

Governance, Harmonisation, & Genetics: The World Anti-Doping Agency & its European Connections

ANDY MIAH

ANDY MIAH is Lecturer in Media, Bioethics and Cyberculture, University of Paisley, Beechgrove, KA8 0SR Scotland (miah-cp0@paisley.ac.uk)

This paper documents the political positioning of Europe in relation to anti-doping initiatives generally and the World Anti-Doping Agency (WADA) specifically to better understand the status of anti-doping in world sport and the possibility for managing the so-called drug war in sport. The paper begins by detailing the historical context of WADA and its relationship to the EU. In so doing, it is revealed that the interest in contemporary anti-doping discourse for harmonisation is made problematic by enduring differences between the two organisations. The EU has withdrawn its funding of WADA on the basis of unsatisfactory conditions relating to budget transparency and the political position of WADA. One of the major points of contention is the question about WADA's independence from the International Olympic Committee (IOC). Despite having moved from Lausanne (Switzerland) to Montreal (Canada), WADA remains embroiled in IOC structures, continuing with 50% of its budget coming from the IOC. As well, WADA is chaired by controversial IOC figurehead Richard Pound, whose background is very much embroiled in Olympic politics. With some uncertainty about the depth of IOC reforms, coupled with Richard Pound not having attained the IOC Presidency, and Canada not receiving the 2008 Olympic Summer Games, the political context of WADA remains uncertain and to the dissatisfaction of the EU. This is fundamentally problematic from the perspective of harmonising anti-doping policy and from the general efforts of anti-doping policy makers. A further basis for arguing why these circumstances are unsatisfactory for the EU is recognised by considering emerging methods of doping, specifically genetic manipulation. It is argued that the EU and governmental organisations in general cannot hold fast to the approaches of anti-doping agencies such as WADA. This is because their approaches to solving the drug problem in sport are not premised upon the protection of individuals, which are guiding principles in the EU and other governmental organisations. WADA's commitment to prioritising the values of fair play and other sporting values does not fit with the way in which non-sporting drug policies are formulated which, instead, focus upon the broader medical priorities implicated by drugs. As new kinds of doping emerge in genetics, the role of sports ethics is less of a priority and this must be built into the way in which anti-doping is approached by WADA. For this reason, it is concluded that the EU and

other inter-governmental organisations, much more than WADA, are better placed to respond to the greater need for harmonising policies and for addressing emerging technologies. While it is appealing to have a world anti-doping organisation, its success relies heavily upon the unity of nations, governmental management, broader biomedical ethical considerations, and the ability to remove sport from the equation. On this level, harmonisation responds to much more than to anti-doping policy. It involves a harmonisation of broader medical policies in relation to drugs, genetics, and the policing of them. However, there is a danger that ethical discussions will still be subservient to policy decisions, where the ethical conclusions have already been made.

The world of anti-doping in sport has been tumultuous in recent years, with new organisations seeming to take the international lead at various points in time and with varying degrees of success. The World Anti-Doping Agency (WADA) is a young organisation by anti-doping standards. With only 3 years of anti-doping experience behind it, it is a new organisation in the sporting drug war, though very much a force with which to be reckoned. It is placed in the most central position of anti-doping initiatives on a global scale, with the weight of the International Olympic Committee (IOC) behind it. For some, there is an aspiration that WADA will provide the kind of *harmonisation* of anti-doping policies that is being sought on an international level in respect to anti-doping policy. However, in the last year, WADA has been through some financial uncertainties, with the European Union (EU) withdrawing its contribution. As well, there remains a lack of clarity about the priorities of WADA and precisely what kind of harmonisation is sought.

Very little has been written about WADA, though critics of anti-doping strategies have argued that its presence reflects a 'political' commitment rather than a genuine attempt to rid sport of drug-use, with comparatively limited funds going towards anti-doping campaigns. The Council of Europe (CoE), the United Nations Educational, Scientific, and Cultural Organisation (UNESCO), and the European Union (EU) have all made anti-doping a priority on their political agenda for some years and WADA seems to challenge the autonomy and role of governmental initiatives in this regard. There is a sense that WADA's independence is both its strength and weakness, precisely because governments have played such an important role in overseeing anti-doping initiatives. A further obstruction to the involvement of the EU has been the relocation of WADA to Canada, bringing into question the interest for commitment from the European community.

