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Anti-doping, performance enhancement, and 'the spirit of sport': a philosophical and ethical critique

1. Introduction

Concerns over the use of what are considered unacceptable substances and methods to enhance athletic performance are by no means new. Gleaves and Llewellyn (2014) trace the cultural roots of anti-doping to early 20th century debates over amateurism. The anti-doping campaign gained momentum in 1967 when the International Olympic Committee (IOC) established a Medical Code with a strong message against the use of performance-enhancing drugs. Still, over the ensuing decades use of banned substances and methods among athletes has become ever more sophisticated. From the early use of androgenic anabolic steroids to increase muscle mass to micro dosing with hormones, anti-doping organizations have attempted to meet the challenges with increasing the quality of prevention, detection, and deterrence policies.

With the 1999 establishment of the World Anti-doping Agency (WADA) the anti-doping movement took a significant step forward. Co-funded by the IOC and significant sporting nation states WADA is an independent body with global authority in anti-doping. The WADA, largely through the development of its principal policy tool, the World Anti-doping Code (WADC), which is now in its third version, attempts to bring greater harmonization to anti-doping work worldwide. This harmonization relates not only to testing controls and protocols, but also the developments of intelligent systems that permit location, identification and monitoring of defined groups of elite athletes with respect to the maintenance of a doping-free environment.

In addition to the scientific and medical developments, WADA have also been responsible for educational initiatives. This is a critically important aspect of anti-doping work. Success in high performance sport has the potential of significant pay off in terms of prestige and profit. The quest for exclusive advantages is strong. There will always be some athletes and some support systems that are willing to extend their efforts above and beyond the limits of the rules (Green 2009). Testing control work has been largely reactive. Education aims at prevention, effectively promoting reasoned bases for why sports organizations, athletes and their support systems should commit themselves to doping-free sport. For 'education' to be worthy of that name it should have a reasoned and ethical basis. The object of this essay is to consider the ethical aspects that underpin the justification of WADAs anti-doping efforts. In order to do so, we critically consider the criteria by which substances and methods may be prohibited, and offer a more detailed ethical and philosophical interpretation of the ideal of 'spirit of sport' than what is stated in the WADC.

More specifically, we examine what are two main interpretations of 'the spirit of sport'. One interpretation, the 'permissive' view, builds on a view of athletes as having the freedom of choice of performance-enhancing means and methods, and of sport as an open sphere of human enhancement. An alternative interpretation, a 'restrictive' view, sees sport as a virtuous quest for human excellence. This view embraces the idea that there are clear limits to the means and methods used to enhance sporting performance. We acknowledge the seriousness and depth of some of the arguments of the permissive approach. We conclude, however, that in the current situation a restrictive view based on arguments from human excellence seems to be supported by superior reasoned argument.

2. Doping, facts, and values

The WADC consists of detailed regulations on the organization and carrying out of anti-doping activities. The Code is widely accepted in the scientific and sporting community. Engaging a high number of stake holders in doping free sport such as athletes, sports organizations, public authorities, scholars, and scientists WADA embarked on an extensive program of consultation in order to arrive at a policy that had greater democratic input and thus greater legitimacy than its previous counterparts. This is not to suggest that all stakeholders are committed to WADC without criticisms or complaints, but merely to acknowledge that there has been a move away from a more paternalistic paradigm into a more consensus driven approach.

In its more principled parts, the Code defines the concept of doping and aims at providing a justification of anti-doping. It is noteworthy how little these aspects have changed since the 1967 IOC Medical Code. In Code article 4.3, three potential criteria are set out as follows:

'A substance or method *shall be considered for inclusion* on the Prohibited list if WADA, in its sole discretion, determines that the substance or method meets any two of the following three criteria:

- * Medical or other scientific evidence, pharmacological effect or experience that the substance or method, alone or in combination with other substances or methods, has the *potential* to enhance or enhances sport performance;
- * Medical or other scientific evidence, pharmacological effect or experience that the use of the substance or method represents an actual or *potential* health risk to the athlete;
- * WADA's determination that the use of the substance or method violates the spirit of sport described in the introduction to the Code.¹ ¹ (emphasis added)

¹ <https://wada-main-prod.s3.amazonaws.com/resources/files/wada-2015-world-anti-doping-code.pdf>. Accessed May 11, 2015

The apparent simplicity of this process is deceptive (McNamee 2012). Several important clarifications must be made before they can be substantively examined. First, the criteria are those that assist WADA – specifically its Prohibited List committee – in determining whether a substance or method may be permitted or prohibited. A less noted function of this consideration may fall short of prohibition and hold that WADA will simply keep under observation the substance or method until such time as more is known about it and its effects. So the fact that a substance or method meets [at least] two of the three criteria is necessary for it to be prohibited but it is not *in and of itself* sufficient.

