

ΕΓΚΛΗΜΑΤΟΛΟΓΙΑ:
ΠΕΡΙΒΛΕΠΤΟΝ ΑΛΕΞΙΦΩΤΟΝ;

Τιμητικός τόμος για τον Ομότιμο Καθηγητή
Γιάννη Πανούση

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ΕΚΔΟΣΕΙΣ
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ΤΙΜΗΤΙΚΟΣ ΤΟΜΟΣ ΓΙΑ ΤΟΝ ΟΜΟΤΙΜΟ ΚΑΘΗΓΗΤΗ ΓΙΑΝΝΗ ΠΑΝΟΥΣΗ
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Τυπώθηκε σε χαρτί ελεύθερο χημικών ουσιών κλωρίου
και φιλικό προς το περιβάλλον.

Το παρόν έργο πνευματικής ιδιοκτησίας προστατεύεται κατά τις διατάξεις του Ελληνικού Νόμου (Ν. 2121/1993 όπως έχει τροποποιηθεί και ισχύει σήμερα) και τις διεθνείς συμβάσεις περί πνευματικής ιδιοκτησίας. Απαγορεύεται απολύτως άνευ γραπτής άδειας του εκδότη η κατά οποιονδήποτε τρόπο ή μέσο αντιγραφή, φωτοανατύπωση και εν γένει αναπαραγωγή, εκμίσθωση ή δανεισμός, μετάφραση, διασκευή, αναμετάδοση στο κοινό σε οποιαδήποτε μορφή (ηλεκτρονική, μηχανική ή άλλη) και η εν γένει εκμετάλλευση του συνόλου ή μέρους του έργου.

DOPING AND GOVERNANCE IN SPORTS: PROBLEMS, QUESTIONS AND SOLUTIONS

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Abstract

This paper reviews what is known about the nature, extent and effects of doping in sports in recent years. It places the issue in the context of sports and politics and considers current issues in the fight against doping in sports, concluding with thoughts on what needs to be done to address these problem that are more complex than most of us think.

1. Background: Nature, extent and effects of doping in competitive sports

Sport plays a central role in contemporary society at the local, regional and international level. Inevitably, it features in numerous ongoing debates revolving around money, culture, gender, race, justice, politics, inequalities, and globalization. Some of these debates have focused on significant corruption and malpractices revealed to the wider public causing scandals and turmoil.¹ Doping, the focus of this article, is one of the most important sports-related malpractices.

Efforts to enhance athletic performance are as old as sport itself, have been frequent, diverse and widespread, while they have not always been seen as illegitimate. Today, there is a broad consensus against doping in sports, but a universally accepted definition of doping is elusive. Sometimes, doping refers to a violation of the Spirit of Sport, claiming to aim to prevent un-natural influences and to level the playing field. Given that most definitions are unsatisfactory, the World Anti-Doping Agency (WADA) defines doping as the use of one or more of the substances or methods listed in its annually updated “Prohibited List”.²

1. <https://theconversation.com/fans-deserve-fair-play-in-major-sports-not-cheating-and-corruption-58999>
2. <https://www.wada-ama.org/en/content/what-is-prohibited>

For the signatory countries of the World Anti-Doping Code (WADC)³, WADA sets out the rules for advancing and harmonizing the anti-doping effort in sports with the purpose

- To protect the athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for athletes worldwide, and
- To ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping.

What then, is the historical and political context of the control of doping in sport? What are the current challenges and issues, and what are possible ways forward?

History and extent

The use of supplements to improve performance has been part of sports since ancient Greek and Roman times. Since the dawn of athletic competition during the original Olympic Games in Ancient Greece, athletes, as well as their coaches and trainers, have been finding innovative ways to gain an edge on their competition. In modern times, doping - the use of performance-enhancing drugs or practices - has been one method that athletes and their trainers have used to beat their competition. Some of those performance-enhancement methods have been within the accepted rules, while other methods skirt the gray area between being in compliance and non-compliance, while still other methods clearly break the established rules and endanger the health of the athletes. The history of sports doping during the modern era can be traced through publicized events and scandals that marked the different time periods. From the use of amphetamines and other stimulants in the early 20th century, to the use of testosterone and steroids by both the USSR and the United States during Cold War-era Olympics games, to blood doping and EPO⁴, to designer drugs, the history of doping in sports closely follows the medical and technological advances of our times. In the early 21st century, the possibility of genetically engineered athletes looms.

At the time when modern Olympics started, the use of performance-enhancing drugs, even as strong as heroine and strychnine, was not considered illicit but rather as antidote to the fatigue of top-performing athletes⁵. Nowadays, the most common performance enhancing drugs by far are anabolic androgenic steroids. They were first developed in the 1930s in the form of an artificial testosterone to treat hormone deficiencies. By the 1950s they were also used by athletes and helped Soviet athletes excel in the 1956 Olympics, prompting the American coaches to introduce them to their teams. By the 1980s anabolic steroids were also used by white, male, non-Olympic athletes in the USA.⁶ Since then, many

3. <https://www.wada-ama.org/en/what-we-do/the-code>

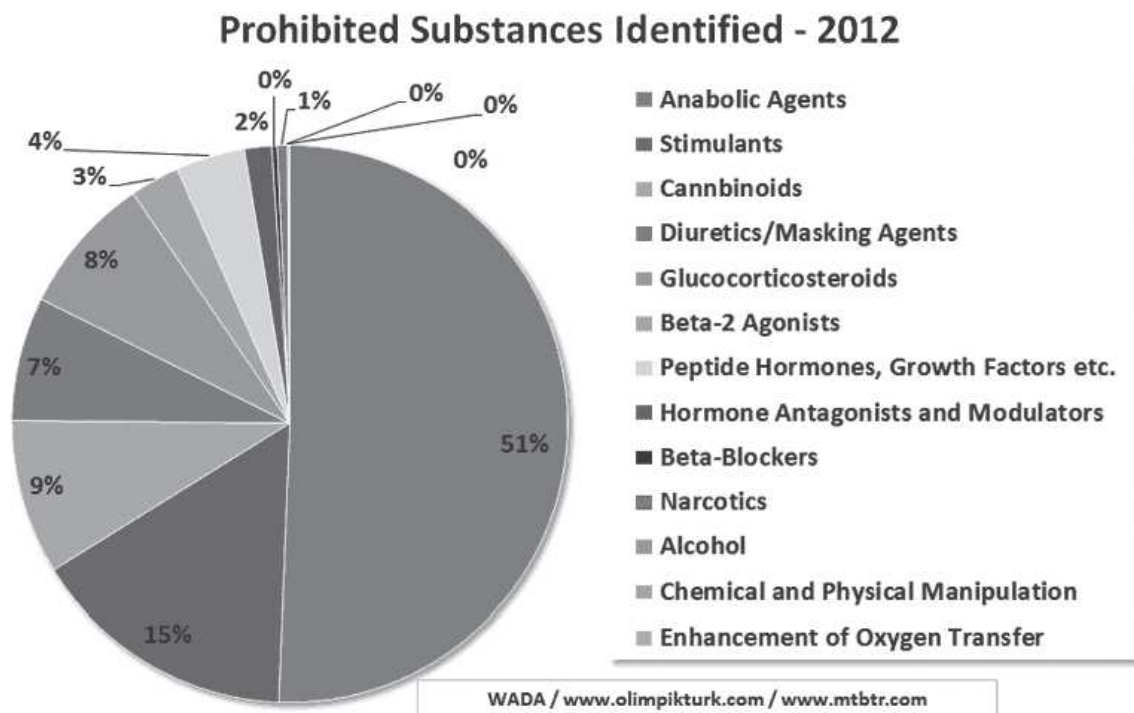
4. See <https://www.wada-ama.org/en/questions-answers/epo-detection>