Nevertheless, the importance of WADA for international sport in general and Europe specifically is apparent. Europe has a strong historical involvement with anti-doping, though a number of different Europes are apparent within the sporting world of anti-doping and it is useful to clarify these various bodies to help understand some of the

challenges facing anti-doping. First, one can identify the Europe of the Council of Europe (CoE), which consists of 44 member states, including the former communist states. In comparison to other European organisations, the CoE has very limited financial resources, though is considered to have considerable moral authority. As will be discussed later, the CoE has been central to the development of anti-doping and its associated organisations. Alternatively, the European Union (EU) has emerged as a wealthy institution, but with only limited interest in sport. Currently the EU does not have an article specifically on sport in its charter and sport falls under the general heading 'Education and Culture.' (Council of Europe, website). Finally, an important European sporting community exists in the form of National Olympic Committees (NOC), forming a large part of the Olympic Family, which is constitutive of the International Olympic Committee. The NOCs work in Olympic countries and have been integral of raising the political agenda of anti-doping in their respective regions.

This paper is concerned primarily with the EU and its emerging involvement with anti-doping campaigns. Specifically, the interest is to understand how anti-doping is managed now with the existence of a world anti-doping agency and how Europe responds to this interest to 'go global' with anti-doping. In many respects, the task is one of political mapping, which reveals some underlying concerns with the interest to harmonise policy. However, it is also about revealing discourses of rhetoric in policy debates and understanding why the concerns about anti-doping seem, often, to remain stagnated in vague idealism and inter-governmental tensions. In so doing, the paper elucidates philosophical weaknesses within anti-doping policy, arguing for a re-framing of the doping question. Importantly, the interest here will be to articulate the emerging technology of genetics, which presents some unique and challenging circumstances for the rationale underpinning anti-doping.

The Evolution of Anti-Doping Campaigns

Barrie Houlihan's *Dying to Win* (1999, 2002) addresses the evolution of anti-doping policy making and there is no need to go over the same ground here. However, it can be useful to summarise some relevant aspects of *Dying to Win* and, subsequently, to address some of the weaknesses in the way that anti-doping has been managed. *Dying to Win* is published by the Council of Europe (CoE), one of the main actors in the last 40 years of anti-doping, responsible for the significant document, its definition of doping in 1963, which was subsequently modified by the IOC to read:

The administration of or use by a competing athlete of any substance foreign to the body or any physiologic substance taken in abnormal quantity or taken by an abnormal route of entry into the body with the sole intention of increasing in an artificial and unfair manner his/her performance in competition. (IOC, 1963, cited in Wadler, 1998, Houlihan, 1999).

Subsequently, the CoE outlined its 'European Anti-Doping Charter for Sport' (1984), which would later become a European Convention (1989). At the time of its publication in 1984, the Charter provided a clear statement of intentions, which set the priorities for subsequent interventions and strategies in relation to doping. The 40-year time frame for considering anti-doping policy is not entirely arbitrary. As Houlihan describes, partly as a result of scandals, death, and a threat to national pride, the interest to remove doping from sport was marked during the 1960s, notably, by Tom Simpson's death at the 1967 Tour de France.

In a similar manner, the International Olympic Committee set-up its Medical Commission in the 1960s. Importantly, the existence of the Commission can be seen largely as a reaction to the concerns about doping and drug-use, rather than as part of a coherent interest in the health issues arising from sport. This 'reactive' approach to anti-doping policy would provide an indelible mark on the future of sport.

WADA is only the most recent incarnation of the multi-national movement to rid sport of drugs and other forms of doping. The 40-year development in the 'war' on doping in sport is certainly not indicative of the amount of time for which doping has been used. Rather, it is an indication of when doping became a concern for sporting and governmental authorities. Looking back on the work of the IOC Medical Commission, one is faced with the enduring problem that medicine is forever merely contingently correct about certain aspects of being human. Of particular concern during the early years of anti-doping policy was the presence of gender testing. Such tests entailed a process of sex testing that would be rival only to the flawed racial tests of the 1960s. At the time, the IOC would receive criticism from renowned scientists for their gender testing, protesting the legitimacy of such tests. However, gender testing remained part of anti-doping policy for rather a long time. The IOC Medical Commission archive includes letters dating from the 1960s from scientists and physicians deploring the gender tests. Indeed, in approximately 1967 (the date of the reference is unknown, though included in the archives among other material of this year) a Dr. Thiebault provided a report for the IOC Medical Commission after the Grenoble Games, criticising the use of gender tests. Interestingly, in this report Thiebault also recommends the term anti-doping rather than just 'doping' in policy documentation, as the former stresses the opposition. Though Thiebault was, in principle, favouring the value of gender tests, others, such as then President of the *Fédération Internationale Médecine du Sport*, Prof. La Cava, argued in a letter to the IOC Medical Commission, "I believe it was a mistake to determine by lot the individuals to be subjected to the examination, and I am strongly opposed to this practice, which has no logical or biological foundation" (1968). Indeed, it was only at the 1999 IOC Session on June 17th, the IOC decided that it would refrain from gender testing on an experimental basis, though considered it could still be used on a case-by-case basis. The Sydney Olympic Games of 2000 was the first time that this policy was implemented.

