

12/05/2011

Doing Epistemic (In) Justice to Semenya

Abstract:

In August 2009, Caster Semenya won the women's 800m event at the International Association of Athletics Federations World Championships in Berlin. This victory became a global news story not because Semenya was a newcomer to athletics who had outperformed an established field – but because of the fact that before the race she had been asked to undergo tests to determine whether or not she was a woman. This article uses a hermeneutics of suspicion to argue that the controversy surrounding Semenya was based on a set of assumptions that, although incorrect, drew on hegemonic understandings of sex and gender that dominate the discourse of sport, and were adopted by the media without question. As a consequence, Semenya became the victim of what Miranda Fricker has termed epistemic injustice – a condition that arises when individuals or experiences are marginalized as a result of the absence of concepts and language that would enable us to articulate reality differently.

Key words:

Athletics, BBC, DSD, Gender Verification, Intersex, Sex Testing, Sport.

Framing the Issue

On 19 August 2009, 18 year-old South African Caster Semenya won the final of the women's 800m at the International Association of Athletics Federations (IAAF) World Championships in Berlin with a time of 1:55:45. What made this victory a global news story was not that Semenya was a relative newcomer to international athletics who had finished well ahead of an established field. Rather, coverage focused on whether Semenya should have been allowed to compete at all, as it was public knowledge that before the race the IAAF had demanded that she undergo tests to determine whether or not she was a woman. Over the following months a number of stories appeared across the media, based on assumptions drawn from the framework established by the sports

12/05/2011

community – in particular that *any* evidence of maleness in a female body would confer an inherent advantage over any body that was exclusively female. This view passed without question from the sporting community (notably the athletics governing body the IAAF and other athletes) via the media into public discourse, and structured all the coverage surrounding the case – even that of pre-eminent public service broadcaster the BBC who, rather than seeking to hold the athletics authorities to account, fell into the trap of accepting the paradigm offered at the expense of delivering coverage that offered a fair and balanced analysis of the issues.

The assumptions on which the BBC assumed there was consensus can be summed up as follows:

- (i) Semenya's performance on 19 August was so exceptional as to raise doubts that it could have been achieved by a 'normal' woman.
- (ii) An appropriate response to concerns over exceptional female performance is to require the athlete to undergo a series of tests to determine whether or not she is 'truly' a woman.
- (iii) That *if* sex testing showed that her body in *any* way differed from that of a 'normal' woman, *then* she would have an unfair advantage over her fellow competitors.

I propose to show that, although drawing on hegemonic understandings of sex and gender that are particularly prevalent in sport – a discourse based on the notion of a fundamental and deterministic binary model of sexual difference, combined with an assumption that men have an inbuilt athletic superiority - all three of these are incorrect.

Responding to Foucault's call to 'think differently' (1992: 9) this article seeks to address the Semenya controversy through a hermeneutics of suspicion, an approach that seeks to expose untenable claims by suspecting the credibility of the superficial text (Pepa, 2004). The original masters of suspicion (as named by Paul Ricoeur) were Marx, Nietzsche and Freud. More recently Marcella Althaus-Reid, drawing attention to the importance of

12/05/2011

questioning the taken-for-granted that has underpinned the most significant contributions to feminist and queer thinking, has cited Judith Butler, Mary Daly and Luce Irigaray as contemporary masters (or should that be mistresses?) of suspicion (2004: 70). In what follows I will invoke my own masters of suspicion, scholars whose goal is nothing short of overturning what is perhaps one of the last remaining grand narratives – that there are two (and only two) sexes, that each of us fits neatly into one or the other, and that if the borders between the two are transgressed then something is wrong and needs to be corrected.

