

Abstract:

The Sochi Winter Olympics were a triumph in the eyes of Russia and the International Olympic Committee (IOC). Yet, a controversy around the introduction of anti-propaganda laws in Russia that had been criticised for being discriminatory marred the efforts of the IOC to fulfil its self proclaimed aspiration of 'encouraging the harmonious development of man'. This article discusses the controversy utilising a legally pluralist approach to sports governance, and providing a critical reading of the practices of neoliberal globalisation that marked the issue of sexuality at the Sochi games. The paper argues that the legal influence of the IOC on domestic and international legal norms is contradictory and inconsistent. This, when considered alongside the aspirations of the IOC is significantly problematic and demonstrates the importance of investigating the underlying power structures of this influential international governing body.

Keywords: Olympics, Power Structures, Neoliberal, Globalization, Sexuality

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Sochi 2014 Winter Olympics and the controversy of the Russian Propaganda Laws: is the IOC is buckling under the pressure of its own incoherence in thought?

1. Introduction

The President of the International Olympic Committee (IOC) in November 2013 at the United Nations (UN) General Assembly declared that “precisely because many of our principles are the same, it must be clear in the relationship between sport and politics that the role of sport is always to build bridges. It is never to build walls.”¹ The environment, sentiment and audience combined with this statement explicitly highlighted that the IOC is relevant to both sport and to global politics. This article contrasts the IOC’s stated intention to ‘build bridges’ with the practical realities arising from the IOC’s relation to Russia hosting the Sochi Winter Olympics in February 2014 and the introduction in June 2013 of a law that criminalised the ‘propaganda’ of non-traditional sexual relations in Russia. This will be analysed using a legally plural approach to sports governance and global politics, alongside insights from critical legal theory. Critical legal studies provides a lens from which to ground the analysis of the IOC’s actions because it looks at the underlying power structures that allow law to have influence on politics and society. The IOC’s reaction to the controversy forced it to engage with globalization, neoliberal principals and disengage with societal, media and softer power structures. A plural approach to law allows us to understand how the IOC can be viewed as a legal entity that although is not a traditional source of law, is in fact creating and enforcing international legal norms. I will build this argument throughout the article, firstly grounding it in the critical legal studies and pluralist theory and in particular how this aligned when applied to neoliberal globalization and international sport. The aim here is to counter the imbalance of current literature on neoliberal globalization and how critical legal studies and legal pluralist perspectives

¹ Thomas Bach, 'Building a Peaceful and better world through sport and the Olympics Ideal' (Olympic 2013) <http://www.olympic.org/Documents/IOC_President/2013-11-6_Speech_IOC_President_Bach-Olympic_Truce_adoption_Speech_4_November.pdf> accessed December 20th 2013

offer constructive insights into neoliberal globalization. Secondly, the case study of Russia will be explored, along with the position taken by the IOC. This will lead to the final analysis of how the IOC's reaction to Russia's 'propaganda' law was problematic. I will argue that the tensions and contradictions within the IOC's legal influence and enforcement in Russia reveal profound political disagreements which cannot be solely resolved through legal reasoning.² In this case study the contradictory and passive behaviour displayed by the IOC demonstrates how it protects and propagates the underlying power structures. As such, this article casts doubt on the accuracy of the IOC's self-image as a bridge-, rather than wall-building entity, by demonstrating that bridges are only built between certain (privileged) groups, at the expense of minorities.

2. Critical Legal Studies & Neoliberal Globalization

Legal philosophy broadened the definition of law and what it constituted so that it "cannot be reduced to the practices and knowledge of lawyers...doctrines, cases or statutes...to reduce it in this way is simply to edit out much of what others have experienced of law".³ The expansion of what can be viewed as law has spawned an extensive literature concerning the question 'what is law', who is influenced by law and where can alternative sources of law be found.⁴ Critical legal studies provide a lens that interrogates "deeper political, historical and philosophical logics that underpin the power of law."⁵ In considering the IOC's position from this lens, we can see that it is a legal entity whose behaviour should be deconstructed and disrupted. This departs from traditional view of law that would not see beyond official legal doctrine, moreover, it is beyond proponents of socio-legal theory who only seek to expand on traditional legal knowledge and content.⁶ The complex interlocking of sport, politics and law that mark the IOC's reaction to the Russian propaganda law concerning the

² Hugh Collins, 'Law as Politics: Progressive American Perspectives' in Penner, Schiff & Nobles (eds), *Jurisprudence & Legal Theory: Commentary and Materials* (1st, Oxford University Press, Oxford 2005), 289.

³ Penner, James, Schiff, David & Nobles, Richard, 'Approaches to Jurisprudence, Legal Theory and the Philosophy of Law' in Penner, J, Schiff, D & Nobles, R (eds), *Jurisprudence & Legal Theory: Commentary and Materials* (1st, Oxford University Press, Oxford 2005)

⁴ Max Travers, *Understanding Law & Society* (1st, Routledge, Oxon 2009)

⁵ Nicola Lacey, 'Normative Reconstruction in Socio-Legal Theory' [1996] *Social Legal Studies* 131, 131

⁶ Roger Cotterrell, 'Subverting Orthodoxy, Making Law Central: A view of sociolegal studies' [2002] *Journal of Law and Society* 632, 633.

place of sexuality in the Sochi Winter Olympics 2014 requires such a critical lens, in order to ground the analysis.