Houlihan (1999, 2002) provides an extensive analysis of the evolution of anti-doping, from its early inception to current challenges regarding the harmonisation of policy. Considering the IOC's three categories of doping: doping classes, doping methods and classes of drug, Houlihan identifies the degree to which each method is deemed acceptable within sports, indicating the scale of the problem facing anti-doping policy makers.

Houlihan stresses the disappointing though understandably distinct efforts of government and sports organisations to develop policy, where for each the focus has been on competitive sports. The author recognises a "medicalisation of life" (1999, p.88) to articulate how doping is symptomatic of a broader social problem with drug use. By highlighting the inability, thus far, to determine what should be the target and objectives of anti-doping policy, this perspective is later strengthened. It is argued as fundamental to successful policy to be clear about this matter when selecting a suitable policy instrument. The most common instrument of a deterrent by penalty for doping in sport is identified as unlikely to be effective, where ignorance or incompetence to provide sufficient penalties is apparent. Further to this, Houlihan explains the difficulty in measuring the success of any policy instrument given the dynamic nature of doping, with new methods and substances seemingly ahead of any mechanism for prevention.

Notably, this is not exclusively a problem for European sports managers. Indeed, the very existence of a global body that will address this problem lends strength to the claim that continental organisations and, indeed, the concept of continental or national bodies to regulate sport is becoming more marginal. In itself, this seems alarming for the various implications it has for challenging the importance of cultural nuance and the ability of nations to determine their own kind of sports administration. Indeed, establishing international rules to dictate the limits of acceptable behaviour for athletes, particularly in contexts that are only partially related to playing sport, is an attempt to instill a global sporting morality. One of the major cases that speaks to this point is the case of the Canadian snowboarder, Ross Rebagliati, winner of the first-ever gold medal in the snowboarding giant slalom at the 1998 Nagano Olympic Winter Games. Only three days after winning the gold, the IOC asked Rebagliati to return the medal after it was discovered that he had tested positive for marijuana. Further details about his innocence or guilt are less relevant here than the fact that a recreational drug (non-performance enhancing) is of interest to an anti-doping policy.

In itself, the process of distinguishing legitimate from illegitimate methods of performance enhancement is fraught with conceptual flaws, which few moral philosophers would dare to support. However, leaving aside this definitional problem, concerns about a global sporting ethics code are also important since it is not clear that sport lends itself to global administration. Interestingly, within anti-doping policy,

this trend towards harmonisation seems necessarily to be at the expense of local sensitivity. Also interesting is that this concept of locality is even further problematised in sport (as opposed to outside of it), as it is not clear whether the local refers to the specific country or simply granting authority to individual sporting bodies.