5. See book review summarizing points in Thomas M. Hunt, *Drug Games: The International Olympic Committee and the Politics of Doping, 1960-2008* (Austin, TX: University of Texas Press, 2011).

6. See <http://www.cesar.umd.edu/cesar/drugs/steroids.asp>, "Estimated prevalence of anabolic steroid use among male high school seniors." Buckley WE, Yesalis CE 3rd, Friedl KE, Anderson WA, Streit AL, Wright JE, JAMA. 1988 Dec 16; 260(23):3441-5.

countries have qualified anabolic steroids as controlled substance, regulating the manufacture and distribution of these drugs. Yet, in 2007, the international illegal market in anabolic steroids alone approached \$1 billion.⁷

The chart below shows the prevalence of different substances detected in testing reported to WADA. This does not necessarily reflect the prevalence of the substances actually used but what has been officially detected.⁸ The true extent and specific types of drug-enhanced performance practices can only be guessed.



While broad-based recreational sports carries health, emotional and social advantages for the vast majority of people, competitive sports can be viewed as a business, entertainment, vehicle of national pride and values, marketing platform, a means to attain power, glory and convey genetic superiority, and an arena to test the limits of what the human body can perform.

As Paoli and Donatinote, the growing demand for illicit drugs by athletes can be explained by

1. The “de-amateurization” of sports, with an increasing emphasis on winning.
2. The medicalization of sports, exemplified by the growth of “sports medicine”.

7. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2219897/>

8. See <http://www.olimpikturk.com/2013/08/wada-2012-anti-doping-testing-statistics.html>

3. The politicization of sports – during the Cold War, sports became an extension of the East-West rivalry, but it is now a proxy of national pride
4. Commercialization(sports sponsorship and franchising, ads, gambling, with global audiences, an industry estimated to be a US\$800 billion a year business.⁹⁾

Pervasive doping among elite athletes

The prevalence of intentional doping among elite athletes is difficult to establish because it varies greatly by sport, country, definition of doping, and method of assessment.¹⁰ According to WADA reports, the world average of positive official tests is about 1-2% (Adverse Analytical Findings and Atypical Findings).¹¹ This clearly underestimates the use of performance enhancing drugs. At least 7% of elite athletes admit to having used doping. The extent of intentional doping in adult elite athletes is estimated to be between 14-45%, which has led to some controversy between researchers and the IAAF.¹²

Effects of Performance enhancing drugs

Just as there are hundreds of different drugs and methods, there are an equal number of effects of these drugs, which cannot all be listed exhaustively here. Suffice it to say that overuse and use without proper medical supervision can be harmful to the athlete, and has affected thousands of lives adversely, including death. USADA's website gives a concise overview of the most common side effects of performance enhancing drugs.¹³

As an example, the side effects of the most commonly used category of drugs, anabolic androgenic steroids, is illustrated below.

9. Paoli and Donati, *The Sports Doping Market; Understanding Supply and Demand, and the Challenges of their Control*, 2014, Springer. New York.

10. <https://www.ncbi.nlm.nih.gov/pubmed/25169441>

11. https://www.wada-ama.org/sites/default/files/wada_2014_anti-doping-testing-figures_full-report_en.pdf

12. From Paoli and Donati, 2014. This is based on the analysis of 7,289 blood samples from 2,737 athletes from all disciplines and countries. Weightlifting and power sports report 20-50%, endurance sports are also high %: Cycling, swimming, running, the Tour de France 1998, Festina scandal investigation revealed systematic doping). "According to some sports physicians, the real rate of elite athletes engaging in doping may be as high as 40-60 %" (Simon, 2010)., <https://www.ncbi.nlm.nih.gov/pubmed/25169441>, <https://www.sportsintegrityinitiative.com/authors-of-tubingen-study-accuse-iaaf-of-being-untruthful/>,

