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Exploring New Avenues to the Doping Debate in Sports: A Test-Relevant Approach

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Abstract

This author examines the doping debate's fundamental question: is sport justified to prohibit certain performance-enhancing substances? Although a well-trod question, this article argues that historical justification for banning doping does not provide sufficient reason to continue banning substances today. At the same time, current approaches that rely heavily on bioethical arguments only address a small portion of the doping debate. This paper will argue that the bioethical issues do not apply since sport, as a subspecies of games, ask that game players follow specific rules when participating in the game. Thus this paper develops arguments about doping related to the game test and separate from past bioethical debates over doping. These arguments use a test-relevant approach where sporting communities democratically evaluate the effects of individual substances on their specific sport. The result of a test-relevant approach is that sporting communities choose specific substances to permit or ban rather than having a universal agreed upon list of banned substances. This paper concludes with a brief discussion of the practical benefits including more meaningful prohibitions, more specific testing, and, potentially, sports that permit certain performance-enhancing substances currently prohibited by the World Anti-Doping Agency.

Keywords: doping, performance-enhancement, sporting tests.

Abstract

Este autor examina una cuestión fundamental en el debate que gira en torno al dopaje: ¿está justificado que en el deporte se prohíba el uso de ciertas sustancias mejoradoras del rendimiento? Si bien se trata de una pregunta recurrente, este artículo sostiene que la justificación histórica para la prohibición del dopaje no proporciona razones suficientes para continuar la prohibición de tales sustancias a día de hoy. Paralelamente, los enfoques actuales que dependen, en gran medida, de los argumentos bioéticos sólo se refieren a un ámbito reducido del debate que gira en torno al dopaje. Este trabajo propone que las cuestiones de bioética no se apliquen desde el deporte, como una subespecie de juegos, y reclama que los jugadores sigan reglas específicas al participar en el juego. Por ende, este artículo desarrolla los argumentos sobre el dopaje en relación con la prueba de juego y separándolo de los trasnochados debates bioéticos sobre el dopaje. Estos argumentos utilizan un enfoque de prueba pertinente cuando las comunidades deportivas democráticamente evalúan los efectos de las distintas sustancias en su deporte específico. El resultado de un enfoque de prueba pertinente es que las comunidades deportivas eligen las sustancias específicas que permiten o prohíben en lugar de haber un acuerdo universal en el listado de sustancias prohibidas. Este artículo concluye con una breve discusión de los beneficios prácticos incluyendo las prohibiciones más significativas, las pruebas más específicas y, potencialmente, los deportes que permiten ciertas sustancias para mejorar el rendimiento actualmente prohibidas por la Agencia Mundial Antidopaje.

Términos Clave: dopaje, mejora en el rendimiento (deportivo), pruebas deportivas.

1. Introduction¹

The entire doping issue in sport hinges on one single question: are existing rules prohibiting doping justified? If they are justified—or if we can at least conclude that some substances should be banned—we can set to work creating good anti-doping policies. If they are not—and we find that sport has no reason, moral or otherwise, to regulate what substances athletes use—we must reconsider whether we need the current anti-doping complex that now dominates sport. But none of this falls into place until we determine whether such policies are justified.

To be sure, the sporting world appears convinced that it should ban doping, and that enforcing this ban remains a top priority. Sporting officials talk about a “war on doping” that must be waged in order to save the integrity of sport. The general public, at least in popular discourse, appears to support anti-doping measures as well.² Often their support emerges from the popular belief that sport should exist as a healthy and morally edifying activity, and that using performance-enhancing substances is necessarily unhealthy, cheating, and immoral. Such a view amounts to an ethical rationale justifying the bans on doping, even if it is theoretically undeveloped, and has historically supported efforts to prevent athletes from doping. However, scholars have pointed out that such arguments, at least without further support, cannot justify banning such substances, and, more importantly, that such justification ignores the complexity of the performance-enhancement issue. In fact, the scholarly debate illustrates this decidedly mixed issue, with some scholars arguing that the bans are not justified (A. Miah, Bengt Kayser, Alexander Mauron, 2005; C. Tamburrini, 2007) and others concluding that they are (W. Morgan, 2009; Murray, 1983).

The philosophical arguments of scholars have tended towards two lines of thinking. One approach uses metaphysical claims about the nature of sport to advocate for a position while the

¹ A special thanks to Tim Lehrbach for his useful guidance and insights. His contribution significantly improved this article, though any faults or mistakes remain my own.

² Empirical evidence also suggests the general public holds anti-doping attitudes. See USADA Report, “What Sport Means to America: A Study of Sport’s Role in Society” March 2011.

other pursues bioethical arguments to demonstrate their position's rationale. Unfortunately, both of these approaches have failed to generate consensus among scholars and, as I will argue, may be incapable of resolving the disagreement. I will advocate for a recent and developing third option discussed in Gleaves, (2011b) and Morgan, (2009) which I will call a test-relevant approach to better show the relevant issues. To show why this new option provides useful insights into the doping debate, I will first briefly sketch the history of doping in sport. I will use this history to show that the assumed arguments lack their supposed normative force. I will next argue that the bioethical arguments likely only apply in extreme cases and are not capable of providing final answers to the doping question. I will then articulate a third approach that considers performance-enhancing substances (PES) as one aspect among a sport's many artificial tests. I argue that the decision whether to permit or ban the use of any PES must begin by examining its relevance to the test. I will conclude by showing how this third option applies to current doping issues. This test-relevant approach offers a better way to consider the decision to ban PESs and, if put into practice, offers certain pragmatic benefits for those choosing to ban doping.

