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Abstract

This article asks the question: 'is there a "right" to sport?' In so doing, the nature of a 'right' is defined and the 'governing rules' by which that right is to be understood are identified. In short, while a number of international instruments allude to the importance of sport and recreation, there is little evidence of an express right in Australia, or in other countries such as Canada, the United States, and South Africa. Nonetheless, it is arguable that implicit in the rights of disabled persons to enjoy the same access to sport and recreation as able-bodied persons is recognition of a normative right to the benefits of sport for all persons. There may also be a link between access to sport and educational rights, and the rights of children, as recognised under international law more generally. In any event, even if sport is not an 'end' in and of itself, it is certainly a 'means' to improve the realisation of other human rights and development goals. For example, access to participation in sport can improve gender and racial equality and can assist in promoting social cohesion and tolerance.

Keywords

right to sport, access to sport, human rights, gender equity, racial equity, children's rights, rights of the disabled

IS THERE A 'RIGHT' TO SPORT?

DANIELLE IRELAND-PIPER¹ AND KIM WEINERT²

This article asks the question: 'is there a "right" to sport?' In so doing, the nature of a 'right' is defined and the 'governing rules' by which that right is to be understood are identified. In short, while a number of international instruments allude to the importance of sport and recreation, there is little evidence of an express right in Australia, or in other countries such as Canada, the United States, and South Africa. Nonetheless, it is arguable that implicit in the rights of disabled persons to enjoy the same access to sport and recreation as able-bodied persons is recognition of a normative right to the benefits of sport for all persons. There may also be a link between access to sport and educational rights, and the rights of children, as recognised under international law more generally. In any event, even if sport is not an 'end' in and of itself, it is certainly a 'means' to improve the realisation of other human rights and development goals. For example, access to participation in sport can improve gender and racial equality and can assist in promoting social cohesion and tolerance.

INTRODUCTION

This article considers whether or not there is a 'right to sport'. It is true that the nexus between human rights, development and sport has been recognised internationally. For example, in 2002, Kofi Annan, the then United Nations Secretary General, reflected:

Sport can play a role in improving the lives of individuals; not only individuals, I might add, but whole communities. I am convinced that the time is right to build on that understanding, to encourage governments, development agencies and communities to think how sport can be included ... in the midst of poverty, disease and conflict³

If, however, as a matter of first 'principles', 'to have a right is to have a claim against someone whose recognition as valid is called for by some set of governing rules',⁴ then mere recognition of a nexus is an insufficient basis on which to assert a right. The right must be recognised in the governing rules. In human rights law, the relevant governing rules are set out in international law, constitutional and legislative frameworks, and judicial decision making.

Part 1 of this article asks 'what is a right?' It then introduces the theoretical underpinnings of rights and their relationship with the rule of law. Part 2 then considers the 'governing rules', in order to determine whether there is evidence to support the existence of a substantive right to sport. Part 3 will suggest that, in a human rights context, sport is not necessarily a right in and of itself but, instead, is a means by which other ends are achieved. Ultimately, the article concludes that sport can, and should, be utilised a means to better realise gender equality, racial equality, health promotion, educational outcomes and social cohesion.

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³ Kofi Annan, United Nations Secretary General, 'UN to Launch International Year of Sport and Physical Education (Media Release, 5 November 2005) <http://www.un.org/sport2005/a_year/facts.pdf>.

⁴ Joel Feinberg, 'The Nature and Value of Rights' (1970) 4 *Journal of Value Inquiry* 243, 249, 270.

PART 1: WHAT IS A RIGHT?