Currently, every international sports federation has its own legal autonomy over its anti-doping policies. Yet, it is not clear whether this is desirable from the perspective of the WADA project. Recent events suggest that it is not. At present, FIFA is one of the few international sporting federations to maintain its own anti-doping code. Others that have maintained a significant amount of independence include the Professional Golfers' Association (PGA), International Cyclists Union (ICU), and the International Tennis Federation (ITF). Other federations, particularly those for which the Olympic Games is their main tournament, subscribe to the IOC anti-doping code in some form or another, though sanctions for positive-tested athletes remains at the discretion of the specific International Federation. However, WADA would like to ensure that there is coherency throughout international sport, for the code and sanctions. Thus, WADA would like the International Cyclists Union to maintain similar standards within the Tour de France as are maintained in the cycling competitions that take place within the Olympic Games. It is not yet clear whether this 'harmonisation' entails the use of similar sanctions for positive testing of the same substance in different sports. Indeed, as O'Leary (2001) explains that this might not be useful, since each sport is quite different in what constitutes a performance modification. As well, in some sports a ban for 3 years can constitute the entire athletic career of a competitor, whereas in others, an athlete can still compete after such a length of time out of competition. The removal of WADA from Europe, particularly when the development of anti-doping policy in Europe has been so important, coupled with the potential antagonism arising from the European Union and its approach to the anti-doping problem, might suggest that harmonisation is too ambitious a term. Yet, this is not surprising, as will be suggested. Without a coherent ethical perspective, it cannot be expected that policy about doping will be coherent. We cannot expect a global policy about drug use to be applicable, particularly in relation to sanctions deriving from cases. If doping is to be managed, then first, the differences between human values must be managed and reconciled. This, of course, presents problems when dealing with a supposedly level playing field, where all players must adopt the same conception of morality (i.e. doping is wrong).

Being 'Anti' is Compulsory

It is important to recognise the highly political content of anti-doping campaigns in order to understand the degree to which governments are compromised in their ability to rationalise varying ethical approaches to doping. Identifying the existence of such premises, gives some basis for understanding conflicts between various anti-doping

organisations and the possibility for the kind of harmonisation to which Houlihan (1999) alludes. If one aspires to develop a greater understanding of sporting values and to question what is fair in sport, then one simply cannot engage with anti-doping policy making. Fundamentally, the aim of anti-doping has been and continues to be a process of asserting ethical judgements from a perspective of pragmatism. All forms of doping are decided to be immoral, without entertaining the possibility that they might not be, save for wrapping the conclusions in sufficient emotive rhetoric about the evils of drug-taking and its inconsistency with sporting ideals. Arguably, this pervasive value-statement has nothing whatsoever to do with sports values or an interest in sport generally. Rather, it has more to do with what Burke & Roberts (1997) call a matter of sentimentality, the assertion that the presumed abhorrence of drug-use derives from some nostalgic sense of sporting ideals, rather than as a justifiable ethical conclusion.

On this view, because of the deeply felt anti-social connotations of drug-use (outside of sport), it is not possible for governments to subscribe to any kind of initiative that might lead to the tolerance of drugs and other methods of doping. The contradictions of this reaction to drug-use, where some drugs are condemned and made illegal and others are tolerated, is less interesting for the current purposes. Nevertheless, it is within these conditions that the manner of managing drug-use in sport must be understood. Sports, as practices of moral goodness, do not lend well to the condoning of a practice mostly associated with anti-social behaviour and consequences. For this reason alone, drugs are deemed to be, *prima facie*, immoral.

Thus, adopting a stance *against* doping of any kind is somewhat compulsory in the sports world, if one aspires to win friends and influence people. Yet, this has nothing to do with open and reflective dialogue about sporting values. Again, addressing the frustrations and inconsistencies of this situation, is more a secondary interest of this paper. Other places have dealt with far more detail about this ensuing ethical dialogue, if, indeed, there is a dialogue at all, since the discourse seems often confined to academic ethicists (for examples, see Morgan & Meier, 1995; Wilson & Derse, 2001). For present purposes it is sufficient to identify how, in the current and past climate of anti-doping, all forms of doping are wrong and there is little reason to suppose that this is changing. Anti-doping policy making is less about evaluating what is right or wrong, than it is about applying the conclusion that doping reflects a moral badness in sport. In this respect, it is somewhat dogmatic, particularly when placed in the context of international sport, where the basis for universalism is even weaker.

Nevertheless, sport is one of the few instances of social enterprise where there is an increasing expectation that policies should and can be universally applied, where an expectation for a universal ethics is an aspiration. Even in medicine, there is a growing recognition of this not being possible, despite a common recognition of health care as being underpinned by a universal code of ethics. If one recognises the challenge of

this in other contexts – such as the harmonisation of human rights policies – then one has some indication about how high is this expectation. International sport organisers operate in a homogenising manner. Within sport, dopers cannot and are not treated differently on account of their heritage and country. Rather, an athlete found with an illegal substance in their body is a cheat regardless of their contextual circumstances, which might have led them innocently to be in such circumstances. However, this is a relatively recent situation and is understood as the process of ‘strict liability’, which states that it be sufficient for the presence of a substance to be found in an athlete’s body, for the governing body to sanction the athlete, without recourse to the intentions or explanations for why this was the case. Particularly important in the derivation of this process of sanctioning is ‘Wilander vs. Tobin’ (1997), where the International Tennis Federation defends its stance taken in respect of two players who had been found to have traces of banned substances in their body. On the basis of an unreasonable restraint of trade, the plaintiffs claim that the sanction ought not to be upheld. They challenged the rule of the ITF, which outlines sanctions for doped athletes, based solely upon the results of urine tests. However, these appeals were overturned, giving the ruling of strict liability legal credibility.