Because the BBC (along with the media more generally) followed the lead of the IAAF in accepting the above assumptions, the controversy surrounding Caster Semenya becomes a paradigm case of what Miranda Fricker has termed epistemic injustice - an injustice caused by “structural prejudice” (2007:1). Fricker’s invocation of this term enables us to address the discourse that surrounded Semenya without implying that either the IAAF or BBC media coverage *intended* to harm the athlete, or were even aware that they might be doing so – even though our common-sense understandings of sex and gender make harm the inevitable result of calling into question someone’s right to membership of what is seen as a clear-cut biological category. Fricker’s work is important to my analysis, as her feminist epistemology can be linked to critiques of the science that have informed the development of our understanding of the biologically sexed body. In arguing that her task is to ask questions “in the context of socially situated accounts of our epistemic practice” (p. 3), Fricker acknowledges that the term ‘socially situated’ originates in the work of feminist philosopher of science Donna Haraway. Haraway also proposed the term material-semiotic in an attempt to reconcile, in the light of a post-Kuhnian approach to science, the problem of accounting simultaneously for the historical contingency of knowledge claims while maintaining a “no-nonsense commitment to faithful accounts of a “real” world” (Haraway, 2004: 85). The same insistence on recognising the linked nature of both the material reality of biology and the influence of culture in framing the paradigms through which we understand the real world is also central to the work of Anne Fausto-Sterling, whose *Myths of Gender* (1985), *Sexing the Body* (2000) and numerous articles have been central to drawing attention to

12/05/2011

inadequacies of the two-sex model of the body. This commitment to ‘reality’ is also important to Fricker, who recognizes that what she describes as “the extremist bent in so much postmodernist writing” (2007: 2) has resulted in the exclusion from Anglo-American epistemology of theorizing that politicizes epistemic practice, on the grounds that such thinking was necessarily allied with a relativistic position – regarded as anathema in the Anglo-American tradition.

In the work of Fricker, epistemic injustice takes two forms – testimonial and hermeneutic. She sees the former – in which identity prejudice on the part of the hearer causes them to give the speaker less credibility – as the most common. Yet it is the second form which interests me, as hermeneutical injustice results from a “gap in collective interpretive resources” (p. 1) with the result that, because of hermeneutical impoverishment, “both speaker *and* hearer are labouring with the same inadequate tools” (p. 7, my emphasis). By this, Fricker means that the injustice is committed unknowingly because, collectively, we do not have the intellectual tools to unpick the assumptions inherent in the discourse. The result is a “hermeneutical darkness” (p. 149) in which some people and experiences are marginalized as a result of the absence of concepts and language that would enable us to articulate reality differently. Yet Fricker is also clear that hermeneutical injustice is not merely a case of what she calls ‘epistemic bad luck’. In the case of hermeneutical injustice it is no accident that the experience of the hermeneutically marginalised falls “down the hermeneutical cracks” – as “the whole engine of collective social meaning [is] effectively geared to keeping these obscured experiences out of sight” (p. 153), for at the heart of epistemic injustice lies a structural inequality of power.

Binary Sex and the Sporting Body

Sport brings the two-sex narrative into sharp relief. Reflecting on the discourses that govern the production of the sporting body, Susan Birrell and Cheryl L. Cole have noted that sport is not only a gender-producing, gender-affirming system – it is also a *difference* producing system. In this way it becomes one of the major sites for the naturalization of

12/05/2011

sex and gender differences, with the implication that superior athletic prowess is the natural domain of men (1994: 232-3). Raymond Boyle and Richard Haynes note that sport has always been a sexual battlefield, with biological difference being central to the construction of sport in society, and essentialist ideas of the body being maintained more frequently in sports discourse than in any other public domain (2000: 127-8). Deborah Stevenson agrees – suggesting that sport is a site where men can affirm physical, symbolic and economic dominance over women (2004: 280). It follows from this that hegemonic notions of masculinity and femininity are central to representations in both men's and women's sport, and that failure to conform to norms of physical appearance results in disciplining by the sports community, of which sports journalism is an influential pillar. The consequence is that: “Women who breach the boundaries of sports femininity and appear too muscular, powerful – or, indeed, too good – are subjected to subtle forms of discipline which ensure that they and their sport do not threaten the superiority of men” (Stevenson, 2004: 280). Corey Johnson and Beth Kivel have pointed out that the discourse of sport reflects a set of social structures that make dominant hegemonic categories seem natural, with gender grounded in an interpretation of two exclusive sexes (2007: 97), while Andrew Sharpe has gone further and argued that sport is the discourse in which the naturalization of two discrete biological sexes is most firmly entrenched (2002: 131-4). Laura Wackwitz notes that the near equation of sex with gender remains largely unquestioned in the international athletic community so that “The three terms “sex testing”, “gender verification”, and “femininity testing” are used nearly interchangeably by Olympic officials, athletes and reporters for the popular press” (2003: 554).