2. A (Quick) Intellectual History of Doping

As the American novelist William Faulkner explained, “The past is not dead. In fact, it's not even the past.” Such sentiments certainly resonate in the doping case. Although few realize it, today's attitudes towards doping and pharmacological enhancement—from the moralized rhetoric to the desire to preserve naturalness—live as much rooted in the past as the pharmacological substances they apply to flourish in the present. As explored below, these 21st century concerns reflect the 20th century concerns over public health and temperance. Those, in turn, reflect the 19th century notion that sport could transmit social values and build character, which, in turn, reflect the post-enlightenment developed cosmology that simultaneously embraced promise and the fear that through science humans could increasingly manipulate the natural world. Indeed, the 21st century attitude reflects the age-old “Promethean” fear that

humanity, unrestrained in its technological quest for mastery, risks stealing from the gods something more powerful than it can handle.

To be sure, throughout modern sport humans have certainly attempted to enhance performance through a variety of methods including the use of substances and herbal remedies.³ The idea of enhancing performance is not new. However, as modern sport thoroughly took hold in the latter half of the nineteenth century, human athletes increasingly applied the methods of science and Enlightenment thought to their sporting performances. By the turn-of-the-century, “stimulants” included substances such as alcohol, strychnine, narcotics, or digitalis—all of which have fallen out of favor with athletes for good reason.⁴ Yet historian John Hoberman explains that for early sporting communities, as opposed to those today, “doping was not regarded as an illicit practice; it was rather seen as an antidote to the extreme fatigue experienced by the athletes of that era” (Hunt, 2011, p. iv). In the working-class professional sports of the early twentieth century, professional athletes found the freedom to use stimulants as they plied their labor free from moralizing influence while the news media portrayed such practices as professional tools of the trade.⁵

Even into the 1920s, this attitude persisted in professional sport (Gleaves, 2011a). Few regarded doping in professional sport as unfair or cheating. Rather, the act of doping to assist in physical labor fit within the acceptable range of social behaviors for the working-classes. Their

³ Evidence on this cultural practice remains controversial, as it is unclear how the Greeks understood this aspect of sport performance. Nonetheless, there is evidence that they sought to improve performance in such ways. See (Hoberman, 1992)

⁴Historians have produced a wealth of studies chronicling the spread of doping and performance enhancement in modern sport. (Dimeo, 2007; Hoberman, 2005, 2006, 2007; Møller, 2008; Rosen, 2008)

⁵ Professional cycling trainer James “Choppy” Warburton openly doped his riders throughout the 1880s and 1890s and also allegedly used substances to prevent one of his athletes from winning.⁵ Reports also indicated that professional pedestrians and prize fighters doped during competitions.⁵ By 1903, the public’s expectation that professional athletes put on a good show increased to the point that in one case, a reporter openly lamented the lack of doping when fatigue slowed the riders at a six-day cycling race at New York City’s Madison Square Garden. The journalist complained that “some of them seemed sadly in need of stimulants.”⁵ A 1904 article discussed the value of “a good second” in a prizefight since they knew how to dope the boxers with stimulants.

jobs demanded they use their bodies in physically demanding ways. Unlike the middle- and upper-classes, who used amateur sport as a tool for moral betterment, social status, and control of leisure, the working classes used professional sport not for leisure but as a means for economic profit. Middle class notions about sport's moral purpose, both in this era and throughout the twentieth century, did not apply. Instead, the physical toll of professional contests such as racing often meant that athletes used drugs to combat fatigue rather than gain an edge. Even in pre-professional sports such as the 1904 and 1908 Olympic marathons—where the fields of entrants often comprised working-class individuals—working class athletes could acceptably dope. Given the sport's physical demands, many apostles of amateurism regarded the marathon as a sport suited for working-class professionals. Thus, when reports of Thomas Hicks in the 1904 Olympic marathon and Dorando Pietri in the 1908 Olympic marathon using PES surfaced, no one objected to such practices.⁶ Sports such as boxing and cycling also fit the description of working-class sports unconcerned with doping. In these pre-professional sports, sportswriters would even go so far as to distinguish between “professional” and “professional amateur” (Pegler, 1930). For both classes, doping remained an acceptable aspect of such sports since the athletes emerged from the working-class with sights set on professional sport.

By the interwar era of sport, concerns over amateurism and sport's moral value combined with increasing social reticence towards drugs in popular culture to lead to the first anti-doping bans. The public became increasingly concerned that elite athletes failed to embody the social values desired from sport. One turning point came when journalist Albert Londres recorded a conversation with Tour de France cyclists at a café in 1924. Londres recounts the cyclists—Henri Pelissier, Francis Pelissier and Maurice Ville—in the following:

“We suffer on the road. But do you want to see how we keep going? Wait...”