The critical legal studies movement was attentive to everyday context and experience; as Kennedy described it, critical legal studies is a lens that provides an analytical critique of the injustices and oppressiveness of current arrangements. In contrast to creating a monolithic account or restrictive theoretical framework critical legal studies sought disrupt and disconnect what stabilized everyday practice. This was significantly influenced by Marxism and how apparently neutral concepts actually support and promote dominant ideologies.⁷ The original theorists used their own experiences of law and regulation, for example, the injustices in Black Panther prosecutions during the civil rights movement, to inform their critique of law.⁸ As such, a critical legal studies approach facilitates understanding the injustice of the IOC supporting the Sochi Winter Olympics and Russia's implementation of propaganda law, because there are incoherent and inconsistent legal demands that the IOC expected of a host nation but contradictorily enforced.

The critical impetus of critical legal studies enables hidden assumptions to be critiqued to reveal the instability and fragility of an overall framework.⁹ A specific way that critique can assist is through deconstruction. Collins expanded that a critique of ideological constructs is based on deconstruction which "pays close attention to the use of language and rhetoric in order to expose shifts in meaning that betray an underlying coherence of thought."¹⁰ The subjective focus of everyday events is deconstructed to reveal assumptions, frameworks and knowledge. Consequently, the production of assumptions rather than the event itself that is what is most important. Pertinent here is the injustice of the IOC's reaction to the controversy in Russia's domestic propaganda law and its hosting of Sochi 2014. The event is of course significant, but more vital is an interrogation of the underlying structures to the IOC's reaction.

⁷ Max Travers, *Understanding Law & Society* (1st, Routledge, Oxon 2010) 72 & 75

⁸ Mark Tushnet, 'Critical Legal Studies: A Political History' [1991] *Yale Law Journal* 1515, 1532

⁹ *Ibid* 5, 137, 138

¹⁰ Hugh Collins, 'Law as Politics: Progressive American Perspectives' in Penner, Schiff & Nobles (eds), *Jurisprudence & Legal Theory: Commentary and Materials* (1st, Oxford University Press, Oxford 2005), 303.

A limitation of critical legal studies is that as it is based on personal experience and everyday experiences it has not produced a unified and easily repeatable lens. This is not to say that critical legal studies is not significant, but to outline that it is embraced through individual engagement with it not merely following a blue print or model to produce critical legal studies. This paper seeks to update the engagement critical legal studies have with political ideologies because the prior engagement is founded upon liberal political and economic positions with law. This will be updated throughout to neoliberal and globalized political and economic positions.

The liberal position based on Kelman's thought that "law and economics has implicitly adopted a theory of the state and legality fundamentally consistent with...privileged liberal positions."¹¹ The deconstruction of this dynamic for Kelman revealed three major contradictions, all based on simultaneous commitments to fundamentally contrasting ideas. How there is a commitment to both mechanical rules and context sensitive standards, how moral value can be objective whilst being individual and arbitrary and that there is a belief in both in individual will and determinism of subjects from existing structures.¹² The application of these contradictions to liberal legal thought is applied in this article to the IOC's legal thought within a neoliberal globalized framework.

This updated application is justified by the dynamic between neoliberal globalization and sport in the present day. Neoliberalism is largely based on economic tendencies; Harvey expands on this by defining it as:

A theory of political economic practices that proposes that human wellbeing can be best advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets and free trade.¹³

From disciplines such as political science, the political and economic development of neoliberalism has been heavily discussed, largely being paired with the term globalization. This is an umbrella term

¹¹ Mark Kelman, *A Guide to Critical Legal Studies* (1st, Harvard University Press, London 1987) 6

¹² *Ibid* 12, 3.

¹³ David Harvey, *A Brief History of Neoliberalism* (1st, Oxford University Press, Oxford 2005)

to describe the increasing interconnectedness of the world on unprecedented levels, it has blurred previous certainties of spatial and temporal organisation.¹⁴ This has been fuelled by dramatic technological advances, decreased expense and increased ease of international travel and communication, for example, the transfer of money instantaneously.¹⁵ The pairing of these terms into neoliberal globalization is the groundwork for what power structures and dominant assumptions are present in the world, and in particular in sport. Neoliberal globalization is not neutral or void of political influences, but rather is based on the assumptions of Western, masculine and capitalist tendencies.¹⁶ To be able to critique such assumptions evidence of them in practice must be outlined which in this piece is demonstrated in the case study on Russia.

Political and economic globalization theories and conceptions have not adequately taken into account the legal dimensions and perspectives. There is extensive literature by sociologists and political scientists on the economic and culture aspects of globalization but indifference to the international law or regulation of the topic.¹⁷ The aim of this paper is to counter this imbalance and justify that a critical legal studies and legal pluralist perspective can offer constructive insights into neoliberal globalization.

3. Legal Pluralism, Neoliberal Globalization & Sport

The space from which to interrogate deeper the political and historical logics that underpin the power of law, are not seen from purely looking at legal doctrines and practices.¹⁸ The legal doctrines and practices that are referred to in this article as mentioned are not traditional legal sources or language. Consequently, I take a legally pluralist approach to the IOC's rules and norms, and to how neoliberal globalization influences its assumptions and actions. Legal pluralism highlights that

¹⁴ Andrew Herod, *Geographies of Globalization* (1st, Wiley Blackwell, Oxford 2009), 3-6.

¹⁵ Aldan -Dinan Kinsey, 'Globalisation and National Sovereignty: From Migration to Trafficking' in Sally Cameron and Edward Newman (eds), *Trafficking in Human\$: Social, Cultural and Political dimensions* (1st, UN University Press, New York 2008) 63.

¹⁶ April Biccum, 'Interrupting the Discourse and Development: On a Collision Course with Postcolonial Theory' [2002] *Culture, Theory and Critique*, 43.

