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# DISABILITY IN SPORT IN THE TWENTY-FIRST CENTURY: CREATING A NEW SPORT OPPORTUNITY SPECTRUM

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## I. INTRODUCTION

This article is based, in part, on the remarks expressed by the authors in their Opening Address at the *Developments in International Disability Sport Law* Symposium hosted by the Boston University Law School and the editors of the BU International Law Journal on January 23, 2009. It is worth noting that this is one of the first symposiums of its kind to be hosted by a law school and focusing solely on issues pertaining to disability and sport. As evidenced by the sole focus of this journal issue, the topics reflect a number of timely and complex issues facing local, regional, national and international sport governing bodies in how to view, understand, integrate and provide inclusion for athletes with a disability within their common practices and events. Unfortunately, many sport governing bodies and sport systems continue to perpetuate the false premise that separate, segregated opportunities for sport, leisure and cultural activities by persons with a disability are both desirable and equitable.

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The authors, along with Dr. Mary Hums of the University of Louisville, co-founded the Disability in Sport initiative (DISI or Initiative) ten years ago in 1999 at the Center for the Study of Sport in Society at Northeastern University (Sport in Society) for the express purpose of creating a dialogue within all aspects of society at local, regional, national and international levels. The purpose of the Initiative is to add a discourse of ableism to the existing pioneering work of the Center in challenging the hegemony of sport power elites in perpetuating racism and sexism as found in sport and in society. The mission of DISI speaks directly to the focus of this symposium and the theme of the Opening Address, *Disability in Sport in the Twenty-first Century*:

The Disability in Sport initiative advances access, inclusion, equality, respect, legitimacy and opportunity for people with disabilities in sport and in society. Through research, education and advocacy activities, Disability in Sport addresses the invisibility of people with disabilities.

The Disability in Sport initiative brings people with disabilities from the margins to become integral members of the sporting community. Ongoing research is conducted examining the inclusion of people with disabilities in sport. Disability in Sport provides educational awareness training on inclusion in sport and in society, and serves as a resource to support sport organizations regarding the inclusion process. The initiative serves as a facilitator to organize individuals and groups to work together to promote the inclusion of people with disabilities.<sup>1</sup>

In the past ten years, the co-founders of the Disability in Sport initiative have activated this mission and these operating principles in their work to: a) help create a new research fellows program to promote new research; b) help facilitate and support the development of legal opinions for the plaintiffs in the cases of *PGA Tour, Inc., v. Martin*,<sup>2</sup> *Hollonbeck v. U.S. Olympic Comm.*,<sup>3</sup> *McFadden v. Cousin*,<sup>4</sup> and *Pistorius v. IAAF*;<sup>5</sup> c) be widely present at regional, national and international professional conferences to act as facilitators in stimulating debate and dialogue among sport management professionals, academics, and policy makers; and d)

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<sup>1</sup> Center for the Study of Sport in Society, Disability in Sport, <http://www.sportin.society.org/vpd/dis.php> (last visited Feb. 23, 2009).

<sup>2</sup> *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001)

<sup>3</sup> *Hollonbeck v. U.S. Olympic Comm.*, 513 F.3d 1191 (10th Cir. 2008), *cert denied*, 129 S.Ct. 114 (2008).

<sup>4</sup> *McFadden v. Cousin*, No. AMD 06-648 (D. Md. Apr. 17, 2006).

<sup>5</sup> *Pistorius v. International Amateur Athletics Federation*, CAS 2008/A/1480 (Ct. of Arb. for Sport May 16, 2008), <http://www.tas-cas.org/d2wfiles/document/1085/5048/0/amended%20final%20award.pdf>.

participate actively in the development of Article 30.5 of the UN Convention on the Rights for Persons with Disabilities.

It is with this background and from this growing body of work that the authors hope to provide a foundational context and perspective in concert with the keynote address and the symposium panels on “Athletics under the UN Convention on the Rights of Persons with Disabilities” and “The Oscar Pistorius Case and the Legal Implications of Technology in Disability Sport.”

## II. CREATING A HISTORICAL CONTEXT: DISABILITY IN SPORT IN THE 20TH CENTURY

It is impossible to hypothesize and discuss the future of disability in sport in the 21st century without providing some historical context regarding disability in sport in the 20th century. Prior to exploring some of the past and present realities, it is important to establish a common language. For the purposes of this article, the authors are intentionally using the phrase “disability *in* sport” and not “disability sport” to highlight and illustrate the overarching emphasis on disability-related issues in sport contexts.

Disability sport is a relatively recent construct used by DePauw and Gavron in their book, *Disability and Sport*, to mean sports uniquely created for people with disabilities depending on the use of specific technology by all participants (e.g., wheelchairs or ice sleds) or by substantial rule modifications and equipment requirements such as blindfolds by all participants (e.g., beep baseball and goalball).<sup>6</sup> This may seem a perfectly natural and useful typology for defining sport, but questions of who is eligible, what type of disability a participant must have, and whether or not it is substantially different in rules and practice from so-called able-bodied or mainstream sport are open to many different perspectives.

Throughout the 20th century, disability groups instead have traditionally organized sport opportunities for people with disabilities by sport.<sup>7</sup> For example, national and international sport federations were created to focus on generalized types of disability identity groupings ranging from sensory disabilities (e.g., deaf and hearing impaired, blind and visually impaired) to mobility disabilities (e.g., spinal injury, amputees, and neurological related disabilities) to intellectual disabilities.<sup>8</sup> The oldest international sport governing body for people with disabilities is the International Committee of Sports for the Deaf (CISS) which held the

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<sup>6</sup> KAREN P. DEPAUW & SUSAN J. GAVRON, *DISABILITY AND SPORT* 7-8 (2d ed. 2005) [hereinafter DEPAUW & GAVRON, *DISABILITY SPORT*].