This point has been very controversial in the last 4 years, where many athletes have made various protests of their innocence, claiming that their positive test has been the result of spiked products or poorly labelled nutritional supplements. On the basis of ‘strict liability’ these explanations are irrelevant and the argument of, for example, WADA is that athlete’s must take sole responsibility for what they ingest.

Houlihan outlines that there are at least 4 main strands of anti-doping policy development:

1. *focus*: refinement of the broad categories and particular examples of drugs and doping practices targeted by policy makers.
2. *generation and maintenance of policy commitment*: stimulation of political support for policy implementation.
3. *technology development*: effective policy implementation depends substantially on the development of testing and analytical techniques and their continuing refinement to match the advances in pharmacology and the deviousness of drug-abusing athletes.
4. *establishment of the necessary resource infrastructure*: includes the provision of money, laboratories, sampling officers and a regulatory framework.

(Houlihan, 1999, p.129)

Linking back to the previous claims, it is interesting to note that Houlihan does not mention the process of value-redefinition, whereby the legality of certain processes and substances is reappraised. This is no reflection on Houlihan's work, but it does indicate that such discussions have not been a priority. Potentially, the process of re-evaluating just how 'anti' is anti-doping, fits within Houlihan's 'focus' category, though to ensure that anti-doping departs from a coherent framework about performance modification, it ought to entail the possibility for concluding that the legality of some substances might need changing. For example, the basis for concluding that an athlete has taken a banned substance for some cases is dependent upon levels of normal functioning, which might not be sound. As Verokken (2001) recognises,

The argument continues over what constitutes drug misuse as some banned substances are found naturally in the body, leading to claims of high natural levels of testosterone or growth hormone, and even nandrolone. Critics argue that this level has been arbitrarily set without scientific evidence. (p.54).

Further reason to suppose that this kind of discussion is not held within anti-doping policy meetings is found later in Houlihan, where he notes the following priorities decided at the 2nd Conference of European Ministers responsible for Sport held in 1978:

1. Need to compile and publish accurate and detailed list of substances and tests.
2. Need to identify ways of instituting and supporting practical and regular tests between and at events.
3. Need to institute stricter sanctions for users (to be applied to trainers, doctors or managers who have encouraged use), and support by publicity campaign on health dangers of doping.

(Houlihan, 1999, p.135)

Again, these priorities do not reveal sensitivity to the suggestion that the 'anti' of anti-doping might need re-evaluating or, at least, further problematising. Delving further into this matter is not possible here. Yet, recognising that WADA seeks to internationalise policies in anti-doping, one realises that the possibility for reflective evaluation on the moral goodness or badness of doping, sports federations must be understood as mechanisms of implementation rather than for reflecting upon sporting values, even if the latter is preferable. This, seems a little contradictory, since the very basis upon which anti-doping is premised is supposedly a discourse of values. If it is not possible for sports federations to re-evaluate their values and ethical practices, then they cannot really aspire to being agents (or avatars) of moral goodness. A suitable analogy might

be with a legal system. If there were no recognition of the need to re-evaluate laws and question their very core, then ours would be a very primitive and stagnant world. Moreover, if one tried then to apply such laws on an international basis, then this stagnant world would soon become a very unstable and conflictive one.