¹⁷ *Ibid* 8, 173.

¹⁸ Nicola Lacey, 'Normative Reconstruction in Socio-Legal Theory' [1996] *Social Legal Studies*, 131 *IBID*

“manifestations of law do not all share the same basic characteristics therefore cannot be reduced to a single set of elements.”¹⁹ Contemporary legal pluralists have sought to show how state legal order is no longer the power centre of legal normativity, given the variety of sites of legal and normative regulation that humans experience.²⁰ The IOC is not a state controlled entity yet in the environment of international law, influences national and international legal norms, which fits with this expanded understanding of the sites and sources of legal regulation.

Legal pluralism is key to providing the space from which to mobilise a critical legal studies lens.

Davies described how pluralism is a standpoint that again is aligned with critical legal theory because it is less positivistic in its approach to law, trying to shift towards a more open and responsive view.

This would include multiple engagements with social, cultural differences and contemporary society which is a variable environment, in contrast to a white, hetero-normative and masculine dominated order.²¹ The use of norm signifies the departure from traditional, positivist and rigid imagining of what ‘legal’ is and what creates ‘legal’. Instead the conceptual orthodoxy of the “reduction of knowledge to science, of law to state law and of social powers to liberal politics”²² can be disrupted to produce a site where the contradictions and power underpinning law are exposed.

Volstrikova suggests that the sports legal order does not coincide with traditional sources and processes of law where the dominant element is the state, but rather creates a particular custom.²³ Sports governing bodies have influence legally, politically and socially both globally and especially locally the cities and countries hosting global sport events. For example, Van Luijk and Frisby argued that “the IOC holds supreme authority over the Olympic movement and requires every host city and

¹⁹ Brian Tamanaha, 'Understanding Legal Pluralism: past to present, local to global' [2008] Sydney Law Review 375, 396

²⁰ Martha-Marie Kleinhans & Roderick Macdonald, 'What is Critical Legal Pluralism' [1997] Canadian Journal of Law and Society 25, 30-32

²¹ Margaret Davies, 'The Ethos of Pluralism' [2005] Sydney Law Review 87, 89- 103

²² Boaventura De Sousa Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (1st, Routledge, London 1995), 399

²³ Elena Volstrikova, 'Norms adopted by international sport organizations as a special type of international custom' [2012] The International Journal of Sports Law 104, 104

country to abide by certain rules and regulations outlined in the Olympic charter.”²⁴ Using this non-state actor as the primary focus of the analysis below will offer a way to de-centre and deconstruct the dominant neoliberal globalized framework and its influence of legal norms. This is justified by legal pluralism as this approach contends that in contemporary society it is the variable environment and experience of legal norms that regulate and propagate power.

Globalization has spotlighted increasing international legal pluralism, because of the rising amount of “distinct bodies of legal norms tied to specific areas of regulation that are not coordinated with one another and can overlap or conflict.”²⁵ The neoliberal globalized space in which this paper is located is international sport governing bodies. Giulianatti and Robertson, in reference to sport, contend that it can be a beneficial area of analysis to elaborate on the “ideas and inherent problematics of the global political community.”²⁶ In particular how international sporting organisations attempted to behave in a neutral, non-government and not-for-profit space, yet they are complicit with the economic and privileged tendencies of neoliberal globalization, which will be highlighted below.

Pendlebury and Semens argue that sport is complicit with neoliberal globalization because in regards to the IOC it performs a “dual role of regulating their sport whilst commercially exploiting it.”²⁷

Countries are interested in the norms of international sport as it allows them to perform to the “model of integration to the norms of global (consumerist) culture and economy.”²⁸ This implies that international sport has taken on these norms, as international sporting organisations “claim to be non-government and not-for-profit organisations, but they are employing similar all-encompassing

²⁴ Nicola Van Luijik & Wendy Frisby, '(Re)Framing of protest at the 2010 Winter Olympic Games' [2012] *International Journal of Sport Policy and Politics* 343, 344.

²⁵ *Ibid* 20, 387

²⁶ Richard Giulianatti & Roland Robertson, 'The Globalization of football: a study in the globalization of the 'serious life' [2004] *The British Journal of Sociology* 545, 56

²⁷ Adam Pendlebury & Anna Semens, 'Sport Governing Bodies and Leveraging Power: What is the Appropriate Governance Model' [2011] *International Journal of Sports Law* 135, 18

²⁸ Mahfoud Amara & Eleni Theodoraki, 'Transnational network formation through sports related regional development projects in the Arabian Peninsula' [2010] *International Journal of Sport Policy and Politics* 135, 143

business strategies of multi-national co-operations.”²⁹ This highlights how international sports organisations are not neutral players in globalization but has taken on assumptions and technique of the dominant neoliberal paradigm.

The argument that sport is complicit with neoliberal globalization is extended to legal norms in varying examples, in particular, from large sporting governing bodies prohibiting and dictating legal procedures in host nations. For example, Van Luijk and Frisby explored the problematic approach of the Canadian Winter Olympic Games in 2010 in the regulation of freedom of speech and the right to public protest. They showed how the restriction of Olympic counter movements was part of the host city’s embrace of the outward and public Olympic logic over the voice of the community which challenged the underlying corporatized logic of the sporting event. The authors suggest that outward public Olympic logic misrepresents how they actually operate and that “logics of the IOC values serve as a cover for other motives.”³⁰ This not only supports the notion that international sports organisations are not neutral, instead co-opted by the dominant neoliberal framework. But, it also highlights the IOC and the Olympic movement as a site of legal norms, from which the Olympics is regulated.

