

Are the current World Anti-Doping Agency guidelines morally justifiable?
An overview of ethical considerations and possible alternatives

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Abstract

The World Anti-Doping Agency (WADA) was created in 1999 with the goal of making elite competitive sports free of doping practices. Since then, it has grown into a powerful organization that oversees national anti-doping institutions and a majority of international sports federations. Anti-doping regulations means that the use of performance enhancement drugs (PEDs) or methods is prohibited in elite sports competition, and athletes who do not comply are sanctioned through a ban from competition and loss of titles and prizes link to them. The recent discovery of a systematic doping scheme in Russia has shown that the regulations currently in place have failed to offer the ‘clean’ environment promised to athletes and the public. While there is an understandable call to reform WADA’s practices to further the anti-doping fight, I suggest that the purpose of WADA itself should also be reconsidered. In taking a step back from the current controversy and urge for stricter regulations, this thesis will first ask if performance enhancement in sports should really be understood as unethical and undesirable. Favoursing a interdisciplinary approach to this problematic, I will take a look at the scholarly debate on doping and critically analyze arguments from both positions including theoretical ideas on doping itself and practical concerns about WADA’s current measures to prevent doping. This overview, while it does provide an unequivocal answer about the ethicality of doping, will show a wide range of counterarguments to the prevailing anti-doping stance, and raise numerous concerns about the current system. In doing so, it indicates the need for a larger, inclusive of all stakeholders, deliberation on the anti-doping position, a position which remains so far mostly uncontested outside of academia. In the second part of my thesis, this rejection of a by-default *anti* stance to doping in sports will then lead me to explore whether there is a more suited alternative to dealing with issue of doping in elite sports than the current zero tolerance approach. Finally, I conclude that a harm reduction approach provides a suitable answer to both moral concerns and issues of feasibility, even though it may be difficult to incorporate into WADA given the number of stakeholders involved. Still, the identification of this alternative, conjointly with the Russian scandal, serves to justify why there should be further deliberation about WADA and the anti-doping movement that goes beyond accepting the status quo and the Agency’s idealist notion of achieving completely doping-free sports.

Résumé

L'Agence Mondiale Antidopage (AMA) fut créée en 1999 avec comme objectif d'éliminer complètement le dopage lors des compétitions sportives élités. Depuis, l'Agence est devenue une organisation puissante supervisant les organisations nationales antidopage ainsi qu'une majorité de fédérations internationales sportives. Les réglementations antidopage impliquent que l'utilisation de substances ou méthodes améliorant les performances est interdite lors de compétitions élités. Les athlètes contrevenant à ces règles doivent être sanctionnés par une interdiction de participation aux compétitions ainsi que par la perte de titres et de prix monétaires liés à ceux-ci. Récemment, la découverte d'un stratagème de dopage systématique en Russie a montré que les réglementations en place ont échouées dans leur promesse d'offrir un environnement de compétition 'propre' aux athlètes ainsi qu'au public. Bien qu'un appel à la réforme des pratiques de l'AMA soit défendable, je suggère que la mission elle-même de l'AMA soit reconsidérée. Prenant du recul sur la récente controverse et l'exhortation à l'application de règlements plus stricts, ce mémoire examinera d'abord si l'amélioration des performances sportives devrait réellement être comprise comme immorale et indésirable. Favorisant une approche interdisciplinaire pour traiter de cette problématique, j'explorerai le débat académique sur le dopage et analyserai de manière critique les arguments émanant des différentes positions, incluant des réflexions fondamentales sur le dopage ainsi que des considérations pratiques concernant les mesures actuelles de l'AMA pour prévenir cette pratique. Bien qu'il ne permette pas de fournir une réponse sans équivoque à propos du statut moral du dopage, ce tour d'horizon mettra en évidence un large éventail de contre-arguments à la position dominante de l'antidopage, en plus de soulever plusieurs inquiétudes à propos du système actuel. Ce faisant, il indiquera le besoin pour une délibération plus large incluant toutes les parties prenantes, portant sur la position antidopage, une position qui reste présentement incontestée en dehors du milieu académique. Dans la seconde partie de mon mémoire, le rejet d'une acceptation systématique de cette position m'amènera à explorer comment concevoir une approche alternative au dopage dans le sport élités, plus adaptée à notre contexte que l'actuelle approche tolérance zéro. Finalement, je conclurai qu'une approche de réduction des risques (*harm reduction*) apportera une réponse appropriée à la fois aux inquiétudes morales relevées plus tôt, ainsi qu'aux enjeux de faisabilité. Bien qu'il demeure difficile d'incorporer cette approche aux activités de l'AMA, étant donné le nombre de parties prenantes impliquées. Néanmoins, l'identification d'une alternative probable, de concert avec le récent scandale russe, sert une fois de plus à justifier pourquoi une délibération plus poussée sur l'AMA et le mouvement antidopage, allant au-delà d'une acceptation tacite du statu quo et de la vision idéaliste de l'Agence d'arriver à des compétitions complètement dépourvues de dopage, est souhaitable, et même nécessaire.

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List of abbreviations

ADO	Anti-Doping Organization
AMA	Agence Mondiale Antidopage
CAS	Court of Arbitration for Sport
EPO	Erythropoietin
hGH	Human Growth Hormone
ISTI	International Standard for Testing and Investigations
IOC	International Olympic Committee
IPC	International Paralympic Committee
MLB	Major League Baseball
NADO	National Anti-Doping Organization
NPES	Non-performance enhancement substance
NBA	National Basketball Association
NFL	National Football League
NHL	National Hockey League
PED	Performance Enhancement Drug
PL	Prohibited list
TUE	Therapeutic Use Exemptions
UCI	Union Cycliste Internationale
USADA	United States Anti-Doping Agency
WADA	World Anti-Doping Agency (also referred to as ‘the Agency’)
WADC	World Anti-Doping Code (also referred to as ‘the Code’)
WHO	World Health Organization

Introduction

The World Anti-Doping Agency (WADA) was created in 1999 by the International Olympic Committee, national governments, and sports federations, out of a desire to offer a stronger solution to the epidemic of doping in sports (Hunt 2015). In 2003, the publication of the WADA's World Anti-Doping Code (WADC) confirmed its place as the leader in the anti-doping fight. WADA's significance was then further solidified by UNESCO's *International Convention Against Doping in Sport* in 2007, which legally bound signatory countries to promote and enforce the WADC. More than fifteen years after WADA's establishment, prohibited performance enhancement is still a hot issue in elite sports, with athletes, the International Olympic Committee and national governments calling for more enforcement of anti-doping regulations and harsher sanctions for cheating athletes to eradicate the phenomenon of doping in elite sports (Ruiz 2016b, International Olympic Committee 2016b). Consequently, the power and reach of the Agency has continued to grow over the years (Hanstad and Loland 2009, Møller 2016).

This thesis will focus on the often unquestioned moral legitimacy of WADA guidelines surrounding performance enhancement drugs (PEDs) and techniques in elite sport by asking (1) if the current all-out ban on doping and the means needed to sustain it are ethically justifiable, and (2) if there is a more suitable alternative to resolve these concerns than WADA's current system.

Using an interdisciplinary background to review this bioethical issue, the next chapters will show dense debate in the fields of social sciences, philosophy of sport, ethics, medicine, public health and law. The multitude of opposing arguments, while they cannot be converted to a single definitive answer, warrants further exploration about the phenomenon of doping in elite sports, that goes beyond the complete prohibition presented by WADA and its signatories.

A not so obvious scourge

Professional or "elite" sports are sometimes dubbed "die wichtigste Nebensache der Welt" (the most important of the trivial subjects in the world) (Tolleneer and Schotsmans 2013, Renson

2009). This means that the moral and ethical issues they create, and the attention they receive, are “the most important of the trivial debates in the world”(Tolleneer and Schotsmans 2013, 51). One of these issues, doping, “[...]provides an opportunity for the articulation of concerns and values, such as respect, integrity and justice, values that are at the heart of ethical consciousness and social sensibilities” given its wide-reaching and controversial nature (Tolleneer and Schotsmans 2013, 51).

With the Games of the XXXI Olympiad in Rio de Janeiro, Brazil, the debate about whether doping should be permitted in elite sports seems livelier than ever. Shortly before the Olympics began, an investigation into a state-backed doping scheme in Russia implicated a large number of Russian athletes in the use of prohibited PEDs and Russian officials in the manipulation of urine samples (Ruiz and Schwirtz 2016; McLaren 2016). Consequently, many athletes (Aschwanden 2016, Ruiz 2016b, Kwakye 2016), sports federations (Hartog 2016a, Ruiz, Macur, and Austen 2016), national anti-doping committees (Tygart 2016), and governments (Ruiz 2016a) clamoured for harsher penalties for delinquent athletes and stricter measures to make sure that such a large-scale doping scheme does not reoccur. WADA, who commissioned the investigation, advocated upon the results of the inquiry that Russia’s entire Olympic team should be banned from the 2016 games (McLaren 2016, World Anti-Doping Agency 2016b). This would have been the first blanket ban of a country in the modern history of the Olympic Games. However, the International Olympic Committee (IOC) decided not to issue this sanction and opted to let the individual sports federations decide whether Russian athletes registered in their discipline could compete, with the added condition that athletes who had been previously been found guilty of doping must be banned even if their previous sanctions had ended (International Olympic Committee 2016). Prior to this incident, another investigation into the alleged widespread use of PEDs by the members of the Russian athletics team by WADA caused the International Association of Athletics Federations (IAAF) to ban the team from the Rio Olympic Games. This ban was upheld by the Court of Arbitration for Sport (CAS) and the IOC (International Olympic Committee 2016, Court of Arbitration for Sport 2016). The IAAF ban meant that every Russian athlete competing in the track and field program (including races, jumps, throws, and hurdles) was de facto ruled out of the Rio Games, no matter their individual doping history. The sanctions and harsher regulations placed upon countries or athletes that violate anti-doping regulations are aimed to reflect the severity of the offense, but they also

speaking volumes about the importance and strong desire within these communities to prevent doping.

The goal is not to judge these sanctions in themselves, but to look at the broader context in which these sanctions occur and ask *whether WADA's current anti-doping guidelines are ethically¹ justifiable*. This question is increasingly relevant given the push to give WADA more power and money to prevent doping. Since 2000, support for anti-doping forces in professional sports has increased, as has the scope of their purview (Kayser and Broers 2013, Houlihan 2015). In 2012, the World Health Organization (WHO) went a step further and chose to address doping in sport as a public health issue, citing the trickle-down effect consumption of PEDs by elite athletes can have for the recreational and junior sports, and the risks associated to many doping substances (World Anti-Doping Agency 2012; O'Connor 2012). More than a problem only confined to sport, doping expanded to a broader sphere of activities, and necessitates a substantiated collaboration between the IOC, WADA, WHO and national governments to eliminate the negative consequences the practice can have for global public health (World Anti-Doping Agency 2012, Henne, Koh and McDermott 2013).

At the same time, the debate around the fundamental morality of using performance enhancement in sport seems to remain mostly contained in academic circles. Doping is treated by WADA and other sports organizations as a scourge against humanity, like poverty or sickness; something to be eradicated by every means possible. This is reflected in a “lack of critical reflection on the idea that doping sits in contradistinction to the essence of sport” (Dimeo 2016, 107). However, the reality is more ambiguous than this, and plenty of anti-doping arguments have legitimate counterparts advocating to (partly or totally) stop the ban.

There is no doubt that some kind of reform is needed; the Russian scandal has shown that our current system can permit an entire country to exploit a flaw in testing procedures and highjack a complete Olympic competition.² In recognition of these problems, IOC has called for a special anti-doping conference in 2017 (International Olympic Committee 2016b). However, this could

¹ In this thesis, I will use ethical/unethical and moral/immoral interchangeably.

² At the Games of the XXX Olympiad, in Sochi, Russia, Russia had the largest medal count out of all countries, a drastic jump from their 2010 Vancouver Games abysmal medal count, which is understood as having been the catalyst for the doping program (Ruiz and Schwirtz 2016; McLaren 2016).

be a good occasion not only to reflect on how WADA's regulations could be ameliorated, but also to reconsider our position on doping *per se*, and see if other arrangements would be better suited to represent our moral ideals for elite sport while accommodating their contemporary context.

Organization of the thesis

In order to determine if WADA's current guidelines are ethically justifiable, this thesis will explore (1) whether doping should be considered unethical in elite sports and (2) if there is a more suitable alternative to the current WADA guidelines against doping in elite sports. These two questions will be explored in the Chapters 2 and 3, respectively, while the first chapter will provide a historical and legal background.

Chapter I – WADA and the anti-doping movement

The anti-doping movement in sports developed in the 20th century and culminated in the creation of WADA in 2000. A number of landmark cases about performance enhancement arose during this time period. These cases can be used to illustrate how contemporary beliefs about doping in elite sports took their roots, particularly with respect to how the anti-doping stance and the reasoning behind it came into prominence, and why the creation of WADA became necessary (Hoberman 2005).

In 1938, the IOC's *Resolution regarding the amateur status* was the first time performance enhancement was pitted against the integrity of Olympic sports, as well as the first instance where human sports doping was described as immoral. The deaths of cyclists Knud Enemark Jensen and Tom Simpson in the 1960s after they allegedly consumed doping substances highlighted potential fatal effects of performance enhancement drugs (PEDs). The doping program of East German athletes in the 1970s and 1980s showed that doping could be organized and systematic (as well as coercive), which disavowed the popular narrative of the lone 'rogue' cheating athlete. The scandal of Ben Johnson, and the inquiry that followed, revealed a doping problem that spanned across a majority of disciplines and inadequate testing procedures to fight it. Finally, the Festina affair at the 1998 Tour de France exposed that the sport was deeply plagued by systematic doping that was enabled by support staff, and unable to be detected by testing procedures of the time.

In exploring how all these events culminated in the creation of WADA in 2000 and what WADA entails, we will detail the operation of the Agency, its role, and its link to the different stakeholders in elite sports. We will analyze the WADC by: examining the different iterations, parties signatories to, and organization of the WADC, as well as the different elements it contains (definition of doping, prohibited substances or techniques, testing procedures, sanctions, arbitration, investigations) and the general legal principles governing its application. Particular attention will be paid to the criteria dictating if a substance or technique ends up on the Prohibited list (PL) of WADA.

Finally, two areas of concerns for the future of WADA will also be highlighted, namely the call for a stronger intervention in testing and investigations, and the perceived lack of transparency from the Agency in certain areas.

Chapter II – Should doping be considered unethical in elite sports?

This chapter will review the literature about the permissibility of doping in sports and explore ethical arguments on both sides of the debate. Those who have previously attempted to do so in the past have often focused on a particular theme, type of argument, side of the debate, or strictly theoretical level of understanding about the issues associated with sports doping. In doing so, they have ignored WADA and the WADC's peculiarities when discussing the concept of anti-doping. Given the variety of arguments, moral frameworks, theoretical ideas and empirical knowledge, an approach that weighs all positions and moral perspectives on the subject and tries to arrive at the best decision possible will be favored.

To stress the importance of doping as a public health issue, the paper *Ethical analysis in public health*, by Roberts and Reich (2002) will be used as foundation for the ethical analysis of the various ideas presented here, both for discussing each type of arguments, and to weight on an ideal way to deal with such different perspectives. The arguments reviewed will be organized to reflect the WADC's three criteria to prohibit a substance: enhances the performance, causes harm, and goes against the 'spirit of sport' (World Anti-Doping Agency 2015b).

The first section addresses concerns relating to the concept of fairness. In the Code, fairness is addressed through the first criterion ('performance enhancement'). For proponents of the anti-doping position, doping is unfair because it prevents athletes from competing on a level playing field on which to measure their *natural* abilities (Loland 2002; Schneider and Butcher 2000).

Those who critique this position raise several objections, including the fact that the playing field is never truly equal either due to one's genes or resources (Miah 2005, Bonte, Sterckx and Pennings 2014, Tamburrini 2006). We will also look at how doping came to be associated with cheating, which fuelled the idea of unfairness around the practice. A rights-based approach could also be used to advocate for less stringent doping testing procedures, arguing the unfairness for innocent athletes to submit to severe and burdensome rules (Savulescu 2015).

We also address arguments about the second criterion ('health risk to the athlete'), which can be seen through a utilitarian perspective. In addition to potential harms to the athlete, we examine possible harms to the competitors, the sporting community, and to society (Schneider and Butcher 2000). However, harms resulting from the current ban also need to be acknowledged in order to provide a full picture of the ethical justifiability of the imposed measures and sanctions discussed in the first chapter (Kayser and Broers 2012). This section addresses the lack of empirical data on the consequences of using PEDs, making the process of weighting all the risks described here all the more ambiguous.

The last group of arguments about the acceptability of doping concerns the importance of safeguarding the 'spirit of sport' criterion. Here, a similar logic is applied by both sides of the doping in sports debate. Due to the fuzziness of the 'spirit of sport' criterion, it remains unclear if doping is against the 'spirit of sport' or fully in line with it (McNamee 2012, Foddy and Savulescu 2007). This line of argument unearths another concern related to whether artificially enhancing one's performance could pose a threat to human nature: should PEDs be considered simply an extension of athlete capacities, or should an enhanced athlete be seen as having lost its human essence? This discussion obviously goes beyond issues related strictly to the use of doping substances in elite sports competitions, but it is still interesting to consider this angle in this particular situation, as athletes are generally one of the first groups to experiment with biomedical innovations (King and Robeson 2013, Camporesi and McNamee 2014).

This overview of positions related to the permissibility of doping in elite sports may not end up giving us a 'best' position, but proves that the anti-doping status quo position can be challenged. This means that other avenues aside from simply giving WADA more power need to be explored and considered seriously.