This paper is primarily concerned with whether there is evidence of a right to sport on an empirical or doctrinal level. The issue as to the desirability of a normative right to sport would require a more comprehensive theoretical analysis that is beyond the scope of this article. In order to ascertain, however, whether or not there is even a doctrinal 'right to sport', it is necessary to at least canvass some of the theoretical foundations on which 'rights' are premised. As a starting point, Joel Feinberg suggests 'to have a right is to have a claim against someone whose recognition as valid is called for by some set of governing rules'.⁵ This then raises the question as to what the governing rules are. In a human rights context, the relevant set of governing rules may be drawn from international instruments, constitutional frameworks, legislative schemes, and, in some cases, the common law.

A liberal legal understanding of rights suggests that a right is different from other types of claims because, 'a right cannot be infringed in the way in which other interests may be'.⁶ One theory is that rights are something that human beings are born with,⁷ while others suggest that rights arise from 'political and governmental processes',⁸ or that are instead 'socially constructed'.⁹ In any event, what is agreed upon is that rights are a special type of claim. As Laura Nielsen has observed, '[w]hatever the origin of rights – be it God, politics or something else – rights occupy a special position among different types of legitimate claim'.¹⁰

There is also a relationship between rights and the rule of law. This is because if rights are grounded in 'governing rules', and those rules are laws, then it follows that the rule of law requires observance of rights. AV Dicey is sometimes credited with introducing the term 'rule of law'.¹¹ However, the concept of the rule of law has a far longer history and is now a widely discussed, and widely contested, term. For example, some commentators advocate a 'thin' conception, wherein the rule of law is simply the law of rules, whereas others argue the rule of law has substantive moral content. Either way, even at its bare minimum, the rule of law requires the observance of any rights recognised at law. Of course, some rights are relative to others, and some are considered to derogable and subject to a proportionality analysis. However, for the purposes of this article, it is presumed that observance of the rule of law requires that rights be observed, or not infringed, by the relevant governing body.

PART 2: THE 'GOVERNING RULES'

As set out above, the governing rules for human rights law can be found in international law, constitutional and legislative frameworks, and judicial decision making. Each of these is examined for evidence of a 'right' to sport.

INTERNATIONAL LAW

International law is generally understood in terms of primary and secondary sources. Treaties, custom and general principles of law are considered to be primary sources, while judicial decision making, and the writings of eminent publicists are secondary sources.¹²

⁵ Ibid.

⁶ Laura Nielsen, *Theoretical and Empirical Studies of Rights* (Ashgate Publishing, 2007) xi.

⁷ Ibid xii.

⁸ Ibid xii - xiii.

⁹ Ibid xiii.

¹⁰ Ibid xiii.

¹¹ Tom Bingham, *The Rule of Law* (Penguin Books, 2010) 3.

¹² See, for example, Gillian Triggs, *International Law Contemporary Principles and Practices*, (LexisNexis Butterworths, 2006) 42; James Crawford, *Brownlie's Principles of Public International Law* (Oxford University Press, 8th ed, 2012) 20-37.

In the context of primary sources, it could be argued that the right to sport is recognised either expressly or implicitly in primary sources, such as the International Charter on Physical Education and Sport (1978) (ICPES),¹³ the Universal Declaration of Human Rights (1948) (UNDHR),¹⁴ the International Convention on the Rights of the Child (1990) (CRC),¹⁵ and, most recently, the International Convention on the Rights of Persons with Disabilities (2006) (RPD).¹⁶ For example, Article 1 of the ICPES asserts the practice of physical education and sport as being a fundamental right for all:

every human being has a fundamental right of access to physical education and sport ... [and the] ... freedom to develop physical, intellectual and moral powers through physical education and sport must be guaranteed both within the educational system and in other aspects of social life.¹⁷

By way of a further example, Article 24 of the UNDHR grants 'the right to rest and leisure',¹⁸ and Article 31 of the CRC recognises 'the right of the child to rest and leisure, to engage in play and recreational activities'.¹⁹ In a similar vein, Article 30(5) of the RPD requires state parties to take appropriate measures to enable 'persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities'.²⁰ There has been little judicial consideration of any of these provisions. However, by implication, the right to rest and leisure could very well include sporting activities, and the reference in the RPD to disabled persons having equal access to sporting activities implies that there is a right to such activities in the first instance.