From his bag he takes a phial. “That, that's cocaine for our eyes and chloroform for our gums...”

“Here,” said Ville, tipping out the contents of his bag, “horse liniment to keep my knees warm. And pills? You want to see the pills?” They got out three boxes apiece.

⁶ For more on Hicks and Pietri's doping as amateurs see Gleaves (2011a).

“In short,” said Francis, “we run on dynamite.” Quoted from (Thompson, 2008, p. 190).

However, these practices eventually raised concern among those in amateur sporting circles. In 1928, the International Amateur Athletic Federation passed an anti-doping rule that read:

“Doping is the use of any stimulant not normally employed to increase the power of action in athletic competition above the average. Any person knowingly acting or assisting as explained above shall be excluded from any place where these rules are in force, or if he is a competitor, be suspended for a time or otherwise, from further participation in amateur athletics under the jurisdiction of this federation.” (IAAF, 1928)

Similarly the IOC would state that it considered doping a violation of its amateurism code in 1938 (Gleaves and Llewellyn). Yet in 1960, the sporting landscape changed drastically when Danish cyclist Knud Enemark Jensen tragically died at the Rome Olympic Games. Following Jensen’s death French cycling coach Robert Ouberon drove home the idea that doping and the world of moral amateur sport do not mix, stating that “many pros are drugged, of course, but we don’t drug amateurs” (Daley, 1960).

Although evidence calls into question the cause of Jensen’s death (Møller, 2006), the tragic event that unfolded under the spotlight of the Olympic Games provided a face for those seeking to underscore the health risks of doping and who viewed doping as anathema to idealized amateur sport. In starts and stops following Jensen’s demise, anti-doping policies grew more established. Drug testing increased, often as a reaction to drug-related scandals. Initially hamstrung by science and politics, the IOC finally introduced drug testing at the 1968 Games, but would not have a serious commitment to curtail doping practices until after Canadian sprinter Ben Johnson’s high-profile positive test for stanozolol during the 1988 Olympic games (Dimeo, 2007). As the Cold War’s “big arms” race played out in anti-doping of the 1970s (Hunt, 2011) and a global war on drugs (regardless of whether their use was for sport or recreation) swept the 1980s (Davenport-Hines, 2002), the intellectual streams of early anti-doping ideologies joined larger social tributaries. The NCAA approved drug testing rules in 1986 following scandals at Clemson University (White, 1986). The National Football League began drug testing in the late 1980s after a string of high-profile players suffered drug-related deaths. Major League Baseball, one of the last organizations to implement drug testing, finally succumbed to public pressure in

2004 following a high number of anonymous tests that were positive for anabolic steroids and human growth hormone the previous season and the constant, less anonymous public scandals involving its athletes (Hoberman, 2005).

The most recent substantial change in anti-doping policy came in 1999 with the establishment of the World Anti-Doping Agency (WADA). WADA exists as a quasi-independent agency designed to oversee all doping related issues ranging from policies, testing and punishments to education and even, at times, the provision of legal assistance to governments wishing to prosecute athletes caught using performance-enhancing substances. WADA handles all Olympic sporting federations' drug testing and sets the policies which the international federations follow. WADA currently receives official endorsement from the United Nations through UNESCO as well as numerous countries including the United States (WADA, 2009). While drug testing policies—including WADA's own—continue to evolve, anti-doping attitudes remain rooted in WADA's *Code* (2009), which considers doping unhealthy, unfair, and contrary to the spirit of sport.

While WADA represents the dominant narrative shaping today's anti-doping debate, the intellectual history of anti-doping reveals a deep connection with the Victorian values of amateurism. Amateurism provided the view of sport that rejected doping. The idea that sport was about health, clean living, and, above all else, a specific vision of moral behavior, meant that the negative attitudes towards working-class professionals who regularly doped and the social stigma towards drug users in general created an environment that viewed performance-enhancing substances as illegitimate sporting practices. In that sense, although the sporting world has long since dropped amateur rules as moral codes governing athlete conduct, tacit amateur values continue to guide attitudes and policies towards doping. Scholars must appreciate that many of the presumed premises of the doping debate are neither natural facts nor moral principles. Rather, they emerge tethered to a specific ideology that used anti-doping arguments to disenfranchise lower classes of athletes. They become reified by way of the reactionary efforts sporting organizations undertake to ensure their sport's moral credibility following public

scandal. Scholars should dismiss these well-worn anti-doping arguments of the past as interesting historical anachronisms rather than tools for resolving current debates.

3. Bioethical Approaches to Doping

In fact, many scholars have already done so. Although the initial inspiration for prohibiting doping used the ideology of amateurism, fairness, and health concerns to justify its position, scholars have pointed out that these traditional reasons for opposing doping do not withstand heavy scrutiny (Møller, 2010b; Waddington & Smith, 2009). Although anti-doping policies remained in place, they lacked a moral “Archimedean point” from which sporting communities could justify such policies. Scholars on both sides of the doping debate sought more sophisticated avenues for examining the ethics of doping. This prompted interest in the field of bioethics. Much of the scholarly doping debate typically, though not always, relies on bioethical arguments to justify a position. These arguments involve debates over paternalism (Brown, 2007; Simon, 2010), autonomy (Munthe, 2007; C. Tamburrini, 2007), coercion (Breivik, 1992; Gardner, 1989), equal access (Loland, 2009) and the nature of being human (A. Miah, 2004; Sandel, 2007). The fact that philosophers naturally turn to bioethics in the doping debate makes sense. A branch of ethics, bioethics examines controversial issues brought about by medical and scientific advances. But is bioethics the best approach to the doping debate?