Chapter III – Is there a better way to address this issue?

During the course of the literature analysis, alternatives to the current system emerged. Each of these alternatives are analyzed from a pragmatic perspective according not only to the extent to which they answer moral issues identified in the preceding chapter, but also to the degree of feasibility to which the solution could be applied in the current context.

These options range from the subtle tweak (e.g., the elimination of the ‘spirit of sport’ criterion - Henne, Koh, and McDermott 2013), to a complete revolution of how we choose to view athletic performance and the role PEDs and other techniques could play (e.g., libertarian and physiological approaches – Savulescu 2015). In the end, I conclude that the harm reduction approach defended by Kayser and Broers (2014) strikes the best balance between ethicality and feasibility, and would be worth further consideration. The chapter will also introduce what might be the biggest obstacle to changing WADA’s accepted position and regulations: political inertia (Hunt 2015), and how it needs to be taken into account when debating implementing alternatives to the status quo.

In the end, I hope this thesis will make a compelling case for a more balanced approach, half-way through idealist and realist perspectives, based on ethical arguments and empirical knowledge, as well as open the discussion more largely to other stakeholders, like athletes and other members of the sport community.

Limits

The stance on anti-doping presented in this thesis serves as a guide to the ongoing discussion on the ethics of enhancement in sports. The goal is not to provide a definitive answer about the morality or doping, or to select a better system to deal with the issue. I aim to provide context to the ongoing debate and bring together both sides of the argument to highlight the importance of deliberation when considering complicated bioethical issues like doping.

I also am unable to provide a definitive answer to our question “*are WADA’s current guidelines ethically justifiable?*” However, the overview of this topic demonstrates that the density of the debate, along with the importance of several concerns raised by opponents of the anti-doping

regulations, warrants an examination of potential alternatives to how doping is currently handled by WADA, national governments, and other sports federations.

WADA's choice to ban genetic doping in sports before a concrete application of this idea had materialized demonstrates that this form of performance enhancement has the potential to impact doping in an unprecedented manner while simultaneously rendering testing, the principal tool in the fight against doping, powerless (McNamee and Tarasti 2010). I chose not to address concerns pertaining specifically to genetic doping because this practice is still in its infancy and would prompt more considerations than I am able to properly address in this thesis (Miah 2005, Tamburrini 2010, Greenbaum 2013). However, I will still briefly address gene enhancement when taking a look at more general arguments like the potential for doping in sports to dehumanize the athlete (McNamee 2007).

I chose to focus solely on elite athletes (i.e., “Any *Person* who competes in sport at the international level (as defined by each International Federation) or the national level (as defined by each *National Anti-Doping Organization [NADO]*”) (World Anti-Doping Agency 2015b, Appendix 1 - Definitions). NADOs can choose to include athletes from a lower level at their discretion, but are not compelled to do so. If NADOs *do* choose to test these amateur athletes, however, positive testing must result in the same sanctions. The distinction between elite and amateur athletes is important, because arguing for a more lenient doping regulation in elite sport, where athletes are often surrounded by experts and health professionals, does not automatically translate to a call for diminishing barrier of access to PEDs for the general public. Discussions about this level should be had between citizens of a legislative state. As such, issues pertaining to amateur athletes will only be addressed in so far as they could be the result of elite athletes' consumption of PEDs, in the sections on possible harms of doping for the public and the sport community.

Chapter I

WADA and the anti-doping movement

This chapter will serve as the historical and legal background for the arguments deployed in the rest of the thesis. For the first section discussing landmark cases in the anti-doping movement, most information was drawn from the scholarly literature in history and sociology of sports. Official documents issued by WADA itself and critical academic commentaries are the primary source of information for the following section about WADA's organization and guidelines. A final section will address concerns voiced in the public sphere about WADA's future, in light of the uncovered state-sponsored Russian doping program.

History of the anti-doping movement

The current largely uncontested stance of strict opposition to performance enhancement in elite sport has not always been the default position. Understanding why doping came to be seen as quasi-synonymous with cheating is crucial because many arguments used to defend the current WADC and the ban on doping rely on historical cases. Given space constraints, the choice to include certain cases here was partly a subjective choice, but also reflected the literature that covered the doping thematic (Hoberman 2005, Hunt 2011, Hunt 2015, Gleaves and Llewellyn 2014, Hanstad, Smith, and Waddington 2008, Waddington 2016). The specific meaning each of them conveys to arguments against doping today is what makes them particularly interesting. WADA was created to resolve the problem of doping because it was seen as against the integrity of sport, harmful to an athlete's health, and had shown to be systematized, pervasive in a majority of disciplines, and resistant to measures already in place.

1938: IOC's Resolution regarding the amateur status

Doping is not a new practice. As Gleaves and Llewellyn remarked, athletes in ancient Greece consumed substances in the hopes of improving their performance over their competitors. During the Enlightenment, sportsmen started intellectualizing their performances using scientific methods, technological advances, and new substances available through worldwide trading such as opiates, cocaine, and kola nut (Gleaves and Llewellyn 2014). Doping was common in horse

aces, but it was not always used to enhance performance. It was also used in order to decrease the performance of a certain horse in order to ‘fix’ a race. Doping in horse races, for this reason, was largely criticized (Renson 2009, Loland 2002, Hoberman 2005).

In contrast, doping in sports where people competed was not cast as categorically undesirable or immoral. Performance enhancing substances were often considered a remedy to athletes’ extreme exhaustion (Hunt 2011), or were seen as a way to achieve human perfectibility (McNamee 2007), which was an idea that was common during the Enlightenment (Hoberman 2005). Both of these ideas about doping encouraged the scientific and pharmacological approach to enhance one’s performance (Gleaves and Llewellyn 2014). By the end of the 19th century, objections were raised against the use of these new techniques of performance enhancement and journalists praised athletes who chose to maintain the “pure lifestyle of an amateur athlete” and abstain from stimulants (Gleaves and Llewellyn 2014, citing the article “Greatest All Around Athlete That Ever Lived” in the Fort Worth Morning Register, July 16, 1899). From then on, a line was drawn between the professional athlete, who was paid to excel at a certain sport, and the amateur athlete, who participated in sports for leisure and glory.

This distinction between amateur and professional athletes was prevalent for the first half of the 20th century. This painted amateurs’ endeavours as nobler, since their performances were the result of pure natural abilities without any form of enhancement such as doping substances or intensive training regimen (Hoberman 2005). This was the first time when enhancing one’s performance ‘artificially’ could be deemed immoral or, at least, less worthy of public praise, and was seen as going against the integrity of athletic competitions.

As many historians have remarked, the differences between amateur and elite athletes were largely based on a social class divide. Amateurs often stemmed from upper class environments that tended to emphasize the gentlemanly quality of sportsmanship, whereas professional athletes came from working-class backgrounds and needing the money associated with their success at their sport. These professional athletes did not have the same approach to the morality of their discipline. This separation between amateur and professional athletes became blurred in practice over the next few decades, as more and more amateurs started devoting their lives to their training regimen and started using drugs or other substances to enhance their performances, although more covertly than professionals (Hoberman 2005).

The Olympics, back in their modern iteration since 1896, defended the amateur conception of sports. When this conception of the moral and noble nature of sport became in danger, or was at least disrupted by undesirable behaviour, regulations were put into place to discourage athletes from using performance enhancing substances (Hunt 2015). The IAAF was the first one to address the issue in 1928 by prohibiting the use of enhancing substances in athletics competition (Hunt 2015, Hoberman 2005). Ten years later, in 1938, the IOC wrote its *Resolution regarding the amateur status*, which reinforced the direction the Games wished for elite sports. While the use of stimulants had been publicly discouraged since the 1920s, Article 6 of the resolution was the first official regulation concerning all sports disciplines at the Games (Hunt 2015). The first event to use the regulation was the 1948 Olympic Games (after the end of World War II). Article 6 reads as follows:

“Article 6 – Doping of athletes: The use of drugs or artificial stimulants of any kind must be condemned most strongly, and everyone who accepts or offer dope, no matter in what form, should not be allowed to participate in amateur meetings or in the Olympic Games” (International Olympic Committee 1946).

This resolution was a concerted effort to crystalize the Olympics’ conception of an amateur athlete, even if the IOC and the IAAF did not have the means to formally stop doping (Dimeo 2016). Because of this lack of resources, the regulation was more a normative reinforcement of the IOC stance and no mandatory testing was mentioned. In the end, the amateur ideal as conceptualized in the resolution did not survive the ‘professionalization’ of sports (Beamish 2015). This professionalization was inevitable in the following decades as countries invested large sums of money in the hope of gaining the prestige associated with athletic superiority (Allison and Monnington 2012). This phenomenon was accelerated by the burgeoning Cold War between Americans and Soviet superpowers (Hunt et al. 2012). The exact wording of this resolution was present in the different Olympic Charters until 1975 (Hunt 2015). Several of its items, like the interdiction for athletes to receive money for their performances, seem foolish today. However, the prohibition of doping has not only persisted until today, but has been subsequently reinforced by other regulations from the IOC and WADA. In this light, the legacy of amateurism and the idea that doping goes against the practice of a ‘pure’ or ‘clean’ sport still exists as the first rationalization against doping (Dimeo 2016).

1960: Knud Enemark Jensen

“In the absence of crisis, issues often have difficulty moving beyond the early stages of the policy process” (Hunt 2015, 210).

After the 1938 resolution, the anti-doping movement did not implement a more robust regulation than what was found in article 6 for some time. While it was known that athletes consumed PEDs, which at the time were mostly amphetamines, the impact of these drugs was still debated (Hoberman 2005). Arthur Abrahams, the head of the British Association of Sport and Medicine, mentioned in an op-ed piece in 1957 explaining the recent decrease of sprinters’ running time that the effects of amphetamines were greatly exaggerated, and that they had a placebo effect at most (Abrahams 1957). Therefore, a prevailing notion at the time was that the ‘pep pill’ of today’s runners was the ‘pep talk’ of yesterday, and the need for stronger regulations was not warranted.

However, when the Danish cyclist Knud Enemark Jensen died from a heatstroke before completing his 100 kilometers team time trial at the 1960 Rome Summer Olympics, a crisis emerged (Hunt 2015). Officially, no drugs were found in the body during the autopsy, but rumours circulated that amphetamines were the main cause of Jensen’s death (Møller 2005). This put pressure on the IOC to deal more directly with the problem. A subcommittee of doctors was formed under the direction of Sir Arthur Porritt, who defended a normative approach geared toward long-term education. In the end, the committee only met sporadically and did not manage to produce a policy to address the issue (Hunt 2015).

When another cyclist, Tom Simpson, died in 1967 during the 12th stage of the Tour de France, the pressure put on the IOC was amplified. Not only were traces of amphetamine present in the athlete’s body, but unconsumed tablets were also found in his pockets (Hunt 2015). France and Belgium had already put regulations against doping in place, and international federations also officially prohibited the practice. A new IOC subcommittee, chaired by Prince Alexandre de Mérode, quickly established a new regulation on doping that included the first list of banned substance, and outlined new testing procedures and a system of sanctions for those who were caught (Hunt 2015). As Henne mentions, this regulation applies the same conception of the amateur seen previously and reflects the upper class background of De Mérode (Henne 2009, 2014) in that he believed that the purity of the sport and athletes should be protected from

harmful practices. Thus, the 1968 Olympics became the first instances where doping tests were administered. This set a precedent that influenced future regulations: “The scientists who pioneered anti-doping established a logic which remains with us today: if society wants ‘clean’ sport then we need the resources to achieve it; and we can do so by promoting research into testing and increasing the extent of testing” (Dimeo 2016, 105).

Aside from re-initiating the policy discussion surrounding PEDs, the largely publicized deaths of cyclists Knud Enemark Jensen and Tom Simpson, and their alleged or proven consumption of amphetamines, highlighted that performance enhancing substances could pose danger to the athlete’s health. This became the second reason used to call for a ban on doping in sport (Hunt 2011, Møller 2005). Jensen, in particular, marks a turning point in the history of the anti-doping movement. After Jensen’s death, doping became seen almost unanimously as a plague to eliminate, whereas the ‘debate’ about its acceptability was largely considered over when he was alive (Gleaves and Llewellyn 2014). It is also around that time that anti-doping ideas became disseminated more broadly in the public sphere. For example, the Sports Illustrated cover for June 23rd 1969 denounced drugs as “[a] threat to sport” (Gilbert 1969).

1974 – State Plan Theme 14.25

The disambiguation of the moral status of doping in elite sports and the new regulations implemented did not halt the use of PEDs. As mentioned earlier, the Cold War, prompted countries to vie for the highest honours in sports in order to prove their superiority. Doping was considered necessary to achieve these high distinctions. The most well-known example of this drive to succeed in sport is probably the East German doping program of the 1970s and 1980s known as *State Plan Them 14.25* (Dennis 2015). For the German Democratic Republic (GDR), achievement in elite sports was a way to acquire both respect at the international level and stability at the national level (Allison and Monnington 2002). Hunt describes *State Plan Theme 14.25* as a “massive state-sponsored initiative overseen by some 1 500 medical personnel, coaches, and sports scientists” (Hunt 2015, 212). Starting in 1972, an estimated 2000 athletes were included in the doping program, and possibly 10 000 athletes could have been implicated at one time or another (Dennis 2015). Not only did the government endorse the use of PEDs, it actively participated in the development of more sophisticated drugs that could not be detected by the established tests. Athletes were given a range of doping measures including

amphetamines, human Growth Hormones (hGH), exogenous testosterone, and erythropoietin (EPO) (Hunt 2015), although anabolic-androgenic steroids were the most consumed substances (Dennis 2015). These drugs were consumed in large doses by the majority of athletes, including minors, and often against the directives of the GDR's own medical staff (Dennis 2015). Ignoring these directives continued until the fall of the Berlin wall in 1989 and the subsequent reunification of Germany, athletes learning in the following years the risks to their health and the side-effects associated with the PEDs they had consumed prior (Dennis 2015).

Individual athletes suffered the penalty associated with cheating if they tested positive for an illegal substance, but the program itself withstood the test of time. It was only with the fall of the Berlin Wall and the collapse of the USSR that the program ceased to exist (Dennis 2015). In the meantime, other satellites of the USSR (and the superpower itself) used similar techniques to gain an advantage over its competitors. Furthermore, western countries, who did not want to lose any ground to communist states, tended to “turn a blind eye to potential transgressors on their own teams” (Hunt 2015, 212). While the GDR top-secret program might have been the most radical and systemized approaches to doping, other countries also pushed their athletes to keep up with competition and tended to protect them from being discovered (Hunt 2015). A salient example of this would be the 1980 Moscow Games, where not a single case of doping was detected during the competition even though many positive results re-surfaced during record checks the following years. In total, experts believe that up to twenty percent of athletes should have been found guilty of doping, mostly from testosterone intake (Hunt 2015, Dennis 2015). The recent revelation of Russia's state-sponsored doping scheme mirrors this state protection to shield doped athletes from tests in international competitions.

The East German example showed the public that the choice of doping was not only an individual one, and that the idea of a ‘lone’, immoral cheating athlete was erroneous. East German athletes as a whole suffered the consequences of this program, with health problems associated with the (over)use of PEDs that revealed themselves over the long term.

1988: Ben Johnson

Steroids, particularly, posed a threat to the established testing/sanctions approach to doping. The beneficial effects of steroids could be perceived without having to take the drug during the competition, and, if properly timed, ingesting the drug would not yield a positive result during

in-competition testing. “This was a highly ambiguous period, wherein the facade of progress and the myth of ‘clean’ sport, combined with the failings of the policy and testing systems, to facilitate a secretive but large world of doping and consequent potential health risks” (Dimeo 2016, 105). This meant that the IOC was forced to support the illusion that its tests were effective and could support the idealist position of doping-free events, while knowing full well that many cheating athletes could not be stopped.

Grumbling against the use of steroids grew steadily in the 1980s as more knowledge was gained about the drugs negative side effects (Beamish 2015). However, national governments, international federations seemed content with the regulations in place despite the public acknowledgement of the harm caused by doping: “The IOC rationalized its political passivity as the necessary consequence of its own policy of decentralization, which left the difficult implementation of policy to national and international federations whose commitment to effective doping control has seldom been evident” (Hoberman 2005, 241).

Once again, a crisis compelled the different stakeholders to modify and create new regulations that better suited the issue. This happened at the 1988 Seoul Olympics, when Canadian sprinter Ben Johnson lost his gold medal a few days after breaking the 100-meter record because he tested positively on a doping test (Beamish 2015). This shocking announcement resonated at the international level because Johnson was the highest profile athlete at that time to have been found guilty of doping (Hoberman 2005). This scandal prompted the *Dubin Inquiry*, which sent Canadian officials to investigate doping substance use by its athletes (Hunt 2015; Beamish 2015). Ultimately, the Dubin inquiry revealed that doping was a generalized issue across a majority of sports, and that the testing procedures in place were inadequate. Dubin recommended that Ben Johnson’s case should be treated by the responsible sporting federation, in this case the IAAF (Dubin 1990), which went against Sports Canada’s initial suggestion that Ben Johnson should be given a lifetime ban (Beamish 2015). Dubin also pushed for the federal government to become deeper involved in anti-doping regulations and strengthen the Canadian drug-testing program, which resulted in the creation of the Canadian Anti-Doping Organization in 1991.

The Ben Johnson scandal, along with a few other cases, illustrated that the regulations in place were unsuitable, and compelled states to take matter into their own hands. This resulted in the creation of a variety of anti-doping programs (Hunt 2015). In the United States, anabolic steroids

and hGH were included under the Comprehensive Crime Control Act of 1990, making the traffic of these substances illegal and subject to punishment (Kayser and Broers 2012). A few countries, like Italy and France, went a step further and chose to make the practice of doping illegal, which would soon prove problematic for the organization of competitions due to the Festina scandal.