The argument that a sporting governing body acts to serve as a cover for other motives is crucial in understanding the ways the IOC acted and reacted during the Sochi controversy. An example that further illustrated this point came from the Brazil 2014 World Cup, which is governed by the Fédération Internationale de Football Association (FIFA). Brazil the host of the 2014 World Cup and 2016 Summer Olympics had been forced to change domestic law that had banned serving alcohol in sports stadiums. The law was originally implemented to reduce football hooliganism and the risk to society and civilians, something that FIFA advocates. However, FIFA had major sponsors that rely on

²⁹ Ibid 29, 154.

³⁰ Ibid 25, 346-353

the sales of alcohol, such as Budweiser (a lead sponsor of the World Cup).³¹ through a critical legal studies lens, we can see that the underlying economic power structures from within the international sports governing body had over ruled a domestic law aimed at improving societal issues. This can be seen as an explicit example of how international sport is embroiled within neoliberal globalization and thus directly affects legal regulation.

4. Case Study- The IOC, Sochi Winter Olympics 2014 & Russian Propaganda Laws

4.1 IOC

The IOC is not a traditional source of law instead it is argued that it acts, as Volstrikova stated, outside of state law and in its own vacuum of norms.³² At the end of 2013 the President of the IOC spoke to the UN General Assembly about how the IOC and sport is “the only area of human existence which has achieved what is known in political philosophy as ‘Universal Law’ and in moral philosophy as a ‘Global Ethic.’”³³ This confidence of the position of sport and the IOC can be interpreted in a legal pluralist respect as a legal norm, and can be related to globalization as its target audience is the international community. Balderstone furthers this by stating that “the Olympic Movement is a unique international social phenomena, no other institution or cause has such a profile, universal appeal and potential influence.”³⁴ This phenomenon is not a traditional source of law, but with such influence on legal regulation problematically is not accountable to a democratic or higher authority. With this taken into account the IOC’s position warrants interrogation from a critical legal studies lens as it is so forceful on a global scale.

³¹ Mecro Press, 'FIFA tells Brazil beer must be sold at the 2014 World Cup matches' (Mecro Press 2012) <<http://en.mercopress.com/2012/01/19/fifa-tells-brazil-beer-must-be-sold-at-the-2014-world-cup-matches>> accessed 8th January 2014 & Ibid 44, 2.

³² Ibid 24.

³³ Ibid 1.

³⁴ Simon Balderstone, 'Olympic Values: Dead, Under Threat or Under Cover' [2009] Olympic Congress 171, 171.

The Olympic Charter is the foundational document of how the IOC is governed and on what principles it is based on, the aspects of the charter that will be focused on are solidarity and human understanding. The charter in its second fundamental principle depicts that:

The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.³⁵

Ban Ki Moon furthered this by aligning the Olympic Charter with the principles of the United Nations, and needing to use this to help those who have been marginalised.³⁶ This message is felt throughout the Olympic Charter as it seeks to show solidarity and human understanding through non-discrimination. This is mentioned frequently and follows the explicit statement of “any form of discrimination is incompatible” with the Olympic Movement.³⁷ A strategy for this is set out by Bach and supported by Balderstone who both see the main way of achieving this as by setting a strong and active example.³⁸

The historical role of this charter and the IOC is summed up here by its founder Pierre de Coubertin, who felt it “did not reappear within the context of modern civilisation in order to play a local or temporary role. The mission entrusted to us is universal and timeless.”³⁹ The historical influence and impact of the IOC has been widely documented, Coe cited it as a platform for change, especially when considering the examples of change brought by moments such as Jesse Owens in the 1936 Berlin Summer Games and his expression of racial equality and the falsehood of white supremacy, or

³⁵ International Olympic Committee, *The Olympic Charter* (1st, DidWeDo S.a.r.l., Lausanne, Switzerland 2013) 11

³⁶ Ban Ki Moon, Keynote Speech at the Olympic Congress, Copenhagen, 2009, available at, Ban Ki Moon, 'Keynote Speech at the Olympic Congress' (Olympic 2009) <http://www.olympic.org/Assets/XIII%20OLYMPIC%20CONGRESS/PDF/ACTES_OUVERTURE/KI-MOON_BAN_ENG.pdf> accessed 20th December 2013

³⁷ Ibid 35, 11, 12, 16.

³⁸ Ibid 1 & Ibid 35, 172.

³⁹ Pierre de Coubertin, quoted in Olympic, 'Building a Legacy through Sport, IOC Final Report 2009- 2012' (Olympic 2012) <http://www.olympic.org/Documents/IOC_Interim_and_Final_Reports/IOC_Report_2009-2012_Interactive_ENG_Sept13.pdf> accessed 22nd December 2013

the change in attitudes around disability that the Paralympics have developed.⁴⁰ The rhetoric and countless documents around the IOC and Olympic Charter back up and expand on these examples justifying this summary from Coe that sport and the IOC is a:

Hidden social worker, the catalyst for community change, a source of international understanding...uniquely powerful bridgehead in addressing seemingly intractable problems that appeared all too resistant to other orthodox approaches."⁴¹

The practice of this 'hidden social worker' is fundamentally in its influence on host cities of the Summer and Winter Olympics, how they perform to the Olympic Charter and uphold these global principles enshrined in the Olympic Charter. It is this practice that will be scrutinized in the next section as the Russian Propaganda laws provoked a fierce debate to whether they were compatible with the Olympic Charter.