13. <http://www.usada.org/substances/effects-of-performance-enhancing-drugs/>

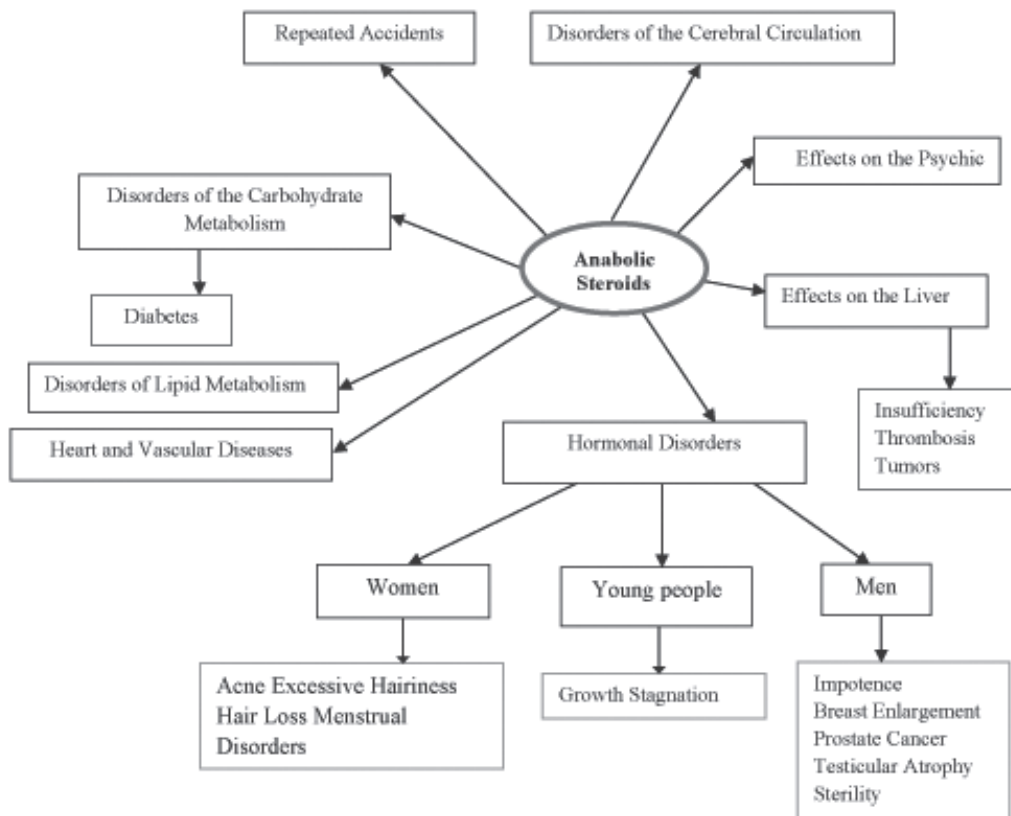


Figure 1: Health effects of using anabolic steroids¹⁴

History of control: Towards international standards

The de-amateurization, medicalization, politicization and commercialization of sports have increased the pressure on athletes, coaches and sporting bodies to achieve. From the beginning, the fight against doping in international competitive sports suffered from the asymmetry of laws and their enforcement in different countries and sports.

Private use of doping substances is pervasive inside and outside competitive sports. Illegal substances are easily available through many supply chains, including medical professional, pharmacists, veterinarians, coaches and fitness instructors and club owners, bodybuilders and many others.

State agencies, the IOC, and international sports federations for decades dragged their feet at creating a consistent set of rules, implementing widespread testing and enforcement. Despite growing awareness of extensive doping in competitive sports, at best the international sports governing bodies turned a blind eye or labeled the occasional dirty athlete an aberration. At worst, they col-

14. <http://www.esciencecentral.org/ebooks/taekwondo/doping-in-taekwondo.php>

luded in covering up positive test results, which served their national medal count as well as their commercial interests. Governments delayed implementation and enforcement of rules.

In poorer countries, the lure of fame and fortune offers a way out of poverty when other doors are closed. A Kenyan runner may support not only himself and his extended family, but a whole village with his prize money. When lax testing and enforcement is combined with severe economic pressure to excel and a medical profession willing to make performance-enhancing drugs available, private doping becomes quite common¹⁵.

Historically, the governance of sports, including the task of keeping sports clean and fair has been the responsibility of non-governmental, sporting agencies, such as league organizers, National Athletics Federations, the International Olympic Committee (IOC) or Major Event Organizers.

The lack of legitimate rules and enforcement by the Olympic committees and the many independent sports governing bodies served everyone well until the positive test of Ben Johnson at the 1988 Seoul Olympics shone a light on doping in sports. The Canadian government started to investigate, and the Council of Europe adopted the Anti-Doping Convention, providing a multi-lateral standard to harmonize measures taken against doping (1989)¹⁶. In the 80s and 90s, some western government agencies started to develop their own anti-doping efforts, adding to the labyrinth of competing rules and standards set forth by the IOC and international sports federations. Major investigations and reforms tended to follow doping scandals: the baseball scandal in the 1990s, the Tour de France 1998 Festina Scandal, followed by the Lance Armstrong admissions.

Olympic administrators, afraid to lose control of the anti-doping administration to national governments, saw the need for an independent body to oversee international doping policy. The decades long struggle to promote a unified approach culminated in the formation of WADA by the IOC in 1999, which is funded and governed in equal parts by national governments and officials from the Olympic movement. Thus, Olympic administrators developed and retained control over their own administrative structures, legislative codes and enforcement procedures.

WADA sees its mission in leading a collaborative, worldwide movement for doping-free sport. In 2004, WADA introduced the first World Anti-Doping Code (WADC), which specifies prohibited substances and methods used for doping. The Code has since been revised thrice and is currently under review for a 2021 update. In general, WADA, through the WADC, provides rules and a framework for signatory countries and organizations¹⁷. Government-funded National Anti-Doping Organizations (NADOs) are in charge of testing through WADA-accredited regional testing centers. Sanctions are then determined and enforced by national athletic federations or major event organizers, and the IAAF can suspend national athletics federation if they themselves are found to be dirty. Athletes have to submit to unannounced testing both out-of-competition and in competition, and

15. See Seppelt documentary on Kenyan runners and Passas interview with ABC Australia: <http://blogs.abc.net.au/queensland/2015/08/professor-nikos-passas-sporting-corruption.html>

16. <https://www.coe.int/en/web/sport/anti-doping-convention>

17. <https://www.wada-ama.org/en/what-we-do/the-code/code-signatories>

sanctions following infractions can be appealed to national arbitration, the Court of Arbitration for Sport (CAS) and then finally the Swiss Federal Tribunal.¹⁸

WADA's mission in leading a collaborative worldwide movement for doping-free sport translates into a range of roles, including the monitoring of Code compliance, education and athlete outreach, scientific research, accreditation of the independent testing centers and therapeutic use exemption (TUE), anti-doping coordination and the development of the regional anti-doping organizations program and collaboration with law enforcement.

Given the international nature of sports and complex legal, practical, commercial and political challenges of enforcing anti-doping measures, a coordinated effort and strong global leadership are sorely needed.

WADA is working with national sports agencies, anti-doping agencies, governments and other stakeholders at improving compliance with the World Anti-doping Code. Over the years, there have been a number of improvements, such as the introduction of the Athlete Biological Passport, the updated Anti-Doping Administration & Management System (ADAMS) and regular revisions of the Code¹⁹. Yet, there is clearly room for improvement, so calls for stronger leadership and greater independence of WADA officials abound.²⁰

Need for continued improvements

Inevitably, in the complex world of international sports, WADA has come under heavy criticism in a variety of areas. While some –such as the recent discussion on gender classification and natural hormone variations– are linked to scientific and social issues²¹, others relate to the politicized and commercialized nature of sports. Uneven implementation of the Code is an ongoing problem resulting from political and competitive pressures, corruption, underfunding of NADOs, technical and human issues, and lax and controversial enforcement.²² Nowhere is the system under greater strain than in cases of state-sponsored doping, recently highlighted by the Russian case, which touches on many of the issues.

Politics of doping: State doping

WADA does not directly conduct testing and sanctioning, but delegates this to the National Anti-Doping Organizations (NADO), accredited testing laboratories,

18. David P., *A Guide to the World Anti-Doping Code: A Fight for the Spirit of Sport*, Cambridge University Press, 2013.