1998: Festina Cycling Team

Efforts continued to be made in the 1990s, but a lack of coordination between national agencies, sports federation, the IOC, and the heterogeneous application of anti-doping regulations were often cited as a key obstacle in the worldwide fight against doping (Hunt 2015). The Festina Affair at the 1998 Tour de France was the culmination of these different problems, and was the last straw before WADA was created.

The Festina Affair began when performance-enhancing products were found in the vehicle of one of the Festina soigneurs at the Belgium-France border. When these were discovered the ongoing Tour de France was disturbed, policemen searched the hotel rooms of the athletes and staff, and athletes delayed the start of a stage to protest the doping allegations (Brissonneau 2015). In the end, the Festina cycling team was implicated in the doping scandal in a comprehensive, unprecedented, manner: all nine members of the team were found guilty of doping or assistance to doping, and many support staff were also implicated in the traffic of doping substances, which included erythropoietin (EPO) (Brissonneau 2015). EPO is a red blood cell-boosting hormone for which no test was devised at the time. The sight of Festina cyclists being handcuffed and brought to the police station made international news, and a renewed disdain for athletes who took PEDs motivated a call for more comprehensive regulations (Hunt 2015). Many other teams were also suspected of taking doping substances and several cyclists either pulled out of the competition or were arrested. Retired and current cyclists also started confessing to taking PEDs, and riders held sit-down protests before different stages against the different police operations taking place (Brissonneau 2015). For the first time, doping was not the problem of an individual athlete, or even a rogue state: it was systemic in a sport at its most elite level and almost caused the collapse of the Tour de France for the first time since its creation in 1903 (aside from its cancellation during the two World Wars). It was, also, something to be “unambiguously opposed” (Savulescu 2015, 351), and universally loathed. In the statements by official bodies, in this case the UCI and the IOC, the previously stated concern for

athlete's well-being and the physical dangers of doping also seemed to be phased out by the need to protect the integrity of the sport and one of its central tenet, fairness, an argument which took center stage in the debate (Cycling Independent Reform Commission 2015).

As Møller remarks, the Festina affair marked the entry of the doping problem into the political sphere. Each of the national governments who had worked in the past decade to create their own testing programs were relying on the sports federations to monitor what was or was not accepted in each sport. France, by arresting and imprisoning athletes, showed how far the disorganized regulations could lead. "The prospect of prestigious sporting events tarnished by images of athletes removed from competitions in handcuffs was nightmarish" (Møller 2016, 211). The lack of coordination had reached a critical point, and it needed to be remediated. In order to strategically place itself at the center of the debates on how to react to this new facet of the problem, the IOC called the Lausanne Conference the following year (Hunt 2015). This is where WADA was officially created.

At the dawn of the 21st century, the moral status of doping in sports was clear. Doping was considered unethical and harmful for the athletes and the sports and it was a problem that needed a comprehensive, worldwide collaboration to be eradicated or controlled. The moments evoked in this section all contributed to this realization. Another element that also needs to be understood deeply is WADA itself, how it works, and how the WADC is organized.

Current WADA organization

Creation of the Agency

When the IOC conveyed the states and international federations to the Lausanne conference, it was with the intention of reinforcing its power in the fight against doping and an effort to prove it could handle cheating athletes on its own. That decade had been hard on the IOC, whose reputation "as the upholder of high sporting ideals and the defender of drug-free sport was coming increasingly under attack" (Waddington 2016, 83). National governments started to get more involved in the control of doping on their own territories in response to local scandals like the Ben Johnson case in Canada. In the early 1990s, these same governments started signing

treaties together (like the International Anti-Doping Arrangement) (Waddington 2016). Not wanting to lose control on such a substantial issue, the IOC, with the conference, planned on repositioning itself as the de facto authority to lead an entity coordinating the anti-doping effort.

The conference was chaired by the President of the IOC, and only delegates who had to been invited by the IOC could speak at the conference unless the chairman said otherwise (Hanstad, Smith, and Waddington 2008). Within a day, however, it became clear that the national governments had another plan on how the doping issue should be tackled. This plan was to create the agency suggested by the IOC, but make it independent from the Olympic Committee. “It might be said that it effectively ended the IOC’s policy leadership role in this regard. Every key proposal of the IOC concerning the organization of the new body was defeated” (Hanstad, Smith, and Waddington 2008, 242). The World Anti-Doping Agency was born with the *Lausanne Declaration on Doping in Sport* on February 4th, 1999, and started operating in Montreal the year after, under the presidency of founder Richard Pound.

WADA’s purpose and activities

Upon its creation, WADA’s main mission was to provide a worldwide fight against doping by “(1) increas[ing] the risk of catching athletes who dope; and (2) standardiz[ing] the different anti-doping regulations and sanctions for doping use” (Tamburrini 2006, 200). The vision at the heart of WADA, “[a] world where all athletes can compete in a doping-free sporting environment” (World Anti-Doping Agency 2016c), includes educational outreach, scientific research, anti-doping coordination and development and, mainly, monitoring the athletes’ compliance to the Code.

Today, the goals of WADA, as written in the Code, are in line with the IOC’s previous regulations on doping that favours an idealist approach over a realistic one. It reads as follows:

“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” (World Anti-Doping Agency 2015b, Preamble - Unchanged from the original 2003 version).

Ever since the *Resolution regarding the amateur status*, and more precise testing/sanctions regulations, the IOC and WADA chose to ban doping altogether, in order to preserve ‘clean’

sports, regardless of whether they can achieve this objective (Allison and Monnington 2002, Dimeo 2016). As such, some products, like EPO, can be officially banned for many years without a test capable of detecting them in an athlete's urine. Using EPO is still cheating, but to prove it was being used would be difficult, if not impossible.

The cost of running WADA and its operations is assumed equally by the IOC and by national governments (World Anti-Doping Agency 2016c). The states further solidified their allegiance to the Agency with the UNESCO *International Convention against Doping in Sport*. This 2007 convention legally binds national governments to align their domestic policies with WADA and the Code, and was written in a further effort to harmonize the anti-doping effort across countries and disciplines (McNamee 2012). An independent entity, the Court of Arbitration for Sport (CAS), is mandated by WADA to handle instances when there is litigation regarding doping cases and attached sanctions. The agency is responsible of certifying the NADOs and ensuring compliance (including their laboratories). Once this is completed, NADOs are responsible of carrying out delegated doping control functions on their territories (World Anti-Doping Agency 2016c).

The World Anti-Doping Code

The first iteration of the WADC was written in 2003, and was revised in 2009 and 2015. Its signatories are the international sports federations, NADOs, professional leagues³, the IOC and the International Paralympic Committee (IPC). The Code is attached to five other documents detailing different technical areas, including; the *Prohibited List*, the *International Standard for Testing and Investigations*, the *International Standard for Laboratories*, the *International Standard for Therapeutic Use Exemptions* and the *International Standard for the Protection of Privacy and Personal Information* (World Anti-Doping Agency 2016). Arguably the most important, the Prohibited List is revised annually and determines exactly what drug or method counts as doping at a particular point in time (World Anti-Doping Agency 2015c).

The WADC is the most important anti-doping regulation, and lays the foundation for the international fight against doping in sports. It simultaneously defines what is doping, how the

³ One notable exception is the big four North American professional leagues – Major League Baseball (MLB), National Basketball Association (NBA), National Football League (NFL) and the National Hockey League (NHL), which have their own anti-doping regulations and do not submit their players to WADA's stringent requirements (World Anti-Doping Agency 2016d).

NADOs and International Federations are supposed to fight it (testing, education, and research objectives), and the consequences of breaking the Code (World Anti-Doping Agency 2015b).

What is doping? (According to the Code)

While this may be the most evident question when looking at a regulation that aims to prevent doping, the WADC does not attempt to provide a normative answer to what doping is. In the 1990 Dubin report, Sir Arthur Porritt, then chairman of the British Association of Sports medicine, highlighted this common stance on the task of defining doping:

“To define doping is, if not impossible, at best extremely difficult, and yet every one who takes part in competitive sport or who administers it knows exactly what it means. The definition lies not in words but in integrity of character” (Dubin 1990, 77-78).

In other words, we know, or can almost ‘sense’ what doping is, but trying to conceptualize it in a succinct definition is elusive. Either the definition would be too narrow, and leave out important enhancing substances or techniques otherwise normally thought of as doping, or too broad, and include items commonly accepted within the sport community. Møller gives an example of the former instance by illustrating how defining doping as ‘the use of artificially produced performance-enhancing substances’, includes anabolic steroids and EPO, but excludes blood transfusion of one’s own blood, whereas the latter instance would arise if doping was explained as ‘all performance-enhancing substances’. This definition would include blood transfusion, but would also prohibit coffee and energy bars (Møller 2010).

Conscious of these traps, WADA’s definition of doping does not explain what is doping conceptually, but takes the form of a list of acts that could be punished under their regulations (Schneider 2015):

“Article 1 – Definition of doping: Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through 2.10 of the *Code*” (World Anti-Doping Agency 2015b, Article 1).

The doping violations are varied, and cover activities that we may not conceive of as ‘doping’ in the classic sense (Items 2.1 to 2.10 of Article 2 (World Anti-Doping Agency 2015b):

“2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete’s Sample*

2.2 *Use* or *Attempted Use* by an *Athlete* of a *Prohibited Substance* or a *Prohibited Method*

2.3 Evading, Refusing or Failing to Submit to Sample Collection

2.4 Whereabouts Failures

2.5 *Tampering* or *Attempted Tampering* with any part of *Doping Control*

2.6 Possession of a *Prohibited Substance* or a *Prohibited Method*

2.7 *Trafficking* or *Attempted Trafficking* in any *Prohibited Substance* or *Prohibited Method*

2.8 *Administration* or *Attempted Administration* to any *Athlete In-Competition* of any *Prohibited Substance* or *Prohibited Method*, or *Administration* or *Attempted Administration* to any *Athlete Out-of-Competition* of any *Prohibited Substance* or any *Prohibited Method* that is prohibited *Out-of-Competition*

2.9 Complicity

2.10 Prohibited Association – As a way to prevent banned athletes to work in other forms in sports, e.g. coaching”

For example, items 2.3 and 2.5 are not acts of doping *per se*. Refusing to hand out a sample does not mean the athlete consumed any doping substance, but the WADC considers it as such. Acts of doping also include association with known dopers (2.10), even if the athlete himself is clean. This is meant to prevent banned athletes to recycle their banned time by coaching other clean athletes. It is also important to understand that the offenses listed under article 2 of the Code are not oriented towards athletes only, but also towards their support personnel, an enlarged group of people that the regulation encapsulates under the concept of participant (World Anti-Doping Agency 2015b, definitions).

This inclusive formulation is not a coincidence (Schneider 2015). It gives the Code, and its attached Prohibited List, the last word on the substances and methods that count as doping and it frames activities linked to unwanted practices not only as mere infractions to the Code, but acts of doping in and of themselves. WADA *chose*, when writing the WADC, not to provide a philosophical or conceptual definition of doping. This approach makes sense given the constantly evolving science of performance enhancement. The Agency retains day-to-day control

on what should be considered doping, and does not have to change the definition every time a new technique or substance comes along, however original it may be. However, the lack of clarity around a “philosophically defensible definition of doping” (Schneider 2015, 9) makes in-depth discussions on the problem of doping, and ethical issues spawning from it, challenging for scholars, as they need to establish what they consider doping to be in order to advance further ethical considerations on the issue.

Legal principles

The WADC applies to the international federations and other signatories, not directly to athletes themselves. The latter fall under the legislation of their respective NADOs, which are governed by the WADC (McNamee and Tarasti 2010). The Code, which exists in the sphere of private law, is added to the independent public laws of countries where athletes are training and/or competing. As mentioned previously, France and Italy have made doping illegal, which means they can impose other sanctions on their athletes in addition to the sanctions found in the Code (McNamee and Tarasti 2010). Aside from the few countries that have criminalized doping, most only peripherally address the practice of doping such as through legal sanctions against drug trafficking and tax evasion. These can be very important in the fight against doping, especially given the investigative mandate of WADA. However, the punishments for transgressing rules related to doping do not have the same nature in national legislations and in the Code. Breaking laws in various national legislations can lead to fines and possibly imprisonment as means of punishment, while going against regulations laid out in the Code leads to an ineligibility to compete, and the loss of prize money and/or medals (McNamee and Tarasti 2010).

The WADC uses a concept of strict liability that is stronger than the criminal liability found in public law. In the context of the WADC,

“It means that each athlete is strictly liable for the substance found in his or her bodily specimen, and that an anti-doping rule violation occurs whenever a prohibited substance (or its metabolites or makers) is found in bodily specimen, whether or not the athlete intentionally or unintentionally used a prohibited substance or was negligent or otherwise at fault” (World Anti-Doping Agency 2016a).

The most concrete phrasing of a strict liability approach in the Code can be found under Article 2:

“*Athletes* or other *Persons* shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the *Prohibited List*. (...) It is not necessary that intent, *Fault*, negligence or knowing *Use* on the *Athlete’s* part be demonstrated in order to establish an anti-doping rule violation under Article 2.1” (World Anti-Doping Agency 2015b, Article 2).

When an adverse analytical result happens during a competition, the athlete’s results are automatically invalidated. It would then be the athlete’s responsibility to demonstrate how the sample entered their system if it was ingested or administered without any fault of their own (which is very difficult to do, as most appeals are denied (Elbe and Overbye 2015)). The strict liability is necessary in an anti-doping regulation, since establishing proof against a cheating athlete that goes beyond just a positive sample would be harder, and would defeat the purpose of testing in the first place because many athletes would be exonerated due to a lack of proof (McNamee and Tarasti 2010). The 2009 version of the Code introduced a certain amount of flexibility because the offense can be diminished if an athlete demonstrates that they did not have the *intention* to cheat either by accidentally or unwittingly ingesting a banned substance (World Anti-Doping Agency 2016a, McNamee and Tarasti 2010)⁴.

The WADC positions itself as sports regulation akin to other rules athletes have to follow in competitions, like not touching the ball for soccer players, or being a certain weight to fight in a precise category in boxing. WADC measures like the Whereabouts system and the blood or urine tests (to be detailed in the section ‘Testing and investigation’) can be imposed on athletes because these regulations are *part* of the sport, and if athletes do not want to follow these rules they can opt out of these elite sport competitions. Any person participating in sport under the authority of a signatory or government is understood as an *Athlete* and therefore subject to WADA’s regulations (World Anti-Doping Agency 2015b).

The 3 criteria to figure on the Prohibited List

Three criteria are used to determine whether or not a substance or technique ends up on the PL:

⁴ Athletes are still responsible, however, for the support personnel they choose to align with, so cannot blame anyone from their team by appealing the decision and saying that they did not have a part in the consumption (World Anti-Doping Agency 2015b).

- (1) 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
- (2) 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
- (3) WADA's determination that the Use of the substance or method violates the spirit of sport described in the introduction to the Code. (World Anti-Doping Agency 2015b, paragraph 4.3.1.1. to 4.3.1.3.)

Inclusion of a substance or technique on the list is based on satisfaction of at least two of these three criteria. McNamee links this approach to the notion of defeasibility, which promotes an openness of definition when not all uses or criteria apply to a concept (McNamee 2012). The meeting of one or more criteria by a substance or technique is at WADA's sole discretion (paragraph 4.3.1).

The first two criteria are pretty straightforward and mostly depend on a scientific assessment of the substance that is done by WADA laboratories. However, the third criterion is more controversial in the scholarly literature, where it is considered necessary for some (McNamee 2012), deeply flawed by others (Foddy and Savulescu 2007), and is thought to potentially perform as a catch-all function that allows WADA to advance any agenda it desires (Savulescu, Foddy and Clayton 2004). This debate will be explored in the next chapter. As detailed in the preamble of the Code, the 'spirit of sport' is also not defined conceptually, but is made up of a non-exclusive list:

"The celebration of the human spirit, body and mind, and is reflected in values we find in and through sport, *including*:

- Ethics;
- Fair play and honesty;
- Health;
- Excellence in performance;
- Character and education;
- Fun and joy;

- Teamwork;
- Dedication and commitment
- Respect for rules and laws;
- Respect for self and other participants;
- Courage;
- Community and solidarity.

Doping is fundamentally contrary to the spirit of sport.” (World Anti-Doping Agency 2015b, Preamble - emphasis mine)

The use of the word *including* is an addition to the newest version of the Code (World Anti-Doping Agency 2015b; 2009). The 2015 version also uses a more open-ended version of the ‘spirit of sport’ than the 2009 iteration, which described it as “[t]he spirit of sport is the celebration of the human spirit, body and mind, and is characterized by the following values: (...)” (World Anti-Doping Agency 2009, Preamble).

Potential masking agents, for which “there is medical or other scientific evidence, pharmacological effect or experience that the substance or methods has the potential to mask the Use of other Prohibited Substances or Prohibited Methods” (World Anti-Doping Agency 2015b, paragraph 4.3.2), are the only exception to the two out of three criteria rule. Masking agents do not need to meet any criterion to be banned other than their ability to mask another illegal substance.