<sup>7</sup> See *Id.* at 61-88.

<sup>8</sup> D. Legg and R. Steadward, *Inclusion of Athletes with a Disability Within Sport*, 35 BULL. INT'L COUNCIL SPORT SCI. & PHYSICAL EDUC. 12 (2002) (on file with author); *Id.*; MARY A. HUMS & JOANNE C. MACLEAN, *GOVERNANCE AND POLICY IN SPORT ORGANIZATIONS* (2004).

International Silent Games in Paris in 1924.<sup>9</sup> The next international body was the International Stoke Mandeville Wheelchair Sports Federation (ISMWSF). This organization had held international games since 1952 and served as the organizing body for the first Summer Paralympic Games held in Rome in 1960.<sup>10</sup> Other disability sport organizations that followed, such as the International Blind Sports Association (IBSA), Cerebral Palsy International Sports & Recreation Association (CPISRA) and the International Sport Organization for the Disabled (IOSD), have focused on mobility-related disabilities and led to the creation of the International Paralympic Committee in 1989.<sup>11</sup> Globalized Special Olympics began in 1968 with the first International Special Olympics in Chicago.<sup>12</sup>

The term “disability in sport” is therefore intended to focus on issues pertaining to labeling, identity and classification systems used either to include or exclude based on self and/or organizational descriptors. Disability identity is a socially constructed paradigm promulgated through cultural and sport classification systems that can become an internalized, as well as externalized, paradigm similar to race and gender. When reflecting over the progression of civil and human rights in the 20th century, the challenges facing individuals with a disability are informed by comparison to similar struggles regarding race and gender. For example, a century ago in the United States it was not uncommon for certain organizations including sport clubs and related institutions to only admit whites or males; such places were not at all accessible for individuals with a disability.<sup>13</sup> Public bathrooms, theaters, swimming pools and other

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<sup>9</sup> DEPAUW & GAVRON, *DISABILITY SPORT*, *supra* note 6, at 8-9; International Committee of Sports for the Deaf, *About Deaflympics*, <http://www.deaflympics.com/about/> (last visited Feb. 23, 2009).

<sup>10</sup> International Wheelchair & Amputee Sports Federation, *ISMWSF History*, <http://www.iwasf.com/Documentation/ISMWSF%20HISTORY.pdf> (last visited Mar. 11, 2009).

<sup>11</sup> International Paralympic Committee, *About the IPC*, [http://www.paralympic.org/release/Main\\_Sections\\_Menu/IPC/About\\_the\\_IPC/](http://www.paralympic.org/release/Main_Sections_Menu/IPC/About_the_IPC/) (last visited Mar. 11, 2009).

<sup>12</sup> Special Olympics, *From Backyard Camp to Global Movement: The Beginnings of the Special Olympics*, [http://info.specialolympics.org/Special+Olympics+Public+Website/English/About\\_Us/History/default.htm](http://info.specialolympics.org/Special+Olympics+Public+Website/English/About_Us/History/default.htm) (last visited Mar. 11, 2009); Mary A. Hums, Eli A. Wolff & David Legg, *Presentation at the 2003 Conference of the North American Society for Sports Management: Examining Opportunities for Athletes with a Disability within the International Olympic Committee: Criteria for Inclusion* (June 2003) [hereinafter *NASSM Conference*].

<sup>13</sup> *See, e.g.*, *Yellow Springs Exempted Vill. Sch. Dist. Bd. of Educ. v. Ohio High Sch. Athletic Ass'n*, 647 F.2d 651, 675 (6th Cir. 1981) (examining gender discrimination in sports facilities); *Beal v. Holcombe*, 193 F.2d 384, 385 (5th Cir. 1951) (concerning African-Americans' alleged denial of access to Houston municipal golf course); *Durkee v. Murphy*, 29 A.2d 253, 254 (Md. 1942) (examining racial segregation in Baltimore public golf courses).

facilities were segregated by race, gender *and* disability.<sup>14</sup> Major League Baseball was segregated according to race, and intercollegiate athletics were segregated by gender and often by race.<sup>15</sup>

These forms of racial and gender intolerance in sports persisted for the next half-century despite the accomplishments of many African-American male and female athletes throughout this time.<sup>16</sup> These men and women were the outliers that succeeded in the face of tremendous odds and prejudice. Only a half-century ago, an African-American woman, Wilma Rudolph, captivated a nation with her gold-medal performance in the 100- and 200-meter sprints at the 1960 Rome Olympics,<sup>17</sup> Abebe Bikila from Ethiopia became the first black African gold medalist in the men's marathon,<sup>18</sup> and Sir Ludwig Guttmann realized his dream with the staging of the first Paralympic Games in Rome.<sup>19</sup>

It would also be not until the 1984, at the Los Angeles Olympic Games, that the International Olympics Committee would sanction a women's marathon race, the event having long been barred because of prejudice based on medical theories promulgated by male physicians that such an event would do harm to women's health.<sup>20</sup> That would also be the year that the first-ever alpine skiing (Sarajevo) and track exhibition (Los Angeles) events would be held within the Olympic Games for athletes who were amputees (alpine skiing) or spinal-injured (track).<sup>21</sup> It was also a period of activism and advocacy that resulted in the first national teams being integrated with athletes with disabilities (U.S. Skiing) including

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<sup>14</sup> See, e.g., *Watson v. City of Memphis*, 373 U.S. 526, 530 n.2 (1963) (listing cases that have struck down segregation); *Muir v. Louisville Park Theatrical Ass'n*, 202 F.2d 275 (6th Cir. 1953), *vacated* 347 U.S. 971 (1954) (concerning African-Americans' alleged denial of admission to city parks, swimming pools and amphitheater); *Sweeney v. City of Louisville*, 102 F. Supp. 525, 526-27 (W.D. Ky. 1951), *aff'd sub nom.*

<sup>15</sup> Timothy Davis, *Race and Sports in America: An Historical Overview*, 7 VA. SPORTS & ENT. L.J. 291, 296-98 (2008).