4.2 Russia & Sochi Winter Olympics 2014

Russia took the decision to host the global mega event, Sochi 2014 Winter Olympics, as a milestone event to "resume the country's pursuit of international fame, glory and appreciation."⁴² By hosting the Winter Olympics Russia have assimilated into a set of international norms that it may not internally agree or currently follow. Especially because, as Gauthier discusses, the traditional hosts of major sport events are from Western Europe, America, Canada, Japan, South Korea or Australia.⁴³ With this taken into account it is important to outline how Russia and its city of Sochi have legally changed and expressed their commitment to the Olympic Charter and IOC as part of being given the right to host the 2014 Winter Olympics.

⁴⁰Seb Coe, 'Why the World needs the Olympic and Paralympic Games more than ever' [2009] Olympic Congress 141, 141.

⁴¹ Ibid 41, 142.

⁴²Nikolai Ostapenko, 'Nation Branding through the Sochi Olympic Games 2014' [2010] Journal of Management Policy and Practice 60, 62.

⁴³ Ryan Gauthier, 'Major Event Legislation: Lessons from London and Looking Forward' [2013] International Sports Law Journal 1, 9.

The Sochi candidate book from 2006 aligned their bid with acknowledgment that sport is part of the “harmonious development of man” from this the Federal Russian Government, local area government of Krasnodar and the city of Sochi “signed covenants guaranteeing respect for the Olympic Charter.”⁴⁴ An example of the IOC and Olympic Charter norms that had a direct impact on Russian domestic law was the creation of the ‘Sports Law’ in 2007 (Federal Law No. 329-F2). This, according to Prokopets and Zhubrin, was the cooperation of the Russian Federation with the demands regulating a mega event in line with the norms of the IOC, for example, dealing with intellectual property, tax, visa entry, urban planning.⁴⁵ It is not uncommon of states to implement such domestic law following being accepted as a host city. Further to this legal relationship Tygachev outlined how the Olympic Charter protected the autonomy of IOC norms by including the state legislation and government but privileged the national Olympic committee as the direct source of authority and regulation. It is within rule 28 of the Olympic charter that national regulating bodies “must achieve a harmonious relationship...resist pressure of any kind, which may prevent them for complying with the Olympic Charter.”⁴⁶ This demonstrates that although state law is influential, the Olympic Charter is always kept as the primary source and norms that dictate the regulation of hosting an Olympic Games.

The Russian commitment to the Olympic Charter in its rhetoric of applying and creating Sochi 2014 continued throughout its build up. For example, Chernyshenko the President of the Sochi Organizing Committee states the aim of expressing “the character of new Russia and bring sustainable, positive change to a whole country” citing in particular the environmental protection, disability awareness,

⁴⁴ Sochi Candidate Book, 'Legal Aspects' (Olympic 2006)
 <http://web.archive.org/web/20071025092713/http://sochi2014.com/sochidwnld/bid_book/Book%201/Theme%203/Theme%203%20sprds.pdf> accessed 2nd January 2014

⁴⁵ Marie Prokopets & Dmitriij Zhubrin, 'Legal Regulation of Organization and Holding the Olympic Games in the Russian Federation' [2012] *The International Sports Law Journal* 37, 38

⁴⁶ Leonid Tygachev, 'Russian Olympic Committee- Cooperation between the Olympic Movement and State Bodies: The Working Russian Model' [2009] *Olympic Congress* 292

and volunteer encouragement as the biggest legacies of bringing the Olympic Games to Sochi.⁴⁷ However, through the rhetoric and glossy reports a scandal had brewed from domestic legislation and its impact on the Sochi 2014. The following section will show how the ratifying of a criminalising ‘propaganda of non-traditional sexual relations’ law in 2013 sparked an international controversy over Russia’s attitude and legal regulation of sexuality and the marginalisation of people with non-traditional sexual relations. This controversy has pressured the IOC to act on its Olympic Charter; however the IOC reaction when viewed through the critical legal lens shows incoherence in thought.

4.3 Russian Propaganda Law

On June 30th President Putin of Russia signed a bill into law banning the “propaganda of non-traditional sexual relation.” Article 6.2 defines the propaganda actions that have been criminalised as;

The act of distributing information among minors that 1) is aimed at creating non-traditional sexual attitudes, 2) makes non traditional sexual relations attractive, 3) equates the social value of the traditional and non-traditional sexual relations or 4) creates an interest in non-traditional sexual relations.⁴⁸

In certain respects, Russia’s propaganda law is comparable to the UK’s notorious (and now repealed) ‘Section 28’ which prohibited the ‘intentional promotion of homosexuality’ by local authorities.⁴⁹ Section 28, however, did not criminalise any aspect of sexual expression, as is the case with the contemporary Russian propaganda law, has but it was symbolic, creating an environment of fear and restriction to behaving or acting on individual preferences.⁵⁰ Numerous examples exist in the

⁴⁷ Dmitry Chernyshenko, ‘The Olympic Games Impact- Summary Report’ (Sochi 2014 2013) <http://sochi2014.blob.core.windows.net/storage/games/strategy/OGI%20Digest_Eng_fin.pdf> accessed 3rd January 2014

⁴⁸ Innokenty Grekov, ‘Russia’s Anti-Gay Law, spelled out in Putin English’ (Policy Mic 2013) <<http://www.policymic.com/articles/58649/russia-s-anti-gay-law-spelled-out-in-plain-english>> accessed 5th January 2014

⁴⁹ Local Government Act 1988, s. 28. Repealed by the Local Government Act 2003, s. 122.