Testing and investigation

Substances and techniques can be prohibited either year-round or only during competitions (World Anti-Doping Agency 2015c). To police the use of prohibited substances or techniques, WADA introduced the ‘Whereabouts system’ in 2004 as a complement to in-competition testing. Active all-year round, the Whereabouts system requires elite-level athletes to declare where they plan on being every day for the next three months, to facilitate out-of-competition testing. During this time, athletes also have to indicate a one-hour period each day when they are available for random urine or blood tests. Failure to comply with the system, or an athlete’s refusal to undergo testing, does count towards a doping offense (World Anti-Doping Agency 2015b). If the athlete fails to comply with these rules three times within a 12 months timeframe (down from 18 month since 2015) they will be banned for doping, as per the article 2, paragraph 2.4 of the Code,

‘Whereabouts failure’, and sanctioned in the same way they would have been following a positive test. This heavy surveillance system is meant to act not only to track an athlete’s adherence to the WADC, but also to deter anyone who might be tempted to use a banned substance (Hanstad and Loland 2009).

The *International Standard for Testing and Investigations (ISTI)* adds further details to how the testing should be done and outlines the process from when the athletes are notified to the final handling of samples before analysis. Among important technicalities, urine samples need to be collected so that the Doping Control (the WADA or NADO official in charge of completing the test) can directly witness the athlete’s urine coming out of her body (World Anti-Doping Agency 2014), which can be intimidating for some. A chaperone is required to be present if the athlete is a minor. The ISTI also established the Test Distribution Plan, which guides testing for a given year. The Test Distribution Plan is a risk assessment of the likelihood that an athlete will take PEDs, based on several criteria such as the physical requirements of each sport, the potential of performance enhancement in the discipline, the reward available at each level, the history of doping in the sport, available research on doping trends, information from investigations, and the outcomes of previous Test Distribution Plans (World Anti-Doping Agency 2014).

An athlete can request to use one or more banned substance if they have a medical need for a certain banned product. These requests are known as Therapeutic Use Exemptions (TUE), and they need to be approved by the international federation for international athletes, and the appropriate NADO for a national athlete in order to be accepted (World Anti-Doping Agency 2015b). It is remarkably difficult to obtain this type of exemption, and many athletes refuse to use certain drugs or treatments for their ailments in order to respect anti-doping regulations (Overbye and Wagner 2013).

In the latest iteration of the WADC, the Agency also gave further importance to the part of its mandate concerned with the investigation of doping allegations in order to tackle what it sees not only as an individual problem (athlete-specific), but a systemic one (involving teams, countries) (Dvorak et al. 2014). This also recognizes that while testing is still very important for the Agency’s goal, intelligence-gathering activities are becoming essential to identify cheating athletes. The modified sections (mainly articles 5, 20, 21, 22) now give increased incentives to

the International Federations, National Olympic Committees (NOC), athletes and other staff, to cooperate with any NADO anti-doping investigation (World Anti-Doping Agency 2015a).

Future of WADA and the WADC

The last section presented a very brief portrait of WADA and its Code in its current iteration. It is likely to continue changing. The Agency is always evolving and modifying the WADC to better suit the current context of performance enhancements in sport. Two areas of concern are being particularly scrutinized at the moment, and are likely to see some changes in the next few years.

Doubling down on tests and investigations

For many, the Russian scandal is proof that WADA and the IOC do not have the means necessary to fight against organized doping initiatives. The Agency needs more money to conduct tests and invest in research to develop means to detect sophisticated methods of doping. This, coupled with harsher sanctions, could prevent another doping scheme on the scale of the one seen in Russia, according to officials from WADA (World Anti-Doping Agency 2016b) and different NADOs (Tygart 2016, World Anti-Doping Agency 2016b, Agence Française de Lutte Contre le Dopage 2016).

Some believe that the consequences of cheating need to be increased since athletes are still willing to use PEDs under the current threat of sanctions. “Doping will continue as long as its benefits outweigh its consequences, and anti-doping efforts have not yet managed to sufficiently flip the ratio” (Aschwanden 2016). The sanctions also need to focus on the ‘real’ cheater as opposed to laying blame solely with the individual who was caught. In the case of Russia, the individual athletes were not the only ones responsible - the state was involved too - and both should suffer the consequences. The director of the United States Anti-Doping Agency (USADA), Travis T. Tygart, is among the people who have called for a stronger version of current guidelines and sanctions:

“The McLaren investigation into Russia must encompass all Russian sports, and WADA must demonstrate that the principle of accountability will be applied as rigorously to a state-run doping program as it has been to individual athletes. This is

the only way for the agency to restore public confidence after its tepid response to the Russian scandal. Clean athletes deserve nothing less” (Tygart 2016).

Therefore, proponents of this approach have argued in favour of a blanket ban similar to the initial sanction WADA suggested to the IOC following Russia’s digression. A blanket ban could be considered as an Olympic version of the trolley dilemma, where a few banned ‘clean’ Russian athletes would be casualties in order to benefit a greater number of athletes who can participate in a competition that is truly doping free (Aschwanden 2016). However, this kind of calculus implies that the system of ban and sanctions works well enough to preserve the ‘cleanliness’ of the different competitions, whereas this is not necessarily the case. This raises a second concern about WADA, in regards to the degree to which the Agency is accountable and transparent in its activities.

Transparency in practice and results

Measuring the success of anti-doping initiatives is not an easy task. One cannot simply use the number of positive drug tests to assess if the parameters around anti-doping regulations are effective. The incidence of positive test results is a poor, if not worthless, indication of the use of PEDs by athletes, only acknowledging the positive tests found, not how many athletes are in fact consuming PEDs (Waddington 2016, Stewart and Smith 2014, Dubin 1990). It is, however, the main component of WADA’s yearly report that assesses urine and blood tests that come from athletes during or outside of competition.

As Waddington remarks, “a critical weakness of anti-doping policies has been the failure even to try to monitor properly – and also the failure, for public relations purposes, to admit publicly – the prevalence of drug use in sport” (Waddington 2016, 86). This failure represents the anti-doping movement’s tendency to display a façade that the situation is under control. This puts forward an idealist approach to the issue that emphasises that a ‘clean’ sport could be achieved under more stringent regulations. WADA’s black and white position against doping “utilises the essentialised and mythical ideas that sport should be natural, fair and healthy, to create a more intensive, more powerful, surveillance and sanction based system” (Dimeo 2016, 108). In contrast, a realist approach to doping in elite sports would understand doping as inevitable in elite sports and could prioritize more achievable goals or target specific pressing problems. Without more precise data about WADA’s success in preventing doping, like how much doping

has decreased since a particular regulation was put in place, promoting only an idealist version of this fight is detrimental to athletes who think they are practicing their sports on a level and ‘clean’ playing field. Arguably, this is difficult to do, positive results only providing a part of the image, and asking athletes and support personnel directly about the extent to which doping substances are used not leading to trustworthy results because people tend to deny that they use PEDs even when they are promised anonymity (Connor, Woolf, and Mazanov 2013). Furthermore, pro-doping activists are almost certainly under-represented, since the position they defend carries a stigma (Morgan 2009).

For critics, this lack of measurable outcomes is comparable to the lack of information or reasoning behind how WADA arrives at certain decisions (Morgan 2009). While the sanctions are administered by NADOs, International Federations, or the IOC, WADA is responsible for deciding things like which drugs or practices are added to the Prohibited List, or which laboratories can become accredited (World Anti-Doping Agency 2015b).

While the accreditation of laboratories benefits from the clarity of the International Standard for Laboratories guideline⁵, how the products find their way unto the PL is still clouded in mystery as the ‘why’ of each substance put on the list (Henne, Koh and McDermott 2013). Therefore, trying to figure out which criteria each substance or method on the Prohibited List violated is a guessing game, as is uncovering what evidence was used to merit its inclusion.

In conclusion, the evolution of the anti-doping movement from individual cases from early in the 20th century, to the creation of WADA in 1999 serves as a background to the functioning and existence of the fight against anti-doping occurring today. The current ‘crisis’ around state-sponsored doping in Russia has highlighted precarious areas in WADA’s operations, which are now at the forefront of discussions regarding possible reforms for the Agency. Many of the issues this investigation uncovered need to be further addressed.

⁵ It is, however, still impossible to know the performance of each laboratory, WADA arguing that “this would permit athletes tailoring doping practice to current testing technology” (Kayser and Broers 2012, 3).

Chapter II

Should doping be considered unethical in elite sports?

It has been observed that even if doping was thought to be a negative practice, few efforts were made to justify the ban once it was put in place (Schneider 1993, Dimeo 2016). Schneider (1993) has classified arguments against doping into four different groups that are still applicable more than twenty years later, remarking at the same time the scarcity and lack of depth of arguments in each group. These are arguments that touch on fairness, harms, the nature of sport, and dehumanisation. Today, each family of arguments paint a much more extensive portrait of the theme they each explore. In exploring each family and their respective counterarguments, scholars have aligned themselves along a scale ranging from total opposition to doping practices to full approval of doping in sports, although more often than not academics fall somewhere in the middle and approve certain arguments for the ban while rejecting others (Morgan 2009). Discussions in academia now also reach farther than the mostly theoretical anti-doping stance of the 1990s and include concerns about how appropriate WADA's measures are from a legal and social standpoint (Hanstad and Loland 2009, Camporesi and McNamee 2014, King and Robeson 2007).

The 'accepted' stance on doping, though, has remained the same and has even been legitimized by WADA, an organization that dictates doping regulations for the majority of elite sporting competitions. As it will be seen in this chapter, not everyone agrees with the WADC's strict ban on doping, nor the means used to promote it. Much of the deeper criticism tends to come from academia because the media, fans, sports associations and athletes themselves rarely openly disagree with WADA's general objective to have 'clean' sports that are completely void of doping. Most critiques from these groups have pointed towards specific decisions (e.g., the inclusion of a particular substance on the prohibited list (Bethea 2016), length or validity of a specific sanction (Hartog 2016b)) or rules used to promote 'clean' sport (e.g., the invasive nature of the Whereabouts system, breach of the athlete's privacy (Overbye and Wagner 2013, Elbe and Overbye 2015)). In contrast, commentaries in scholarly literature that stem from fields like philosophy, ethics, social sciences, and legal studies focus on more profound disagreements

about the fight against doping itself, its legitimacy, and the methods WADA uses to further its agenda.

This chapter will aim to paint a panorama of the current debate and exposing the variety of arguments used to advance different positions. In doing so, the question “*should doping be considered unethical in elite sports?*” will guide this exercise and should be understood as weighing on two different concepts. First, this overview will consider if banning doping from elite sports is the ethical solution in itself. Second, this question also entails an analysis of more concrete regulations WADA has applied over the years that are reflected in the WADC and whether these are ethical. In order to do so, arguments will be grouped by type along the same framework as the three criteria of the Code discussed in the preceding chapter. The organization of this chapter will follow the order of the criteria as they appear in the WADC: (1) doping as performance enhancement, (2) doping as harmful, and (3) doping as against the ‘spirit of sport’. We will critically assess cases for an anti-doping stance (pros) and cases against a doping ban (contras) in each category.

This classification has numerous advantages and has been used by most authors (Miah 2005, Kiouss 2008, Tamburrini 2006, Møller, Waddington and Hoberman 2015)⁶. First, it allows for a flow between theoretical discussions on the morality of doping and ethical assessment of the WADC guidelines according to the different issues at hand. Second, the three criteria are each fueled by various moral considerations that stem from distinct frameworks, used to analyze ethical dilemmas arising from public health issues (Roberts and Reich 2002), which this arrangement allows us to see more clearly. Finally, discussing arguments while linking them to a precise criterion gives us the possibility to isolate which one (if any) we should modify in our approach to doping in elite sport, while still keeping one or more useful criterion, an exercise that will be done in Chapter 3.

⁶ Schneider has used a similar classification in a number of papers, pre- and post- WADA. To better fit the three criteria, I chose to regroup her last two categories, ‘nature of sport’ and ‘dehumanisation’ under the discussions regarding the ‘spirit of sport’ criterion.

Is doping unfair?

“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” (World Anti-Doping Agency 2015b, Article 4.3.1.1).

The first criterion has to do with the perceived unfairness of using performance enhancing drugs or methods when other competitors are not doing the same. Arguments addressing this criterion lean heavily on rule-based approaches to ethics, with defenders of anti-doping regulations using a contractualist perspective to support their claims (Loland 2002, McNamee 2012) and critics of the ban using rights-based perspectives to back their assertion that doping should be left to the athletes to decide (Miah 2005, Savulescu 2015). In the area of public health, these types of concerns would be encompassed by the perspective of liberalism, focused on rights and opportunities (Roberts and Reich 2002). Liberal arguments can be used for both sides of the debate, leaning either toward an egalitarian liberalism (most anti-doping arguments, although it could be used to defend doping) or a libertarian approach (strictly pro-doping arguments).

Pro: Unfairness to the competitors

The first group of arguments revolves around how it is unfair to ‘clean’ athletes when so-called cheating athletes choose to dope because it adds inequality to the otherwise level playing field created by the elite sporting competition (e.g. running the same length on the same surface, or throwing a javelin against similar winds) (Loland 2002, Lenk 2007). This is the argument that is invoked the most frequently, especially by sports federations, sports associations, and the athletes themselves. Loland and Hoppeler refer to Rawls and his theory of justice when they assert that a sport competition is a rule-governed practice, and, therefore, athletes have the moral obligation to adhere to its pre-determined rules (Rawls 1971). Many rules in different sports do not seem to have any logic behind them (e.g. Players can’t touch the ball with their hands in soccer, players can’t make more than three steps without dribbling the ball in basketball), and abstaining from doping is such a rule. Anti-doping and international sport authorities do not need to justify their stance against doping, they merely have to enforce it. Moreover, doping has also been described as unfair because it gives an advantage to the rule violators who “enjoy the

benefits of cooperation without doing their fair share” (Loland and Hoppeler 2012, 348), while expecting others to follow the rules.

However, using PEDs and enjoying the benefits while others choose not to use them does not make doping unfair in and of itself. What is unfair is going against the established anti-doping rules (McNamee 2012). If there were no regulations to support anti-doping positions, the use of PEDs would then become fair as a result. Arguing that doping is in itself unfair and, thus, unethical because it is a form of cheating makes for a poor circular argument (Gleaves and Llewellyn 2011). In this argument, both premises support one another: (1) doping should be banned because it is unethical and (2) doping is unethical because it is banned and, therefore, doping is cheating.

Aside from the fact that it is considered cheating, there is no clear explanation why doping is unfair (Kious 2008). Or, I should say, more unfair than other inequalities that are commonly accepted in sports. Many other unequal aspects accepted in competitions could be deemed unfair such as an athlete’s natural abilities or their funding and training opportunities, which are largely dependent on the wealth of each country of origin. Singling out doping and acting as if it is the only unfair factor in an otherwise controlled and equal environment makes light of these other factors without explaining how doping is different from them. In fact, when it comes to natural abilities and genetic predispositions, for some doping could even rebalance these inequalities, to let only the hard work, dedication and training shine through (Gleaves and Llewellyn 2014, Bonte, Sterckx and Pennings 2014)).

However, defenders of anti-doping could respond to this last point by mentioning that due to its technological nature, doping will always advantage athletes from richer countries that have the resources to consume the best products and develop more sophisticated techniques and drugs. Therefore, allowing doping under a patent system like we are using today for pharmaceutical products would only further contribute to unfairness in elite sport, with richer countries developing products they could now legally hold off the market from poorer states.

Finally, anti-doping promotes another kind of unfairness. By prohibiting doping without having the means to fully eradicate it (and failing to recognize that this is so) (Savulescu and Foddy 2011), WADA puts ‘clean’ athletes at a disadvantage. Knowing that doping has proven extremely hard to suppress completely, some authors have argued that it would be fairer to

develop a more inclusive approach to PEDs in sports that could offer the same opportunity to everyone (Kayser and Broers 2012, 2015, Savulescu, Foddy and Clayton 2004). The actual unfairness that ‘clean’ athletes experience, after all, is created through the flawed expectation that the testing and investigation approach is able to fully contain doping practices. But the fact that athletes continue to be caught in most competitions and the discovery of massive doping in Russia proves that the phenomenon of doping has not ceased and shows that it can take many years (and countless competitions) before cheaters are caught. Making the moral choice, in this situation, also means accepting the risk to be pitted against cheaters unknowingly in an imperfectly safeguarded system. Discrepancies between the different countries and their anti-doping effort only furthers this inequality (Savulescu 2015).

Contra: Rights of the athlete

Defenders of anti-doping measures often reference athletes’ duties when explaining why doping is unethical and why banning the practice makes sense from a moral standpoint. However, critics of the anti-doping movement have also appealed to arguments about the rights of athletes to show that the current ban is unethical in that it deprives them of fundamental rights, and that this rights violation is more important than the moral status of doping in itself. This is to say, that they believe that regardless of whether PEDs are good or bad, they should not be banned anyway.

The first right that is compromised by anti-doping regulations is the right to decide for oneself, if said decision is not overtly dangerous for the person and does not impact negatively others around them (Savulescu 2015). Doping, in this sense, could arguably be presented as something that could be left to the athlete’s own decisions. There could be consequences for an athlete’s health, but, as discussed in the next section, banning PEDs solely due to this would be paternalistic. This is especially true given that society tends to accept equally dangerous practices, like cigarettes, or base-jumping (Savulescu 2015, Miah 2005). Not having anti-doping regulations may impact others, especially competitors, by coercing them into using doping products too in order to keep up with the group. But in this case it would still be their own choice to keep up by doping or to compete at a lower level and not consume PEDs.

Those who are against the ban also argue that it violates the right to privacy due to the intrusive Whereabouts system and the testing procedures (Elbe and Overbye 2015, Overbye and Wagner

2013, MacGregor 2015). The practices, detailed in Chapter 1, are strongly perceived as an infringement of the athlete's personal life (Miah 2005). In response to this, supporters of the ban argue that competing at the elite level needs to be seen as a privilege (Hanstad and Loland 2009), and that the broader idea of a 'clean' sport commands certain sacrifices on the athlete's part.