19. <https://www.wada-ama.org/en/athlete-biological-passport> ,<https://www.bbc.com/sport/24955873> , <https://www.wada-ama.org/en/what-we-do/the-code/2021-code-review> ,

20. <https://www.reuters.com/article/us-sport-doping-wada/doping-white-house-adds-voice-to-calls-for-wada-reform-idUSKCN1N52ZR>

21. <https://www.theguardian.com/commentisfree/2019/mar/06/testosterone-biological-sex-sports-bodies> , <https://www.bbc.co.uk/news/health-47640359> , <https://www.bbc.com/sport/athletics/47690512> ,

22. Ulrich, R. et al, *Doping in Two Elite Athletics Competitions Assessed by Randomized-Response Surveys*, *Sports Medicine*, 2017, Vol.48, 211-219, DOI: 10.1007/s40279-017-0765-4, <https://www.nytimes.com/2016/08/03/sports/olympics/international-olympic-committee-world-anti-doping-agency.html> , <https://www.independent.co.uk/sport/wada-rusada-russian-anti-doping-agency-reinstated-a8547021.html>

the national sports federations and major event organizers.²³ This can lead to inconsistent testing and enforcement when these agencies politicized, even state-sponsored misconduct, leaving athletes at the mercy of a corrupted system.

State sponsorship is hard to detect but is often suspected in states where international athletic success is a matter of great national pride, where a centralist government and its sports agencies can collude to hide the doping, and coaches and doctors manipulate their athletes into accepting doping. The states of the former Eastern-block as well as communist Asian countries were long alleged to have engaged in state sponsored doping.

State-sponsored doping of adolescents in East Germany has been well documented. Between 1970 and 1990, children and adolescents were subject to extensive, state-enforced doping that was administered without information or consent. While the program yielded champions, particularly females who responded better to male hormones, up to 10,000 athletes suffered, and are still suffering, negative health effects, some of them severe, including death²⁴. There are signs that their children are now suffering adverse health effects.²⁵ While the German state has offered some compensation, the perpetrators have received only limited punishment.²⁶

State-sponsored doping was common in Socialist states before 1990²⁷, and there are indications it is still happening in Communist countries (N Korea, China), though this is near impossible to prove. Hajo Seppelt documented violations of anti-doping rules such as not permitting access to athletes for testing and presence of known doping coaches²⁸.

There have been allegations for a long time that Russian sports officials and coaches have supplied banned substances to their athletes, and there is evidence that this continues²⁹.

The two McLaren Reports, commissioned after allegations brought by the former director of the Moscow laboratory (Anti-doping Center) Dr. Rodchenkov, established that over 1000 Russian athletes benefitted from manipulations to conceal positive doping tests.³⁰ The manipulations are thought to have started after a low medal count at the Vancouver 2010 Winter Olympic Games and refined

23. David P., *A Guide to the World Anti-Doping Code: A Fight for the Spirit of Sport*, Cambridge University Press, 2013.

24. "Hormonal doping and androgenization of athletes: a secret program of the German Democratic Republic government." Franke WW, Berendonk B. *Clin Chem*. 1997 Jul; 43(7):1262-79., <https://www.youtube.com/watch?v=TfF7hd3IsGo> , <http://www.heliosaktuell.de/regionen/nord/die-dramatischen-folgen-staatlichen-dopings/> ,

25. <https://www.tagesspiegel.de/sport/aufarbeitung-der-sportgeschichte-die-verlorenen-kinder-der-ddr-dopingopfer/20616948.html> ,

26. <https://no-doping.org/23-november-2018-das-2-doping-opfer-hilfe-gesetz-wurde-vom-bundesrat-bis-zum-31-12-2019-verlaengert/> ,<https://www.dw.com/en/east-germanys-doping-program-casts-long-shadow-over-victims/a-5968383>, <https://www.theglobeandmail.com/sports/east-german-doping-trial/article4165918/>,

27. See Child Doping documentary in GDR by HajoSeppelt

28. <http://hajoseppelt.de/2011/07/sports-in-north-korea-look-at-an-unknown-world/> Sports in North Korea: look at an unknown world, 2011.

29. <http://hajoseppelt.de/2016/03/doping-secret-russias-red-herrings/> Doping Top Secret: Russia's Red Herrings, ARD 2016.

30. https://www.wada-ama.org/sites/default/files/resources/files/20160718_ip_report_newfinal.pdf

between 2011-2015. The McLaren Reports show that the government, the security services and the sports authorities colluded to hide widespread doping of Russian athletes across many sports and competitive events, later confirmed by data obtained by WADA³¹. The agencies include the Ministry of Sport, the Russian National Anti-Doping Agency, the Moscow Laboratory, the Sochi Laboratory, the Center of Sports Preparation of National Teams of Russia and the Russian Federal Security Service.

In the aftermath of the report's publication, many Russian athletes were banned from the 2016 Summer Olympic Games in Rio de Janeiro, and many athletes lost medals won at previous competitive events. In response to the disciplinary action taken by sports governing bodies, Russian hackers obtained the positive doping test results of several American athletes, who had prior medical exemptions to take drugs. Russia disputes tampering with the samples and alleges that their athletes get singled out for punishment, while Western athletes are let off the hook. The Russian sports minister Vitaly Mutko claimed that two female ice hockey players from the 2014 Winter Olympic games in Sochi had male urine samples because they had sex in the days prior to testing. He suggested that this was similar to two Western athletes who were reinstated after positive test, when they claimed that kissing a woman who had taken cocaine led to a positive test result³². As more samples from previous events get re-tested and more athletes and sports are involved, Russia has had to give up hosting events in a variety of sports.

The acting director general of the Russian anti-doping agency RUSADA, Anna Antseliovich, confirmed in an interview with the NY Times that "It was an institutional conspiracy"³³, but this admission was quickly withdrawn by her and Russian officials³⁴. The data on which the McLaren statements have been made can be found online³⁵.