⁵⁰ John Eeklaar, ‘Perceptions of Equality: The Road to Same-Sex Marriage in England and Wales’ [2014] *International Journal of Law, Policy and the Family*, 1. For further discussion of the political conditions supported the enactment of Section 28, see Davina Cooper, and Didi Herman (1991) ‘Getting “The Family

Russian propaganda law being actively used to marginalise and discriminate against lesbian, gay, bisexual and trans (LGBT) individuals, and more specifically events of this nature had been connected to Sochi 2014 and the Olympic movement. Human Rights Watch documented concerns about the behaviour of officials impeding and finally not allowing the creation of an Olympic Pride House in Sochi, which was created in Vancouver Winter Olympics to be an information hub for LGBT athletes during the Olympic Games.⁵¹ Secondly, in August President Putin signed a further decree that bans “all demonstrations and rallies in Sochi for the two and a half months around the time of the games, a measure intended to thwart protests by gay rights activists.”⁵² This demonstrates that not only does the law exist on paper but how in action it directly impacted on the Sochi Winter Olympics.

However, in the international media Russia insisted that the law is “not discriminatory but its intended to protect children.”⁵³ I would argue that this law was not used to simply protect children, instead has opened a path for discrimination. An example of this in everyday life comes from main stream Russian media portrayal of the law. Worden cites a channel from the official Olympic broadcaster Rossiya 1 that hosted an hour long program debating whether “gay perverts and sodomites are part of an expansion of sin in Russia”, which throughout featured the Olympic rings under the channels logo, showing an endorsement or at least complicity of the Olympics.⁵⁴ The visual association gives credibility to criticism of and discrimination towards LGBT people in a public setting, even if it is merely from the use of the logo. This illustrated that the propaganda law was

Right”: Legislating Heterosexuality in Britain, 1986-1991’, *Canadian Journal of Family Law*, 10: 41-78; Monk, Daniel (1998) ‘Beyond Section 28: Law, governance and sex education’ in Moran, L., Monk, D. and Beresford S. (eds) *Legal Queeries*, pp96-112, London: Cassell.

⁵¹ Mark Johanson, 'Sochi 2014 Olympics unsafe for LGBT community under Russia's anti-gay law activists warn' (International Business Times 2013) <<http://www.ibtimes.com/sochi-2014-olympics-unsafe-lgbt-community-under-russias-anti-gay-law-activists-warn-1334223> > accessed 3rd January 2014 & Ibid 44, 11.

⁵² Lauren Mills, 'IOC says it's 'fully satisfied' that Russia's anti-gay law doesn't violate the Olympic Charter' (Huffington Post 2013) <http://www.huffingtonpost.com/2013/09/26/ioc-sochi-olympics-russia-anti-gay-law_n_3994761.html> accessed 4th January 2014

⁵³ Laura Smith, 'Why Russia's Sochi Olympics are now a battleground for gay right' (CNN 2013) <<http://edition.cnn.com/2013/08/10/world/europe/russia-gay-rights-controversy/>> accessed 4th January 2014

⁵⁴ Minky Worden, 'Russia's Anti-gay law threatens the Olympics character' (Human Rights Watch 2013) <<http://www.hrw.org/news/2013/11/23/russia-s-anti-gay-laws-threaten-olympics-character>> accessed 3rd January 2014

being tacitly accepted by the IOC and that the new image and attitude Russia described in its bid to host the Winter Olympics included this law that discriminates based on sexuality.

It is outside the scope of this paper to explain in detail how Russia's propaganda law is inappropriate and discriminatory. Suffice to say, its significance here is the clear violation of the Olympic Charter inherent in a law that condones inequality and discrimination. The IOC has placed itself explicitly at the forefront of being a 'hidden social worker' promoting equality and as stated already enshrining in its charter that of "any form of discrimination is incompatible" with the Olympic Movement.⁵⁵ The three examples highlighted above demonstrate restriction, inequality and discrimination in preventing the Pride House, thwarting of homosexual activists and a program discussing homosexuality in a derogatory manner on an Olympic endorsed television channel. The IOC reaction and dealing with this controversy is integral to the final analysis of how underlying power structures dictate the IOC's behaviour above their outward Charter and intentions, consequently displaying inconsistent and contradictory actions.

4.4 The IOC and the Russian Propaganda Law

The IOC has historically shied away from pressing hosts to address human rights concerns in relation to their events, because the decisions and reactions are made by and for the benefits of elites and citizen participation is a minimal.⁵⁶ This is reinforced as the IOC in its final inspection post the propaganda law becoming active declared that "the Olympic Charter states that all segregation is completely prohibited, whether it be on the grounds of race, religion, colour, sexuality...on Olympic territory" moreover Sochi will be a "fabulous experience" and "as long as the Olympic Charter is respected we are satisfied. This is the case."⁵⁷ The IOC has changed its language in order to find a way to not have to condemn Russia and uphold the Olympic Charter. This is by changing the word non-discrimination to segregation in the above statement. Moreover, the statement explicitly says

⁵⁵ Ibid 35, 11, 12, 16.

⁵⁶ Ibid 44,11 and 12.

⁵⁷ Owen Gibson, 'IOC gives Sochi the seal of approval for Russia's Winter Olympics' (The Guardian 2013) <<http://www.theguardian.com/sport/2013/sep/26/ioc-sochi-russia-winter-olympics>> accessed 6th January 2014.

on Olympic territory rather than extending that to all of Russia. This implies that as long as the Olympics and its spaces are not prejudiced through segregation then the IOC is satisfied. This is contrary to their Olympic Charter and aims of being universal and far reaching, in particular as shown above the Charter promotes solidarity and understanding through non-discrimination. The anti-propaganda law and actions such as banning the construction of the Pride House are directly violating the basic Charter principles, consequently making the IOC's reaction contradictory. The incoherence in rhetoric highlights that the motives of the IOC and the Olympic movement must be interrogated deeper to reveal what power it is protecting.