However, the courts in many countries, including in Australia, generally do not hold the legislature or executive to account for their treaty obligations, unless those obligations have been implemented into domestic law. For example, section 51(xxix) of Australia's Constitution permits the Commonwealth Parliament to enact laws that implement international treaty obligations. However, the Commonwealth is under no obligation to implement treaties into municipal law and nor must it implement them precisely. For example, in *Dietrich v The Queen*,²¹ the High Court was unanimous in deciding that a right purportedly conveyed by such a treaty did not exist in Australia by reference to international law because 'no international instrument upon which the applicant may successfully rely has been incorporated by legislation into Australian municipal law'.²² As such, the position is that international law is not part of Australian law unless specifically incorporated by legislation.

In contrast, other countries take a more inclusive approach to international law. For example, the Supreme Court of India, in *Maganbhai Ishwarbhai Patel v Union of India*,²³ held that unless there is a law in India in conflict with an international treaty, the treaty must stand. Taking the recognition of

¹³ United Nations Educational, Scientific and Cultural Organization, *International Charter on Physical Education and Sport*, GA Res 20C, 12th sess, UN Doc 20C/Resolution 15 (21 November 1978).

¹⁴ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

¹⁵ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS (entered into force 2 September 1990).

¹⁶ *Convention on the Rights of Persons with Disabilities*, GA Res 61/106, 61st sess, Agenda Item 67(b), Un Doc A/Res/61/106 (13 December 2006).

¹⁷ United Nations Educational, Scientific and Cultural Organization, *International Charter on Physical Education and Sport*, GA Res 20C, 12th sess, UN Doc 20C/Resolution 15 (21 November 1978).

¹⁸ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

¹⁹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS (entered into force 2 September 1990).

²⁰ *Convention on the Rights of Persons with Disabilities*, GA Res 61/106, 61st sess, Agenda Item 67(b), Un Doc A/Res/61/106 (13 December 2006).

²¹ (1992) 177 CLR 292.

²² (1992) 177 CLR 292; [1992] HCA 57, [23].

²³ (1970) 3 Supreme Court Cases 400 (Supreme Court of India).

treaties a step further, the Court in *Vishaka v State of Rajasthan*,²⁴ proposed that international conventions and norms are to be read into constitutional rights which are absent in the municipal law of India, so long as there is no inconsistency with such domestic law. In any event, the point is that there is a relationship between international law and the content of domestic legislation in establishing the 'governing rules' of human rights law. To that end, the question as to whether there is any evidence of a right to sport in legislative and constitutional schemes in Australia, or other countries, is considered in due course.

As for secondary sources, such as judicial decision-making and the writing of eminent publicists, there has been little to no judicial consideration of the issue by international tribunals and only minimal commentaries by eminent international law publicists. There are, however, publicists writing about human rights *in* sport, such as issues of gender and race equality.²⁵ Further, the link between sports and human rights has been made. By way of example, Bill Jonas made the following comment in a speech at a Sport and Human Rights Conference:

I want to suggest nevertheless that it is the outstanding victories of men and women in sport which demonstrate to us, through undeniable and indisputable action, the defiance of discrimination, the struggle against adversity, and the untruths of prejudice, that are the hallmarks of our own efforts in the name of genuinely universal human rights.²⁶

There is far less commentary, however, conceptualising sport *as* a doctrinal right in and of itself. This academic 'gap', so to speak, is what this article seeks to make a modest contribution to.