In early 2017, IAAF officials traveled to Russia to discuss the possible reinstatement of Russian teams to international competitions. Ahead of these sensitive meetings, the German television channel ARD announced the publication of another documentary with new doping allegations featuring another Russian whistleblower.³⁶ This announcement caused a string of rebuttals ahead of the ARD documentary, even though the identity of the whistleblower or the specific allegations had not been revealed yet.^{37, 38}

31. <https://www.theguardian.com/sport/2017/nov/10/wada-mclaren-russia-doping>

32. See <http://www.bbc.com/sport/38690922>

33. See https://www.nytimes.com/2016/12/27/sports/olympics/russia-doping.html?_r=0

34. <http://www.rferl.org/a/russia-doping-scandal-institutional-conspiracy-olympics-putin-mutko-mclaren/28201605.html>

35. Evidence package of McLaren Report [https://www.ipevidencedisclosurepackage.net/McLaren Part 1 \(18 July 2016\)](https://www.ipevidencedisclosurepackage.net/McLaren%20Part%201%20(18%20July%202016).pdf) https://www.wada-ama.org/sites/default/files/resources/files/20160718_ip_report_newfinal.pdf McLaren Part 2 https://www.wada-ama.org/sites/default/files/resources/files/mclaren_report_part_ii_2.pdf

36. <http://www.daserste.de/sport/sportschau/videosextern/wada-director-general-olivier-niggli-on-whistleblowing-in-sports-100.html>

37. <https://www.rt.com/sport/374473-athlete-wada-doping-investigation/>

38. <https://www.rt.com/sport/374962-yelena-isinbayeva-doping-informants/>

After the airing of the documentary, which showed a banned coach working at an official Russian training site, the head of RUSADA Yelena Isinbayeva turned on the whistleblower and criticized him for not contacting Russian officials instead.³⁹ Interestingly, during the same program in which the documentary was aired, ARD published an interview with WADA Director General Niggli concerning a new protection measure for whistleblowers.⁴⁰ Indeed, Dr. Rodchenkov has voiced his concern about being targeted by Russia and the fear for his life.⁴¹

The Russian Olympic Committee was suspended from the 2018 Winter Olympic Games, and clean Russian athletes were allowed to compete under the Olympic flag.

After successful appeals to the CAS, many Russian athletes sanctioned after the 2014 Winter Games, were reinstated in February 2018, and the IOC lifted its suspension of Russia the same month after the closing of the Winter Olympic Games.⁴² Russia's Anti-Doping Agency RUSADA was reinstated by WADA in September 2018 under the condition that WADA be given all data and samples from the Moscow Laboratory and that Russia acknowledge that state-sponsored doping had taken place.⁴³ However, no such statement has been made and the delivery deadlines were missed.⁴⁴ The decision by the IOC and by the WADA Executive Committee to reinstate Russia has drawn widespread international criticism, including from WADA insiders and Richard McLaren, athletes and anti-doping agencies, and exposes weaknesses in governance and conflicts of interest at WADA⁴⁵. Jack Robinson, former Chief Investigator for WADA, has strongly criticized the reinstatement of Russian athletes and has issued a stark inside view of the failing system of the WADA and IOC-led anti-doping campaign⁴⁶. Their criticism highlights a host of problems besetting the current WADA-coordinated anti-doping approach.

2. Better leadership and better governance

WADA has come under repeated criticism over its governance structures, lack of transparency and perceived inconsistencies in processes and sanctions. According to Lam (2014), "Good sport governance should include such principles as (a)

39. <http://www.insidethegames.biz/articles/1046193/isinbayeva-attacks-whistleblowers-as-iaaf-taskforce-visit-concludes>

40. <http://www.daserste.de/sport/sportschau/videosextern/wada-director-general-olivier-niggli-on-whistleblowing-in-sports-100.html>

41. <https://www.cbsnews.com/news/russian-doping-olympic-mastermind-on-the-run/>

42. <https://www.theguardian.com/sport/2018/feb/01/russian-doping-scandal-athletes-bans-overturned-courts-of-arbitration-for-sport-athletics>, <https://olympics.nbcsports.com/2018/02/28/russia-olympic-ban-lifted/>, <https://www.nytimes.com/2018/02/28/sports/olympics/ioc-reinstates-russia-doping.html>

43. <https://www.usatoday.com/story/sports/olympics/2018/09/20/olympics-wada-reinstates-russia-ends-suspension-after-doping-scandal/1365815002/>

44. <https://www.nytimes.com/2019/01/16/sports/wada-russia.html>,

45. <https://www.cbc.ca/sports/olympics/wada-decision-to-reinstate-russia-clear-conflict-of-interest-1.4833572>, <https://www.theguardian.com/sport/2018/sep/21/wada-head-russia-reinstatement-triumph-money-over-clean-sport>, <https://www.theguardian.com/sport/2018/sep/20/wada-crisis-lifts-russia-suspension-anti-doping>,

46. <https://www.nytimes.com/2017/12/27/opinion/2018-winter-olympics-russia.html>, <https://www.theguardian.com/sport/2018/nov/14/wada-clean-athletes-russia-doping-robertson>

the role of the governing body, (b) structure, responsibilities and accountability, (c) democracy, elections and appointments, (d) transparency and communication, and (e) solidarity.”⁴⁷

As the guardian of the World Anti-doping Code, it seems imperative that WADA itself has unblemished governance and the strictest Code of Ethics. Recent years have shown that international sports organizations are plagued by corruption and unethical behavior at every level, so it is essential that WADA, in its role as leader and guardian of the World Anti-doping Code, publicly state and demonstrate its commitment to ethical governance within its own structures. Yet, the process of nominations of WADA officials has been unclear for years. WADA itself does not publish its own Ethics Code or Compliance program.

Ordway (2018) succinctly summarizes the governance issues that befall WADA because of its current governance model⁴⁸. Others have also expressed concerns that the WADA’s funding model exposes it to pressures from the IOC.⁴⁹ Ordway highlights the need for a re-writing of its constitutional documents to remove serious conflicts of interest brought on by dual leadership roles between WADA and the IOC, overlapping personnel within WADA governing boards, and representation based on its funding model.⁵⁰

In response, WADA has established committees to guide the reform of its own governance. Among the recommendations put forth by the Governance Working group are term limits, the addition of independent seats, and the formation of an Independent Ethics Board and of a Nominations Committee:⁵¹

- “An independent President and Vice-President, with a small remuneration going with the role of the President; So far, the presidency rotates between an Olympic movement representative and a government official.
- The addition of two independent seats - with full voting rights - to the Executive Committee. Nominations for these positions could be proposed by the sports movement and the governments but the candidates should have no link to either group in accordance with the strict criteria that will be vetted by the Nominations Committee;
- A limit of three three-year terms (nine years in total) for all members of the Foundation Board, Executive Committee and the Standing Committees with no possibility of stepping out for a term and returning;
- Formation of a Nominations Committee to ensure the right people in terms of skills and independence serve in senior governance roles within WADA;
- Formation of an Independent Ethics Board to ensure compliance with the standards of conduct required for good governance; and

47. Lam Eddie T.C. ,The Roles of Governance in Sport Organizations. *Journal of Power, Politics & Governance*, June 2014, Vol. 2, No. 2, pp. 19-31https://www.researchgate.net/profile/Eddie_Lam/publication/272789182_The_roles_of_governance_in_sport_organizations/links/54ee21380cf2e2830864270c.pdf

48. <http://blog.transparency.org/2016/12/09/cleaning-up-sport-conflicts-of-interest-at-the-top/>

49. <https://www.cbc.ca/sports/olympics/wada-decision-to-reinstate-russia-clear-conflict-of-interest-1.4833572>

50. *Marina Nehme and Catherine Ordway*, *Governance and Anti-Doping: Beyond the Fox and the Hen House*, in *Doping Sport and the Law*, Haas, U. and Healey, D. (eds), 2016, Hart Publishing

51. <https://www.wada-ama.org/en/media/news/2018-10/governance-working-group-to-make-recommendations-to-wada-foundation-board>

- One seat each at a minimum for both athlete and NADO representation in all Standing Committees.”