While sport may link these terms unproblematically, the nature of their relationship has been a source of debate and tension within feminist theory since the advent of the second wave when Simone de Beauvoir opened Book Two of *The Second Sex* (titled ‘Woman's Life Today’), with the claim that “One is not born, but rather becomes a woman” (1983: 295). De Beauvoir's work marked the starting point of a turn towards constructionism that sought to separate out the cultural inscription of gender from the biology of the sexed body. This move resonated with the turn to postmodernism and the privileging of

12/05/2011

language that (in the field of feminist theory) is frequently seen to reach its apogee with Judith Butler's *Gender Trouble* (1990), which put forward a performative theory of gender, expanded on in *Bodies That Matter*, where Butler sought to argue that there was no sex that was not already gender, and that "the regulatory norms of "sex" work in a performative fashion to constitute the materiality of bodies" (Butler, 1993: 2). Yet what was seen as the extreme linguistic relativism of Butler's work was contemporary with a turn to 'corporeal feminism' as exemplified by the work of Elizabeth Grosz (1994) and Moira Gatens (1996) that sought to reintroduce questions of the body into the heart of feminist thinking. This psychoanalytically and philosophically informed work developed alongside work by feminist biologists that sought to draw attention to the complexity of sex determination. Leading the field was Anne Fausto-Sterling whose work has, over the past twenty-five years, sought to bring to light the lack of substance behind ideas about biologically-based sex differences (see Fausto-Sterling, 1985, 1993, 2000, 2005 for key examples of her contribution to the debate). Taking a lead from Grosz' work on the relationship of body and mind, Fausto-Sterling appropriates the analogy of the Möbius Strip to consider how biology and culture flow together in determining our understanding of the sexed body (Fausto-Sterling, 2000: 24-25).

In the absence, in public discourse, of this sophisticated understanding of the relationship between sex and gender that has developed – and is continuing to develop – in gender studies, and with the imposition of femininity as the definitive marker of womanhood, the physical appearance of women sports personalities becomes key to their acceptability to fellow athletes and the sports-loving public. While what constitutes the acceptable female sporting body varies from sport to sport, there remains a core femininity that requires appropriate dress, adornment, deportment and interest in things 'girly' (notably clothes and shopping). Given the controversy surrounding her, it is perhaps no surprise that Semenya falls foul of this discourse. Based on her appearance alone, certain sections of the UK press had no doubt that she was not a woman. Tabloid newspaper *The Sun* reported her victory with the headline '800m and two veg', while the 'quality' *Daily Telegraph* likened both her voice and looks to those of former World Heavyweight Boxing champion Frank Bruno (McRae, 2009).

12/05/2011

Even Donald McRae's sympathetic article in *Guardian Sport*, published in November 2009 when the IAAF findings on Semenya were believed to be imminent, is redolent with phrases that note the way in which Semenya displays many of the signifiers of masculinity. From noting that, from a distance, even her coach cannot tell if she is a boy or a girl, McRae continues by referring to her "crunching" handshake, her muscled frame (in contrast with which Britain's Jenny Meadows – who took Bronze in the 800m on 19 August – "looked diminutive and slight"), and her "girly lament" about not being able to go shopping any more "sounding heart-wrenching when uttered in her relatively gruff voice". He also reports how from a young age "Caster was teased and mocked as a tomboy" and how her former headmaster reports that while she tried different hairstyles he had never seen her in a skirt or dress – "always trousers", creating a narrative in which Semenya has always been different (McRae, 2009).

The comments surrounding Semenya's appearance, and lack of appropriate feminine behaviour, highlight the way in which sport (and sports journalism) pursues a particular narrative of what it means to be a woman, and requires participants to overcompensate in their performance of femininity in order to conform to an understanding of gender that makes athletic physicality inconsistent with womanliness. This means the more successful the athlete the more they need to dispel anxiety about their place in the hierarchy of sexual difference. If we adopt the traditional (albeit simplistic) distinction of seeing sex as biological and gender as cultural, it is clear that Semenya failed to allay suspicion about her *sex* through her performance of *gender*, with even the ANC (who were vocal in her support) acknowledging her masculine build (BBC Sport, 2009b). Yet the IAAF side-stepped the issue of her appearance (as, indeed, the controversy sought to side-step issues of race), insisting that it was her allegedly world-beating times that had prompted their concerns and led to the request that she undergo a series of tests to establish her biological sex. But were these times really so exceptional that – had they not been accompanied by comments about her appearance – warning bells would have sounded?