LEGISLATIVE SCHEMES

Australia does not have an entrenched or statutory bill of rights. This makes the task of identifying 'rights' in Australia challenging. Nonetheless, it is suggested that at a normative level, the promotion of sport can be seen by a willingness of the legislator to provide infrastructure to facilitate participation in sport as part of a 'common good'.²⁷

Arguably, there are at least two ways in which government can effectively advance participation in sport for the 'common good'. First, the ratification into domestic law of significant primacy sources of international law, such as the UNDHR, CRC and RPD, would provide individuals with a substantive right to sport. Second, the creation and coordination of various public policy initiatives can also serve to advance participation in and access to sport.²⁸ For example, initiatives such as 'Get Out, Get Active',²⁹ the 'Sporting Uniform Programme',³⁰ and the 'Sports Voucher Scheme',³¹ are aimed to guarantee an individual's access to sport and recreation.

²⁴ (1997) 6 Supreme Court Cases 241 (Supreme Court of India).

²⁵ For example, see Bruce Kidd and Peter Donnelly, 'Human Rights in Sport' (2000) 35 *International Review for the Sociology of Sport* 131.

²⁶ 'How you play the game: The contribution of sport to the protection of human rights', Speech by Dr Bill Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner at the Sport and Human Rights Conference, Sydney, 1 September 1999 <<https://www.humanrights.gov.au/news/speeches/how-you-play-game-contribution-sport-protection-human-rights-dr-bill-jonas-1999>>.

²⁷ For the purpose of this article 'participation in sport' includes competing and/or being a spectator.

²⁸ Many sport initiatives are designed to be delivered by state and territory governments, as well as local councils, with funding for the initiatives often being derived from the federal government.

²⁹ From mid-2014 the Queensland government is committing \$200,00 to target women (from school leavers age to the elderly) to regularly participate in sport and active recreational activities through its 'Get Out, Get Active' program. See Queensland Government, Department of National Parks, Recreation, Sport and Racing, *Get out, Get Active* <<http://www.nprsr.qld.gov.au/>>.

³⁰ The Sporting Uniform Program is aimed to fund Victorian community-based clubs to deliver sporting opportunities. The Victorian government grant provides up to \$1,000 to assist clubs in purchasing sporting uniforms. See Victoria Government, Department Transport, Planning and Local Infrastructure, *Sporting Uniforms* (20 May 2014) <<http://www.dpcd.vic.gov.au/home/grants/all-grants/sporting-uniforms>>.

Ultimately, however, there is currently no legislation expressly providing individuals with a right to sport and recreation in Australia. Nonetheless, it could be argued that such a right is implicit in the framing of some legislation. For example, the *Disability Discrimination Act 1992* (Cth) recognises that people with disabilities have a right to be a respected part of the community by having the same rights as other members of the community.³² This recognition extends to various areas, such as employment, education and the activities of clubs and incorporated associations involved with sport.³³ By implication this suggests that all members of the community have, and are to enjoy, rights such as sport. Consequently, in the absence of any other legislative instrument, which identifies and provides for a scheme of human rights, the object of the *Disability Discrimination Act 1992* (Cth) gives substance and conjoins the ideal that different groups in the community are given equal rights and have equal standing. Therefore, the *Disability Discrimination Act*³⁴ may implicitly recognise a right to sport for all Australians.

Further, it is difficult to ignore the variety of sporting and recreational initiatives undertaken by the legislators, sporting bodies and civil society organisations.³⁵ It might be argued that these initiatives have 'institutionalized and created a human rights culture through sport'.³⁶ In the absence of an entrenched bill of rights in Australia, a human rights culture may be the way in which a 'right to sport' manifests. Therefore, in the absence of any substantive rights, a cultural and policy recognition of sport as a means to an end may be just as effective.

By way of brief comparison, Canada and the United States and members of the European Union also do not expressly recognise a 'right to sport' as such. Again, however, other policy initiatives reflect a normative acceptance of the value of sport. For example, in the United States, a 'Bill of Rights for Young Athletes' is used by many sporting organisations, bodies, schools and colleges.³⁷ While this Bill of Rights may not be enforceable, it is another cultural recognition of the relationship between sport and human rights.