An independent, well-funded Ethics and Compliance office that has access and authority at the highest level of an organization is a staple of good governance. Yet, WADA’s Independent Ethics Panel has only advisory function to the Management, and its main task seems to be to advise on issues relating to WADA’s mission, not its governance. Transparency, documented training, help-lines and whistleblower protection, continued efforts to assess and improve compliance are all required parts of a successfully implemented Code of Ethics. An ethical culture can only take hold and thrive if its values are clearly stated and promoted by all officials. Indeed, progress has been made in the establishment of the Intelligence and Investigations Unit, which also offers a tip line.⁵²

WADA’s other committees, such as the Compliance Review Committee or the Athlete Committee, can make recommendations but lack decision-making authority or representation at the Foundation Board or Executive Committee. It seems prudent that a body tasked with as wide-ranging issues as WADA, responsible for the wellbeing of athletes in such diverse sports and cultures, and under such intense commercial pressures should seek as diverse and complete a representation on its Foundation Board and Executive Committee as possible. Yet, WADA has consistently resisted calls to include other stakeholders. First and foremost athletes have been seeking an equal voice but were rebuffed again at the September 2018 meeting of the WADA Executive Committee, where members emphasized their intent to maintain the current composition of the Committee with sole representation of IOC and government officials.⁵³

Athletes’ complaints

The core aspect of WADA’s mission is to promote health, fairness and equality for athletes worldwide, yet the very athletes it promises to protect and cater to have been conspicuously absent from its decision-making bodies. The governance of ethical behavior in sports and of WADA in particular should include a role of athletes in governance and as stakeholders, participants, subjects, and beneficiaries of anti-doping policies.

Russia’s reinstatement and lax treatment drew the criticism of many athletes, who feel they are not given a fair treatment and not listen to by WADA and the IOC. Three-time Canadian Olympian Beckie Scott resigned her post on the WADA Compliance Committee in protest after WADA decided to reinstate RUSADA, even though it failed to comply with WADA’s stipulations.⁵⁴

Perceived or real inconsistencies in testing and sanctioning have led to calls for clearer enforcement procedures. Athletes have been complaining for a long

52. <https://www.wada-ama.org/en/what-we-do/intelligence-and-investigations>

53. https://www.wada-ama.org/sites/default/files/resources/files/executive_committee_meeting_minutes_20092018.pdf

54. <https://www.cbc.ca/sports/olympics/wada-decision-to-reinstate-russia-clear-conflict-of-interest-1.4833572> ,<https://www.nytimes.com/2018/12/31/sports/russia-doping-wada-deadline.html>

time that the WADC is too complex and includes substances that have not been shown to enhance performance, and there have been calls for a radical simplification of the Code. Some suggest that the testing can be too sensitive, picking up metabolites that may originate from unrelated food sources or unintentionally ingested ingredients. With weeks, months or even years passing between sample taking, testing and re-testing, and the need to travel to events around the globe, athletes find it hard to reconstruct their diet and origin of their meals and supplements. There are many reports of athletes who are unable to challenge a test result effectively, and have suffered loss of income, training or competition time while defending themselves. Sanctioning also is flexible by design to accommodate the specificities of each case, which on the other hand has led the perception of uneven enforcement.

There is growing concern about the athletes' privacy as testing has become ever more intrusive and data protection has proven vulnerable. In the summer of 2016, Fancy Bears hacked and published the medical records of western athletes and in another hacking in 2018 published IOC emails in an effort to embarrass the WADA-led anti-doping effort.⁵⁵

The 2015 revision of the WADC and the International Standards include a clearer commitment to the principles of international law and human rights⁵⁶. Yet, more effective tests are also more intrusive. As noted by Rigozzi et al, "... the fight against doping will continue to have to deal with questions of privacy, data protection and scientific integrity of its processes. The conflicts arising therefrom can only be resolved through weighing the interests at stake, and, ultimately through the test of proportionality."⁵⁷

On the other hand, transparency in testing and sanctioning is also important. Athlete advocacy groups such as the European Elite Athletes Federation have tried to collect testing and compare data, which WADA requires the NADOs to publish annually. They found lack of reporting or gross inconsistencies in reporting even between the European NADOs⁵⁸. This makes it almost impossible to compare performance and efficiency of testing, which is needed to confirm efficacy and equity of the test, and which flagged athletes may need to evaluate their own test result. However, available data point to significant differences in testing, such as great variations in the number of tests, the percentage of out-of-competition and in competition testing, or the percentage of blood testing (0-33%). WADA itself published only a summary of the test results it has received (mostly through ADAMS) on its website⁵⁹.

55. <https://www.wired.com/story/russian-fancy-bears-hackers-release-apparent-ioc-emails/>

56. https://www.wada-ama.org/sites/default/files/resources/files/2016-09-30_-_isti_final_january_2017.pdf, <https://www.wada-ama.org/en/questions-answers/2015-world-anti-doping-code>

57. Antonio Rigozzi / Marjolaine Viret / Emily Wisnosky, Does the World Anti-Doping Code Revision Live up to its Promises?, in: Jusletter 11 November 2013

58. Paulina Tomczyk and Walter Palmer (2017). An assessment of the Monitoring Practices of European National Anti-Doping Organizations (NADOs) <https://euathletes.org/wp-content/uploads/2017/12/2017-NADO-Report.pdf>

59. https://www.wada-ama.org/sites/default/files/resources/files/2017_anti-doping_testing_figures_en_0.pdf

In response, athletes are organizing to ensure a greater voice⁶⁰. There are suggestions that athletes may benefit from unionizing. Unions could counteract the individualization of athletes before the anti-doping agencies by representing individual athletes when testing results flag them, paying for lawyers and additional testing of samples, food and supplements, creating transparency and comparing testing results that are returned from the accredited labs, supporting athletes while in limbo and engaging in collective advocacy and bargaining.