“The political acceptance of the interpretation that professional sports are not professions in the ordinary sense of the word and athletes therefore are not entitled to the same level of protection as workers in other professions is crucial to the WADA cause” (Møller 2016, 112).

Supporters of the ban argue that because elite athletes are not ordinary workers and have likely already profited from their participation in sports since they are now working at its highest level, the rights to decide for oneself and the right to privacy could be waived in order to protect the institution with which their achievements are so intrinsically linked. By accepting to compete, the athletes have consented to the rules, including anti-doping ones (McNamee and Tarasti 2010).

This defense is interesting, but does create a supplementary burden for someone choosing to use it. He or she would need to pinpoint what makes anti-doping so fundamental to the institution of sport, that it can warrant such sacrifices on the athletes' part. To answer this question, one needs to move onto another category of arguments that will be seen later, centering on the 'spirit of sport'. Doping, from this perspective, is not only unfair, but also detrimental to the institution that is elite sport, since it goes against the values that constitute it (fair play, health, respect for rules, amongst others). The threat of destroying what is seen as valuable in sport would then effectively warrant sacrificing some of the athlete's rights in exchange of the benefits received through her participation.

Is doping harmful?

“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*” (World Anti-Doping Agency 2015b, Article 4.3.1.2).

The second criterion is interesting in that it mentions the possible negative consequences doping could have for the athlete's health. In the literature, this idea is expanded into every adverse effect doping could have including its effects on the athlete, their competitors, the sports community, and society in general (Schneider and Butcher 2000, Tamburrini 2000). However, this utilitarian defense of anti-doping measures can also be turned on its head and give rise to an argument that is focused on the negative outcomes arising *from* a ban on doping.

Utilitarianism is an approach that values the wellbeing of the people concerned by a regulation in order to determine its moral legitimacy, focusing strictly on the consequences, as opposed to the act in itself as was discussed in the preceding section. Utilitarianism implies weighing the possible outcomes and favours the decision that strikes the highest ratio of benefits. In public health, this means "the right choice is viewed as the one that produces the most gain, for example, the largest reduction in the burden of disease" (Roberts and Reich 2002, 1055). This greater good is not necessarily the greater happiness of one individual, but the aggregate happiness representing everyone concerned by the issue (Loland 2002, Mill 1989).

Pro: Preventing harm

If the criterion is restricted to whether it harms an athlete, the reasoning behind the argument that doping is or may be harmful in several ways could be used to give plenty more reasons why we should not tolerate doping in sports. The rationale behind the idea that anti-doping regulations protect people's health is that the negative consequences of doping clearly outweigh the potential positives that would result from enhancing the athlete's performance. Therefore, this imbalance renders doping unethical under utilitarian precepts.

I will take a look at these perceived negative consequences from those closest to the person actually taking the PEDs (the athlete themselves) to the farthest (society in general).

Harms to the athlete

Athletes who dope mainly do so by ingesting various substances. These substances, which they wouldn't have consumed otherwise, can have adverse effects for the health of the athlete. This is the reasoning at the heart of the second criterion, and it is easy to understand why. Ever since Knud Enemark Jensen's death, this fear of ailments from doping has been a strong motivation to write regulations limiting their consumption. East German athletes, after learning the impacts on

their bodies of the pharmacological regimen they were fed for many years in the 1970s and 1980s launched a lawsuit against the people behind *State Plan Theme 14.25* (Dennis 2015).

Public policy also used the fear that PEDs could be harmful for a person's health to further banish certain substances, as in the case of the Steroid Trafficking Act of 1990. Joe Biden, who wrote the report that led to this legislation, emphasized the dangers of consuming the drug: "the evidence is clear: steroids are dangerous drugs that can permanently disfigure young users – and, in some cases, can take young lives...(and) can cause severe psychological disorders" (Biden 1989, 103, cited in Dimeo 2016). In the effort to stabilize the anti-doping effort, the evidence of PEDs' consequences for the user was widely circulated in both general media and academic publications (Dimeo 2016). Dimeo remarks, however, that not all of these claims were verifiable. These now debunked claims include things like citations that refer to the alleged twenty or so young cyclists that had died from EPO usage in the early 1990's (Dimeo 2016).

Both true and false claims about the danger of PEDs for the athlete nonetheless impacted the international sport community, and were one of the most important reason behind WADA's creation (Kayser and Broers 2015, Møller 2005). This is made clear in the very first lines of the Lausanne treaty: "Considering that doping practices contravene sport and medical ethics, and that they constitute violations of the rules established by the Olympic Movement, and concerned by the threat that doping poses to the health of athletes and youth in general" (World Conference on Doping in Sport 1999).

For the sake of clarity, Schneider and Butcher develop the argument into three premises, which she later debunks:

“(P1) Substance or practice X harms its user

(P2) Its user needs to be protected

(P3) The user can be protected by banning the substance

Therefore the substance should be banned” (Schneider and Butcher 2000, 188).

Note that (P1) addresses a substance or practice X, and not doping in general. Today, WADA is responsible for assessing the level of risk a substance can pose to an athlete's health (World Anti-Doping Agency 2015b). But beside the criterion cited earlier, there is no precise or technical guideline on how the drugs or methods are evaluated (Henne, Koh and McDermott 2013). Also, the very fact that the substances are illegal makes it hard to obtain further data about

their impact on an athlete's health (King and Robeson 2013, Camporesi and McNamee 2014). Our current evidence about harms to the athlete comes mainly from cases where there is unregulated PEDs consumption in uncontrolled conditions in very high doses (Kayser and Broers 2015, Savulescu 2015, Tamburrini 2006). This uncertainty highlights a commonly recognized flaw within the utilitarian approach, which is that we can never know every outcome in advance for certain and we have to rely on a good deal of predictions. But even if the predictions turned out to be true, and we had a good knowledge of the extent of the risks from some PEDs, this would only apply to certain drugs, and the 'harm against the athlete' argument could not be used generally to condemn doping (Schneider and Butcher 2000, Lavin 2007). Therefore, for (P1) to stay valid, substances and methods must be evaluated individually, with the supposition of rigorous evidence to support adverse effects from them.

For critics of the anti-doping movement, (P2) is more problematic. The assumption that the athlete should be protected, even from their own decisions, places the argument under a paternalistic light that many people oppose (Tolleneer, Sterckx and Bonte 2013, Tamburrini 2006, 2000, Fost 1986). In further discussing this issue, I will assume that the (would-be) doped athlete is a competent adult who is able to make informed decisions and is free of coercion. If this is so, restrictions on doping also restrict their autonomy. In public policy, this is acceptable under certain conditions. Harms from the prohibited practice have to be sufficiently higher than the negative consequences that could be suffered due to the restriction (Roberts and Reich 2002). This is the logic behind the illegality of most hard drugs that pose a sufficiently high threat to society to warrant restrictions on their free distribution. The obligation to fasten a seat belt when in a car follows the same rationale; having a seat belt on, even if you did not feel like it in first place, is a small enough sacrifice given that it could save a life in the event of an accident. With doping, however, (P2) does not explain why doping is different than other common and risky practices in sport (Schneider and Butcher 2000). Why should we accept that football or hockey players suffer concussions as part of the sport they play, but prohibit they use certain substances because they could be dangerous for their health in the long term? We already know that repetitive concussions could lead to chronic traumatic encephalopathy (CTE). Participating in a majority of sports carries some short- and long-term risks to health, be it from the practice of the sport itself or from the repetitive and stringent training needed to achieve the elite level of performance WADA oversees (Tamburrini 2000).

Finally, and as illustrated by every positive test made public by WADA, (P3), as understood in the current context, is flawed; banning substances does not necessarily protect the user from the adverse effects of doping. Athletes who are willing to use doping substances have always found ways around the system, and forcing them to do so brings added risks associated with unregulated doping substances, which could prove more harmful than legal, controlled drugs (Kayser and Broers 2012, 2015). Testing also does not guarantee that every cheat will be caught. Lance Armstrong and Michael Rasmussen were tested several times during the many years while they were doping to no avail (Møller 2016). In order to achieve true protection for the athlete, a policy aimed at changing the athletes' attitude over a longer-term would be needed, which would propel the education component of the WADC in front of the current testing/sanction approach.

Of course, anti-doping regulations can still have an effect on the overall health of athletes, even if a few of them chooses to dope, by diminishing the number of potential users willing to break the rules and/or risk their health first, and second making it more difficult to obtain the drugs for those who (still) want to use PEDs. Since the activity was always illicit in some kind of ways, it is however hard to gather data on how effective WADA's regulations are to reduce doping instances.

Harms to the competitors

Next comes the potential harm done to an athlete's fellow competitors, who could be either (a) coerced to dope in order to keep up and risk the physiological harms of the drug/treatment, or (b) drop out of the high-stakes competitions to which they dedicated the larger part of their lives (or at least accept that will most certainly not be able to win them) (Tamburrini 2000). Both of these scenarios are constraining from the athlete's perspective, and would be a negative consequence of an other athlete's use of PEDs. And in both cases, the sheer benefit for one athlete to win a prize or medal would be outweighed by the negative consequences felt by her competitors of being deprived of said medal, or risking the health dangers to themselves discussed in the previous subsection.

The perceived rights for an athlete to compete in a doping-free sport were mentioned in the section on fairness. But in light of what was said on paternalism in the previous section, the coercive aspect of doping for 'clean' athletes makes this argument stronger than the one on harms to the doping athlete (Schneider and Butcher 2000). This is because while an athlete who

wants to dope can rightly denounce WADA's regulations as overtly paternalistic and imply that they themselves can choose to run whatever risks are associated to a certain drug, in this scenario 'clean' athletes who do not want to dope would *not* be choosing to use PEDs as *free* agents, since they would be coerced, in an highly competitive environment, to either keep up with their peers through doping, or renounce their opportunity to win athletic competitions. This latter part runs against the exact state that was used to critique the paternalistic regulation in first place.

Added to this observation is the different cost/benefits analysis of using PEDs in order to succeed in elite sports and the assumption that the latter would not be worth the health risks encompassed by the former. Following a game theory approach, this is especially true if more than one person opts to dope (Loland 2002). Doping, after all, is helpful for the athlete if she is the only one who does so. If everyone opts to use PEDs, the advantage is lost, and all feel the negative consequences. So the benefits of doping to an individual athlete are higher if it stays illegal and less athletes use them, but this ratio would probably be overturned if they became acceptable.

Detractors to this argument mention the coercive nature of elite sports and that athletes are already forced everyday into more demanding training regimens anyway, so doping should be considered as the extension of these ever-evolving practices (Miah 2005). It is unclear, however, if doping is in fact part of a sport in this way. This is something that will be addressed in the last section on the 'spirit of sport', where very different response to this question would lead to a divergent stance on the extra-coercive nature of doping.

Harms to society

More generally, proponents of the fight against doping argue that society could also suffer consequences from adopting a liberal doping attitude. Considering that athletes are often seen as role models, a more explicit consumption of doping products could induce fans, especially younger ones, to mimic their idols' drug regimen. Here again, Schneider and Butcher deconstruct this argument into two assumptions: (1) that "if children see athletes having no respect for rules of the games they play there will be a tendency to undermine respect for rules, and law, in general" and (2) that it considers "athletic drug use as part of a wider social problem of drug use" (Schneider and Butcher 2000, 192).

The first point goes back to the circular argument where doping is considered immoral because it is cheating and the practice is banned because it is immoral; children will understand seeing their favourite athletes using PEDs as undermining rules and law *only* if the practice is against the rules and law or deemed unfair in the first place. On its own, this assumption is not sufficient to support the doping ban.

The second point made by Schneider and Butcher is supported by the anti-doping movement history, which closely mirrors the war on drugs (especially in the United States) (Hoberman 2005). Both fights were crystallized by specific regulations starting in the 1960s where PEDs, like steroids, were often lumped together with other illicit substances. In the 1990s, the appointment of steroids as class III drugs in the Crime Control Act of 1990 furthers this analogy between anti-doping and the war on drugs (Loland and Hoppeler 2012, Kayser and Broers 2012). The reasoning behind this assumption is the idea that if young people see athletes consuming doping substances, they may get the signal that the consumption of drugs to attain certain goals (athletic or recreational) is legitimate. The reasoning goes further to say that doping must not be encouraged to preserve the image athletes cultivate for their fans, who could be tempted to follow in their idols' footsteps and could encounter the negative health effects associated with PEDs (McNamee and Tarasti 2010). The athlete, in her quality as a public persona, has the duty to present a positive example to the youth. If an athlete could be competent in making this choice, the same cannot be assumed for their youngest fans.

For critics, two issues need to be considered in relation to this argument. First, other substances with negative effects, like alcohol and cigarettes, are regulated in a way that makes it harder for children and adolescents to access them (Savulescu 2015). Authorizing doping in elite sport would not automatically condone the use of PEDs by a younger audience. Surely, the issue would need to be properly monitored and safeguards would need to be put into place, but the threat advanced by defenders of anti-doping regulations does not hold by itself when we consider other unhealthy practices that are legal but unavailable to minors.

Second, and more specific to the doping issue in itself, it is unclear why athletes should be considered and treated differently from other public persona (Schneider and Butcher 2000, Møller 2010). For example, artists often use implicitly or explicitly forbidden substances to create their art, and are seldom put under pressure to be a 'positive example' for their younger

audiences. Indeed, no one is arguing that Amy Winehouse should have been disqualified from winning her five Grammys because of her substance abuse problem, a fact known even at the time of the award ceremony. The idea of being a role model in this way places undue pressure on athletes, and requires a stronger argumentation as to why athletes, specifically, would be such a strong vector for drug use by young people and in society more broadly. In sum, Schneider and Butcher advance two requests for this argument to be acceptable:

“Until a clear and cogent reason is put forward to justify treating athletes differently from other public figures, and until a causal link between their actions and harm to others has been demonstrated, we do not have a justification for the ban based on this argument” (Schneider and Butcher 2000, 193).

Once more, further evidence would be warranted to sustain the idea that athletes should not be allowed to use doping substances because of the possible negative consequences it could have for society’s health at large given their status as a role model.

Harms to sport community

Finally, we could argue that the sporting community could also be harmed from doping practices. These harms could result either because doping could lessen past performances that could be easily broken with the help of PEDs (or, seen the other way, doping could diminish future records as nothing more than the product of doping), or due to a repudiation from the fans who could feel cheated if they learn of illegal PED use.

The latter concern could easily be dealt with by suppressing the fans’ expectation of a ‘clean’ sports competition (Schneider and Butcher 2000). This could be done by spreading an understanding that athletes would most likely be using PEDs during competitions since they would no longer be prohibited to do so. But the end of the ban on doping could not deal with the sense that accomplishments of past or future sports achievements were diminished, particularly if the public actively wishes for doping-free sport. Then again, as it was the case in many of the ‘harms’ arguments, we are missing a crucial element to accept the argument. In this case, what we are missing is the reason why the public would choose to see performances by athletes who use PEDs as being less impressive than classic or ‘clean’ sport.

It is understandable to be wary of a new ‘generation’ of performances that would crush past records. But, on the other hand, how do we explain trying to get rid of doping in an event like the

Tour de France when doping was actually present during many decades? The Tour, and cycling in general, is a good example of the public's resilience to the apparition (or more precisely the discovery) of doping in a sport. It is one of the sports where doping was (and maybe is) the most endemic. The sport has had problems with doping since Jensen and Simpson's deaths early on to past the Festina affair later. 1999, which was the year after the Festina scandal when the Union Cycliste Internationale (UCI) promised a 'clean' sport, the new champion of the Tour, was also the year that Lance Armstrong, started his streak of six Tour victories, all of which were later voided because of the use of doping substances by Armstrong and a majority of his teammates. However, the Tour de France is still among the most important annual sports events, and viewing does not seem to be down even though the public realized that the performances during competitions were most likely partly the result of doping (Morgan 2009). Track and field, which has also been embroiled in doping scandals numerous times, still figures as one of the most anticipated competitions at the Olympic Games (Hoberman 2005). There is even, some might argue, a demand from the public to see always more spectacular performances and witness new world records, something that PEDs would substantially encourage (Hoberman 2005).

Harms for the sport community from doping are possible. But again, there is a lack of evidence about how much the public is attached to 'clean' sports, and the little knowledge we have so far does not seem to corroborate the assumption that the public would be less interested in a sport if they knew that its athletes took PED (Morgan 2009).

Contra: Harms from the ban

In true utilitarian fashion, if we chose to look at consequences of doping and articulate our argumentation around the benefits of banning the practice, we should also take a look at the consequences of this choice and include them in our risk/benefit assessment. If we follow this framework, it does not suffice to say that doping is immoral because it has negative consequences; we also need to make sure that the regulations imposed are moral in the way that they support an outcome benefitting the greater good. Two main concerns are raised by opponents of anti-doping regulations: unintended consequences of the ban, and psychological pressure the current guidelines put on 'clean' athletes.

Unintended consequences

Every policy has unintended consequences. For some, doping in elite sports should be prohibited and strict measures should be put into place to ensure this ban. However, there are social, economic, and political consequences to such a choice.

First, WADA's importance and visibility, which is a good thing to deter elite athletes from consuming PEDs, can lead to further publicity for the doping substances in the news. Far from suppressing amateur athletes' desire to use PEDs, the knowledge about what elite athletes' preferred substances are can entice them to find a similar product to complete their lower level competitions, where almost no testing takes place. This mediatisation of doping methods, which was before a highly secret part of an athlete's education with each team or country researching which drugs or methods were the most effective, ends up increasing the number of people who use PEDs (even if it effectively prevents a majority of elite athletes to do so): "the sheer difference in numbers between amateur cyclists and professional riders means that the health risk has been significantly increased" (Møller 2016, 114). As an example, Møller cites the UCI's observation that amateur cyclists tended to use EPO more than ever, possibly as a result of the publicity around high-profile cases like Lance Armstrong (Cycling Independent Reform Commission 2015). While WADA is preoccupied by the its athletes' health, amateur athletes who fall below the testing level incur a probably higher risk through the self-administration of PEDs instead of being monitored by experts (Møller 2016).