<sup>16</sup> *Id.* at 302-03.

<sup>17</sup> *The Fastest Female*, TIME, Sept. 16, 1960, available at <http://www.time.com/time/magazine/article/0,9171,826652,00.html>.

<sup>18</sup> MediaETHIOPIA, Abebe Bikilia (1932-1973), [http://www.ethiopians.com/abebe\\_bikila.htm](http://www.ethiopians.com/abebe_bikila.htm) (last visited Mar. 11, 2009).

<sup>19</sup> *History of the Paralympics*, BBC, July 6, 2004, [http://news.bbc.co.uk/go/pr/fr/-/sport2/hi/other\\_sports/disability\\_sport/3628745.stm](http://news.bbc.co.uk/go/pr/fr/-/sport2/hi/other_sports/disability_sport/3628745.stm).

<sup>20</sup> CHARLIE LOVETT, OLYMPIC MARATHON: A CENTENNIAL HISTORY OF THE GAMES' MOST STORIED RACE (1997), available at <http://www.marathonguide.com/history/olympicmarathons/chapter25.cfm>.

<sup>21</sup> PARALYMPIC GAMES: FROM 1960 TO 2004, ATHENS 2004 ORG. COMM. FOR THE OLYMPIC GAMES (2002), available at [http://www.paralympic.org/release/Main\\_Sections\\_Menu/Education/ATHENS\\_Education\\_Material.pdf](http://www.paralympic.org/release/Main_Sections_Menu/Education/ATHENS_Education_Material.pdf).

equal participation at national championship events.<sup>22</sup> During this period and leading into the early 1990s, global and national pressure mounted for more equity for athletes based on race, gender *and* disability.<sup>23</sup>

During the late 1980s, national and international sporting events for athletes with disabilities began to be less about cultural games as part of a rehabilitation perspective and more about emerging elite competition.<sup>24</sup> The International Paralympic Committee was created in 1989 and took control of all aspects of international competition for athletes with a disability with the exception of deaf and hearing-impaired athletes and athletes with an intellectual disability.<sup>25</sup> The sports movement in the United States during this period was due in part to the motivations and desires of Vietnam War veterans.<sup>26</sup>

With the passage of the Americans with Disabilities Act of 1990<sup>27</sup> and the Ted Stevens Olympic and Amateur Sports Act in 1998,<sup>28</sup> athletes with disabilities were hopeful that they would see significant increases with support from the U.S. Olympic Committee (USOC) and other national governing bodies (NGBs) involved in both Olympic and Paralympic sport for participatory and distributive justice issues in sport. Unfortunately, this progression did not occur as new policies from the USOC and its related NGBs pushed for significant regression by limiting resources and sporting opportunities via a stated policy of organization and practical re-segregation.<sup>29</sup>

The ten years between 1999 and 2009 have witnessed arguably bigger leaps in the resources, professionalism, legal challenges, and advances in sport technology with regard to sit-skis, prosthetics, sport wheelchairs and related devices than the previous ninety years combined. Athletes with a disability have qualified and competed in both Olympic and Paralympic

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<sup>22</sup> Disabled Sports USA, Guide to Disabled Alpine Skiing Competitions, <http://www.dsusa.org/programs-winter-competition-guideAlpine.html> (last visited Mar. 11, 2009).

<sup>23</sup> See, e.g., Amy Bauer, Note, *If You Build It, They Will Come: Establishing Title IX Compliance in Interscholastic Sports as a Foundation for Achieving Gender Equity*, 7 WM. & MARY J. WOMEN & L. 983, 994 (2001).

<sup>24</sup> DEPAUW & GAVRON, *DISABILITY SPORT*, *supra* note 6, at 270-71.

<sup>25</sup> About the IPC, *supra* note 11.

<sup>26</sup> Disabled Sports USA, About Disabled Sports USA, <http://www.dsusa.org/about-overview.html> (last visited Feb. 27, 2009).

<sup>27</sup> Americans with Disabilities Act of 1990, Pub. L. 101-336, 104 Stat. 327 (codified in scattered sections of 42 U.S.C.).

<sup>28</sup> Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §§ 220501 *et seq.* (2000).

<sup>29</sup> Theodore G. Fay, Race, Gender, and Disability: A New Paradigm Towards Full Participation and Equal Opportunity in Sport 17-22 (Sept. 2003) (unpublished Ph.D. dissertation, University of Massachusetts. Amherst) (on file with author); NASSM Conference, *supra* note 12.