As an example that highlights a different approach to anti-doping, most Major American Sports Leagues have not adopted the WADC, but have worked with athletes to decide on a shortened list of banned drugs, clearer procedures and shorter sanctions for first time offenders. Collective bargaining has served the athletes well in becoming partners in determining the anti-doping policies. This has resulted in a practical balance between protecting the athletes' health, frequent testing, avoiding over-complicated, choking regulations, and sensible sanctions⁶¹.

This perspective is analogous to the mind shift that occurred when adaptive cancer therapy was introduced. Traditional cancer therapy strove to eradicate every last cancer cell, in the process often making the patient more unwell and creating aggressive, resistant and often lethal tumors. In contrast, by taking an evolutionary and ecological approach in reducing excessive cancer growth, but allowing a less harmful remnant to persist and frequently monitoring the cancer, the disease can often be managed long-term as a chronic condition⁶². Similarly, sports researchers have argued that it is time to focus on athletes' health instead of an ever growing list of banned drugs and methods: performance enhancing methods are so varied and many that they cannot be eradicated, but steps must be taken to protect the athletes' wellbeing⁶³. Advocates have argued for the use of currently banned substances in healing and recovery, even the complete deregulation of doping.⁶⁴

Other actors and solutions

Independent anti-doping activists have emerged from the media, legal professions, and former athletes and sports officials.⁶⁵ Investigative journalists have reported on several potential infractions and have created a secure, confidential whistle blower website outside the purview of WADA, with the promise to investigate further any tip left on the site⁶⁶. Other sites have been created to publicize

60. <https://abcnews.go.com/Sports/wireStory/athletes-group-formed-tackle-doping-sports-61046478> ,<https://www.uniglobalunion.org/sectors/world-players/about>,

61. Sports Reference Blog: Professional Sports Leagues Steroid Policies <https://www.sports-reference.com/blog/professional-sports-leagues-steroid-policies/>

62. Robert Gatenby, Ariosto Silva, Robert Gillies and Roy Frieden, Adaptive Therapy, Cancer Res. 2009 Jun 1; 69(11): 4894-4903

63. <https://globalsportmatters.com/science/2018/08/14/has-wada-helped-or-hurt-the-anti-doping-movement/>

64. <https://www.businessinsider.com/mark-cuban-talks-about-using-hgh-for-injury-recovery-2015-12>

65. <https://www.asser.nl/SportsLaw/Blog/post/international-and-european-sports-law-monthly-report-november-and-december-2016-by-saverio-spera>

66. <https://www.sportsleaks.com/> ,

doping related news and provide a forum for discussions.⁶⁷ There are associations that aim to support victims of state doping.⁶⁸

Governments and sponsors can take a role in effecting change. The Canadian government has been critical of WADA's decision to reinstate RUSADA, the United States have advocated for a reform of WADA, and are looking to apply the Global Magnitsky Act as a weapon against doping and corruption in sports.⁶⁹ In contrast, former East German sport officials who were leading forces in the GDR doping program were found guilty of harming up to 140 young women and children yet received only a suspended jail sentence.⁷⁰

Sponsors in particular, can play a crucial role in supporting clean sports. Nike's 2018 value-based ad campaign featuring Colin Kaepernick is an example of the power of sponsors, which sponsors of the IOC may wish to emulate⁷¹. Sir Craig Reedie, the president of WADA, called on broadcasters and sponsors to help fund clean sport during his opening speech at the March 2016 annual WADA Symposium for Anti-Doping Organisations in Lausanne.⁷²

Conclusion and Next Steps

While broad-based recreational sports carry health, emotional and social advantages for the vast majority of people, competitive sports is a rather different activity. At the competitive level, sports is an entertainment business, a matter of national pride and unity, a marketing platform for its sponsors, a showcase for its host cities and countries, a testing ground for the limits of human abilities, a means to attain power, glory and convey genetic superiority, a role model of moral values.

Thus, there are many and diverse stakeholders in competitive sports: IOC and NOCs, national governments, IAAF and sports governing bodies, media, advertising agencies and their clients, private companies, host cities, athletes, coaches, medical community, fitness community, and the general public. In general, it is agreed that clean sports events are the only ethical way that benefit all stakeholders. Yet, national agendas, commercial interests, personal greed, temptations, inequalities, pride, competitive pressure, or even a general attitude towards medicating, lead to cheating.

This begs the question: Who pays for and who benefits from competitive sports, clean or otherwise? Is it a government, satisfying a popular need for national heroes, unity and pride, distracting from unpopular policies? Is it business, paying for television rights, product endorsements and association with champions? Do we crave ever more outrageous performances and feats?

67. <https://www.sportsintegrityinitiative.com/about/>

68. <https://no-doping.org/doping-opfer-hilfe/>

69. <https://www.cbc.ca/sports/olympics/wada-decision-to-reinstate-russia-clear-conflict-of-interest-1.4833572> ,<https://www.reuters.com/article/us-sport-doping-wada/doping-white-house-adds-voice-to-calls-for-wada-reform-idUSKCN1N52ZR>, <https://www.nytimes.com/2018/03/14/sports/russia-doping-olympics.html>,

70. <https://www.wired.com/2000/07/e-german-olympic-dopers-guilty/>

71. <https://adage.com/article/cmo-strategy/nike-ad-age-s-marketer-year-2018/315795>

72. <https://www.wada-ama.org/en/media/news/2016-03/wada-president-calls-on-broadcasters-and-sponsors-to-help-fund-clean-sport>

Given the general consensus and demand for clean games, WADA has provided a unifying international regulatory framework, while the UNESCO convention offered a legal basis and framework for national governments. However, uneven testing levels by national bodies, selective enforcement by national athletic federations, fragmented controls, and asymmetric legal provisions in different countries make for an unsatisfactory and inconsistent patchwork. Similarly to other international areas of regulation, the global community has a combination of soft law and binding standards, guidelines and principles as well as national laws, but consensus and consistent enforcement are elusive.

This unwillingness of Olympic movement officials to cede power goes hand-in-hand with under representation of other stakeholders in decision making bodies, first and foremost of the athletes themselves. WADA must include more stakeholders to achieve a more diverse representation and to dilute the power of IOC and governments, which are currently funding WADA and make up the representatives in equal parts; such stakeholders include athletes, media, academics, legal and medical experts, and sponsors.

Wide-ranging reframing of the governance of the anti-doping efforts must include a host of reforms, such as clear procedures, transparency and accountability, empowerment of a greater variety of stakeholders to support independent governance, and simplification of the WADC.

Whistleblowers and Ombudspersons

WADA has instituted whistleblower protection measures, such as safeguarding the name of the person as well as providing help in protecting the persons themselves. WADA has hired a law enforcement professional to guide its whistleblower protection efforts. This is a laudable step in the right direction, but more resources must support intelligence gathering, investigations, and confidential persons of trust (ombudspersons).