While progress has been made on some specific issues, the general question as to whether the doping bans are justified is as murky as ever. As Simon recently concluded in his 3rd edition of *Fair Play: The Ethics of Sport*, “When I first started writing about performance-enhancing drugs in the 1980s, my initial intuition was that their use to enhance performance in athletics was clearly wrong....However, I believe such a conclusion is more open to debate than I first thought and that the pros and cons are more complex than I realized” (2010, p. 109). Indeed, after nearly three decades applying bioethical arguments to the doping debate, such arguments have failed to provide scholars with a clear cut rationale to justify either prohibiting or permitting PES in sport.

The reason for much of this failure is that, except in extreme cases, bioethical arguments do not shed much light on the justification for game rules within the context of games. As philosophers of sport have argued, sports are institutions created by constitutive and regulative game rules that function to govern the activity (Kretchmar, 2001; W. J. Morgan, 1995; Russell, 1999). Of course within such institutions, ordinary ethics, including bioethics, always applies.

Ethical obligations exist regardless of the game players' status as game players. For example, ethical norms against murdering exist for a game player regardless of a game's rules. In the real world, sports often attempt to mitigate risk and limit violence in order to preserve basic moral tenets that emerge out of respect for human life. In rare instances where sports permit unethical behavior, such as perhaps the Roman coliseum, where murder of non-voluntary participants occurred, ethicists can—and should—point out that such behavior is unethical. But such instances where a game's rules can be ethically evaluated are rare. Please note, I do not say “rarely” here as an overly cautious way of hedging my claim when I really mean to say “never.” There are definitely cases where bioethical questions go live in sports, including within the doping debate. Concerns about medical privacy, drug testing children, and athletes' health are examples of bioethical issues related to doping. The emerging controversies surrounding concussions and head injuries in American football and the medical treatment provided to injured athletes are additional examples of bioethical issues.⁷ These questions focus on preserving the moral integrity of the activity. Yet such bioethical arguments miss the heart of the doping debate.

In general, bioethical issues in sport rarely occur because most sporting issues really amount to means/ends debates. Means/ends debates focus around the permissible means to achieve a game's ends. When sporting communities address such debates, they focus on lusory issues, such

⁷ For fuller treatment of these as bioethical issues, see (Loland, Skirstad, & Waddington, 2006; C. M. Tamburrini & Tännsjö, 2005).

as promoting fair contests, durable tests, and the like.⁸ Such evaluations might be how long to make the game, how to determine the winner, how contestants share the test, and even how to define a game's tests. These determinations are not bioethical in nature. It is not an ethical issue to make the marathon 26.2 miles instead of, for example, 26 or 27 miles. Nor is it an ethical issue to decide if a basketball game should have four quarters or two halves or if baseball should permit a designated hitter. Such decisions have to do with what we consider a "good game." Although there is no single recipe to what makes a good game, it often involves what Kretchmar (1975) has called "just right" tests—tests that are neither too hard nor too easy. This requires balancing permitted means with the stipulated ends. For example, the sport of cycling has determined that the means involves riding a bicycle that conforms to specific specifications including not having a motor. However, the ends test of cycling involves riding variable distances that change based on the talent level of participants and the challenges of the terrain. In this way, cycling keeps its means constant but alters its ends in order to achieve an ideally balanced competitive test for participants. If someone invented a motor that allowed cyclists to go ten miles per hour faster while still allowing them to pedal their bicycles, then naturally achieving the ends would become easier, potentially destroying the sport's challenge. Riders would finish the same course in less time or expend less energy. Either way, altering the means reduces the challenge of the ends. The sport could make the courses more challenging in order to restore balance, much like golf famously Tiger-proofed their courses throughout the 2000s, or it could simply prohibit the motor-assisted bicycles and choose to keep the bicycles the same.

However, is the central question in the doping debate—is sport justified to prohibit certain performance-enhancing substances—a bioethical question or a means/ends question? Most philosophers have pursued this question as if it was the former. In part, the bioethical approach initially appealed to philosophers because of doping's perceived negative health effects. Especially in the early days of amphetamines, steroids, and erythropoietin, the bioethical

⁸ Critics might argue that fairness is a moral norm. If such fairness is read as justice, I can concede this point. However, often rules on fairness have to do with creating an equal or level playing field. These considerations, which are what I am referring to, do not have to do with justice but with creating a good game. The desire to create a level playing field is born out of a desire to create a game where winning is accurately attributed to the best player. This desire shows that it is lusus consideration having to do with determining what we want our games to be about.

approach made sense because scientists understood relatively little about their health effects and feared for the worst. But now, evidence overwhelmingly indicates that it is possible to administer performance-enhancing substances to athletes with minimal risks. As Houlihan has concluded, “relying upon health-related arguments to provide a basis for anti-doping policy ... is not possible” (Houlihan, 2002: 132). With such small risks, arguments addressing personal liberty and unjustified paternalism (A. Miah, Bengt Kayser, Alexander Mauron, 2005; C. Tamburrini, 2007) appear more persuasive in defense of doping than before. Additionally, the health risks of doping pale when compared to the risks many athletes regularly face while participating in their sports. These points indicate current performance-enhancing substances do not present serious enough health concerns to merit bioethical consideration. Additionally, arguments such as fairness and the spirit of sport do not hinge on bioethical considerations (Gardner, 1989; Schneider & Butcher, 1994).