Games (e.g., Runyon, Natalie duToit, and Partyzk).<sup>30</sup> Casey Martin sued and won his right as a professional golfer to compete on the PGA Tour using a motorized cart.<sup>31</sup> Tatyana McFadden sued and won the right to practice with and compete for her high school track team.<sup>32</sup> Scot Hollonbeck and others sued the USOC over equity and distributive justice issues.<sup>33</sup> Finally, Oscar Pistorius won his administrative appeal in the international Court for Arbitration in Sport (CAS) for the right to compete at the 2008 Beijing Olympic Games.<sup>34</sup> During this last decade, other critical events include the creation of the DISI at Northeastern<sup>35</sup> and the passage and ratification of the U.N. Convention on the Rights for Persons with Disabilities including its landmark Article 30.5 with its focus on sport, leisure and cultural rights for persons with a disability.<sup>36</sup>

This brings us to the present and a new window to the future. In order to contextualize where we have been, where we are and how far we have yet to go to realize a nation and a world that celebrates and values diversity, we must ask what the next decade (2019), quarter century (2034), half century (2059) or century (2109) will yield. Will the world and Olympic champions of the future look more like Oscar Pistorius and less like the fully-limbed Olympic sprinters of the present? Will there be a shift from the “norms of naturalism” to trans-humanism that will yield new paradigms and understanding of what is sport and who are athletes? In order to answer these questions effectively, people need to start by utilizing a set of overarching conceptual frameworks related to an array of critical issues confronting individuals with disabilities as a means to challenge, assess and publicly expose the prevailing traditions of sport governance and acculturated public opinion that serve to limit their opportunities in sport.

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<sup>30</sup> DisabilityNow, Games Without Frontiers, <http://www.disabilitynow.org.uk/living/features/games-without-frontiers> (last visited Feb. 23, 2009).

<sup>31</sup> See *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 690-91 (2001).

<sup>32</sup> *McFadden v. Cousin*, No. AMD 06-648 (D. Md. Apr. 17, 2006). For a summary of the opinion, see *McFadden v. Grasmick*, 485 F.Supp. 2d 642, 644 n.4 (D. Md. 2007).

<sup>33</sup> See *Hollonbeck v. U.S. Olympic Comm.*, 513 F.3d 1191, 1194-96 (10th Cir. 2008).

<sup>34</sup> *Pistorius v. International Amateur Athletics Federation*, CAS 2008/A/1480, at 18 (May 16, 2008).

<sup>35</sup> See generally *CTR. FOR THE STUDY OF SPORT IN SOC'Y, SPORT IN SOCIETY'S DISABILITY IN SPORT PROGRAM ENTERS 5TH YEAR OF PROMOTING INCLUSION AND HUMAN RIGHTS OF PEOPLE WITH DISABILITIES* (2006), [iris.lib.neu.edu/getblob?blobid=7429170231562655](http://iris.lib.neu.edu/getblob?blobid=7429170231562655).

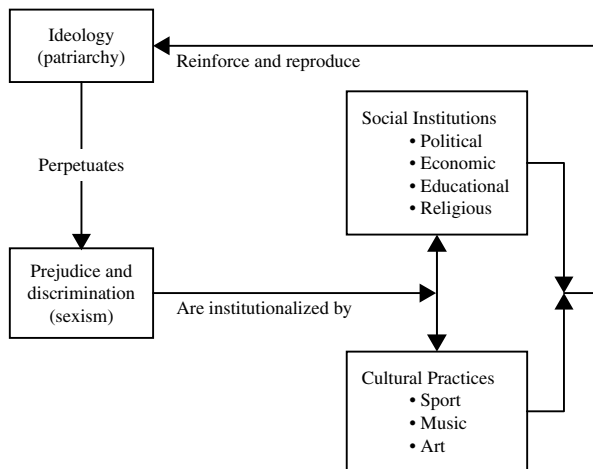
<sup>36</sup> *Convention on the Rights of Persons with Disabilities*, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Jan. 24, 2007).

III. CREATING A PLATFORM FOR ANALYSIS AND DISCUSSION: FIVE INTERLINKING CONCEPTUAL FRAMEWORKS

Besides setting the stage for the symposium panels and keynote addresses to follow, the purpose of the opening address and this article is to provide a broad analysis and discussion of the key issues based on the concept that all people have the right to access the fields of play. The following set of five interlinking conceptual frameworks address critical issues confronting individuals with disabilities as they challenge persistent and prevailing traditions of sport governance and acculturated public opinion that serve to limit their opportunities in sport. They help create a new super-critical context that identifies, analyzes and frames levels of progression and regression towards understanding greater socio-cultural, political, legal, economic, environmental and technological contexts of access, equity and justice.

These conceptual frameworks have their basis in historical, sociological and open-systems perspectives. People live in societies that consist of complex networks of identity relationships (e.g. race, ethnicity, gender, disability, sexual orientation, age, religion) that are socially constructed under historically specific conditions (e.g. race and slavery, ethnic cleansing and genocide, male hegemony) through which organizational structures reinforce the status quo acculturated belief system. Dominant ideologies and social norms are pervasive, and thus cultural practices are not easily transformed even with the advent of new laws and government-induced policies.<sup>37</sup>

FIGURE 1: SOCIAL DYNAMICS OF INEQUALITY<sup>38</sup>



<sup>37</sup> GEORGE H. SAGE, POWER AND IDEOLOGY IN AMERICAN SPORT: A CRITICAL PERSPECTIVE 18-20 (2d ed. 1998); Fay, *supra* note 29, at 6-7.

<sup>38</sup> SAGE, *supra* note 37, at 59.



Thus, the frameworks, which follow have been constructed to evaluate and access the progression and regression from highly discriminatory and segregationist practices to more equity-based and inclusionary practices.

### **Five Interlinking Conceptual Frameworks**

Critical Change Factors Model<sup>39</sup>

Organizational Continuum of Sport Governance<sup>40</sup>

Criteria for Inclusion in Sport Organizations<sup>41</sup>

Individual Multiple Identity Sport Classification Index<sup>42</sup>

Sport Opportunity Spectrum<sup>43</sup>

In analyzing the societal change process, one must consider whether it is a series of random events or if it can be viewed as a more strategic and therefore intentional process. As Malcolm Gladwell illustrated in his book, *The Tipping Point*, social phenomena and systems change defy linear or incremental analysis and reasoning.<sup>44</sup> Instead, change is often a blend of weighted factors or variables that come together in a “perfect storm-like” concussion that precipitates major cultural shifts in societies as they become either more or less inclusive.