South Africa arguably goes further in that the UDHR and CRC are reflected in the Bill of Rights (Chapter 2 of the *Constitution of the Republic of South Africa 1996*) ('Bill of Rights'). For example, section 28(1) of the South African Bill of Rights reflects the CRC in that it states that, 'every child has a right to basic, nutrition, shelter, basic health care and social services'.³⁸ Mira Dutschke has suggested that the term 'social services' has a wide application and includes arts, culture, education, health, labour,

³¹ The Northern Territory government will provide all school aged children and schools in remote with a voucher of varying amounts (\$75, \$100 and \$200) to assist with the costs of playing sport. See Northern Territory Government, Department of Sport, Recreation and Racing, *Sport Voucher Scheme* <<http://www.sportvoucher.nt.gov.au/>>.

³² *Disability Discrimination Act 1992* (Cth) s 3.

³³ Other areas include accommodation, buying and selling land, administration of Commonwealth laws and program and provisions of goods and services. See *Disability Discrimination Act 1992* (Cth) s 3.

³⁴ 1992 (Cth).

³⁵ See Part 3 of this article for examples of how sport is used to achieve good for the community.

³⁶ Richard Giulianotti, 'Human Rights, Globalization and Sentimental Education: The Case of Sport' [2010] *Sport in Society: Cultures, Commerce, Media, Politics* 355, 361.

³⁷ Vern Seefold and Rainer Mortens created the Bill of Rights for Young Athletes out of concern relating to the abuse of young athletes. This Bill outlines 10 rights which are: (1) right to participate in sports; (2) right to participate at a level commensurate with each child's maturity and ability; (3) right to have qualified adult leadership; (4) right to play as a child and not an adult; (5) right of children to share in the leadership and decision-making of their sport participation; (6) right to participate in safe and health environments; (7) right to proper preparation for participation in sports; (8) right to equal opportunity to strive for success; (9) right to be treated with dignity; right to have fun in sports; and (1) right to have fun in sports. American Alliance for Health and Physical Education, Recreations and Dance (1979).

³⁸ See Bill of Rights, ch 2 of the *Constitution of the Republic of South Africa Act 1996* (South Africa).

social development, sports and recreation.³⁹ Dutschke notes that while the right to social services is 'seldom referred to in policy or legislation', the recently amended *Children's Act 2005* (South Africa) ('*Children's Act*') provides a legislative framework that gives effect to a child's constitutional rights.⁴⁰ The general principles in the *Children's Act* state that all decisions, actions or proceedings in a matter concerning a child must recognise a child's need for development and to engage in play and other recreational activities appropriate to the child's age.⁴¹ This general principle is applied further to ensure that a vulnerable child in the care of a drop-in-centre may be offered programmes that include recreation, where appropriate to the developmental needs of the children.⁴² In a further promotion of a child's right to recreation is the provision which states that the Minister for Social Development may, after consulting with the Ministers for Education, Health and Justice and Constitutional Development, make regulations for the provision of programmes for child and youth centres to meet the developmental, therapeutic and recreational needs of children.⁴³ The Bill of Rights and the *Children's Act* leave no doubt that the creation of the right to sport and recreation gives normative arrangements legal support and force for the good of the community.

Rights in South Africa are capable of being limited. Section 36 of the Bill of Rights has the capacity to limit a child's right to sports and recreation to the extent that it is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.' Before limiting rights, the Constitutional Court undertakes a proportionality enquiry. The Court will weigh up the harm done by infringing a fundamental right and whether any benefits are to be achieved by the law or government policy.⁴⁴ Proportionality demands a balancing of a right against the justification of infringement. Some may argue that a child's right to sport and recreation can be limited justifiably on the basis of a lack of available resources. The more compelling argument, however, is that infringing or restricting a child's right may have a negative outcome, in the form of an adverse impact in the context of both the benefits and the purposes of the *Children's Act*⁴⁵, and upon a child's fundamental right to basic social services.