12/05/2011

An Impossible Performance for a Woman?

One of the key assumptions that dominated coverage of Semenya was that her performance was so exceptional that it called into question the possibility that it had been achieved by a 'normal' woman. The most consistent feature of BBC Sport's reporting of the controversy was its repeated reference to her margin of victory in the 800m final. Between 19 August and 19 November 2009 the sports section of BBC News Online ran nine articles on Semenya (BBC Sport, 2009 a,b,c,d,e,g,h,i,j) with a further article consisting of an interview with Indian athlete Santhi Soundarajan who had been banned from international athletics by the Indian Olympic Association in 2006 following a failed gender test (BBC Sport, 2009f). Five of the articles noted that Semenya had broken Zola Budd's South African record [of 2:00:09] set in 1984, and all nine drew attention to the fact that Semenya had beaten defending IAAF world champion Janeth Jepkoskei by almost 2.5 seconds. Yet one name absent from the coverage was Pamela Jelimo, the Kenyan athlete who took the gold medal in the 800m at the 2008 Beijing Olympics.

Born in December 1989 Jelimo is only 13 months older than Semenya – so she was almost exactly the same age in August 2008 as Semenya was in August 2009. And Jelimo's athletic prowess casts Semenya's success in a rather different light. Jelimo won her Olympic Gold with a time of 1:54:87, a time she bettered later that month (August 2008) in Zurich when she ran a time of 1:54:01 (1:44 seconds faster than Semenya ran in Berlin). Moreover – like Semenya – Jelimo came 'out of nowhere'. Lauded by the IAAF as the 2008 Golden Girl of Athletics, the following comes from the IAAF 2008 Yearbook:

In four months Jelimo went from unknown runner to Olympic gold medallist. ... Jelimo began the year as a raw novice who finished 39th in the Kenyan Junior Cross Country Championship. She was not even among the 400 athletes listed in the Peter Matthews edited International Track and Field Annual for 2008. But from April to September, she proved unstoppable, winning all 15 of her races. She became Kenya's first Olympic women's athletics champion, took the African title, scooped \$1m as the only athlete unbeaten in six Golden League meetings, and triumphed at the World Athletics Final. Yet that was only half the story. From the moment she first made her mark on the World Athletics Tour, in Hengelo in May,

12/05/2011

Jelimo was a record-breaking machine. She lowered the World Junior record five times and the African record four times.

(<http://www.iaaf.org.news/kind=103/newsid=49201.html>.)

The article continues by quoting Sebastian Coe (former world record holder in the men's 800m), who praises Jelimo as a "stunning talent" with the potential to break Jarmila Kratochvilova's 800m world record time of 1:53:28 set in 1983 (2.17 seconds faster than Semenya ran in Berlin). It seems astonishing that BBC coverage fails to make *any* mention of an athlete who, just one year earlier, would have left Semenya –if not trailing in the dust – at least some way behind, but who at the Berlin World Championships was eliminated during the heats. What this makes clear is that – contrary to the implications of statements made by the IAAF and subsequent media coverage - Semenya's performance does *not* overshadow that of her fellow competitors. Yes, her performance at 800m in 2009 was far better than her closest rivals that year. But looked at in a broader context, and with only a marginally longer timescale, there are other women athletes whose performance is at least comparable, and even superior, but whose sex/gender has not been publicly called into question.

Indeed, Semenya's own performance record in her other event, the 1500m, provides no grounds for regarding her as mysteriously exceptional. Much was made of the vast improvement she made over 800m between 2008 and 2009, during which she knocked more than seven seconds off her personal best. Not surprisingly, similar improvement took place in her performance at 1500m. In 2008 her best time at this distance was 4:33:25 run in Rustenburg on 29 March. On 2 August 2009, at the African Junior Athletics championships in Bambous, she ran 4:08:01. Semenya did not enter the 1500m in Berlin. Yet had she done so she would have needed a significant improvement on even *this* performance if she were to have finished ahead of Maryam Yusuf Jamal who won the event in a time of 4:03:74. Indeed the first eight runners in the 1500m final finished with times better than Semenya's personal best. Making reference to this would, once again, have cast Semenya's case in a very different light by contextualising the level of her performance, yet the BBC either did not pursue this line of enquiry – or chose to ignore it in favour of a more simplistic and sensational story.