Second, early, preventive bans of substances make research on PEDs in human subjects, and especially athletes, very hard to conduct. Many gaps in the literature about the evidence for actual effects of PEDs and the danger for the health of the athlete have been identified (Camporesi and McNamee 2014). I mentioned this as a possible flaw in both arguments of fairness and harms, but it also needs to be recognized as a consequence in and of itself of the ban on doping. Using athletes as research subject would disqualify them under WADA's current guidelines, so it is extremely difficult to know empirically the extent to which elite athletes are enhanced by PEDs or other doping methods (Camporesi and McNamee 2014, King and Robeson 2013).

Third, authors note that while doping is made illegal, athletes may still have the incentive to dope (as it is currently the case), and the PEDs will come from somewhere. Unfortunately, this

distribution will often fall unto the black market in these situations, with the sale of illicit doping substances financing organized crime (Paoli and Donati 2014). It also allows for unregulated production, which can lead to subpar products in comparison to what would be produced by licensed pharmacological companies. Finally, athletes who disregard the ban and opt to dope would most likely do so covertly, which sometimes means an unsupervised consumption of the PEDs (or one that is restricted to a very few number of medical personnel) (Kayser and Broers 2012, 2015). This is a less-than-ideal situation when dealing with a complex drug regimen.

Finally, the funding of the anti-doping efforts deprives other areas of public health from resources (Kayser, Mauron, and Miah 2007, Savulescu 2015). Aside from the IOC money, WADA and the NADOs owes half of their operating budget to national governments. Knowing this, the expenditures linked to the testing system needs to be measured against the prospective benefits of other programs that could have been funded with this money. This is not to say that anti-doping initiatives should not be funded, but it is worth considering that these decisions do not happen in a vacuum, and these factors influence the distribution of finite resources.

Effect of testing system on athletes

WADA's current regulations also have consequences for the athletes themselves, which have been acknowledged by anti-doping advocates as a price to pay to achieve 'clean' sport.

The loss of autonomy, discussed in the section on fairness, is furthered by a loss of privacy for athletes through the Whereabouts system. By accessing the highest level of competitions, elite athletes are scrutinized by reporting their daily schedule three months in advance, and giving out urine or blood samples when required (World Anti-Doping Agency 2015b). Authors commented on the stress felt by the athletes when disclosing in their Whereabouts when three mistakes, however unintentional they may be, could suspend them from competitions (Overbye and Wagner 2013). The invasive nature of the tests, particularly the urine test, is also stressful and embarrassing for athletes because they tend to fear a positive test even if they know that they did not ingest any substances on purpose (Elbe and Overbye 2015). Defenders of the regulations will point out that athletes themselves, while acknowledging the possible negative emotions stemming from these testing procedures, still favour them as a deterrent for doping practices (Elbe and Overbye 2015).

Another important psychological impact of WADA's regulation is the emotional distress that can be felt when an athlete receives a positive test and is subsequently banned from competition for a certain amount of time (Elbe and Overbye 2015). These are athletes who, voluntarily or not, consumed prohibited substances and will endure the sanction determined by their federations. Regardless of whether the sanction was given because of three missed tests out-of-competition, or because the substance was unknowingly ingested, the stigma of a ban is still perceived negatively by the public. Consequences of a ban can include the loss of sponsors (public and private) and can lead to financial instability and/or the premature end of an athlete's career. Should an athlete's career be prematurely ended, they can then struggle to re-orient their professional identity (Elbe and Overbye 2015). A more tragic chain of events can even go as far as suicide or a suicide attempt in reaction to the feelings of isolation, shame, and anger the banned athletes may feel (Elbe and Overbye 2015).

As mentioned earlier, the campaign to ban doping in professional and elite sports gained some steam from tragedies like the Jensen case, and pro-ban discourse today is still heavily geared toward preventing further harms to athletes. If these dangers are not as important as they are thought to be, the legitimacy of anti-doping campaigns could be severely downplayed. Further attention is also warranted towards the harms that the ban is causing, if we are choosing to defend anti-doping measures by focusing on harms. This is not to say that doping should be authorized right away, but only that this question, treated under the utilitarian argument, should warrant more evidence on both sides of the issue so that it would be easier to pinpoint which outcome allows for the greatest benefits. The Olympian trolley dilemma mentioned by former Olympian Sarah Konrad (Aschwanden 2016), perfectly embodies this way of considering the doping problem: negative consequences for a few are acceptable as long as they help reach benefit for the greater number.

The problem, after analyzing different harms coming from doping *and* anti-doping regulations, is that the orientation of the harm/benefits ratio is not as clearly defined and skewed towards anti-doping regulations as WADA's discussions make it out to be.

Is doping against the ‘spirit of sport’?

“WADA’s determination that the *Use* of the substance or method violates the spirit of sport described in the introduction to the *Code*” (World Anti-Doping Agency 2015b, Article 4.3.1.3).

The final, and probably the most controversial, criterion has to do with the elusive ‘spirit of sport’, as defined in the WADC. While it is a problematic concept, it is also a fundamental one for WADA’s mission. “Anti-doping programs seek to preserve what is intrinsically valuable about sport. This intrinsic value is often referred to as the ‘spirit of sport’” (World Anti-Doping Agency 2015b, Preamble - Fundamental rationale for the Code). The attachment to this notion, however imperfect it may be, veers unto the territory of virtue ethics, emphasizing what virtues the athlete should aim to develop (McNamee 2013). In public health, this defense of values said to be of importance to a particular community/society translates into communitarianism, with decisions aiming to preserve a set of shared values within the community (Roberts and Reich 2002). In this case, what is thought to be of value within elite sport.

The ‘spirit of sport’ criterion, and the search of excellence associated with it, brings us to another set of concerns regarding the impact doping could have on human nature. Some will applaud the coming of a post-human, while other will fear the dehumanization that could be caused by drastic doping technologies. Virtue ethics, with its focus on the agent, is also the framework underlining most arguments analyzed in this discussion.

Pro: Safe-guarding the ‘spirit of sport’

WADA, with its slogan ‘Play true’, evokes an idea of a ‘true’ sport, and, by opposition, a ‘fake’ one (World Anti-Doping Agency 2016c). To make such a distinction implies that doping is not only known to go against the nature of sport, but to fundamentally change its nature if it is present. Making this judgement implies that we have an idea of what ‘sport’ means. For scholars and stakeholders defending this position, a sport, whichever one it is, is supposed to measure the natural ability of an athlete to excel under certain restrictions, including not enhancing her performance (McNamee 2007, 2013). Allowing doping substances or techniques would rob the sport of its essence, and void modern performances of the worth they were previously given. In WADA’s definition, this vital definition is encompassed by the ‘spirit of sport’ definition (Morgan 2006), which takes the form of a non-exclusive list of values encompassed by sport (see

Chapter 1, section ‘the World Anti-Doping Code’ for the list). The Code’s preamble also emphasizes the ‘natural’ quality of sport performances (World Anti-Doping Agency 2015b).

McNamee, in a formalist approach, argues that respect for the rules is one of the values inherent here. A sport is defined by its rule, and, therefore, if the ban of doping is one of the rules, as it is the case now, the practice of doping should be considered against the ‘spirit of sport’ (McNamee 2012). The essentialist version of this argument stands by a similar logic: sport has always been considered a “celebration of the human spirit, body and mind” (World Anti-Doping Agency 2015b, Preamble) and if we view doping as subverting the ‘human’ factor of competition, then we could rightly assume that we are not watching sport as our ancestors played it. We will come back to this modification of the humanity by doping in the next subsection, but for now, let us consider the most important criticism to this argument, which is that these rules and expectations are socially constructed (Schneider and Butcher 2000). Doping was not always seen as being against the ‘spirit of sport’, but merely against the amateur conception of sport. Today, we are choosing to give these considerations a negative weight, but our stance could be modified, just like the stance on professionalism was modified in the last century. To ground this anti-doping argument on a social context (doping is unethical because society deems it against the ‘spirit of sport’) brings us back to a circularity in the argumentation seen with the fairness argument (doping is unfair because it is cheating). In both cases, the second part of the affirmation could easily evolve or change regardless of the fairness or ethicality attributed to doping.

The second argument that could be made against doping on the grounds of preserving the ‘spirit of sport’ concerns what the athletes are taking out of their participation in sports competitions. From WADA’s list, several values could be argued to be *developed* by practicing a sport at the highest level. These are: ‘excellence in performance’, ‘teamwork’, ‘dedication and commitment’ and many others. For those who believe in anti-doping regulations, the use of PEDs would take away from this learning process, and deny the athletes the access to these valued virtues, which under this light is considered the ‘true’ goal of sport (McNamee 2007). But for this to be true, doping substances would have to be powerful enough that someone taking them would be automatically catapulted at the elite level of her sport without any other effort on her part. However, the reality is different. Using PEDs will only give a competitive advantage to similarly trained and talented athletes, but will not improve skills or allow an athlete to skip a demanding training regimen (Schneider and Butcher 2000).

Contra: 'Spirit of sport' demands doping

There are also arguments about why the 'spirit of sport' should not be invoked to support (or, in fact, arguments that could be brought in to *support* doping). The 'spirit of sport' concept is often critiqued as being overly fuzzy and too vague to mean anything (Foddy and Savulescu 2007, Savulescu, Foddy and Clayton 2004). By trying to capture the essence of sport through the inclusion of an open list, WADA also widens the concept to be whatever stakeholders wanted it to be. Some of these virtues, like 'teamwork', 'fun', and 'joy' are not necessarily always synonymous with sports, especially at the elite level. They also have nothing to do with doping. Therefore, interpreting which substance should be part of the list based on these criteria is problematic, WADA has been accused of over-stepping its mandate to provide a doping-free sport environment by putting forward a moral stance on some substances, rather than just addressing whether these substances have a 'doping' quality. If everything and anything could be 'against the spirit of sport', should the criterion even be used for the PL? Critics say no, and argue that there is even less justifications for the inclusion of non-performance enhancement substances (NPES) on the list (Waddington et al. 2013).

The most common example cited in support for the argument to remove NPES from the list involves the inclusion of cannabis in the in-competition prohibited substances group, even though it provides no advantages via performance enhancement (Waddington et al. 2013, Henne, Koh and McDermott 2013). Given that this is the case, in order for cannabis to be banned it should have to fulfill the other two criteria: harms and 'spirit of sport'. Understanding how cannabis can be harmful is easy, but understanding why it is against the 'spirit of sport' is more complicated. The substance, which is becoming increasingly legalized in many different countries, does not seem to be different than cigarettes. Critics argue that the inclusion of cannabis on the PL does not represent a threat to the 'spirit of sport', but political pressure from state signatories who wish to crystallize the moral stance they took in their legislations (Waddington et al. 2013). Defenders of the criterion argue that morality is, in fact, part of the sport and the demands on its athletes, and deeming a substance immoral, like cannabis, is enough to warrant a spot on the list (McNamee 2012).

Alternatively, scholars sometimes embrace the 'spirit of sport' concept without critiquing it. If we consider sports to be an activity in the pursuit of excellence, which is one of the value

included on WADA's list, doping should not be considered against the essence of sport but as a practice actually supporting this idea (Savulescu and Foddy 2011, Miah 2005, Tamburrini 2006). Authors are quick to point out the Olympics Game motto, *Citius, Altius, Fortius* (Higher, Faster, Stronger), as an illustration of this attachment to breaking records and outperforming past and present competitors (Bonte, Sterckx and Pennings 2014). Prohibiting doping, in this sense, would go *against* the 'spirit of sport'. At this point, we need to ask the question 'What makes doping different?' if this practice only furthers the aim of excellence in sports. Savulescu has pointed out that people seem to have an aversion to unnaturalness, which would explain why strict training and diet regimens are accepted while PEDs are frowned-upon. He gives the example of coffee, which is a stimulant and could conceivably enhance performance but is nevertheless now accepted in competition (Savulescu 2016). The way the drug is created, naturally or synthetically, could influence its acceptance by society and WADA, highlighting the subjectivity of the list. Indeed, at times it reflects not only elements found to enhance performance (or that are bad for health and against the spirit of sport), but also elements that are easier to prohibit or that are less pervasive in the general population's consumption habits (e.g. caffeine or nicotine). Since WADA does not explain or justify the products or techniques it chooses to put on its list, it is very difficult to understand the possible logic behind each choice. This aversion of the unnatural is a supposition, and it remains hard to either prove or dismantle it.

Pro: Preventing dehumanization of the athlete

This last remark brings me to another discussion under the 'essence of sport' category of arguments. As noted above, the 'spirit of sport' definition offers us a glimpse on the importance of human nature in sports, with its accent on the *human* spirit, body and mind. After all, "([s]pirit of sport) is the essence of Olympism, the pursuit of human excellence through dedicated perfection of each person's natural talents" (World Anti-Doping Agency 2015b, Preamble). If we chose to acknowledge PEDs as artificial, as Savulescu demonstrated, it follows that the athlete's performance would now be regarded as unnatural and potentially dehumanizing. The essence of the athlete, as a human being, could even be put into question by doping practices, as they would no longer be seen as a human displaying remarkable natural abilities worthy of admiration, but as a vehicle for new technologies to achieve unnatural or artificial feats of athleticism (McNamee 2007).

Critics mention that this argument requires having a good idea of what is considered natural and unnatural, for which a universal divide does not exist (Bonte, Sterckx and Pennings 2014). It would also mean having “an agreed-upon conception of what it is to be human” (Schneider and Butcher 2000, 196). Tellingly, arguments about doping’s ‘unnaturalness’ and those arguing that it is dehumanizing also suffer from a lack of consistency about the acceptability of the current regulations (Henne, Koh and McDermott). A natural hormone like testosterone is banned, while high-tech running blades like the ones used by Oscar Pistorius at the London Olympics in 2012 are considered fair game. Similarly, a practice like psycho-doping (the mental manipulation of an athlete – while the mind is amongst the things celebrated by the ‘spirit of sport’) is tolerated, but the re-injection of one’s own blood (which could hardly be deemed dehumanizing and is done regularly for medical purposes) is not (Schneider and Butcher 2000).

Contra: The athlete as the first post-human?

In parallel of this fear of losing the human essence of the athlete through increasingly transformative doping practices, there is excitement around the idea that sport may be the catalyst to a new, ameliorated version of man. This desire for enhancing our natural abilities is not new, and even well regarded in many other spheres of society. A liberalisation of doping would fast track these advances and could even result in better medical treatments for both athletes and society if research is not constricted by a ban on enhancing substances.

Underlying this argument is also the fact that the distinction between enhancement and treatment is as complex as the divide between what is considered natural and unnatural (Overbye and Wagner 2015, Schneider 2015, Dimeo 2016). Cutting-edge technologies allow us to more efficiently treat ailments than ever before, but could also be said to blur the line between what is considered a normal condition and what is an abnormal one. Treating the latter would be considered therapeutic (e.g. a laser operation to restore poor eyesight to optimal level), while fixing the former would be considered enhancement (e.g. a laser operation on someone who already has perfect vision, to give her a ‘super’ vision⁷). In elite sport, where nothing short of perfection is required, a normal condition can quickly become abnormal. The difficulty in distinguishing treatment from enhancement points to the idea that these procedures, if accepted

⁷ This is an intervention that was provided to Tiger Woods. Sport authorities did not condemn the procedure, but a few journalists remarked that it might have given the golfer an advantage over his peers (Tamburrini 2006).

for therapeutic purposes, are not as threatening to the self as they are made out to be during anti-doping conversations.

For defenders of doping, the dehumanization would come not from ingesting substances that enhance the athlete's natural abilities beyond what is naturally possible, but from losing the right to choose what to do with his own body (Savulescu 2015). This freedom of choice is what makes us human, more so than our muscular mass, or our endurance limit. Being deprived of a choice, in this case using PEDs or not, would be more a threat to our essence as humans than the actual effects these drugs or techniques could have on us.

Discussion

Seen through liberal, utilitarian and communitarian perspectives, the debate on the ethicality of doping does not highlight an obvious 'best', or ideal, position. Often, the impact of the ethical or political frameworks behind the arguments is not always mentioned, and certain authors would jump from one to the other without acknowledging it, or pit arguments stemming from different approaches together and judging their merits from one perspective only. In a discussion as dense and complex as the one surrounding doping and WADA's regulations, this leads to a dialogue of the deaf between the different stakeholders and critics.

Cognizant of this problem of different justifications taking ground on various perspectives, Roberts and Reich (2002) suggest that discussion, and the persuasiveness that it entails, should arrive at the best decision for the community.

“From this perspective, we can view any particular ethical theory as a contribution to a continuing discussion about how to organize society, and ask, does it move that conversation forward an interesting way? This returns us to public discussion (what political scientists call deliberation) as a critical process (Roberts and Reich 2002, 1058).

This is not unlike the pragmatic approach to ethics (and the authors recognize this too, citing Rorty and Dewey to support their claims), which aims to facilitate a dialogue between different ethical approaches, seeing them as tools to arrive at the best solution possible (Schermer and Keulartz 2003, LaFollette 2000).

While a pragmatic approach to doping is sometimes encouraged by scholars (Kayser and Broers 2012, Loland 2002), it is mostly used with the pre-existing assumption that the use of performance enhancing substance *is* unethical, and that we should work towards minimizing its impact on the athletes and society (i.e., pragmatists should work to create a more realistic formulation of WADA's idealistic stance). But pragmatic ethics, as Roberts and Reich mentions, can bring more depth to this public health debate by highlighting two important areas that can be addressed about WADA's approach.