The typical response from the IOC to human rights violations by a host country or city is passivity, in an attempt to uphold the image of "non-political sport."⁵⁸ We can see this approach in the way that IOC President Bach responded to questions about Russia's propaganda laws by trusting assurances from the "highest authorities" in Russia that they will not breach the Olympic Charter, and went onto comment that "in order to fulfil our role to make sure that in the Olympic Games and for the participants the Charter is respected, we have to be strictly politically neutral."⁵⁹ The intention of being politically neutral has been challenged throughout based on the neoliberal assumptions taken on by sport and the IOC, furthermore, the economic and political stakeholders that the IOC interacts and engages with. For example, the assurance by Bach that the highest authorities guarantee no Charter breach reinforces a political and elite engagement with countries that host the Olympic events. The assurances of not breaching should have come from the Olympic organisers, providing evidence from within societal norms and the Olympic spaces

This can be linked back to Kelman's contradictions⁶⁰ and how using a critical legal studies lens the IOC is simultaneously committing to fundamentally contrasting ideas. The most significant contradictions to this point are that the IOC is committing to both universal influence but only

⁵⁸ Helmut Digel, 'The Politics of the Olympic Games' [2009] Olympic Congress 269, 269

⁵⁹ ESPN, 'Thomas Bach elected IOC President' (ESPN 2013)
<http://espn.go.com/olympics/story/_/id/9658153/germany-thomas-bach-elected-international-olympic-committee-president> accessed 5th January 2014

⁶⁰ Ibid 13, 6.

enforcing it in Olympic specific sites, being politically neutral whilst aligning itself with political elites, and finally being passive about human rights issues in host countries yet being committed to an Olympic charter that demands equality and non-discrimination. These contradictions are paralleled to those that Kelman described against a liberal framework, particularly how there is a simultaneous commitment to mechanical rules and context sensitive standards, and how a moral value can be objective and individually arbitrary.⁶¹

Interrogating deeper the position of the IOC it is clear that it is privileging political and economic interests dominant in the neoliberal globalized power structures, above the aspirational rhetoric of the harmonious development of man. But further interrogation reveals a concentration of voices within the IOC. This concentration is illustrated by Pound who notes that historically in the 114 year history of the IOC, only one of its Presidents has been non-European, raising questions about whether such a concentration of power and influence is, over the long term, a healthy situation for a movement which purports to be universal and worldwide.⁶² The imbalance of leadership and representation further indicates that there is an elite privilege that is based in Western voices; this compounds the issue that the IOC is built on power structures that are not aligned to its rhetorical endeavours.

The economic stakeholders influence on power structures beneath the IOC also further highlights the contradictory passivity of the governing body. Sochi Winter Olympics, in line with hosts previous, had adapted and changed their domestic law to accommodate the economic demands of the IOC, for example altering the law in marketing, intellectual property and visas. This benefits the IOC because it protects their brand and allows them to plant their standardised model of an event into a host country, but it also benefits the host country in making significant legal changes to their prior culture under the guise of preparation for the Olympics. However, what is demonstrated with the Propaganda Law controversy is that the IOC will be active in expecting legal changes based on

⁶¹ Ibid 13, 6.

⁶² Richard Pound, 'Eurocentricity within the Olympic Movement' [2009] Olympic Congress 244, 244

economic benefit, but benefit for societal and human experience is not expected. When the evidence above is considered the IOC appears to actively avoid encouraging legal change when a state is violating the Olympic Charter's societal expectations.

This prioritisation of economic interests, in particular those of large multi-national corporations, above societal dynamics and civilian interests provide are further evidence as to how elite and economic interests are privileged by the IOC. This can be allied with the main contradictions of the legal norms being developed by the IOC as they are not politically neutral but aligning themselves with the UN, and as has been demonstrated here, with major international economic interests.

Consequently, soft and aspirational legal norms such as the propaganda laws are not seen to violate any of the key structures that the IOC ensures compliance with and are met with inaction, yet when a corporate and economic norm is violated then there is action from such governing bodies.

In February 2014 the Sochi Winter Olympics took place. They were celebrated as a success and branded as 'athletes games', this evaluation has been made on the back of no significant protests or distractions from the Winter Sports that were centre stage. In the concluding ceremonies and articles the IOC behaved in a clinical manner, with no evaluation or even mention of the Propaganda law controversy. IOC President Bach hosted a celebratory breakfast the morning after the closing ceremony with the main organisers and Russian President Putin. President Bach "thanked the Sochi team for having delivered 'athletes Games', which had met with overwhelming approval from all the different stakeholders involved in Sochi 2014".⁶³ The 'different stakeholders' is an interesting choice of language as it heavily implies a corporate stakeholder, rather than a universal human voice. The clinical and corporate approach was furthered by an official article from the IOC on the Sochi 2014 legacies because it focuses on: the environment, business, transport and volunteer culture- all having physical, objective and measureable results.⁶⁴ There is no mention of improvements that

⁶³ Ian Jones, 'IOC President Says Thank you to Sochi' (IOC 2014) <<http://www.olympic.org/news/ioc-president-says-thank-you-to-sochi/226246>> accessed 20th March 2014.

⁶⁴ IOC, 'Attention turns to Sochi 2014 legacies' (IOC 2014) <<http://www.olympic.org/news/attention-turns-to-sochi-2014-legacies/226396>> accessed 20th March 2014.

could be made post the Olympics or any acknowledgement that the Propaganda controversy should be open to discussion as a legacy. This disengagement with the controversy and corporate language shows that the IOC is creating a vacuum not representational of the pressure and challenges to the Olympic movement and its aims.