JUDICIAL CONSIDERATION

As foreshadowed at the outset, there has been very little judicial consideration of the idea of a 'right to sport'. There is little, or no, evidence of such consideration in Australia. Even in the case of South Africa, where the evidence of some sort of right to sport is far stronger, as at the time of writing, the Constitutional Court has yet to consider the principles or provisions of the *Children's Act* or the Bill of Rights with respect to a child's right to sport. While there are a small number of cases relating to participation in sport for people with disabilities, these have generally been resolved on a domestic level based on national discrimination rules rather than the CPDR and other international laws.⁴⁶ For example, in *Pistorius v IAAF*,⁴⁷ heard before the Court of Arbitration for Sport, did not cite the CPDR. The main question in that case was whether an athlete's prosthetic legs provided him with an advantage and whether it was discriminatory or not to allow him to compete with the prosthetic legs. The importance of this decision consequently allowed the athlete to compete in able-body

³⁹ Mira Dutschke, 'Defining Children's Rights to Social Services' (Project Paper, No 28, Children's Institute, University of Cape Town, May 2007) 2.

⁴⁰ A child's Constitutional rights in South Africa are the rights to social services; family care or parental care or appropriate alternative care; right not to be neglected from maltreatment, neglect, abuse or degradation. Mira Dutschke, 'Defining Children's Rights to Social Services' (Project Paper, No 28, Children's Institute, University of Cape Town, May 2007) 1.

⁴¹ *Children's Act 2005* (South Africa) ch 2, s 6.

⁴² *Ibid* ch 14, s 213.

⁴³ *Ibid* ch 13, pt 3, s 212(k).

⁴⁴ *S v Makwanyan and Another* 1995 (6) BCLR 665 (cc).

⁴⁵ *Children's Act 2005* (South Africa) ch 1, s 2.

⁴⁶ See for example, *GPA Tour Inc v Martin* No 0024-, Fed Cir (9th cir, 2001).

⁴⁷ CAS 2008/A/1480.

competitions, namely the London Olympics. While this decision was primarily concerned with the conditions of participation in sport, rather than a principle right to participate in the first instance, the implicit recognition of the right of disabled persons to access sport does lend support to the idea of an implicitly recognised right to access the benefits of sport. Put another way, rather than there being a right to sport, there may in fact be evidence of a right to access the benefits of sport. Some of these benefits are discussed in Part 3 below.

Similarly, the right to access sport may also be implicitly tied to education rights. For example, in *Folgero (and Others) v Norway*,⁴⁸ a decision of the European Court of Human Rights, the court observed, 'the importance of ensuring an open and inclusive school environment, irrespective of the pupils' social backgrounds, religious creed, nationality, sex, ethnic group or functional ability.'⁴⁹ Drawing from this it is suggested that there might be an obligation on schools to provide sport to disabled and able-bodied students.

The central issues pertaining to the cases of *Folgero*⁵⁰ and *Pistorius*⁵¹ relate to non-discrimination.⁵² Specifically, in the European context, Article 14 of the *European Convention on Human Rights* (ECHR)⁵³ provides that rights and freedoms are secured without discrimination and, moreover, to achieve equality. Further, Protocol 12 to the ECHR creates a free-standing right to non-discrimination. The scope of Article 14 and Protocol 12 can be construed and be applied widely to areas such as, disability and education, in order for the rights of the individual to be given full effect, which is illustrated in *Folgero*.

PRELIMINARY CONCLUSIONS

Other than some references in international instruments, there is little evidence to support an express right to sport. While this is unsurprising in Australia, because it does not have a bill of rights, there is also little evidence of an express rights in jurisdictions such as Canada and the United States, which do have an extensive array of entrenched rights. There is, however, evidence of an implied right to access sport in disability legislation, and in the rights of children, as is evidenced in South Africa. Further, the existence of various policy initiatives in Australia, and in other places, indicates a cultural value placed on the benefits of access to sport. In this way, sport is recognised as a means to achieve other ends.