Therefore, few bioethical arguments appear relevant to whether sporting communities can justifiably prohibit athletes from doping. Perhaps, when considering banning future genetic technologies philosophers still have good reason to explore bioethical concerns. And bioethical issues still emerge on the periphery of the doping debate with issues of medical privacy, disclosure of testing results, personal freedoms, and harm reduction. However, as philosophers have seen, the results of such arguments have yet to resolve the central doping questions and such questions lie precisely at the heart of the doping debate.⁹ As I will argue below, the doping debate can benefit by considering performance-enhancing substances as part of the means/ends debate and that bioethics, for all its promise, does not apply to the central doping question. Rather, the answer to whether sporting organizations can justifiably prohibit performance-enhancing substances hinges on how individual sporting communities evaluate the effects of specific substances on their sporting tests. Viewed in this light, the doping debate ought to involve different determinations than scholars have typically used. By looking at the debate in

⁹ I do concede that approaches such as Kayser and Broer’s (2012) harm-reduction argument to illicit drug use in sport provides a useful bioethical argument to the doping question. However, those who typically disagree with Kayser and Broer’s line of argument assert that the doping debate amounts to more than harm reduction and permitting performance-enhancing substances violates some other undefined aspect of sport.

this way, sports will create their own set of banned substances based on their internal values rather than the current model used by the World Anti-Doping Agency (2009) of a single anti-doping code that lists all banned substances for all sports.

4. The Test-Relevant Approach

As an alternative to the bioethical approach, I suggest that scholars and sporting communities ought to examine how a performance-enhancing substance would alter each sport's test and the values associated with that test.¹⁰ I call this process of examination the test-relevant approach. The test-relevant approach first examines the ways that introducing a performance enhancer into a sport affects a sport's tests. In principle, enhancers can have one of three effects. They can help, harm, or have no effect on the current test. To determine whether a performance-enhancer (or a rule change, in general) has helped, harmed or had no effect on a sport, we can evaluate how the change impacts the values laden in the test. These values can be the testing of certain qualities such as endurance, physical skills, or strategic considerations, among many, many others.¹¹ Testing these qualities has value insofar as cultures and individuals associate meaning with the results of such tests. Whatever prowess is demonstrated by the tests of, for example, football, weight lifting, wrestling, athletics—of which each is admittedly multi-faceted—is meaningful to the sporting community.

In the case of a performance-enhancer, sporting organizations can justifiably prohibit it if the effects of the performance enhancer alter the test in undesirable ways. For example, if a technology renders a sport's central challenge irrelevant, as would be the case when using a GPS-guided golf ball, then a sport can decide to ban it in favor of preserving the test—in this case, the golfing test that requires that golfers can hit the ball in the direction of the hole.

¹⁰ Critics might object to this claim by arguing that safety would, in fact, be the first consideration. But such a claim is hasty. If a change to a rule harms a test, then there is no reason to evaluate the rule changes safety. However, if a rule change makes a test better, gamewrights may want to examine the safety implications. Thus in both cases, safety considerations follow the lusory considerations.

¹¹ To be clear, this shift towards testing values is not a move towards MacIntyre's "internal goods" argument. Indeed, internal goods, which are goods specific to practices is far more narrow than my conception of test-relevant values, which are values attached to the testing of certain qualities.

Additionally, a sporting organization can decide to ban an enhancement if allowing it does not add anything to the test. This second reason works much like an “Occam’s Razor” for sport in that when faced with two equally appealing tests—one with the enhancer and one without—sporting organizations ought to err on the side of simplicity and ban the enhancement. Sports ought to err on the side of simplicity because undesirable complexity can detract from an athlete’s experience. For example, if a sport’s community determines that an enhancer does not make the test any better but simply adds cost, provides another opportunity for a game to go awry, decreases the time available for playing the sport, or adds undesirable redundancy to the test, sporting communities would have good reason to prefer the simpler version and exclude the enhancer.¹²

While the test-relevant approach provides justification for banning a performance enhancer, it also can justify permitting it. In cases where permitting an enhancement or technology improves a test, sporting communities can—and usually do—embrace such changes. Such changes can come in the form of improved equipment, rule modifications, performance-enhancing technology such as PES or even genetic engineering. Equipment that functions better or allows better players to more fully demonstrate excellence or creativity can improve tests when compared to their older versions. Rules can be changed so as to allow new equipment or strategies that will enhance challenges, make the sport more enjoyable, or close undesirable loopholes. In those instances, sports can certainly embrace such rule changes because the improved game test is more enjoyable than the one it replaced. Skiing provided such an example when the sport embraced side-cut skis that allowed both recreational skiers to master the sport quicker while allowing expert skiers to ski even faster.