12/05/2011

If the most repeated aspect of BBC coverage of Semenya's performance in Berlin was her margin of victory, the story soon developed into attempts to explain the reason for this and the nature of her supposed advantage. On 25 August, in what was described as a 'new twist' to the 'saga' BBC Sport reported that tests had revealed Semenya to have higher than normal testosterone levels (BBC Sport, 2009c,e). Later reports noted that the BBC understood that tests were likely to show Semenya had an 'intersex' status (BBC Sport, 2009 e,f,h), explaining this to mean that the subject has both male and female sex characteristics. How these might manifest was never specified – but as it is accepted that Semenya's *external* sex characteristics are female (at birth no one questioned that she was a girl) the *implication* (although never stated as such) must be that her *internal* sex organs are male (testes) rather than female (ovaries) - leaving the reader to conclude that this, in itself, is sufficient to confer an unfair advantage on the athlete on the assumption that *any* evidence of maleness would inevitably confer a degree of competitive superiority over an entirely female body. Yet this is widely disputed by those who understand the range of intersex conditions and their varied effects on human physiology (Opie, 2001; Ritchie, *et. al.* 2008).

Even *if* Semenya does have an increased level of testosterone, any intersex condition she might have makes it almost certain that it would provide no unfair advantage. But *does* she have an exceptionally high testosterone level? In its report on the 'new twist' to the 'Semenya gender saga' the BBC leads with the news that the athlete's testosterone levels have been reported as being *three* times those normally expected in the female population (BBC Sport, 2009c). The report goes on to state that it was this high level of testosterone – detected by tests undertaken in South Africa – that contributed to the IAAF decision to have further tests carried out. This is subsequently linked to a “hermaphroditic or intersex condition” (BBC Sport, 2009e). But the 'normal' level for male testosterone is *ten* times the 'normal' female level (Connor, 2008). Context clearly matters here, as a comparison between Semenya and men would cast her test results in a very different light to a comparison with other women. But the BBC fails to provide this framing and leaves the public to draw an inappropriate inference from a fact taken out of context.

12/05/2011

Fausto-Sterling (2000: 170-194) provides grounds to question the significance attached to the role of hormones in sex determination, but even without taking the hermeneutics of suspicion that far, we can say that the reality is that testosterone levels vary widely not only between men and women but also *within* male and female populations. It is inevitable that some women will have higher than 'normal' levels – just as it is inevitable that, for some women, their level of testosterone will be lower than 'normal'. Moreover, sporting competition is rife with inherent – natural - differences that confer competitive advantage on some participants. Sharpe notes that factors such as heart size, lung capacity, muscle mass and body fat often traverse, rather than parallel, the division of sex (2002: 132), and David McArdle highlights the problems involved in applying the concept of the 'average' person to sport, as those involved will *usually* possess physiques, strength and levels of stamina that are above average, almost by definition. He notes that six-foot plus biological women with considerable stamina are not exceptional, particularly in elite sport, and that in February 2007 all top 20 female tennis players in the world were at least 4cm above average height (McArdle, 2008: 48-9). Similarly, Mandy Merck (2010) has noted the range of genetic advantages (such as the height of basketball players) that sport accommodates without question. Expecting 'normality' in an elite athlete is a contradiction in terms. Nevertheless, in the mid-1960s a concern with 'fairness' resulted in the introduction of compulsory sex testing in international athletics, and the insistence in sport that it is possible to find a definitive test for womanhood . Over the years a variety of techniques were used, but as Wackwitz has noted "Each advance in screening technology has failed to provide a definitive and undisputable marker of the category "woman"" (2003: 555). Recognising that there was *no* definitive way to distinguish between male and female bodies, in 1992 the IAAF abandoned the notion of compulsory sex testing, with the IOC following suit after the Olympic Games in Atlanta in 1996.

