the level playing field.

It's not just the Olympics, of course. World Rugby has banned trans women from playing in women's competitions, citing that their physique, muscle mass and strength pose a risk to cis-women. There's science to support that stance: research has suggested that biologically-born men enjoy on average a 30% physical advantage over women in weightlifting, for example, which is only reduced by about 5% if you subtract the testosterone difference from the equation.

Other sports have tried to move in a more inclusive direction, with results as repulsive as those the Olympics are producing. The trans AFLW player Hannah Mouncey decided to withdraw from the AFLW draft, stating as her reason the psychological effects that the process of testing was having on her.

As trans cyclist Kristen Worley wrote in her book *Woman Enough*, she was constantly labelled either a freak or a cheat, but the worst was the intrusion: “They felt utterly entitled to ask me embarrassing, intimate questions about the details of my surgeries, and talk openly about my body in front of me, as if I wasn't there.”

That's the human cost of trying, theoretically ethically, to maintain fairness. But it ignores a very obvious question: what is it we are seeking to maintain?

Simply, what sporting codes are defending is a binary construct which no longer holds. There never was such a thing as the level playing field, of course, but the real issue is the insistence on maintaining a division of people into two mutually exclusive groups: male and female.

For all the squealing of the loud majority that humanity is binary, we're just not. Semenya was born the way she is, as were Mboma and Masilingi. Mouncey and Hubbard were born, biologically, the way they don't identify. They are people and they're entitled to compete no less than anyone else.

Where the binary construct is forcing us is to a new definition of man and woman, determined not by genitals but a hormone level. Above the line, male; below, female. That makes as much sense as your instincts are telling you it does.

Where it should lead us is to a place where another arm of rugby has been tentatively pointing; in some junior rugby union competitions, players are being graded by weight rather than age, acknowledging major differences in physical maturity between little boys and girls, partly random and partly to do with genetics.

That creates its own set of problems, such as body shaming. There is in fact no easy answer, ethically. What should be clear is that there's definitely no answer scientifically.

Where we urgently need to veer away from, however, is this business of measuring who can be female on a scale. It's all kinds of wrong.

*Michael Bradley is the managing partner at Marque Lawyers and Crikey legal correspondent. Emma Johnsen is a senior associate at Marque.*