Secondly, the 'at least two from three' procedure is itself predicated on sophisticated work in the philosophy of language and of law (McNamee 2012). A complex deconstruction of this history is not relevant here. Nevertheless, it can be summarized as follows: doping in sport is a heterogeneous phenomenon ranging from biochemically simple drugs for muscle growth, to exceptionally complex genetic modifications, and also to evasion of testing control officers, or using other substances to mask doping substances or methods, or even associating with known doping personnel. In short, there are 9 different offences that are collectively known as Anti Doping Rule Violations (ADRVs). The range of criteria, and the 'at least two from three' procedure allows ADOs full scope to capture anti doping behaviours, extending beyond the mere ingestion of banned substances, which is the common sense understanding of 'doping'. It is more precise and less open to contestation to retain the official language of the WADC and to refer to the various offences as ADRVs.

Thirdly, even if the two first criteria are factual matters settled by scientific examination, applying the criteria in practice is challenging. It will be clear that the word 'potential' used in the first two criteria are open to contestation; what latitude does this open up?; how likely is the actualization of harm or enhancement for it to be considered sufficient? Moreover there are other questions of a philosophical kind: what constitutes 'health risk' or what kinds or levels of health risks are anti-doping policy set against? Nor is it clear what kind of performance enhancement or what levels should trigger the concern of anti-doping policy or personnel. For example, hard training enhances performance and can also represent a risk to athlete health. Still, to most people hard training and the challenge of balancing on the right side of the catabolic and anabolic processes of the body seem to be an integrated and natural part of the challenges of sport (Loland 2009a).

In other words, even if the extent to which a substance or method is potentially performance-enhancing and/or represents health risks to the athlete can be examined scientifically and given an evidence-based response, this is not a sufficient response to the complex of questions raised by the phenomena of doping. These are matters of considered judgment that require philosophical examination and clarity rather than intuitive understanding or consensus. It is noteworthy that the Prohibited List Committee does not include philosophers among their group. To precisely distinguish between acceptable and non-acceptable substances and methods, normative premises about the

nature and value of sport are unavoidable. In its core, the doping debate is about ethical values. Standpoints towards doping are necessarily moral standpoints. WADA acknowledges this fact in its third criterion on the violation of 'the spirit of sport'. What are the values involved? How is 'the spirit of sport' to be interpreted?

3. 'The spirit of sport' as a liberal view of human enhancement: a permissive account

In ethical and political terms, liberals value – perhaps more than anything else – the independence of individuals to determine the shape of their own lives. Following the classic tradition of liberalism first set out by the English philosopher and reformer John Stuart Mill (1859) in the 19th Century, liberals believe that individuals should have autonomy and be free to determine what is in their best interests according to the shape of the life they wish to lead and consider best for them. They hold that society goes best when individuals are permitted this freedom. In Western democracies at least this freedom is the subject of legal and moral rights. Nevertheless, rights to preserve and promote this freedom are not absolute. Liberals accept that there are populations, typically the young and those with impaired judgment, or who are vulnerable for one reason or another. These populations are not fully granted rights to self-determination by the State, and instead others are authorized (parents, teachers, and so on) legitimately to override what might be incompetent or immature judgments.

A further, and crucial point, about the State's legitimate interference in the free choices of individuals relates to the harm that may be caused to others. All liberal accounts, and there are many, leave open a space for the intervention in people's private lives where innocent others will be harmed by the actions of an individual who pursues his or her own interests without proper regard for others. Intervention by the State, or others, over competent individuals is known as paternalism. In series of essays, liberal philosophers such as Ronald Dworkin (1972) and Joel Feinberg (1971; 1986) have argued that interventions over incompetent persons may be justified. Feinberg (1986) labels these acts of soft/weak paternalism. Like most liberals, however, he thought that interference in the lives of competent persons was typically unjustifiable. He calls this hard/strong paternalism.