The celebration of the Games being a success and being 'athlete centred' implied that any protest or inclusion of the propaganda law controversy would have detracted from this success. This further compounded the sense that the Olympics are content to be in vacuum and not engage with societal dynamics. There were no significant protests, contrary to rumours and threats from athletes and activists that they would make a stance against the propaganda laws that were openly criticised. The most significant one came from an Italian transgender gay rights activist who broadcasted that she had planned a protest and had then shown up at a women's ice hockey game in a rainbow skirt, she was detained by police, and the IOC took no action.⁶⁵ Terlep suggested that it was a success at Sochi for the organisers as they had kept the spotlight off Russia's propaganda laws, they quote a high level IOC member saying the incident with "the Italian activist is a good case of why we need to keep the games separate from issues that are not game related".⁶⁶ But, this success came about from the restriction and fear of protest not because of the lack of will to protest from LGBT Olympians, supporters and activists. This mirrors contradictions discussed above of the economic and political legal norms being changed in host cities and countries to protect the power structure of the IOC, yet the rhetorical and aspirational human legal norms were not supported, and indeed appear to have been ignored by the IOC.

In the spaces outside of the IOC's and Russia's restriction there were high levels of media and public protest. For example, Google designed a rainbow version of their logo and displayed it during the Games, and American President Obama was very vocal that America was against discrimination

⁶⁵ Sharon Terlep 'At Sochi, Athletes' Criticism of Russia's Antigay Laws Grew Quieter' (Wall Street Journal 2014) < <http://online.wsj.com/news/articles/SB10001424052702303880604579400691299231818> > accessed 20th March 2014.

⁶⁶ Ibid 63.

based on sexual orientation.⁶⁷ Although the political motivations of these particular companies and politicians being publicly critical of Russia must be taken into account, it is more important for this paper to view how this discredited and exposed fragility in the IOC's position. The IOC placed itself and the Sochi Games away from the controversy but they could not control being embroiled in the international debate over the propaganda laws. The passivity shown by the IOC exposed fragility in its support of political, economic and elite power structures as it did not engage in a topic that the societal stakeholders and civilian supporters discussed as an issue needing to be engaged with. Moreover, even though during the Sochi Games there was no outward protest from athletes, there was high level athlete condemnation of the laws and more significantly the IOC's behaviour. For example, over fifty current and past Olympians signed "principle six" campaign (named after the clause in the Olympic Charter that guarantees non-discrimination) urging the Russian authorities to reconsider but also criticising the "IOC and multinational sponsors for not doing more to force Vladimir Putin's administration to scale back the legislation."⁶⁸ This is based on the violation of the Olympic Charter, but also on evidence that homophobic attacks have increased since the law was introduced. Such attacks were documented at the Sochi Games, for example it was reported that a protest condemning homosexuality took place outside Sochi's main railway station, which is forbidden as any protest was to be confined to a designated zone, with a permit which was located miles from downtown Sochi and the Olympic village. However, as Wolff wrote there were guards present that did not shut down the protest. This discrimination and the rise of homophobic violence towards LGBT people in Russia are directly linked to the Propaganda Law and concerns of the impact post Sochi is being voiced by human rights advocates.⁶⁹ The IOC passivity coupled with protest

⁶⁷ Sky News Online 'Sochi: Google Doodle Tackles Anti- Gay Law' (Sky News 2014)

<<http://news.sky.com/story/1207915/sochi-google-doodle-tackles-anti-gay-law>> accessed 20th March 2014

⁶⁸ Owen Gibson & Shaun Walker 'Olympians urge Russia to reconsider 'gay propaganda' laws' (The Guardian 2014) <<http://www.theguardian.com/sport/2014/jan/30/olympic-athletes-russia-repeal-anti-gay-laws>> accessed 20th April 2014

⁶⁹ Alexander Wolff 'Anti- gay demonstration reveals double-standard in Sochi' (Sports Illustrated 2014) <<http://olympics.si.com/olympics/2014/02/07/anti-gay-demonstration-sochi-olympics-protest>> accessed 20th March 2014.

outside of the Games and evidence of discrimination has discredited and exposed the fragility of the inconsistent and contradictory IOC behaviour.

5. Conclusion

The rhetoric of the IOC and its actions when viewed through a critical legal studies lens are incoherent. On the one hand it has been shown that there is an attempt to make a universal Olympic movement that is politically neutral yet a platform for change and a global ethic, a tool of this being legal regulation. Statements have included a desire to be a 'hidden social worker' and the ability to provide unorthodox solutions to endemic issues. However on the other hand it has been shown that the behaviour of the IOC does not match such claims. When analysing the reaction of the IOC to Sochi 2014 and the Propaganda laws there is significant incoherent thought as it has attempted to be passive, context specific, morally individual and placed inside a Winter Olympic vacuum. The legal norms based on human rights and human dignities are not enforced by the IOC, yet they have in Sochi enforced the traditional economic and political legal norms that allow profit and logistics of the global sporting even to run smoothly and effectively. From this it is justified to view the IOC as being a powerful international actor that has legal norm influence. This power though is not legitimized by their actions and use of legal norms, as it has been argued that it is used to propagate economic and political power within a neoliberal globalization framework. When faced with profound disagreements based on sexuality and discrimination it could not through legal norms enforce its global ethic or principles. Moving forward the IOC must be held accountable and be evaluated as it currently believes it builds 'bridges not walls'. But, this article has shown the IOC acted from within particular walled spaces and the bridges they build are between particular elite groups and interests that override global and societal needs.

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