First, the ethicality of WADA's regulations will require a great deal of consideration about the technical aspects of doping and what they entail in terms of concrete evidence. Empirical knowledge is not in confrontation with theoretical debate, but in fact helps to inform it. More importance needs to be given to concrete facts when judging this problem, especially considering that it encompasses high-tech scientific developments, and that the impact of doping varies greatly between decades, drugs, administration methods, and sports (Schneider and Butcher 2000).

Second, pragmatic ethics highlights the need for deliberation and interdisciplinarity to resolve an ethical dilemma. Arguments about the permissibility of doping and the sufficiency of WADA's guidelines in the literature come from historians, philosophers, legal scholars, athletes, and anti-doping officials. On one hand, pragmatism's emphasis on deliberative exchanges opens up areas of questioning that are up to now left mostly untouched (e.g. instead of asking ourselves what is the best way to stop doping, we ought to ask why we should consider doping bad). A deliberative approach would not only make possible debate on these deeper issues, but welcome them as a way to attain a better solution. On the other hand, these discussions needs not to happen in a vacuum, including only a restricted group of people stemming from related areas and sharing similar views. They should permit, and actively seek, the inclusion of a variety of views stemming from a diverse range of expertise. Public health issues, including doping, often require this interdisciplinarity due to the complex and varying nature of the problems at hand. These analyses fit naturally into a pragmatist approach (Moreno 1999).

Looking at this subject through a pragmatic ethics perspective, or through Roberts and Reich's 'public discussion' approach more largely, underlines the important place of concrete evidence in this debate, perhaps most because it emphasizes the lack of empirical knowledge in certain

areas at the heart of the debate. Many subsections, especially under the harms criterion, ended in confusion not over which argument was sounder, but over how these ideas translate into reality. To properly weight negative and positive impacts of doping, we need to have more knowledge about what these consequences actually entail (Henne, Koh, and McDermott 2013).

There are two areas where evidence is particularly lacking. These areas are the lack of knowledge about doping substances (performance and harm-wise), and what the outcomes of the regulation(s) are. The first one is a direct effect of the ban because athletes cannot consume what is put on the PL, so scientists cannot study their impacts. Many arguments stemming from both criteria 1 and 2 are largely based on assumptions, and cannot be discussed with full knowledge about their outcomes. The second shortage of evidence creates an uncertain environment that feeds into problematic issues at the heart of WADA's regulations. For example, everyone assumes that because of WADA's mandate things are supposed to be a certain way (i.e., elite sport competitions are doping free) when in reality this is not a correct assumption (Kayser and Broers 2015). This situation, as it was remarked before, is partly due to the fact that the Agency tends to have an idealist vision of the fight against doping and promotes the concept of a fully 'clean' sport instead of the imperfect, but real version the athletes are facing in each competition. More informed and better empirical data on the state of doping in elite competitions would get rid of some concerns raised here, such as the athletes' expectations that they are competing on a totally 'clean' and level playing field (Dimeo 2016).

The commonly accepted anti-doping stance takes its root from a social, political and historical context surrounding it. But this context is not stagnant; it will continue to evolve in time. It would be counter-productive to ask that the stance does not evolve as well. In pragmatism's words, if "[b]ioethics constitutes an adaptive case-based social regulation movement" (Fagot-Largeault 1987, cited in Racine 2010, 54), doping in sport should be treated as such, too. Arguments regarding fairness and the 'spirit of sport' were regrettably based on the idea that everything will remain immobile, which protects the ban on doping under the pretence that the practice was already banned and therefore unethical. This logic deprives the issue of a much-needed deliberation on the ethicality of WADA's current regulations and on doping itself.

From this chapter it becomes clear that moral justifications for the anti-doping ban are not as undisputable as they are presented by WADA and national governments. We may not arrive to a clear-cut, definitive answer to our initial question, but the debate depicted here warrants at least a rethinking of the status quo and the consideration of other solutions to this public health issue, something that was done by a few authors already. The next chapter will explore a few of these options, keeping in mind the several ethical concerns that were raised in this section.

Chapter III

Is there a better way to address this issue?

Many of the authors cited in Chapter 2 did not stop at critiquing WADA's take on doping; a part of the literature consulted is dedicated to describing possible approaches that would be more ethical, efficient, and better reflect the current context of elite sports. The debate, which seemed to grow wider with the creation of WADA, gave rise to several different positions on how to overcome this issue, and whether or not the Agency was the tool international elite sport needed to confront the problematic. WADA's efficiency is being questioned even by the head of the IOC, Thomas Bach (Gibson 2016), and there are abundant calls for a rethinking of the organization's functioning (Tygart 2016; Ruiz, Macur and Austen 2016). The timing seems, therefore, ripe to consider other avenues.

In this chapter, I focused on approaches aiming to make doping regulations more liberal. There are nowadays stakeholders arguing for stricter guidelines, to face better what is seen as an insidious and tenacious threat but also to overcome WADA's recent failures. These options are already benefitting from a wide coverage in the media, and I wanted to emphasize less debated alternatives, which are now mostly restrained in academia. In light of the concerns raised in the last chapter, which made for an anti-doping case ambiguous at best, a more rigid solution would be antithetical to the conclusion of this analysis, which raised several valid concerns against the fight for doping and its consequences.

I will therefore examine five options that vary in scope but were all discussed following recognition that WADA's current guidelines rigidity in its all-out war on doping was unsuitable in our contemporary context. This chapter will present them in order of importance of the changes proposed, from the more subtle technical modification to the complete reformulation of the 'accepted' view on doping. Each will be considered through its general justification and framework, feasibility, and the answers it provides to the moral issues raised by the precedent section. At the end of the chapter, a discussion will follow where I will pinpoint which option, if any, would be more suitable to manage doping in elite sport.

Balancing Ethics and Feasibility

In keeping with a moral approach that aims to account for the many different ethical concerns raised by doping, may they be consequences, rights or values, my goal, in this chapter, is trying to answer the follow-up question "*could there be a better way to address the doping in elite sports issue?*" To address this query I will consider the answers these recommendations each offer to the ethical issues identified in Chapter 2, but at the same time, the degree to which these solutions are feasible in our current situation.

Sport is a meaningful activity, which should not be voided in all its sense; but at the same time, preserving these values and rules must not come at too high a price for athletes' health and society in general. This act of balancing is delicate, and probably encompasses compromises on both sides of the debate. In the end, decision-makers have to keep in mind that this analysis of rules, harms and virtues should lead to an optimal set of policies and regulation for the population concerned (Roberts and Reich 2002), in this case, athletes and, to a certain extent, the general public.

Aside from these moral concerns, we also need to consider how feasible these solutions are in today's context. And since we now consider doping as a public health problem touching many different stakeholders, the feasibility of the solutions must also be analyzed (Roberts and Reich 2002). These suggestions are meant to remedy to a large-scale problematic touching several levels of governance. Hence, they need to be approved by international organizations (IOC, International Federations) *and* a majority of national governments, all of whom may very well have different ideas on how best deal with doping in sport (Hanstad, Smith and Waddington 2008). Due to the lack of discussion aside from academic circles, it remains unfortunately difficult to know for certain how these solutions would fare when debated by a larger audience, including the major stakeholders. Historical, political and social knowledge will be necessary to have a grasp of which suggestions could prove acceptable to succeed to WADA's current regulations.

Option 1 - Scratching the 'Spirit of Sport' Criterion

In one form or another, this is probably the most popular tweak suggested for optimizing WADA's activities to target better its fight against 'truly' doping products and techniques (Foddy and Savulescu 2007, Henne, Koh, and McDermott 2013, Waddington et al. 2013). Abolishing

the third criterion, widely seen as overly broad and fuzzy by its detractors, would result in an easier to understand, more predictable approach to which substance or method will find its way onto the list.

The 'spirit of sport' criterion, as we have seen in the last chapter, is problematic in itself. While the variety of values sport is supposed to represent are best served by the very wide definition, this same vagueness is a concern when it is time to use the criterion. Doing away with it would erase this problem surrounding the actual definition of the 'spirit of sport' and make the Prohibited List less subjective in nature.

One of the paradoxes this creates is that under the current defeasibility approach, an item can be prohibited if it is harmful or has the potential to harm the athlete and if it is against the 'spirit of sport', without actually enhancing performance – the current primary worry of the WADC. This lead to NPESs, like cannabis, to be included on the Prohibited List, and athletes receiving doping bans for consuming them and suffering the likely economic and social consequences of such a title. Like Henne *et al.* (2013) remark, prohibiting illicit substances is not unethical in itself. From a public health perspective, it is even understandable. But to do so under the 'spirit of sport' criterion, almost in a covert manner, robs the different stakeholders from having a reflection on whether or not illicit substances should be banned from sport (Henne, Koh, and McDermott 2013). As a way around this, the NBA has an anti-drug agreement that includes both recreational drugs (marijuana, cocaine, ecstasy, etc.) and PEDs, but the sanctions are differing widely, and failing a test is not automatically associated with doping behaviour like under WADA's precepts. This difference could be explained in part because like the other large professional sports organizations in North America (NFL, NHL and MLB), these arrangements are negotiated between the league and the players' union, unlike WADA's term that is dictated without the athletes' input or with a very small amount of it (McNamee and Tarasti 2010).

If, by scratching the criterion, we would make the other two criteria mandatory, this approach could better restrain WADA mandate to 'real' doping, and not every substance the agency and the governments supporting it chooses to see as unethical or undesirable or at least move this last debate onto another platform. Abolishing the 'spirit of sport' criterion that determines which substance or technique gets on the PL would then surely help focus the fight against doping on

elements that are truly enhancing performance of athletes and potentially harmful to them or others.

It would not grapple with the fundamental question of why exactly performance enhancing doping is wrong, as it would continue to tolerate a Code and the measures it encompasses, nor would it do anything against the possible negative consequences of a ban. More importantly, this avenue would mean a flagrant medicalization of the prohibited list, voiding it of any moral content. While the clarification of criteria should be appreciated, it would now only rely on evidence of enhancements and harm (McNamee 2012).

On a feasibility perspective, it is interesting to note that this route was almost taken during the second rewriting of the WADC, when the first draft included only the first two criteria (McNamee 2012). It is unclear why the third criterion was brought back in the subsequent versions, but it proves that at least some key stakeholders in the process, that already have a seat at the negotiation table, would favour a two criteria system. A later version shows the performance criteria as being mandatory to warrant the presence of an item on the list, complemented by satisfaction of one of the two other criteria.

Option 2 - Moral relativist approach

The next approach would not change the guidelines of what should be considered doping, but would modify how we choose to attribute sanctions to offences. Detailed by Tamburrini (2006), the moral relativist approach to doping takes root in the idea of fairness behind WADA's regulation. Currently, this idea is materialized in a rigid, strict liability system that does not excuse even athletes who prove they took the drug unknowingly. Tamburrini (2006) argues that this standardized approach to sanctions is not fair, and rests his thesis on relativistic ethics, reminding us of its two core tenets: (1) there is no objective truth in ethics and (2) there is no universal standard that can be universally applied to all people at all times (Tamburrini 2006). The approach aims to produce a sensible answer to two different issues, namely the inequality in resources between the countries as an already unfair advantage and the fact that doping is not understood and opposed in the same way everywhere.

Tamburrini (2006) suggest an approach that would rectify this perceived inequality between rich and poor countries and also take cultural differences into account. The first item was raised in the section on the fairness argument against doping, namely that resources going into infrastructure,

training and medical staff in richer countries is an unfair advantage that poorer countries have to deal with. The main change put forward would be to modulate sanctions according to the country of origin of the athlete, with a new emphasis on the environment surrounding the athlete as a mitigating factor in the decision to dope. This would alleviate the gap between competitors coming from rich and poor states, the latter never able to finance its athletes on the same level as the former. Money is also an important factor in the mastering of novel technologies, and it could be argued that richer athletes have access to more sophisticated ways of doping, able to fool current testing, and leaving poorer athletes with less developed tools more at risk of getting caught. This justification is deeply linked to Rawls' Difference Principle (1971), which stipulates that an inequality be morally justifiable if it benefits the least-advantaged members of society, or in this case the least-advantaged states in the world. Offering leniency to poorer athletes who do not benefit from the same wealth could also boost the equality of opportunity between international competitors.

According to Tamburrini, reducing sanctions in certain cases could not only remediate an imbalance in economical and technological means, but also better represent different cultural views on doping. He argues that the strong disdain for the use of performance enhancement in sport is not universal, and some societies show more openness to a certain degree of liberalization. Furthermore, the author notes several reasons that could lead an athlete to dope, like social, economic and/or political pressure, and it would be more ethical to make a distinction, when giving out the sanction, between an athlete who freely chose to dope and someone who was pushed by external pressures to use PEDs.

Technically, WADA, the International Federations and the CAS could choose to impose different sanctions based on the aforementioned criteria, since they do not have a 'fixed' length of sanctions for each doping offence. They already do so when they integrate the degree of culpability of the athlete in their sanction. Tamburrini (2006) is also adamant that the sanctions must stay unpredictable and function on a case-by-case basis, to avoid for certain countries to be overwhelmed by doping athletes.

However, keeping in mind WADA's budget constitution, and knowing that the United States (US) is its second-biggest funder behind the IOC, it would be really surprising to see the US, and other richer countries who tend to contribute more to the anti-doping effort, accepting an

arrangement detrimental to their athletes standing at the elite level. By giving out quasi-systematically harsher sanctions to poorer countries or countries that do not tend to view doping in the same light, these richer countries would automatically accept a rebalance in their disfavour. The Russian state-doping scheme also illustrates why this approach could prove difficult to apply in real life: athletes could easily say they were coerced into integrating the doping scheme, and Russia, already a strong presence in several sports, could itself argue that it has a cultural preference for using PEDs. If we apply Tamburrini's moral relativist approach, this would have the potential to result in a plethora of Russian athletes receiving shorter bans, something which would undeniably prove frustrating and would seem unfair to competitors coming from states holding a more stringent stance on the use of PEDs in sports.

On a feasibility level, choosing to function on a case-by-case basis, to preserve the uncertainty of punishment, would risk making the process more burdensome, from the initial sanctioning to the appeal process.

Option 3 - Harm reduction approach

Middle ground between the current zero tolerance position and a more liberal vision of doping, the harm reduction approach is often used on another public health problem, the consumption of illegal recreational drugs, and could highlight how the current strict anti-doping regulations, while laudable, may in effect create more harm than they actually prevent. A few authors (Kirkwood 2009; Lemmens 1997) hinted at modifying the regulations to integrate more regards towards a harm reduction principle but Kayser and Broers (2012, 2015) defended a particularly evocative case for doping in sport problematic. Citing the International Harm Reduction Association (IHRA), the authors are adamant that such a perspective could improve the negative consequences of the prohibition, while not furthering the consumption of doping substances by elite athletes:

“Harm Reduction’ refers to policies, programmes and practices that aim primarily to reduce the adverse health, social and economic consequences of the use of legal and illegal psychoactive drugs without necessarily reducing drug consumption. Harm reduction benefits people who use drugs, their families and the community.” (International Harm Reduction Association, 2009, cited in Kayser and Broers 2015, 364)

Kayser and Broers (2012, 2015) argue that our perception of possible harms from the prohibited practices are sometimes presented more severely than the evidence would suggest, in an effort to ‘frame’ these practices as negatively as possible, to justify draconian measures. Both the anti-doping movement and the war on drugs use myths and exaggeration “to justify its excessive repressive and surveillance measures” (Kayser and Broers 2015, 367).

Like with its counterpart, illegal psychotropic drugs, the justification behind a harm reduction regulation for doping is that a fully prohibitionist approach is bound to fail from the start, the phenomenon it is trying to stop always occurring, only more covertly, and giving way to riskier practices (Room and Reuter 2012; Stewart and Smith 2014). Athletes, or at least some of them, will always tend to dope and try to circumvent regulations around doping, and it would therefore be safer to accept and regulate certain doping practices, to better ensure the athlete’s health is protected when consuming PEDs.

In the 1990s, when harm reduction came to be seen as an alternative to the ineffective war on drugs that did not manage, unsurprisingly, to eradicate recreational drugs consumption, policies were developed to better manage effects arising from the practice. Needle and syringe exchange programs were put in place to diminish risks of contracting HIV, safe-use facilities were opened to offer a better care in case of an overdose, on-site chemical analysis of party drugs were provided to avoid the consumption of subpar products (Kayser and Broers 2012). These measures were in no way encouraging drug use, but were actively reducing the risks inherent to the practice.

With the harm reduction principle in mind, and keeping with the unintended harms stemming from total prohibition of doping discussed in Chapter 2, a more lenient approach could lessen the negative consequences of anti-doping, without raising substantially the harms from actual doping (Kayser and Broers 2015). Following this, drugs that are proven to be safe for humans (or relatively low risk) should be accepted in competition. This would prevent in part the unfairness of athletes cheating their way to the podium, opening the practice to everyone. It would not negate the training and efforts of athletes: “It will still take talent, a lot of hard work and some luck to become a champion” (Kayser and Broers 2012, p.7). It would mitigate the harms raised by too strict guidelines, creating the possibility for regulated, monitored products, without creating newer risks linked to doping itself: risky procedures/drugs would still be outlawed and

an age-limit would be created to protect children. Ultimately, it would diminish the part of the market now falling in organized crime hands, opening the door to a legal and supervised production of safe products.

This approach does not change the fundamental rhetoric of doping being undesirable in sports, but it strikes a more positive balance of harms, informed by athletes' *real* behaviour. Furthermore, WADA could then concentrate its efforts on detecting fewer but more dangerous practices, concentrating funds and efforts on select tests. In effect, the PL would be constituted mainly of substances and methods that fulfilled the second criterion, potential of harm.