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<sup>39</sup> Fay, *supra* note 29, at 42.

<sup>40</sup> *Id.*

<sup>41</sup> Eli A. Wolff, Presentation at VISTA '99 - International Conference on Sport for Athletes with a Disability: Inclusion of the Sport for Athletes with Disabilities into Non-Disabled Sport Organizations: Strategies and Recommendations (1999); Eli A. Wolff, Inclusion and Integration of Soccer Opportunities for Players with Disabilities Within the United States Soccer Federation: Strategies and Recommendations 5-7 (May 2000) (unpublished senior honors thesis, Brown University) (on file with author).

<sup>42</sup> Ted Fay & Eli Wolff, Presentation at the Annual Conference of the North American Society for the Sociology of Sport: Disability in Sport: Analyzing the Opportunity Spectrum (Nov. 3, 2006) [hereinafter Sociology of Sport Conference].

<sup>43</sup> *Id.*; Ted Fay & Eli Wolff, Presentation at 2006 VISTA Paralympic Congress: Classification Systems – The Epicenter of Sports for Persons with Disabilities: Redefining the Context of Fair Play in Relationship to Fields of Play 23 (May 6, 2006) [hereinafter 2006 Paralympic Congress].

<sup>44</sup> MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* 7 (2002).

FIGURE 2: CRITICAL CHANGE FACTORS MODEL (CCFM)<sup>45</sup>

- |               |  |
|---------------|--|
| <b>CCF1)</b>  | Change/occurrence of major societal event(s) affecting public opinion toward identity group.       |
| <b>CCF2)</b>  | Change in laws, government and court action in changing public policies toward identity group.     |
| <b>CCF3)</b>  | Change in level of influence of high-profile identity group role models on public opinion.         |
| <b>CCF4)</b>  | Change in level and nature of mainstream mass media's portrayal of identity group.                 |
| <b>CCF5)</b>  | Change in the critical mass of identity group athletes attaining high athletic achievement.        |
| <b>CCF6)</b>  | Change in attitudes of key leaders in power elites who act as catalysts for breakthroughs.         |
| <b>CCF7)</b>  | Change in perceived or real economic value of identity group as assets to the ruling power elites. |
| <b>CCF8)</b>  | Change in the beliefs about the medical and intellectual stereotypes of the identity group.        |
| <b>CCF9)</b>  | Change in hiring practices toward identity group related to managerial and leadership roles.       |
| <b>CCF10)</b> | Change in use of strategic processes by power elites to effect greater integration.                |

In his work, *Race, Gender, and Disability: A New Paradigm Towards Full Participation and Equal Opportunity in Sport*, Fay established a new theoretical framework entitled Critical Change Factors Model (CCFM) to bring a very large field of data under some level of control, coherence, and readability, which would minimize bias on the part of the researcher or analyst. Thus Fay designed a set of ten core factors drawn from equity (including distributive and participatory justice), critical social (including agency), and open-systems theories.<sup>46</sup>

The prevailing logic behind the creation and selection of these specific principles was one of commonality or universality, rather than uniqueness to a specific identity group, organization, or sport.<sup>47</sup> These factors were selected for their potential broad application across identity groups and different sport governance structures and are drawn from an historical analysis of three different identity groups based on race, gender, and disability. These factors are also used to determine differences in breakthroughs and progression towards inclusion at three primary stratification levels of (a) working class, (b) management or middle class, and (c) executive or ownership class.<sup>48</sup>

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<sup>45</sup> Fay, *supra* note 29, at 42.

<sup>46</sup> *Id.*

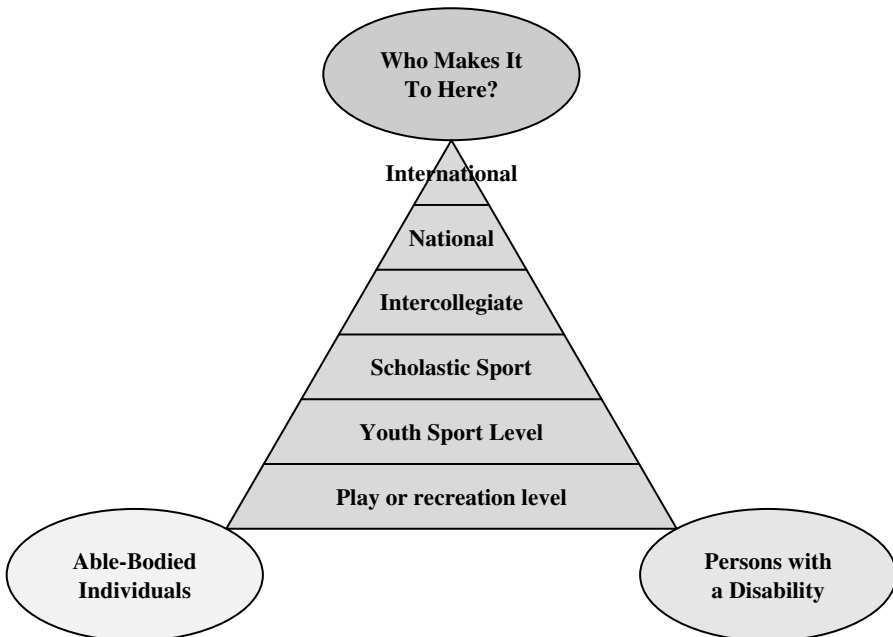
<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