PART 3: A MEANS TO OTHER ENDS

As set out above, there is insufficient evidence in the 'governing rules' of the existence of an express right to sport. However, in a human rights and development context, while sport may not necessarily be an end in and of itself, it is a 'means' by which other ends, such as gender equality, racial equality, health promotion, education development, and social cohesion, can be achieved. For example, in terms of health promotion, programs such as the 'Kicking Aids Out! Network' in East Africa use sport to teach personal health and sexual responsibility to vulnerable youth.⁵⁴ As Ireland-Piper has observed, this is significant considering that more than half of persons newly infected by HIV in East

⁴⁸ No 1547/20, ECHR, 14 February 2006.

⁴⁹ Ibid 4-5, 15, 36.

⁵⁰ Ibid.

⁵¹ CAS 2008/A/1480.

⁵² See also *GPA Tour Inc v Martin* No 0024-, Fed Cir (9th cir, 2001).

⁵³ *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, ETS No 5 (entered into force 3 September 1953).

⁵⁴ Kicking Aids Out! Network, *History and what is KAO* (2013) <<http://www.kickingaidsout.net/history-and-what-is-ka0>>.

Africa are between 15 and 24 years of age, and most of those will die before their 35th birthday.⁵⁵ She also goes on to discuss 'Girls Kick It', a soccer program that seeks to empower young women in Uganda through education, business training and personal development, delivered through the medium of sport.⁵⁶ For example, the 'Gweno (chicken) Cooperative Enterprise Project' offers each soccer team the opportunity to manage and maintain a poultry house together as a group. The profits from the sale of the chickens to the local community can be put towards school fees, sport expenses and the development of new businesses.⁵⁷ Further, in terms of social cohesion, programs such as the 'Open Fun Football Schools' in the Balkans⁵⁸ and 'Mifalot' in the Middle East and parts of Africa⁵⁹ use sport to bridge social divides and decrease racial prejudice.

As for promoting gender equality, 'the provision of designated spaces for women's and girls' sport activities can have practical benefits but also a symbolic character, especially if these areas are public'.⁶⁰ This is because, in some countries, access to community areas is often primarily granted to men and boys. Further:

Sports programs that assure women and girls active board membership in leading positions, equity, financial means, participation in decision-making and strategic planning are likely to be more successful in producing lasting change in the self-perception and self-confidence of female participants in such programs.⁶¹

However, none of this is to say that all will automatically be well in the wide world of sports. Sport itself is still beset by issues of gender equity, homophobia and racism. For example, in Australia, sport played by women generally still receives less funding and governmental support than sport played by men.⁶² There are also marked differences in community attitudes to women in sport. This can be seen in Australian sportswoman, Ellyse Perry, being subjected to sexist abuse on social media after the 'meme' below was generated online.

⁵⁵ Danielle Ireland-Piper, 'Development through Sport: Fans and Critics' (2013) *Sports Law eJournal* 9 <<http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1016&context=slej>>.

⁵⁶ See, for example, *Girls Kick It!*, Website, <http://www.girlskickit.org/?page_id=503>.

⁵⁷ Ibid.

⁵⁸ Danielle Ireland-Piper, 'Development through Sport: Fans and Critics' (2013) *Sports Law eJournal* 9 <<http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1016&context=slej>>. See also Open Fun Football Schools <<http://ccpa.eu/>>.

⁵⁹ Street Football World, *Mifalot on CNN*, [video], <<http://www.streetfootballworld.org/network/allnwm/Mifalot/blog/mifalot-on-cnn>>.

⁶⁰ Sportanddev.org, *Promoting Gender Equality through Sport* <http://www.sportanddev.org/en/learnmore/sport_and_gender/promoting_gender_equity_through_sport/>.