The test-relevant approach also considers the possibility that introducing new elements to a sport might not improve a test, yet trying to enforce a ban proves problematic. In those cases, where a rule change does not enhance a sport but enforcing the bans clearly harms the sport, a

¹² For a clear picture of such a stewardship model, see Robert Simon’s *Fair Play: The Ethics of Sport* 2nd, chapter on the ethics of commercialism and sports equipment. In it, Simon advocates for a shared stewardship model between sport communities, their official organizations, and the manufactures who sell products. These stakeholders each have a moral obligation to determine what improves the sport.

sport can justifiably decide to change its rule and relax a previous prohibition. For example, the rules surrounding amateurism in many Olympic sports during the mid-twentieth century proved very hard to enforce and led to “shamateurism.”¹³ Although sporting organizations may have wished to preserve amateurism, enforcing amateur rules in the face of illicit payments proved detrimental to all parties involved. The cures, in a sense, proved more harmful than the competitive disease. Thus changing the rules to permit payments may not have improved sport, but it avoided the negative effects of the ban.

While the test-relevant approach provides a useful set of criteria for arbitrating performance enhancement, it also differs from many of the previous approaches. Importantly, the test-relevant approach does not depend on sports having any internal goods or essences that need preserving, something frequently cited in previous doping debates. Instead, this argument simply looks at lusory considerations for a sporting test from the perspective of problem-solving and playability.¹⁴ All sports are open for adjustment if such adjustments can improve the sport’s lusory appeal. If a performance-enhancer improves a test in some demonstrable way, a change can be justified. If a sport’s test is harmed, the change is not. There is no appeal to a metaphysical or naturalistic claim about the essence of sports or about what counts as enhanced and what counts as natural. The appeal is a more pragmatic one. It is related to the kinds of challenges that people find gratuitous, and such gratuity includes a variety of characteristics. While people can disagree on what features should be preserved, enhanced, de-emphasized, or eliminated, it is also possible for those who play these games to establish a rough consensus on how the game should be played or, in cases where judgments are uncertain, to at least support a degree of experimentation and further assessment.

¹³ The under-the-table payment of amateur athletes led to a practice called “shamateurism,” where athletes pretended to be amateurs although receiving payment. In this example, the sporting organizations could not stop such payments and the enforcements had negative consequences for both innocent and offending athletes.

¹⁴ Many things contribute to a sport’s enjoyability such as good challenges, sensuousness of the sport, playability, durability and more. Altering such characteristics alter a test’s enjoyability. Performance enhancers can certainly affect the characteristics that make tests enjoyable thus what matters is how performance enhancers affect a test’s enjoyability via characteristics such as durability, playability, etc.

At the same time, the test-relevant approach presupposes—and subsequently benefits from—a philosophically established conception of sport. As Suits argues, games are “voluntary attempts to overcome unnecessary obstacles” by inefficient means. Good games, Suits contends, involve well-balanced tests where the means and the challenges are neither too difficult nor too easy (2005, p. 52). As Meier (1988) argued, all sports are games that rely on varying levels of physical performance to voluntarily overcome obstacles but good sports will have rules that outline challenges with desirable degrees of difficulty. If a sporting community alters its rules and accidentally makes its challenge too difficult, the sport will not endure. Players will become frustrated by a seemingly-impossible test. At the same time, if a sport alters its rules and makes the challenge too easy, perhaps by permitting a type of performance enhancing technology, it will also not endure. Its test will be reduced to “child’s play” and hold little appeal for those seeking a durable game. The time spent playing may decrease or it may test different characteristics that the sporting community does not wish to test. By making the test too easy, sporting communities may lose many of the characteristics of a good test.

Additionally, the test-relevant approach incorporates Kretchmar’s explanation that games can be put to two uses—testing and contesting (Kretchmar, 1975). Testing problems, Kretchmar explains, are the artificial challenges game players must overcome, while contesting problems emerge when competitors undertake the same test in an effort to perform better than one another. Both testing and contesting problems are important components of sport. In sports, testing problems can be durable challenges such as skiing quickly down an icy slope or shooting a ball through a ten-foot high hoop. Contesting problems enter when we attempt to negotiate a testing problem better than an opponent. To extend the examples, this would mean attempting to ski down an icy slope faster than someone else or to put a ball through a ten-foot high hoop more often than an opponent in a set amount of time. The comparative project introduces new strategies (when or how to make a move) and new behaviors (taking unusual risks in order to take the lead).

When sporting communities use the test-relevant approach, they can examine how such changes affect the sport’s testing and contesting problems. A change to a game’s rules may affect

the difficulty of either or both, and, once again, they can affect them for better, for worse, or in no appreciable way. For example, a substance such as erythropoietin (EPO) may make a testing problem easier by increasing an athlete's ability endurance. A substance can also make a contesting problem easier, if, for example, it could steady an athlete's nerves in face of competitive challenges. Thus a test-relevant debate over a rule change should consider what affects the change has on both sets of problems Kretchmar identified.