What has all this to do with doping in sport? Well, a question remains as to *how* free individuals should be to prepare themselves for, and participate in, sporting competition. In other words, what kinds of limits are permitted both in the freedom to act, and the restrictions upon individual athletes? The interpretation of 'the spirit of sport' as a liberal view of human enhancement comes in several versions. Running the risk of simplification, we will distinguish between two forms here: the human enhancement view, and the risk-reduction view.

An early criticism of the anti-doping campaign is found in the work of the American philosopher Miller Brown (1980: 1990). Sport is considered a cultural practice with the potential of realizing significant ethical values, among them empowerment of individuals as autonomous and responsible moral

agents. Within competitions the rules of the game and norms of fair play are significant and ought to be kept. Outside of competitions however athletes ought to be free to choose the performance-enhancing means and methods they find appropriate and morally acceptable. Within the permissive paradigm, anti-doping regulations are expressions of anti-liberal views and of hard paternalism and counterproductive to the aim of moral development in sport. Among others Tamburrini (2000), Foddy and Savulescu (2007) and Savulescu et al (2004) consider choice of performance-enhancing technologies as matters of individual, even professional choice among athletes. From a similar position, Møller (2011) and Waddington (2011) present criticism against the WADA system of whereabouts information in which athletes have to report their daily whereabouts to be available to testing.

Philosophers such as Tamburrini and Savulescu take a further step and consider 'the spirit of sport' as an open sphere of human enhancement. Human enhancement in terms of biomedically and genetically enhanced athletic performance should not merely be permissible as matters of free choice but are actually morally praiseworthy, and sports organizations should be tolerant of, and respect, this. Arguing from the twin premises of human freedom, and the value of bio-technological possibilities to enhance human capabilities, they are open to the Promethean prospect of transcending problematic and limited aspects of human biology (McNamee 2007). Modern development within genetics is seen to carry particularly powerful potential. Proponents of liberal enhancement in medicine and biotechnology beyond sports, envisions not only physiological enhancement and increased longevity, but cognitive, social and moral enhancement as well (Agar, 2008; Harris, 2010; Savulescu 2007). Indeed, both Harris (2010) and Savulescu (2001) have proposed that individuals have a duty to enhance their children according to the biotechnological possibilities with a view to bringing up – according to Savulescu (2001) – the best children possible. This has been viewed as a new form of eugenics (Sparrow 2011), albeit within a liberal – not fascistic – world-view. Even one of its proponents (Agar 2008) refers to this position as 'liberal eugenics' in an attempt to set it apart from its repressible political and military resonances of the recent past.

To liberal enhancement proponents, modern sport serves as a paradigmatic case. In sport, talented athletes set new records and transcend what was previously considered limits of human potential. This, according to enhancement proponents, is the true nature or spirit of sport: a spirit of never ending progress. As long as athletes can make informed choices, restrictions on their access to performance-enhancing substances and methods, are in direct contradiction to this spirit. Doping rules and regulations appear as arbitrary interventions in the proper exercise of individual freedoms. Liberal enhancement proponents consider WADC distinctions between 'acceptable' and 'unacceptable' substances and methods as unjustifiable. Responsible and free choice and use of performance-enhancing technologies are admirable and in line with the transcending spirit of sport and the potential benefits of human enhancement.

Liberal enhancement views are based on a very broad body of opinion and argument. Their adherents share many arguments and their positions are subtle and partly overlapping, while adhering to the general liberal position laid out at the beginning of this section. There is one further argument against anti-doping shared by many liberal enhancement proponents as well: the argument of harm-reduction (Kayser et al 2007; Kayser and Smith 2008) that relates specifically to the second criterion of the WADC section on consideration for the Prohibited List. Whether one considers use of biomedical and biotechnological performance-enhancement as acceptable as with the liberal view, or as morally recommendable as with the enhancement view, there is consensus on organized anti-doping work as a failure (Waddington 2011). The large economic resources used to detect, deter and prevent use of banned substances and methods are considered as having meager results. It is argued that athletes and support personnel engaged in doping practices are forced under-ground with significant costs in terms of increased health risks for athletes. Lifting the ban on performance enhancing substances and methods - while at the same time installing responsible health surveillance for athletes - would be the superior approach.