In addition, setting up a network of ombudspersons, discretely available to athletes and coaches, could help define appropriate courses of action. It could also strengthen athletes' and coaches' capacity to resist the pressures and temptations to engage in doping. This could be done under the auspices of WADA or independently, but exempt from mandatory reporting of incidences of doping. A professional to whom concerned athletes can speak confidentially or anonymously when they face dilemmas or are troubled, can help resolve problems, offer guidance, provide personal support and professional advice, counsel on whistleblowing and assist on how to handle disputes and challenges.

Harmonization of national civil and penal codes

Problematic legal asymmetries must be addressed through the ratification and implementation of international treaties and the incorporation of the World Anti-Doping Code and Prohibited List into national laws. The same applies to damaging civil and criminal penalty asymmetries across countries, which must be reduced to the maximum possible. Such efforts at law and enforcement harmonization would address conflicting interests of sports federations, they would supplement WADA's efforts towards effective detection and sanctioning, they

would enhance international police and judicial cooperation, and they would support the investigation and control of supply chains.

Legal efforts may also include the innovative use of UN conventions against corruption and transnational crime, as argued by Passas and Ordway (2015)⁷³. This can be quite effective given the near-universal ratification of these international instruments which contain also the legal basis for states to cooperate and assist each other.

Transparency and independent scrutiny

Vital as the (criminal and other) law is in promoting clean games, it has limits and can at times be counter-productive. Preventive and procedural steps are therefore crucial and these must be based on a thorough, well thought-out, evidence-based strategy. This brings out the following set of policy implications, which can constitute concrete and independent projects to be pursued

- Establish in a systematic fashion the range, extent and impact of lack of integrity in sports. In essence, we need an accurate diagnostic in order to develop more effective counter-measures toward sustainable success.
- Systematic review of contributing factors and thoughtful, long-term planning to address them (incl. criminogenic asymmetries – legal, economic, political, cultural, environmental, etc.) - this would assist with a systematic exploration of demand side solutions to the problem
- Transparent decision making and governance. A review of sports governance is in order, perhaps even the creation of some “truth commission” of independent persons guiding reviewing and leading the strategy construction as well as its subsequent implementation
- Application of tax and fair competition/anti-trust laws as an additional instrument of legal control is another tool authorities may wish to consider

The review provided in this chapter points to a rather complex social problem that calls for a joint and coordinated effort of stakeholders from the private and public sectors, NGOs, international organizations and sports institutions. Hence the need for collective action with all stakeholders: state institutions, national and international governing bodies, sports clubs, athlete associations, private sector, media, NGOs and public at large. The best existing model for such a project is that of the Collective Impact Forum, whereby the solution of a serious social problem is built into the business model of private companies and the operations of NGOs and government agencies⁷⁴.

Finally, we conclude with some further thoughts and general questions that can inform parts of the brainstorming and strategy-formation process recommended above that deals with cultural asymmetries and conflicts.

- We should treat doping substances as harmful drugs and prosecute as such. Perhaps we should consider considering them as illegal markets: investigate supply chains, apply money laundering rules, asset freezes etc.

73. Passas, Nikos, & Ordway, Catherine. (2015). Sports corruption: justice and accountability through the use of the UNCAC and the UNTOC. In UN Office of Drugs and Crime (Ed.), *Compendium of the Anti-Corruption Academic Initiative Symposium* (pp. 120-137). Vienna: UNODC.

74. See <https://www.collectiveimpactforum.org/>

- Prevent harm to recreational athletes, the general population, and children: How do we protect young male and female athletes from artificial body images and cultures that push them to excel beyond their normal capacity, no matter whether they engage in recreational, amateur or professional sports? Do we do enough to educate children on harmful effects of doping drugs?
- Conceptual and normative clarity need to be sought with respect to what criteria by which artificial enhancements may or may not be acceptable. Is the ideal of the clean athlete, competing only based on their natural talents and hard work, a viable concept? Why are some medical treatments allowed that clearly enhance performance, such as Lasik eye surgery for golf players, while others are deemed inappropriate?
- Related to the above is the way in which we define as a treatable illness worth medicating with an exemption compared to a deficit of talent or ability to progress. When are engineered improvements acceptable (Oscar Pistorius, yachting) and why are they banned in some places (shark skin swim suits, balls and rackets in various sports)? Does doping only become a problem in elite and competitive sports, or would it be acceptable in non-competitive or recreational settings as long as it does not harm the athlete? Would doping still be a concern if all risks to health and fairness were removed? How will we deal with advances that are impossible to detect, e.g. neuronal brain stimulation, genetic engineering?
- Engage in a substantive debate on the role and functions of sport across continents and contexts. What is the idea of sport and what we want it to be in the future? Is it a mere entertainment for audiences looking for the faster, better, higher, further at all cost and transgressing the limits of the human body? Or do we want to enjoy the talented and specially gifted athletes with their human abilities, pure as nature has given them, only enhanced through effort and practice? Is sports only joyful play or a serious means towards establishing power, wealth and genetic superiority?
- Do we allow some artificial enhancements (if administered without health risks) or condemn the clean athlete to lower achievements?

In the end, doping in sport is part of a wider societal ethical debate on the “treatment of the healthy”. We live at a time when doping and physical enhancements are pervasive, whether it is students taking drugs to help them study, young men trying to buff up their physique (and their attitude), the over-worked looking for relaxation and restful sleep, fighter pilots and surgeons aiming to steady their hands, the young woman freezing parts of her ovaries for later re-implantation to delay menopause, body builders going for the extra muscle, the amateur athlete looking for a little edge, elective plastic surgery, gene editing or a maturing population using drugs and brain stimulation in an attempt to delay aging⁷⁵. In contrast to the widespread use of enhancements in society, “natural” hormone levels in athletes are hotly debated and the IAAF now requires female athletes to limit their testosterone levels medically prior

75. <http://www.nature.com/nature/journal/v456/n7223/full/456702a.html>, <https://www.bbc.com/news/health-47852578>

to competing internationally⁷⁶. This policy has been called out as scientifically flawed by researchers⁷⁷.

This great natural variation between individual and the widespread use of drugs and enhancements by the healthy warrants an examination of our attitudes towards doping in the widest sense and heralds the global ethical discussion to be had: when does the “augmented” become “un-natural”? How do we keep the playing field level and protect the “clean” (unadulterated) human being from their enhanced peer? The informed discussion of integrity in sports has still ways ahead.

76. <https://www.sciencedaily.com/releases/2019/02/190212160030.htm>

77. Pielke, R., Tucker, R. & Boye, E. *Int Sports Law J*, 2019. <https://doi.org/10.1007/s40318-019-00143-w> and others cited therein