The test-relevant approach also conforms to Russell's conception of broad internalism as a justifiable explanation for rule changes (1999). Broad internalism describes how game-communities can alter their rules without harming the integrity of the game. Sporting organizations typically modify their rules for many reasons but with the end result of preventing harm to their sport or making the sport better. A sporting organization might modify rules to prevent previously unthought-of actions such as using ones' hat to catch a baseball or to improve a sport such as introducing the forward pass into football. When new technology arises that allows players to perform better in a sport, people may debate whether the rules ought to permit or prohibit such technology. In fact, the sport of cycling is currently debating whether riders ought to be allowed to use radios during the race. This technology allows a team to better coordinate its strategy, but removes certain tactical challenges from the race. All of these deliberations point to sporting organizations' capacity to successfully navigate the challenges of performance-enhancing substances.

While the test-relevant approach benefits from its philosophical consistency, it also reframes the perennial doping question as a less emotionally-charged issue. Rather than debating the ethics of doping, the test-relevant approach considers all issues as they relate to the relationship between a sport's means and its ends. Any change in the permitted means can modify athletes' performances. Debating whether such modifications are an improvement avoids the problematic assumption that plagues the doping debate, which is the assumption that doping is inherently wrong and those who do dope have violated a fundamental moral principle. In part, this attitude stems from the previous bioethical approach which attempted to turn the doping debate into a moral issue. The test-relevant approach asks whether a substance improves performance in way

that affect the integrity of the test, not whether the technology itself is morally problematic for sport.

5. Advantages of the Test-Relevant Approach

Given the interest in doping by philosophers of sport, surprisingly the test-relevant approach has remained largely absent from the doping debate. However, when considering the issue of doping, each sporting community should consider performance-enhancing substances separately. This marks a change from the current approach that treats doping as a single catch-all of substances. Since EPO and anabolic steroids differ significantly in their physiological function, it makes sense to consider them separately. Their effects on the sporting test will differ widely. EPO provides athletes with endurance by creating more red blood cells to deliver oxygen to working muscles. Anabolic steroids help with strength and recovery by increasing protein synthesis in muscle cells. Other substances including many stimulants and beta-antagonists have been shown to provide only marginal to little positive effects in specific events. Substances differ by mechanisms of action and degrees of effect, and therefore it makes sense to consider them separately rather than as one single class of substances.

This is an important step, for under this approach sporting communities will have both the ability and the responsibility to evaluate the decision to permit or ban those substances based on their sport's demands and decisions internal to the sport. Sporting communities can independently evaluate whether specific substances results in conditions that create, from a luscious perspective, better testing or contesting problems. If permitting everyone to use substance X would improve the sport, make the sport more enjoyable for athletes and the audience, make it a fairer competition, allow athletes to express more tactical or skillful excellences, or reduce the risk of other injuries, then that substances could be considered a step forward and there would be reasons for accepting it into the sport. For example, if a substance increased athletes' focus, motor sports have reason to embrace the substance, as it would decrease collisions caused by driver inattention. One might wonder if this would simply encourage drivers to go faster, but drivers are already driving as fast as they can. Such a substance would only decrease risk of

collisions. If inattention caused by fatigue is not a central component of most motor sport tests, then these sports would benefit from permitting such a substance. On the other hand, building on Morgan (2009), if the minimally harmful substance removed desirable elements of the sporting test, sporting communities would have compelling reasons to ban it. In the example above, if the auto sports community agreed that focus while fatigued *is part of the test*, then it could justifiably prevent athletes from using such substances.

But the point is that it is up to the sporting community to determine if a substance erodes, improves, or does not affect its sporting tests and it is on the criterion that sporting communities can justifiably prohibit or permit such substances.

Sporting communities often negotiate such issues. For example, football's recent debate over goal-line technology revealed a sporting community navigating how best to determine when a goal is scored. Golf communities have navigated which clubs to use. Baseball has determined that certain metal bats present an unsafe situation for the pitcher and unfairly advantage the batter. Similarly, if sporting communities do not see value in permitting a performance-enhancer—that is, it does not improve the sport in any meaningful way, or adds extra costs and undesirable complications--then the simpler, substance-free, version of the sport that presents the same tests as the substance-enhanced version with less cost and fewer complications is to be preferred. Additionally, sporting communities ought to be conservative about modifying established, durable sporting contests. Certainly substance-free sport has proven itself enjoyable and appealing, even when performance-enhancing substances were available. There is no need to risk harming a sport by introducing or experimenting with a substance that does not appear to have benefits that outweigh the perceived harms. But if such reasons existed, they would arise because introducing the substance negatively affected a sport's lusory considerations or its test-relevant values.

While the test-relevant approach reveals how sporting tests may be directly affected by performance-enhancing substances, it also reveals that such substances provide slippery slopes towards eroding the tests. For instance, a sporting community can argue against a substance or

other technology, not because the particular substance harms the test, but because future improved versions of the substance push the sport in a direction that connoisseurs of the sport do not wish the sport to go. Although substance X may be benign, it sets a precedent for using substances. Once such a precedent is set, one may ask why not use even better substances? As new substances which offer greater increase in strength or endurance emerge, their existence may harm the sport's tests. However, with such substances, the sporting communities could still pursue case-by-case bans rather than wholesale bans on doping.