The liberal enhancement interpretation of 'the spirit of sport' is contested. First, in particular enhancement proponents are criticized by bio-conservatives (Friedmann and Schneider 2006; Kass 2002; Murray 2015; McNamee et al 2009, Loland 2011) for holding a naïve view of the blessings of new technologies. Even if developments of genetic technologies are promising, few gene-therapeutic techniques have been clinically cleared by regulatory authorities. Leading genetic scientists warn of complications, offering a modest picture of the state of the art than is propagated by commercial agencies (Schneider and Friedmann 2006; Bouchard and Hoffmann 2011). In particular, genetic precursors of complex human skills and even cognitive and moral capabilities seem unrealistic. Complex capabilities, even more limited ones like sprinting, by their nature are not reducible to genetic pressures (Lucia et al, 2007).

Further unanswered questions relate not so much with the state of cutting edge biotechnology but with social and ethical questions regarding distributive justice. Who will get access to the benefits of potentially functional genetic and other biotechnological enhancements? Is there reason to believe that such enhancements will lead to even larger inequalities in society and in sport than what is the case today? A final criticism concerns the very rationale for enhancement (Sandel 2009). Why should we allow all kinds of biomedical and biotechnological performance enhancements in sport? If everyone enhances where is the competitive advantage sought? And, if everyone is engaged in free enhancement projects, in what way would this make sport morally better? These questions remain largely unanswered in the permissive paradigm whose goal is simply to maintain liberal freedoms and encourage a quest for enhancement.

The harm-reduction view of the permissive paradigm has also been criticized. The portrayal of the anti-doping campaign appears as one-sided. Critics point to what they see as a common weakness

among liberal enhancement views: they seem sociologically naïve (Loland 2009a). Elite athletes start their careers early and are dependent upon external coaching and expertise. The ideal of free and informed choice of mature individuals when it comes to biomedical and biotechnological performance-enhancers is hard to realize. Moreover, the social logic of elite sport implies coaches and support systems who depend professionally upon sporting success (sometimes at whatever cost is thought necessary) (Green 2009). After all, their jobs are on the line. As emphasized above, the incentives are strong for looking for substances and methods that provide even marginal competitive advantage. In such a context strong coercive pressures arise (Murray 1983). Assumptions about free and informed choices among mature and autonomous athletes, and of responsible and harm-reducing use of performance-enhancing substances and methods, seem unrealistic.

4. 'The spirit of sport' as a restrictive view of development of human excellence

Permissive liberal views of human enhancement are not univocal. Neither are bio-conservative ones. Nevertheless, there is an identifiable group of interpretations of 'the spirit of sport' as the virtuous development of human excellence lead to more restrictive views on doping and in most instances to support of the anti-doping campaign.

The dominant or official public sport policy response to bio-medical performance-enhancing methods and substances is a restrictive one. WADA's references to 'the spirit of sport' are typical. Such positions strike important associations between sporting excellence and methods of preparation and competition and are ethically based, but are often left philosophically underdeveloped. From a systematic philosophical point of view, several scholars have proposed more elaborate interpretations.

The central premise of several of these approaches is that competitive sport is a sphere of ethically admirable human excellence. Sport is a cultural practice in which human capabilities of particular performances are measured, compared, and ranked (Loland 2002). More generally, developing these capabilities is considered to lead towards moral development of the individual (McNamee, Jones and Duda 2003). The use of certain kinds of biomedical and biotechnological performance-enhancement is considered counterproductive to moral development and generically labeled 'doping', to designate a pejorative stance (Fost 2007; McNamee 2009). One approach departs from an analysis of the logic of games and of sport as a cultural and social practice. An interconnected approach is a neo-Aristotelian understanding of human excellence. We shall take a closer look at both and how they are combined.