⁶¹ Sportanddev.org, *Promoting Gender Equality through Sport - Access to resources, structure and leadership* <http://www.sportanddev.org/en/learnmore/sport_and_gender/promoting_gender_equity_through_sport/>.

⁶² Rhonda Jolly, 'Sports Funding: Federal balancing Act' (Background Note), Parliamentary Library, Parliament of Australia, 27 June 2013); Leanne Evans, Australian Sports Council, *Women's Sport* (30 April 2014) <https://secure.ausport.gov.au/clearinghouse/knowledge_base/sport_development/sport_and_government_policy_objectives/womens_sport>; Justine Quill, 'Give the Female Athletes a Level Playing Field on Sports Funding' *Herald Sun* (online), 22 September 2013 <<http://www.heraldsun.com.au/news/opinion/give-the-female-athletes-a-level-playing-field-on-sports-funding/story-fni0ffsx-1226724417784>>.



Image 1: A Cricket Meme⁶³

The online abuse sexualized Perry in a way that overshadowed the significance of her sporting achievements, and in a manner to which most male sportsmen would be immune.⁶⁴ Therefore, the way in which communities engage with issues of gender equality in sport could, and should, be improved. Ironically, sport, as is the case with a number of the gender specific programs noted above, has the potential to be its own antidote when delivered and communicated in the appropriate way.

A similar dynamic can be observed in the context of the relationship between racial equality and sport. For example, increased indigenous participation in sport in Australia has, over time, generally improved race relations and created a high profile forum for advocates of indigenous peoples. For example, as at 2010, 156 indigenous players had made their Australian Football League (AFL) or Victorian Football League debut since 1980.⁶⁵ Prior to 1980, only 23 had done so.⁶⁶ However, while AFL clubs employ around 1,300 employees, of these only 5 are Aboriginal, only one Aboriginal person is a club executive, none are on club boards, and only 2 out of the 150 coaches are Aboriginal.⁶⁷ In this context, sport can be considered both as part of the problem and part of the solution.

CONCLUSION

This article asked the question: 'is there a "right" to sport?' In so doing, the 'governing rules' were identified and evidence of such a right was considered. In short, while a number of international instruments allude to the importance of sport and recreation, there is little evidence of the acceptance of an express right in Australia, or in other countries, such as Canada, the United States, and South Africa. Nonetheless, implicit in the rights of disabled persons to enjoy the same access to sport and recreation as able-bodied persons is recognition of a normative right to the benefits of sport. There may also be a link between access to sport and educational rights, and the rights of children, as recognised under international law more generally. Further, this normative recognition manifests in a variety of government initiatives and policies. In any event, even if sport is not seen as an 'end' in and of itself, it is certainly a means to improve the realisation of other human rights and development goals. For example, access to participation in sport can improve gender and racial equality and can

⁶³ See Rachel Oakes-Ash, *Ellyse Perry Sparks Sexist Abuse* (31 January 2014) <<http://www.dailylife.com.au/health-and-fitness/dl-sport/ellyse-perry-meme-sparks-sexist-abuse-20140131-31q1t.html>>.

⁶⁴ Ibid.

⁶⁵ Creative Spirits, *Aboriginal Sport* (8 February 2014) <<http://www.creativespirits.info/aboriginalculture/sport/>>.

⁶⁶ Ibid.

⁶⁷ Creative Spirits, *Aboriginal Sport – Indigenous Australian Football League (AFL) Fact File* (8 February 2014) <<http://www.creativespirits.info/aboriginalculture/sport/>>.

assist in promoting social cohesion and tolerance. That is not to say, however, that the practice of sport, particularly in a professional context, is not troubled by racism and gender bias. Rather, there is certainly room for improving gender and race dynamics in Australian sport, for example. Ultimately, sport is both part of the problem and part of the solution in furthering human rights and development goals. Therefore, even in the absence of express recognition as a substantive right, sport is, and is likely to remain, a means by which other ends may be realised.