Finally, this model serves as a coding structure to determine a hierarchy of change factors that need to be in place for key stakeholders to advocate against a specific organization's practices. In weighing each critical change factor in the context of a given situation, the model look to four categories. A Category I - CCF is sufficient by itself to cause change; a Category II - CCF is necessary but not sufficient by itself to cause change; a Category III - CCF is supportive but not necessary or sufficient by itself to cause change; and a Category IV - CCF is counter-productive since it causes a reversal or regression to increased integration and inclusion of an identity group.<sup>49</sup>

#### A. *Organizational Continuum in Sport Governance*

FIGURE 3: SPORT OPPORTUNITY SPECTRUMS<sup>50</sup>



This conceptual framework is an “access” paradigm that shows where a person or group resides within a dynamic organizational environment based on a self or culturally imposed identity group label. This construct was modified from a model developed from research on workplace diver-

<sup>49</sup> *Id.* at 43.

<sup>50</sup> Sociology of Sport Conference, *supra* note 42, at 8.

sity by Esty, Griffen and Hirsch.<sup>51</sup> The Organizational Continuum on Workplace Diversity was a unidirectional model that did not account for stratification levels of different types of employees (i.e., labor, management and ownership).<sup>52</sup> Fay has adapted and modified this model by incorporating Sage’s stratification levels and representing this continuum as a dynamic environment that may be progressive, regressive or static, ranging from exclusivity for a particular identity group (e.g., white males) to inclusivity embracing a wide spectrum of identity groups.<sup>53</sup> This continuum helps map the progression of a given identity group within the context of time and place. It also allows one to discover that an organization might be more progressive regarding the utilization and integration of labor and less progressive in the levels of management, and ownership.<sup>54</sup>

FIGURE 4: CRITERIA FOR INCLUSION

	OCSG Stages					
	EC	LSI	T	CM	TAD	VD
<b>CI – 1:</b> Governance (Mission and Policies)	1	2	3	4	5	6
<b>CI – 2:</b> Media and Information Distribution	1	2	3	4	5	6
<b>CI – 3:</b> Management (Executive and Staff Levels)	1	2	3	4	5	6
<b>CI – 4:</b> Funding and Sponsorship	1	2	3	4	5	6
<b>CI – 5:</b> Awareness and Education of Organizational Membership	1	2	3	4	5	6
<b>CI – 6:</b> Events and Programs	1	2	3	4	5	6
<b>CI – 7:</b> Awards and Recognition	1	2	3	4	5	6
<b>CI – 8:</b> Philosophy	1	2	3	4	5	6
<b>CI – 9:</b> Advocacy	1	2	3	4	5	6
Subtotal	9	18	27	36	45	56

Drawing upon the CCFM and Organizational Continuum in Sport Governance (OCSG) frameworks, Wolff in 2000 reflected on the need to be more comprehensive in analyzing the qualitative context and meaning of the movement of an identity group from one stage on the OCSG to the next one, drawing upon his own experiences as a collegiate and

<sup>51</sup> KATHARINE ESTY ET AL., *WORKPLACE DIVERSITY: A MANAGER’S GUIDE TO SOLVING PROBLEMS AND TURNING DIVERSITY INTO A COMPETITIVE ADVANTAGE* 189 (1995).

<sup>52</sup> *Id.*

<sup>53</sup> SAGE, *supra* note 37, at 35-44.

<sup>54</sup> Fay, *supra* note 29, at 159.

Paralympic athlete.<sup>55</sup> In 2008, Fay and Wolff modified the Criteria for Inclusion framework by intersecting the six stages of the OCSG model with the nine elements of criteria for inclusion. This allows the assessment and grading of the efforts of a particular organization or governance system with respect to each element of the framework. Thus, an organization that clearly acts and maintains its practices as an exclusive club (Stage I of the OCSG) would have a score between 9 and 17, whereas if it were to progress to Stage II by showing lip service to inclusion, it would have a score between 18 and 26. This framework could be used to assess a nation's effectiveness in adopting Article 30.5 of the UN Convention on the Rights of Persons with Disabilities.

FIGURE 5: INDIVIDUAL MULTIPLE IDENTITY SPORT CLASSIFICATION INDEX (IMISCI)

<b>PERSONAL IDENTIFIERS</b>	<b>SPORT IDENTIFIERS</b>
National Status	National Federation Membership
State, Provincial or Regional Status	League or Conference
Gender	Sport Organization
Age	Specific Sport
Race	Specific Sport Role or Position
Faith or Sect	Specific Sport Qualification or Performance Standard
Physical Weight	Specific Sport Event Qualification or Performance Standard
Sexual Orientation	Records Held
Disability	
Specific Disability Level	

Many athletes who have a disability face a decision on whether to identify with a sport identity, a cultural identity or both. All persons have an individual multiple identity classification index, whether they participate in sport or not. When sport becomes important this index becomes more complex and contextual. There are many cases of athletes with a disability who are "able" enough to successfully compete with and against athletes without the same disability or no apparent disability. Where do these athletes fit and how do they define or identify themselves? How athletes answer the basic question of "who am I?" relative to other athletes within a sport context is based on a number of factors including their own awareness and definition of ableism. The following two quotes illustrate a spectrum of possibility:

#### **Ableism**

[T]he devaluation of disability [that] results in the societal attitudes that uncritically assert that is better for a child to walk than roll, speak than sign, read print than read Braille, spell independently

<sup>55</sup> See generally Wolff, *supra* note 42.

than use a spell-check, and hang out with non-disabled kids as opposed to disabled kids, etc.<sup>56</sup>