In Bernard Suits' well-known analysis, playing a game is defined as a voluntary attempt to overcome unnecessary obstacles (Suits 1978). Game rules define these obstacles; the rule against handball in soccer, against kicking the ball in handball, rules prescribing passing over the hurdles in a hurdle race and through the gates in a slalom race. According to Suits, such attempts are expressions of a lusory, or playful, attitude. In everyday or professional activities prohibiting the most efficient means to reach

a goal seems irrational. The use of one's hands might be efficient if the point is to catch and control a ball. In normal life, where hurdles are in the way they are removed or avoided. In games however the voluntary attempt to overcome 'unnecessary obstacles' is the heart and soul of the enterprise: they make up their very meaning and value as they open for strong experiential qualities: fun, excitement, challenge, mastery and failure, a sense of community and a sense of conflict. Games have the logic of autotelic activities. The logic of play is self-contained, not referring to external goals or attitudes.

From Plato via Huizinga to present-day philosophers of sport such play is seen as having the potential of moral development as it is a clear expression of human freedom and possibility (Morgan, 2006). Most, though not all, draw more or less explicitly on Aristotelian ideals of human perfectibility. At its best, play can be an exponent of human excellence. In play, we explore who we are and who we can become (Reid 2002). In sporting games, these explorations are done in embodied and concrete ways. The spirit of sport, Murray (2010, 2015) claims, is the virtuous development of natural talent towards human excellence.

The point here, and different from the liberal enhancement position, is that enhancement and performance development in sport has to take place in particular ways to enable development of virtue. What then are the criteria of the virtuous athlete? Here a catalogue of individual virtues has been proposed (Brown 1980, 1990; McNamee 1995; Reid 2002; Jones 2005). Others have approached the perspective of ethically admirable sports from a more system-oriented perspective (Loland 2002). Perhaps the dominant appeal to ethically driven sport concerns itself with the ideas of fairness and justice.

A central argument in the doping debate is view of the use of certain biomedical and biotechnological performance-enhancing substances and methods as unfair. Indeed, the paradigmatic example is the use of prohibited means implying the covert breaking of anti-doping rules in order to gain an exclusive advantage. Use of these means is cheating. In a discussion of whether certain means and methods should be banned or not, however, the argument on cheating begs the question. One cannot justify a set of rules with reference to the wrongness of breaking them. As the liberals argue, one could remove the cheating argument in the blink of an eye by changing the rules that forbid those means and methods. A more fertile approach departs from ideas of institutional fairness and from what is referred to as the fair equality of opportunity principle (FEOP) (Loland 2009b).

Where virtue ethicists draw on classic figures in ancient philosophy such as Aristotle, FEOP has a more modern provenance drawing inspiration from the great 18th century German philosopher Immanuel Kant, and subsequent post Kantian scholarship. One particular aspect is notable, in the ideal of never treating others as a mere means to our goals, but only and always also as persons worthy of respect in their own right. Thus in developed, democratic societies, FEOP lies at the core of distributing basic goods such as food, shelter, work, and to a certain extent income. Individuals with disabilities or with

unfortunate set backs in life are compensated. According to Loland (2002) the social structuring of sport reflects FEOP to a considerable extent. Classification schemes are designed to compensate for or eliminate inequalities with impact on performance but that individuals cannot influence or control in any significant way: biological sex, body size in some sports, and age. Other inequalities, for instance inequalities in genetic predispositions for speed, endurance, power, or complex motor skills, are not compensated for, as these are inequalities that need to be developed through hard training and own efforts, that is, in an admirable and virtuous way.

Returning to the third WADC criterion of eligibility for the prohibited list as violation against 'the spirit of sport', the question is whether biomedical and/or biotechnological enhanced performance ought to count as a proper constituent of athletic inequality, the very thing that sports contests should compare, measure and rank? Proponents of the human excellence-view argue in the negative. Use of substances and methods as those on the Prohibited List represents an externally administered enhancement of performance without requiring the relevant efforts and capabilities of the athlete. In varying degrees, responsibility for performance shifts from the athlete towards external expertise, and thus the admirable and virtuous basis of the performance is reduced or negated. Sport tends no longer to be an exponent of individual human excellence but increasingly becomes a struggle between overarching financial, scientific and technological systems in which the athlete is merely the top of the iceberg.