12/05/2011

The Challenge of Determining Sex

Sex testing of female athletes began during the Cold War in response to concerns that a small number of athletes from countries of the Eastern Bloc might be *deliberately* masquerading as women in order to gain competitive advantage and bring glory to their respective countries. The 1966 European Athletics Championships saw the introduction of ‘nude parades’ in which all female competitors were required to appear before a panel of three women doctors who confirmed they possessed female genitalia. All those attending the parade passed the visual inspection, although five East European world record holders suddenly withdrew from competition – including Russian sisters Irina and Tamara Press, who between them had dominated a variety of track and field events in the 1950 and 60s, achieving 26 world records and winning six Olympic gold medals (Ritchie *et. al.*, 2008; Skirstad, 2000). With the possible exception of those athletes who decided not to turn up in 1966, testing has *never* identified an individual *deliberately* misrepresenting their gender, although it has created embarrassment for competitors whose bodies have, *unknowingly*, been found not to conform in a straightforward way to the two-sex model of sexual difference.

In this context, it is important to note that the IAAF has never suggested that Semenya *deliberately* misrepresented herself as a woman. As the first report from the BBC made clear, IAAF spokesman Nick Davies was adamant that the situation in which the athlete found herself was not her fault, and recognised that telling someone who had been brought up female that they were, in fact, a man was a very serious issue (BBC Sport, 2009a). It is agreed by all that Semenya’s birth certificate registered her as female, that she had been brought up as a girl, and showed no evidence of external male genitalia. This raises an intriguing question. Is it possible to be brought up as a woman, but actually to be something different and not know it? The answer is yes. It is a commonplace that the first question asked about a baby is “is it a boy or a girl?”. In the vast majority of cases the answer is given immediately on the basis of an inspection of the child’s external genitalia. Only when this appears ambiguous do questions arise – at which point the situation is treated as an emergency and steps are taken to resolve the

12/05/2011

uncertainty (Chase, 2006; Hird, 2000). Yet as the IAAF acknowledged, sex determination is not quite that simple, as underlying non alignment of adrenal, hormonal and genetic function does not always result in the development of visually ambiguous sex (Holmes, 2009: 3).

As Nick Davies indicated, sex testing is “extremely complex”. In Semenya’s case it would involve an endocrinologist, a gynaecologist, an internal medicine expert, an expert on gender and a psychologist, and the results would not be known for several weeks – or, as it turns out, months (BBC Sport 2009a). While experts in the field would agree with Davies’ assessment of the range of factors involved, many are less likely to agree that there would – eventually – be a definitive outcome. Despite this, the only expert quoted in the BBC Sport reporting, John Wass, professor of endocrinology at Oxford University, seemed not only to think that any tests would be conclusive – but that determination is simpler than the IAAF indicate. According to Wass there are three aspects that determine whether a person is a man or a woman: chromosomal sex (which can be decided in about a fortnight on the basis of a few cells scraped from inside the mouth and which show XX for a woman and XY for a man), what your external genitals look like, and, finally, what you feel you are (BBC Sport 2009b). No mention is made of the fact that these three aspects might not align.

However, the medical community agrees that there are eight criteria to be taken into account in determining sex (Ljungqvist, 2000: 188), and while it is common for these to align, it is not a requirement that they do so. The many ways in which this non-alignment may manifest have tended to be known, collectively, as intersex conditions (the term adopted in BBC journalism) and became politicized in the mid 1990s through campaigning by the Intersex Society of North America (ISNA) that, encouraged by the publicity generated by an article in the *New York Times* by Anne Fausto-Sterling that argued for five sexes (Fausto-Sterling, 1993), sought to end early medical intervention that claimed to ‘fix’ children born with any kind of bodily anomaly on the grounds that such interventions were rarely necessary on medical grounds and tended to do more harm than good (Chase, 2006). But while the late twentieth and early twenty-first centuries

12/05/2011

saw the flowering of a framework for intersex that sought to confront a world informed by the premise of defect rather than of neutral variation (Holmes, 2009: 6), more recently the movement has begun to lose ground to a more medicalized outlook. While the underlying issues of biology have not changed the hermeneutics have, as suspicion is once again replaced by pathologization, with moves to have the value-neutral term intersex replaced by that of *disorders* of sexual development. As Alyson K. Spurgas notes:

The discursive shift to DSD signifies not only the distancing of intersex from radical GLB, trans and other queer identity movements, it also heralds a new mode of association and identity around the medicalized body and a new understanding and way of living in the body itself (2009: 104).