However, critics may sense that in such a conservative argument about a sport's test, a type of essentialism lurks. Essentialism is a theory that holds that sports have certain inviolable or essential components. Violating these essential components means that one is no longer playing the sport while violating other non-essential components may be permitted. In short, the essential components of a sport define that sport. Critics of essentialism such as Simon point out that rule violations—and rule changes—frequently occur in sports without ruining their integrity (Simon, 2004). Moreover, critics have shown that it is difficult to determine what counts as a central component of a sport and what does not. Thus my appeal to preserve a sport's test may strike some as an unjustified appeal for the preservation of a sport's essential characteristics.

I harbor no such essentialist perceptions of sport. My test-relevant approach asserts that sports can change if the change presents better or improved sporting tests. There is nothing special about a sport beyond its enjoyment. If the aficionados of a sport conclude that introducing such a technology or substance improves the sport, even if it alters its central tests, the sporting community can adopt such a change. There is no reason to not adopt a change if more people enjoy the amended sport simply because the previous version of the sport did not have such an amendment. Yet if the substance introduces no perceived benefits, the sporting community can retain its well-built sporting tests as they are precisely *because* the old tests speak to that community. Rather than being essentialistic, the test-relevant approach proves flexible in the face of change.

Yet this flexibility reveals why the doping debate remains such a vexing issue. For many, it is unclear whether doping harm sporting tests. In many ways, they appear to enhance sport as they allow *humans* to train harder, go farther, jump higher and run faster. For example, a substance that prevents fatiguing could allow athletes to play longer. Such substances could also open new skills, new strategies and new levels of complexity that all improve the test. Thus some performance-enhancing substances may prove to allow people to train harder, participate more skillfully, and play longer. In other words, doping might not squeeze out human agency and virtue, but actually give them more room in which to operate. But doping may also harm sport. Critics from a sport could argue that a substance leaves the sport relatively unchanged, but drive up costs and add undesirable layers of complexity. And last, banning a substance may cause a number of unintended harms. As Werner Pitsch (2009) has suggested, probability indicates that at least a handful of innocent athletes have been found guilty of doping while guilty athletes have gone unpunished. Others have pointed to the potentially immense de-humanizing effects of anti-doping including the invasion of athletes' privacy, their lack of due process, and the paternalistic nature of anti-doping rules (Hoberman, 1992; A. Miah, 2004; Møller, 2010a). At the same time, all great athletic performances now fall under the suspicion of being products of illicit enhancements. If anti-doping bans did not exist, many of these problems posed by their bans would dissolve.

Ultimately, the only way to answer such unasked questions is for a sport's officials and connoisseurs to specifically consider a substance's effects on their sport's tests. What matters is how each sporting community, which understands its sport well enough to determine whether a technology improves or harms it, views the relevant effects of a specific substances on their sport's tests. A universal prohibited substance list that applies for all sports will ultimately prove ineffective because different sports will and ought to have different attitudes about certain substances. Those sports which determine a substance improves its tests ought to be permitted to sanction its use. Therefore, a test-relevant ban on a performance-enhancing substance is fundamentally a contingent ban as sporting communities may later decide that a substance improves its test and reverse its decision to prohibit the substance.

6. Conclusion

Those who question the justification for current bans have often mistaken the issues at stake. When debating whether a sport is justified to have passed that rule in the first place, the fundamental question is not of an athlete's liberty or freedom. Instead, the fundamental question is how a rule alters a sport's testing or contesting problems; considerations about safety and marketability come later. If such technology cannot be said to improve the sporting test, or if prohibiting such technology appears to harm the sport, then a sport is justified in permitting it. If a sport is harmed by incorporating such technology or by prohibiting the technology the sport is made better, then it can be said that a sport is justified to prohibit it. Additionally, the test relevant approach shows that there is not an absolute answer to the doping question since there is not an absolute decision on whether a given substance improves or harms a specific sport. Future decisions to either permit or prohibit PES should hinge on lusory considerations such as fairness, enjoyability, the ability to demonstrate skill and the values relevant to a test. Moreover, certain substances appear to fit with some sports better than others. Sports, such as cycling or baseball, may be better suited to permit PES as athletes in those sports have used PES so often. Conversely, these sporting communities may decide that they are not well-suited for PES. Such substances may reduce the endurance challenge and thus remove a quality that they find worth keeping.¹⁵ Other sports, especially less technologically dependent sports such as running, may desire to keep certain substances out so as to fit within the sport's traditional characteristics. Either way, future policies should not be universal but specific to each sport, with different sports banning different substances as the preservation or enhancement of their specific sporting tests dictate.¹⁶

¹⁵ A special thanks to the blind reviewer who pointed this out. It seems reasonable that communities could go either way, which further supports my argument.

¹⁶ Remaining open to permitting performance-enhancing substances should not be confused with permitting them. In the former—and what I advocate—remaining open to such substances means not dismissing their use out of hand. It means simply considering what permitting them would entail. Certainly if a substance presented serious costs or grave health risks, a sporting community could decide not to permit since it does not improve a sport. But to realize such second-order concerns, a sporting community would have to first be open to considering such a substance in a way that most sporting communities are not today.

7. *Bibliography*

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