In addition, the restrictive position provides support to the health criterion. As noted above, it is true that elite sport in many cases is inherently linked to health risks, and to a certain extent to significant health risks, as in American football, boxing, ice hockey or rugby in which serious (including head) contact is foreseeable and frequent. Training hard implies the risk of overtraining and fatigue injuries, intense competition can cause sudden injuries, some sports such as downhill skiing are risk sports with serious injury or even death as possibilities. Based on the human excellence criterion, however, the possibility is offered of distinguishing between relevant and non-relevant health risks (Loland 2009a). The risk of training and competing hard without developing injuries is a challenge athletes have to face and handle themselves. Risk sports are among other things about athletes' capabilities of calculating and taking risks in responsible ways (Breivik, 2007). The risks involved in drug use administrated by external experts, into which most athletes do not have insights nor upon which they have control, do not contribute to athlete skill and mastery, and neither to their empowerment as athletes and to human excellence. Hence, to proponents of the restrictive view health risks linked to drug use can be considered non-relevant to sport. If 'the spirit of sport' refers to developing human excellence, a ban on certain performance-enhancing substances and methods makes sense and can be justified.

This conclusion should not be taken to imply that the approach from human excellence solves all problems involved in anti-doping. By and large the criticism of the anti-doping campaign referred to in

the discussion of the liberal human enhancement view is itself a criticism of the restrictive human excellence approach. Although proponents of liberal human enhancement agree on the nature and social logic of sporting games and the necessity of fair play, they reject extending the restrictive logic outside of play. Moreover, their point of the difficulties of line drawing is relevant. The restrictive human excellence approach does not deliver ready-made solutions in difficult cases, such as the acceptability or non-acceptability of artificially constructed hypoxic conditions to enhance performance (Levine 2006; Loland and Murray 2007). To proponents of the restrictive view, however, this challenge is a sign of the debate over 'the spirit of sport' as authentic ethical terrain in which distinctions and lines are drawn by the use of example, reason and argument. Ethics is no exact science, but it requires an ongoing discourse on the norms and values upon which human institutions, practices and actions are based. The restrictive human excellence approach is an attempt to articulate systematic and critical criteria to distinguish between acceptable and admirable athletic excellence from its simulacra.

5. Concluding comments

By looking critically at WADA's three criteria on deciding upon which substances and methods should be considered for the Prohibited List, we have argued that the basic issue and justification of anti-doping is a normative and value-laden one. Standpoints to the use of biomedical and biotechnological means to enhance performance in sport must necessarily be based on a vision of the nature and values of sport. Liberal or restrictive views are moral positions.

WADA's third, normative criterion for substances and methods to be evaluated for the Prohibited List refers to 'the spirit of sport'. 'The spirit of sport', as we have shown, can be interpreted in several ways. With reference to the literature we have sketched two interpretations; what we have called the permissive liberal human enhancement interpretation, and the restrictive human excellence interpretation. The two interpretations lead to contradictory conclusions for anti-doping: the liberal view is sometimes presented in such a way that it sees no justification for the anti-doping campaign, in the restrictive human excellence view such a justification can be found. Which interpretation of 'the spirit of sport' seems to be the more reasonable one?

In our view, arguments from the liberal human enhancement camp do not provide sufficient answers to how biomedical and biotechnological enhancement add sufficient value to the practice of sport. Moreover, compared to the human excellence approach the liberal account seems to put less emphasis on the social power structures and the vulnerable position of individual athletes in elite sport. Restrictive views (paradoxically) seem to lead to protection of athlete autonomy to a larger degree than liberal alternatives.

This does not mean that proponents of liberal and more restrictive views necessarily hold radically different views on the moral potential of sport. Most scholars on both sides of the doping debate share the vision of sport as a perfectionist sphere with positive ethical potential. There are however significant disagreements on the functions and consequences of the anti-doping campaign.

On a final note, we should bear in mind that the socio-cultural context of sport is in constant change, and sociologically informed analyses have to be revised accordingly. One possible future development is the overall, general use of performance-enhancing technologies both in sport and society. If such use is based on informed consent and mature decisions, and if such use makes sport and more generally human life better and of higher quality, anti-doping justifications seem to lose force. As the situation is today, however, the burden of proof falls on proponents of a liberal view of legalizing. The weight of public authorities, sports bodies, the medical community, and the majority of athletes do not appear to side with them. Rather, a view of athletic enhancement understood within an overall view of human excellence in sport seems best realized within restrictive anti-doping regimes.

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