In 2006 the ISNA renamed itself the Accord Alliance and switched to the exclusive use of the nomenclature of DSD, although not all other activist organisations have followed suit. Much of the current debate draws on the fact that for many of those born with intersex conditions “this physical atypicality in no way compromises normative *gender* identity” (Spurgas, 2009: 97), so that they are anxious *not* to find themselves allied in any way with those who seek to politicize their condition and feel uncomfortable being included under the banner of queer. Framing intersex as a *disorder* marks a biopolitical shift that puts the focus on disciplining and normalizing bodies that fail to conform to a two-sex system. It also allows the intellectual framework within which non-binary sexual development is discussed to shift from the paradigm of queer theory to that of disability studies – perceived by many as inherently more respectable. Yet the intellectual shift from queer to disability may not prove to be the paradigm change it initially appears, as Crip Theory emerges as a discourse that seeks to politicize disability and focus on the challenges it poses for notions of bodily ability and related notions of normality (McRuer, 2006).

While the debate between the paradigms of intersex and DSD continues to play out in the theoretical literature, the evidence is that the International Olympic Committee has opted to embrace the medicalized framework of DSD. In February 2010 BBC News reported

12/05/2011

on a meeting of the IOC General Assembly where the head of its Medical Commission, Professor Arne Ljungqvist, recommended that “strategically located centres of excellence should be established to which athletes with a DSD could be referred and, if necessary, further investigated and treated” (BBC News, 2010a). In contrast to the BBC Sport reporting, this report balanced the views of Professor Ljungqvist with recognition that the terms now being used – “eligibility, diagnosis, disorder, treatment and surgery” – had triggered alarm throughout the sporting world, particularly given that the IOC did not accompany its pronouncements on the possibility of compelling some athletes to undergo treatment with any indication of the criteria that would be used to determine gender, or even a reassurance that such treatment would only be required if it were demonstrated that any anomaly conferred an advantage. Additionally, by framing any disorder of sexual development as a defect that not only can – but *should* – be treated even if there is no medical reason to do so, the IOC is contributing to a discourse that pathologizes the sex-variant body and produces the very stigma that the majority of those with variant bodies are seeking to avoid, and that drives their reluctance to be part of a queer alliance.

What Next for Semenya?

A BBC report posted online on 10 June 2010 indicated that Caster Semenya would learn that day whether she would be able to resume her career (BBC Sport, 2010c), but a little over an hour later the page was updated to report that the news conference intended to announce the verdict had been cancelled (BBC Sport, 2010d). Both the 10 June reports reminded readers of Semenya’s margin of victory the previous August. The decision of the IAAF on Semenya’s eligibility to compete as a woman – originally scheduled for November 2009 – was announced finally at the beginning of July 2010. The announcement stated “The IAAF accepts the conclusion of a panel of medical experts that she can compete with immediate effect. Please note that the medical details of the case remain confidential” (BBC Sport, 2010e). In case anyone had forgotten the earlier coverage the report *again* noted Semenya’s 2.45 second margin of victory over defending champion Janeth Jepkosgei. The same day, on his BBC blog, sports correspondent Gordon Farquhar posted that, although it had never been confirmed, he was convinced that the athlete had undergone treatments “for some kind of inter-sex condition” and that

12/05/2011

she was *now* in a position to compete without unfair advantage (Farquhar, 2010). The implication here is clearly that, at the time of her August victory there had been some sort of (unspecified) advantage – despite the fact that all the medical evidence on the effects of intersex conditions on human physiology fails to support this.

It is clear that, despite this outcome, the doubts raised in the Summer of 2009 remain. Semenya returned to international competition at the Lappeenranta Games in Finland a little over a week after the IAAF made their announcement. In her first 800m race for 11 months she finished in first place with a time of 2:04:22. Four days later, at another event in Finland, she won in a time of 2:02:41. In Berlin in August she broke the two minute barrier, winning in a time of 1:59:90 with her coach, Michael Seme and South African Olympic Chief Gideon Sam indicating they believed even better performances were to come. So, if Semenya has (as Farquhar feels able to state with confidence) been treated for an intersex condition or, as the IOC would seem to want it, a *disorder* of sexual development, her continued dominance in the event makes sense only if her condition did not play a part in her athletic performance in the first place. Despite having been cleared to run, the BBC coverage of her victory makes clear that her fellow athletes remain unconvinced that the competition is now fair, reporting misgivings from Britain's Jemma Simpson (who finished fourth in Berlin) and Canadian Diane Cummins (who finished eighth). Demonstrating what Spurgas (2009: 108) has called 'inter-phobia' (which she sees as being allied to the widespread acceptance of homophobia and trans-phobia, both of which are prevalent in sport (Boyle and Haynes, 2000; Cavanagh and Sykes 2006)) Cummins is quoted as saying "*Even if she is a female, she's on the very fringe of the normal athlete female biological composition from what I understand about hormone testing. From that perspective, most of us just feel that we are literally running against a man*" (BBC Sport, 2010f, my emphasis). Giving credence to these athletes' allegations that they were facing unfair competition, the same report informs readers that Semenya had been "banned by the International Association of Athletics Federations (IAAF) after unusually high levels of testosterone were detected in a sample", at the very least a misrepresentation of a complex situation in which Athletics South Africa chose to withdraw Semenya from international competition pending a definitive ruling from the