Considering the success the approach had when it comes to illegal psychotropic drugs, even when taking into account the negative image surrounding these substances, a harm reduction could conceivably be implanted in competitive sports without alienating the public and national governments. This would, however, require heavy changes on WADA guidelines, or even a complete overhaul of the organization, implicating lengthy discussion between national governments, and many sports associations.

Option 4 - Physiological approach

Hailed as a “pragmatic approach that respects both the dignity and privacy of athletes and the integrity and attraction of sport” (Savulescu 2015, 352), the physiological approach was hinted at in several of Savulescu and Foddy's papers (Savulescu, Foddy, and Clayton 2004, Foddy and Savulescu 2007, Savulescu and Foddy 2011), but laid out more strictly in a chapter from the *Handbook on Drugs and Sport*.

Looking at the presumed results of what would be accepted or prohibited under the physiological approach, we could arrive at similar conclusions than with the harm reduction approach. But the former use a very different rationale to justify its position and the suggested regulation accompanying it. While Kayser and Broers could conceivably still be considered against doping, and simply accepting certain practices to protect the athletes, the physiological approach is our first foray into ‘pro-doping’ territory.

Physiological doping uses the concept of normal physiological range, where one looks at the statistical distribution of a population to uncover the ‘normal’ trend for an indicator, like hematocrit levels. PEDs, often, are pushing an athlete level beyond what she would have been able to develop on her own, without drugs. In itself, the practice would not be dangerous. What

is dangerous is when the doping is extravagant and pushes the athlete beyond a safe limit. Savulescu (2015) suggests instead of banning substances or techniques; we should aim to prohibit reaching a certain level, beyond which it would be unsafe to participate in the competition. Hematocrit levels, to follow our example, are easier to calculate than the use of EPO (especially in micro-doses) or blood transfer.

Under the approach, safe PEDs would be tolerated, and what would be tested would be the athlete's blood profile against this normal range. If the test falls within this range, even in the upper tier, we should accept it, regardless of how the athlete got there (naturally or pharmacologically). It is, after all, modern athletics entire focus to find novel ways to break records, and most of these ways are legal (Savulescu 2015). This, the author argues, would make for an even fairer playing field than what is proposed by WADA, since natural abilities could be boosted within certain limits. This imposed range ensures that no significant harm comes from the authorized doping. Savulescu (2015) warns that we should also put them into perspective with other harms stemming from doing the sport in the first place. Like with harm reduction, legalizing certain substances could even lead to a more responsible consumption, and fewer risks for the athlete.

After all, regarding the preservation of the 'spirit of sport', the scholar changes the formula for the spirit of *the* sport, with the understanding that a PED could very well be detrimental to one or more sport, but we shouldn't lump together all drugs in an all-sport prohibition. Two criteria can evaluate if a substance goes against the spirit of the sport: it reduces interest in watching it or corrupts the activity and it controls the contribution to an outcome, reducing the human element unreasonably. Steroids and hGH, for example, because they merely assist the athlete in a better recovery and development of endurance, do not take away from demanding training regimen, and do not spoil the enjoyment we find in watching a race, should be fair play for the athletes to use. In opposition, beta-blocker drugs for shooters or archers shall remain prohibited because they impact directly one of the interesting components of these competitions, namely the ability to control their nerves and steady their hands during high-stake events. Genetic enhancement, widely unexplored for concrete application at this time, has the potential to overpower the human element in future competition, and should be prohibited accordingly.

The physiological approach answers several concerns that were raised regarding fairness, risk of harms, and the threat to the ‘spirit of sport’ values. The argumentation presented by Savulescu (2015) is a complete one ethically, but it would fundamentally challenge WADA’s core philosophy of the utmost valuable ‘clean’ sport. Here, performance enhancement is not a despicable thing in itself, but we would still need to safeguard against too-risky products. This reform would necessitate a considerable change in the current paradigm, which is not likely to take place in the close future, especially given the growth in power and responsibilities WADA has seen in recent years, reflecting stakeholders’ strong concerns about doping. Add to this the commitment of sovereign states to the UNESCO’s *International Convention against doping in sport* and the WHO’s stance on how doping should be considered a public health issue, and it does not fare well for an approach that would essentially back-track on the historical notion that performance enhancement is problematic *in itself*.

Option 5 – Pharmacological libertarianism approach

If the physiological approach would require a change in the contemporary anti-doping paradigm, proponents of a libertarian approach to the doping issue would need a complete revolution in the way we see sports. Based primarily on an enforced respect of the athlete’s individual rights, including the right to enhancing one’s performance, and a novel understanding of sport emphasizing unrestricted quest for higher performance, this solution would do away with any restrictions, including ones that were justified by potential harm to the athlete. Aside from the protection of individual rights, the approach is meant as the ultimate interrogation of WADA’s uncontested position on the immorality of doping.

This stance can be more or less extreme, but generally discourage any regulation, based on the idea that the anti-doping position is not strong enough to warrant such measures. Mentioned in the literature (Morgan 2009), there does not seem to be a theorized, real application of pharmacological libertarianism for doping in elite sports. The approach is often instead mentioned in passing by scholars wishing to find a middle ground between WADA’s overt idealism and a retraction of current regulations that would remove any prohibition on PEDs.

The libertarian view is mostly used as a foil for the totalitarian prohibitionist view. In practice, it is hard to conceive of libertarianism as becoming the dominant approach to deal with doping, not

only reversing the common desire for a ‘clean’ sport but at the same time denying any involvement into a practice that is still, on many levels, harmful.

Discussion

This overview, obviously, is incomplete. But it still presents a pertinent panorama of possibilities outside of WADA's current rigid realm. Each option discussed here strikes a realistic balance of answering our moral concerns with doping and their degree of feasibility in reality. On the one hand, scratching the ‘spirit of sport’ criterion and the moral relativistic approach were both avenues that offered easier implementation in the continuity of WADA’s regulation, but failed to address important ethical issues (or even created some new, in the case of the latter). On the other hand, the physiological and more libertarian approaches suggested much-needed changes to the current system, offering relief to moral problems that surfaced in the preceding chapter. These changes, however, were maybe too important to consider an application in real-world setting for the years to come, seeing the widespread support the anti-doping stance seems to hold at the moment. Not only would regulations need to change, but the perception of doping would need to be reversed, which could prove difficult on a worldwide scope.

In the middle of all these, the harm reduction approach seems to offer an ideal balance of ethicality and feasibility. In practice, it would have similar results as the physiological approach suggested by Savulescu (2015). Kayser and Broers (2015) even mention the possibility of using hematocrit levels instead of drug testing in some situations, something that is a central element of the physiological approach. But the noticeable distinction of acknowledging that doping is still ultimately undesirable could make the difference in the implementation. The authors (Kayser and Broers 2015) know that what they suggest is already a tall order for the sports community. It would mean a de-sanctification of elite sport, and the acknowledgment that certain adverse consequences, and the need to combat them, are superseding the ideal of a ‘clean’ sport at all costs. The road to change promises to be arduous for such a transformation:

“It seems that the ideal of sport as promoted by the International Olympic Committee is attaining universal value with a legal status that tends to supersede national law. We are worried that the inertia of this system is such that in the next 10–20 years little change can be expected” (Kayser and Broers 2012, 8).

Even if this position picks up more steam in areas other than scholarly literature (where it is mostly confined), a major obstacle is still on the horizon, in the form of immobilism of large political institutions, which often favour the status quo. This inertia was aptly described long ago by Machiavelli in his political treaty, *The Prince* (Hunt (2015) also refers to this particular passage):

“One should bear in mind that there is nothing more difficult to execute, nor more dubious of success, nor more dangerous to administer, than to introduce new political orders. For the one who introduces them has as his enemies all those who profit from the old order, and he has only lukewarm defenders in all those who might profit from the new order. This lukewarmness partly arises from fear of the adversaries who have the law on their side, and partly from the incredulity of men, who do not truly believe in new things unless they have actually had personal experience of them” (Machiavelli and Bondanella 2005, 22).

Political inertia needs to be understood as an obstacle, but not as a fatality anchoring us to a zero tolerance status quo. By presenting a balance between the protection of the athlete’s health, and the preservation of sport against abuse, the harm reduction approach creates an option worth striving for short- and mid-term. It could also possibly fill WADA’s mandate better than the Agency’s current regulation:

“The WADA-led anti-doping regime is constructed in such a way that it inevitably works against the principles upon which it is based. Rather than protecting health, fairness and equality it increases the health hazards, and contributes to make the playing field even more uneven” (Møller 2016, 115)

This situation is untenable, more than ever. In declaring doping a public health problem, the WHO instilled a renewed need to *really* try to attain the best solution for the concerned population. This is not anymore the sole area of concerns of private stakeholders, like the IOC or other international federations: national governments are investing resources in the fight against doping, and pressure is mounting to invest even more money in it for the coming years. If we are going to consider doping as a public health problem, and give it the attention it needs, we also ought to evaluate the arrangements in place, and not only from a value perspective of preserving the essence of sport, but also with the different impacts the policy has, and its efficiency in

attaining its goal of a doping-free sport. In other words, we ought to evaluate it just like any other public policy would be, and not place doping-free sport on a pedestal, unattainable ideal that warrants sacrifices regardless.

Once more, a need for evidence and more empirical knowledge is warranted to further our analysis of both WADA's and the hypothetical harm reduction approaches, echoing a major concern about the lack of certainty that came out of the last chapter. In the present case, we need not only to select which approach we think suits better our ideals but also to measure its outcomes once it is implemented in reality.

In sum, this chapter examined numerous alternatives to WADA's current guidelines. Of them, the harm reduction approach stroke the most sensible equilibrium between feasible application and solution to our ethical qualms. As with the preceding chapter, this is not a complete and definitive answer to the question asked at the beginning of this chapter. But it proved that there could indeed be more suited regulations to deal with doping than WADA's. Something inspired by the harm reduction principle, if it is ever implemented, could modify substantially the way we conceive of dealing with the phenomenon, without challenging the very elusive desire for doping-free sport, the difference being that we should now acknowledge it as such.

Conclusion

WADA was created in order to better address the doping problem after the IOC's poor management of this issue in the 1970s, 80s, and 90s. It was meant to be an independent coordinating institution that was sponsored equally by the IOC, national governments, and international sports federations. Today, IOC has critiqued WADA for its continued poor management of the doping problem (Tygart 2016, Gibson 2016). As it did when athletes were caught with anti-doping substances in what is now referred to as the Festina affair, the anti-doping movement is at a crossroads. But the roles, ironically, have changed. WADA, instead of being seen as the solution, is now considered part of the problem. Athletes, federations, and national agencies are calling for stricter regulations as well as a more transparent process on how WADA makes decisions. The Russian scandal has shown that whistleblowers were ignored, and that some tests results were never analyzed (Ruiz, Macur and Austen 2016; Seppelt 2014). The Russian staff is clearly at fault, but the Agency also failed to protect 'clean' athletes and to offer them the promised opportunity to compete on a doping-free playing field. Some athletes feel that this trust has been broken and they doubt they will ever be offered this doping-free playground. They feel cheated, and rightly so.

At the Rio Olympics, this bleak outlook on measures meant to prevent doping is palpable. During the women's swimming competitions two interesting cases emerged that confirm that athletes do not feel fully protected by the anti-doping regulations and the public are not certain it is watching a 'clean' sport.

Yulia Efimova is a Russian swimmer medalled at London in 2012 who completed a 16-month ban from competition in 2015 following testing positive to dehydroepiandrosterone, which is an endogenous steroid hormone⁸ (Schilken 2016). Upon the IOC's decision to ban all Russians athletes that were found guilty of doping in the past, regardless of the completion of their sanctions, Efimova, who lived in the United States for most of the year instead of Russia,

⁸ She also tested positive for the newly banned drug meldonium in January 2016, just after the entry of the substance on the PL. However, sanctions regarding meldonium are now on hold while WADA gather more information on how long detectable traces of the drug stays in the body, many athletes arguing that they did not, in fact, consume the substance after January 1st 2016 (Schilken 2016).

appealed to the CAS on the basis that a precedent offense could not warrant a new ban in itself. She was granted the appeal on August 6 2016, the day before her first competition (BBC 2016). At Rio, she ended up winning two silver medals but was booed every time she competed, and a competitor commented publicly that she should not be competing and implied that Efimova's status as a cheater should still be relevant (Schilken 2016).

On the other hand, the Hungarian Katinka Hosszù never tested positive for doping. But a sudden improvement of her performances beginning in 2014, at the 'old' age of 25, have raised suspicions that she is doping in the swimming world so much so that the athlete choose to address them in the fall of 2015 (Thomas 2016). At the Rio Games, she won three gold medals and one silver medal and broke both a world record and an Olympic record while doing so. Once again, suspicions that the athlete was doping were raised by the American media, which tarnished the pride of the winning athlete (Thomas 2016). In the cases of both Efimova and Hosszù, many competitors feel cheated due to the continuing doubts about their remarkable performances and WADA's poor record of catching cheaters. It also hurts the athletes themselves, who have to comment and deny doping allegations when they should be celebrating their achievements. The idealist environment promised by WADA only works if a certain trust exists and this trust does not seem to be there at the moment. This lack of trust can help explain why a number of stakeholders (e.g., athletes, IOC, international federations, the public) feel WADA should double-down on anti-doping regulations and sanctions.

This thesis did not meant to contradict these feelings, but to open the discussion to a larger debate regarding the ethical legitimacy of the strict prohibition on doping in sports enforced by WADA. After examining the plethora of arguments from both sides of the issue, I do not pretend to have a conclusive answer to this question. However, the richness of the debate summarized here, coupled with doping status as a public health issue (World Anti-Doping Agency 2012) does call for a substantive discussion on the status of doping itself, one to which *all* stakeholders should be invited to contribute.

Nonetheless, sufficient legitimate points were made against the current guidelines to warrant at least an examination of other avenues. In the third chapter, after inspecting them from the moral and feasibility standpoints, one approach stood out as particularly appropriate to explore in future discussions. The harm reduction approach, which has already proven successful in other

problematic areas of public health, answers a non-negligible number of concerns raised by critics of WADA and its WADC.

Implementing a novel approach to doping will not be a simple task. Political inertia is a hurdle to consider when thinking about how to reform the regulations of an international organization in which numerous governments and institutions have a vested interest. But the concept of political inertia is also helpful to understand how WADA came to be. As it was discussed in the first chapter, initial measures from the IOC to prevent doping were decided quickly in the wake of casualties related to PEDs. A system of test and subsequent sanction was adopted after Knud Enemark Jensen and Tom Simpson's deaths, and the first tests were carried out during the 1968 Mexico Olympic Games.

This choice has had tremendous implications. Testing is still seen as the primary weapon in the fight against doping and people call for better and more tests when the system is seen to be failing. As Hunt remarks, "those who wished for a different type of system (e.g., one based on Porritt's educational preference) would find the path towards its enactment continually obstructed by the forces of bureaucratic inertia" (Hunt 2015, 212). Arthur Porritt defended a more passive and normative system where the IOC would put a stronger emphasis on the general education and safety of athletes while still condemning the use of doping substances for athletes and testing them when appropriate. In the end, that has more to do with the harm reduction approach than the zero tolerance approach. Porritt's approach was seen as ineffective in the years that followed, and was replaced by a more technical and 'total' approach that completely evacuated the notion of education to focus on the logistics of testing the athletes (random tests, list of banned substances) (Henne 2014). This switch towards a technical view of doping, void of normative stance was then reinforced by subsequent decisions in the 1970s, 80s and 90s.

Perhaps the Russian scandal will lead to another important shift in the anti-doping movement just like the deaths of Jensen and Simpson accelerated the creation of the first 'active' anti-doping policy. The IOC has already called for WADA to organize an "Extraordinary World Conference on Doping" in early 2017 (International Olympic Committee 2016b), a sign that longer lasting solutions are wanted, aside from the ban of Russian athletes from the Rio Olympics. I have argued that this desire to change is warranted. However, it must not be confined to just applying differently the same prohibitionist perspective on doping. Doping as a concept must be re-

examined, and stakeholders must determine if this *anti*-doping stance is still warranted in today's context.

This discussion must also not be restricted to a certain group of decision-makers. In theory, the rules of the WADC are supposed to “represent the consensus of a broad spectrum of stakeholders around the world with an interest in fair sport” (World Anti-Doping Agency 2015b, 17). But in reality, only two types of stakeholders that have direct influence on this consensus: the IOC and other sport federations, and the national governments. This group needs to be enlarged to include every possible stakeholder in a truly collaborative manner. To do so, further research needs to be done on how athletes and the general public view doping. In light of the diversity of arguments presented here, a widely held objection to doping cannot, and should not, be assumed.

The debate on doping is rich on both sides of the debate and it is impossible to arrive to a concrete answer to the central question *Are the current World Anti-Doping Agency guidelines morally justifiable?* In themselves, current WADA's current guidelines are not unethical. However, this does not automatically mean they are ethical either. The process by which the regulations are created, combined with the coherence between empirical evidence and the theoretical arguments, are what makes the guidelines ethical or not. At the moment, shortcomings from WADA and the anti-doping movement on both the deliberation and the evidence fronts does not permit us to consider its guidelines ethical. To fully support WADA's idealist stance on anti-doping and the important consequences it encompasses, we need to be more certain of their ethical value. The same thing can be said of the more realist harm reduction approach, which would need to be more widely discussed in order to be accepted. At the possible dawn of an ‘Extraordinary World Conference on Doping’, let us hope the meeting will provide this much-needed deliberative space to expose, argue and critique *all* positions, as well as cement the importance of empirical knowledge to support proposed guidelines.

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