### **Internalized Ableism**

Ableism devalues people with disabilities and results in segregation, social isolation, and social policies that limit their opportunities for full societal participation. Unfortunately, persons with disabilities are also susceptible to internalizing stereotypes and negative beliefs. This process, which we call *internalized ableism*, is similar to internalized racism and sexism of other devalued people.<sup>57</sup>

The Individual Multiple Identity Sport Classification Index (IMISCI) is intentionally constructed to expose the futility of stereotyping and labeling persons with a disability, similar to the use of racial or gender labels. Identity is always contextual, but at the same time it is an outgrowth of culturally created social construction.<sup>58</sup> It is dependent on each individual's abilities specific to a given time, location, set of unique circumstances and context.<sup>59</sup> In applying the IMISCI to fields of play, the index retains a complex array of personal- and sport- specific characteristics and/or relationships that when aggregated serve to define a person relative to a specific sport context, thus creating a context of eligibility either providing access or denying access to the field of play.<sup>60</sup> The Oscar Pistorius case is a perfect example of such application of the International Rules of Control (ICR) of a given sport governance system, namely the International Association of Athletics Federations (IAAF), which oversees and governs the sport of track and field for World Championships and Olympic events.<sup>61</sup>

The IMISCI is the critical piece or interlocutor between sport classification systems, eligibility for event participation and the exclusiveness or inclusiveness of sport opportunity spectrums. Natalie du Toit of South Africa participated in the 2008 Beijing Olympic Games in part because she qualified for the women's ten-kilometer swim without using her leg prosthesis. Thus, she was capable of meeting the performance standard without using a "technological aid." The fact that she was at a disadvantage compared to her fully limbed competition was not relevant to the ICR of the international swimming federation (FINA).<sup>62</sup> Natalia Partyka

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<sup>56</sup> Thomas Hehir, *Eliminating Ableism in Education*, 72 HARV. EDUC. REV. 1, 3 (2002).

<sup>57</sup> ROMEL W. MACKELPRANG & RICHARD O. SALSGIVER, *DISABILITY: A DIVERSITY MODEL APPROACH IN HUMAN SERVICE PRACTICE* 4 (1998).

<sup>58</sup> 2006 Paralympic Congress, *supra* note 43.

<sup>59</sup> *Id.*

<sup>60</sup> Sociology of Sport Conference, *supra* note 42.

<sup>61</sup> Pistorius v. International Amateur Athletics Federation, CAS 2008/A/1480, at 3 (May 16, 2008).

<sup>62</sup> Jere Longman, *Embracing the Equality of Opportunity*, N.Y. TIMES, Aug. 18, 2008, at D1.

of Poland competed in the doubles table tennis competition despite having only one hand. Once again, she was allowed to participate based on her ability to compete within the rules.<sup>63</sup> Thus, determining who gets to compete depends on the eligibility and classification systems that are applied within a given sport governance system.

### B. *Sport Opportunity Spectrum*

The following are five hypotheses related to athletes with disabilities having the opportunity to compete:

**Hypothesis #1:** The Sport Opportunity Spectrum (SOS) for individuals with disabilities within a given society will be perceived by the majority of that society's population as more limited than the SOS for identity-labeled able-bodied athletes in the same society.

**Hypothesis #2:** The SOS within a given society will be perceived to be significantly different by athletes with a disability and athletes labeled or identified as able-bodied athletes.

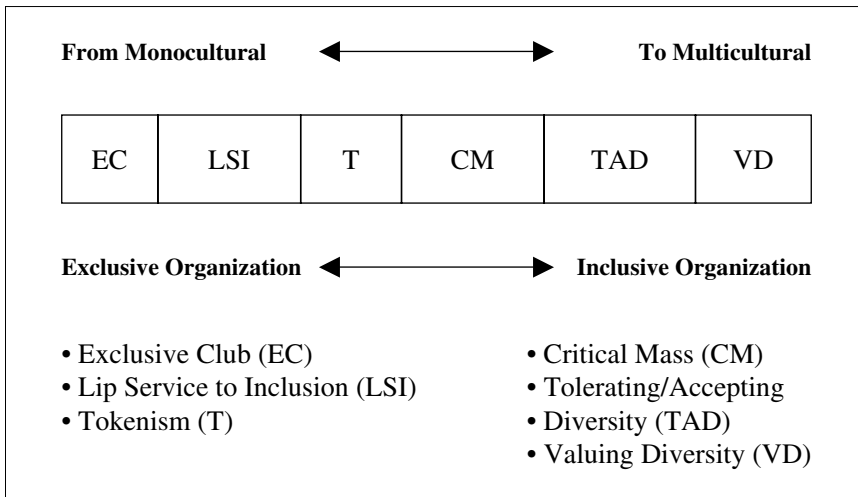
**Hypothesis #3:** Sport governance systems use classification systems and performance standards intentionally as strategies and as a means to control participation within a given environment.

**Hypothesis #4:** Sport governance systems use classification systems and performance standards intentionally as strategies and as a means to control participation within a given environment including creating different Sport Opportunity Spectrums for able-bodied athletes versus athletes with a disability.

**Hypothesis #5:** Athletes with a disability often reinforce the acceptance of different Sport Opportunity Spectrums for able-bodied athletes versus athletes with a disability through an acculturation process of internalized ableism.

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<sup>63</sup> *Id.*; Oliver Holt, *Disabled Table Tennis Star Natalia Partyka Gives Doubters the Elbow*, MIRROR.CO.UK, Aug. 14, 2008, <http://www.mirror.co.uk/sport/more-sport/2008/08/14/disabled-table-tennis-star-natalia-partyka-gives-doubters-the-elbow-115875-20696728/>.