12/05/2011

IAAF, and when no official confirmation has ever been given regarding the outcome of the tests undergone by the athlete.

While much of the blame for this continuing unease over Semenya must lie with the athletics governing bodies that gave credence to the rumours about her, and took almost 11 months to reach a verdict on the case, the media contributed by uncritically adopting the frame with which the sporting community presented the issue. At the time of writing Semenya has been picked for the South African team for the 2010 Commonwealth Games to be held in New Delhi in October where she is expected to win the gold medal in the 800m. Should she continue her current level of performance in the event – and particularly if she approaches or exceeds her personal best times from 2009 - it will be fascinating to see how both her fellow competitors and the sports media handle her success. (In fact she pulled out of the competition with a back injury. Media reports frequently mentioned the previous controversy.)

What Next for Sex and the Body?

Feminism was once content to take its lead from Simone de Beauvoir who, as I noted earlier, argued that one was not born, but rather became, a woman. But over the past two decades the commitment to distinguish between sex and gender has been supplemented by various turns in feminist theory that have sought a greater recognition of the links between the two terms, seeing them as interdependent though not interchangeable. While this may seem to bring it more in line with the discourse of the sporting establishment, which seems never to have made a distinction between sex and gender (and femininity), an important - indeed crucial - difference is the way in which a more somatic approach within feminist theory has gone hand-in-hand with an acknowledgement, based on a careful examination of the scientific evidence, that the division of individuals into two – and only two- sexes fails to recognize the complexity of the human body. The more we find out about the sexed body the less we are able to establish hard and fast differences between men and women that do not rely on cultural

12/05/2011

assumptions to provide their conceptual purchase. Yet rather than take the complexity of the empirical realities of the body on board, and recognize the diversity of lived human experience, the IOC seems to be turning to medicine to ‘correct’ athletic bodies so that they conform to the prevailing model of sex.

If we continue to live with an insistence on a clear cut model of binary sexual difference, which may provide the comfort of certainty for the majority, the inevitable consequence will be the perpetuation of injustice towards the minority whose experience is not accorded credibility. To return to Miranda Fricker’s concept of epistemic injustice, she claims that “hermeneutical inequality is hard to detect” because the background social conditions do not give us adequate terms in which to frame the debate differently, and that “the powerful have no interest in achieving a proper interpretation” (2007: 152). What clearer illustration of this might there be than the fact that, in the case of sex and the body, rather than change the model to fit the evidence, the IOC would appear to be giving serious consideration to amending the evidence to fit the model? Writing in an issue of *Hypatia* that includes a Symposium on intersexuality, Sharon L. Crasnow tackles directly the issue of the relationship between models and reality when science tackles sex. In doing so she notes “What we pay attention to is determined by our interests, our models capture those interests, and the models themselves are constructed out of those concerns, *but the world is not.*” (Crasnow, 2001: 147, my emphasis). Like other feminist philosophers of science Crasnow is not seeking to deny the existence of objective data on the sexed body – but like Haraway with her concept of the material-semiotic, and Fausto-Sterling with the biology/culture Möbius Strip - she is drawing attention to the need to recognize that the science of the body does not exist in an intellectual and cultural vacuum. If the IOC set up centres to treat athletes diagnosed as having a ‘disorder’ of sexual development, whether or not it confers any competitive advantage, then future athletes like Caster Semenya will be required to undergo body-changing treatments, and not just (as at present) tests. The result will be that politics will have trumped science, athletics will remain under a cloud of hermeneutical darkness, and epistemic injustice will prevail.

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12/05/2011

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