FIGURE 6: ORGANIZATIONAL CONTINUUM – ABLEISM<sup>64</sup>

The standard sport rules and operating principles that are expressed through the ICR of a given sport are based on creating the contexts and standards of eligibility, parameters of performance, metrics for the field of play and classification of participants.<sup>65</sup> Issues of fair play and how an apparent competitive advantage is determined are often based on subjective (phenomenological) criteria based on the traditions of the sport (e.g., the *Martin* case<sup>66</sup>) rather than more objective evidence or science-based criteria (e.g., the *Pistorius* case<sup>67</sup>). However, in the *Pistorius* case it became evident that the IAAF was determined to utilize its version of what able-bodied sport is as its norm and as a result, it diminished the value sport has for people with disabilities.<sup>68</sup>

The IMISCI, when applied to a specific sport context, helps create a context of eligibility as an element of classification, thereby either providing or denying of access for a given athlete or team to the field of play within a specific set of parameters including event type, time and location. The concept of sport eligibility is a social and organizational construct controlled by a set of designated organizations.

The IMISCI provides a potential conceptual and practical framework and critical context to a sport governance system. The IMISCI clarifies what it means to provide fair access to an athlete to be eligible to qualify and therefore compete at the highest level of performance capability on

<sup>64</sup> Esty, *supra* note 51, at 189.

<sup>65</sup> See, e.g., *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 666-67 (2001).

<sup>66</sup> *Id.* at 670.

<sup>67</sup> *Pistorius v. International Amateur Athletics Federation*, CAS 2008/A/1480, at 7-8 (May 16, 2008).

<sup>68</sup> *Id.* at 3.



the maximal number of fields of play. Once eligibility is determined, a qualification process and system can be put in place based on certain publicly disseminated criteria known to the potential participants (e.g., athletes) and their support groups (e.g., coaches and trainers) that have been accepted as the norms of the sport as created and managed by the relevant sport governance system.

There is often a nexus related to the administration of “open” versus “segregated” competition based on a set of specific discriminating characteristics that are either “personal” (e.g., gender, age, race, religion, disability group) or “performance” (e.g., minimum qualifying standards) identifiers that can confound sport governance systems over who has a right to compete and in what competitions.

It is critical to note that classification of a given athlete or team is based typically on a uniform code outlined in the ICR for a given sport as overseen by a designated International Sport Federation (IFs) and its member National Sport Federations (NSFs) or NGBs.<sup>69</sup> Fear that economic resources are prioritized to able-bodied individuals might be somehow diverted to athletes with a disability (e.g., the *Hollonbeck* case) serves to perpetuate myths and stereotypes as to who should get to participate at certain levels of sport.<sup>70</sup> This is often due to a lack of awareness, education and expertise on the part of management professionals within sport governance structures in fully understanding the capability and level of athletic ability of a person with a disability. Pistorius’s Cheetah legs provide the opportunity for him to participate in open competition because of his athletic body, not because of his extraordinary advantage as a perceived cyborg athlete.<sup>71</sup>

#### IV. CONCLUSION: DISABILITIES IN SPORT IN THE 21ST CENTURY: A SET OF NEW SPORT OPPORTUNITY SPECTRUMS

The DISI in collaboration with other individuals and organizations needs to continually work on integrating people with disabilities from the margins of society into their desired sporting communities. Ongoing research needs to examine ways to facilitate and support the full inclusion of people with disabilities in sport. This research must be practiced through conscious reflection and evidence-based qualitative and quantita-

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<sup>69</sup> See International Paralympic Committee, Classification, [http://www.paralympic.org/release/Main\\_Sections\\_Menu/Classification/](http://www.paralympic.org/release/Main_Sections_Menu/Classification/) (last visited Mar. 15, 2009); INTERNATIONAL PARALYMPIC COMMITTEE, IPC CLASSIFICATION CODE AND INTERNATIONAL STANDARDS 6 (2007), available at [www.paralympic.org/release/Main\\_Sections\\_Menu/Classification/Code/2008\\_2\\_Classification\\_Code6.pdf](http://www.paralympic.org/release/Main_Sections_Menu/Classification/Code/2008_2_Classification_Code6.pdf).

<sup>70</sup> See, e.g., *Hollonbeck v. U.S. Olympic Comm.*, 513 F.3d 1191, 1196 (10th Cir. 2008).

<sup>71</sup> Ted M. Butryn & Matthew A. Masucci, *It's Not About the Book: A Cyborg Counternarrative of Lance Armstrong*, 27 J. SPORT & SOC. ISSUES 124 (2003).

tive analyses of the past and present to create arguments for systems change for the future.

Sport technology will force the re-conceptualization of the SOS in relation to new classification systems that reduce and end marginalization as the status quo while promoting legitimatization as the new inclusive paradigm. Many questions, however, remain unanswered. What are the essential benchmarks and norms related to SOS that we need to know and explore? What data is missing? Where and from whom do we need to find it? What additional studies do we need to explore? Whose voices need to be heard? What role do the law, the sport humanities (e.g., sport sociology, philosophy, ethics, history), the sport sciences and sport management disciplines have in informing theory and practice relative to SOS and classification systems for athletes with a disability? Does this research have potential relevance to other marginalized identity cultures involved in sport?

We need to develop a “AAA” strategy of athletes, advocates and strategic allies to help break down barriers and reduce the fear factor present in the change towards a more inclusive and equitable society. We need personal narratives of pathfinders who have waged their own struggle in order to help frame the contest and create a game plan to illustrate how to effect change for greater equity and justice. Finally, we may have to be willing to break the rules of the game in order to create greater access to the fields of dreams. What will be the Sport Opportunity Spectrums in fifty years? What will be the sport social justice legacy of this generation? Game on!