The World Anti-Doping Agency, 3 years young

The World Anti-Doping Agency came into existence after the 1999 Lausanne conference on Doping & Sport hosted by the International Olympic Committee. It is important not to misconstrue the emergence of WADA as a clean break from the IOC. In its first years of running (until 2002), WADA was funded entirely by the International Olympic Committee. From the outset, it was proposed that this would be the arrangement until 2002, at which time 50% of its funding would then derive from governmental resources throughout the world. The prospect of an international agency had been long debated and was in place, somewhat, through the work of the IOC Medical Commission, which provided a unifying anti-doping code until the existence of WADA. However, as was noted earlier, not all international sporting federations have been beholden to the IOC codes. As Houlihan (2001) recognises, the key test for WADA is "whether it can gain commitment of those IFs such as soccer, tennis, cycling and rugby union that have so far been, at best, lukewarm towards anti-doping efforts" (p.144). Yet, in the last year, WADA has edged its way into discussions with the Fédération Internationale de Football Association (FIFA) and the International Tennis Federation (ITF), two major sporting federations, which have still not signed formal agreements with WADA, although the ITF is currently pursuing conditions within which it would be able to sign an agreement with WADA (Reuters, 2002). Notably, these federations are not clear about their collaboration with WADA, though do not approach their relationship with an interest to work counter to WADA's ambitions.

Yet, there might be due reason to conclude that the concept of a world anti-doping code is not appropriate for all sports. The expectation of a global body might make sense in relation to athletes competing in multi-sport world championships such as the Olympic Games, though why there needs to be an overarching body such as WADA overseeing the policies of all individual sporting organisations in their own tournaments is a quite different matter. Perhaps the only reason for desiring such circumstances is that WADA is supposed to be active at ensuring transparency about anti-doping practices and its existence as an independent body could give credibility and legal strength to any individual governing body that ascribes to its conditions. However, its relationship with the EU gives some reason to doubt whether this is so.

The importance of Europe in these ongoing discussions to internationalise anti-doping policy is ambiguous. As Houlihan (1999, p.129) notes, "A leading role in debates on

doping policy has consistently been taken by the Council of Europe with bodies such as the European Union and UNESCO, making occasional, but largely rhetorical, interventions." The CoE has been proactive in raising the issue and framing it within a general ethical policy for sport. An early landmark in European anti-doping policy was the 1978 Conference for Ministers of Sport where the CoE formulated a recommendation to members of governments about doping. At this time, the CoE decided to focus less upon the muddled problem of definition and move straight to implementation (Houlihan, 1999). In 1981, at the 11th Olympic Congress at Baden-Baden, an Anti-Doping Charter was acknowledged by UNESCO, the World Health Organisation (WHO), and the European Commission (EC). The influence of the CoE Charter (1984) and subsequent Convention (1989) has already been mentioned. However, it is worthwhile to emphasise that the implementation of a Convention, to which all member states were required to sign, gave the CoE efforts much greater influence than other inter-governmental anti-doping efforts at this time.

How can we harmonise, when we can't work together?

At present, the tensions within and between sports organisations and governments preclude successful policy implementation. As well, there remain discrepancies between governments in what should be used as an overarching policy for sport. The reluctance of sports organisations to relinquish control over what takes place within their sport is matched only by the reluctance of government to ignore the social implications of doping and sport more generally. Nevertheless, Houlihan argues that the initial stages of policy development are coming to an end. The success of policy, however, remains uncertain with objectives still unclear about who should be targeted, when, and within which sports, given that there are limited resources. There is also much uncertainty about how testing should be administered and by which authorities. Nevertheless, of key interest is how policy can attain any degree of uniformity. Arguably, this process is complicated by the situation that is emerging in Europe.

As explained above, from 2002, the IOC will fund 50% of WADA's budget and governments would provide the remaining 50%. Of this 50%, it was decided that the European countries should provide 40% – at this point in time, the EU was proposed to provide this contribution, due to it representing the richer countries of the European community. Consequently, it made the EU's contribution the largest single contribution of the entire governmental funding. However, in 2001, it emerged that the EU was not convinced that it could make its 40% commitment to the governmental contribution of WADA. This, it would seem, was attributable to three key decisions that were taken at one of WADA's board meetings. The first is that the EU was not to be given sufficient representation on the WADA board, to match its financial contribution. The second was that the limit of funding prescribed by the EU was not honoured and WADA were

requesting additional funds. The third, and perhaps most alarming, is that the EU was not content with the level of transparency in WADA's working budget.

In relation to the first, the position from the EU was that the level of representation of any government on the WADA board should be reflective of their financial contribution. The EU protested that it has only about a quarter of the voting rights, while it pays nearly 50% of government contributions. This attitude was further antagonised by WADA's decision to increase the level of funding requested of the EU from 45% to 47.5%, when the EU had expressed that 45% would be its limit. As a consequence, on June 21st at the Culture Council in Luxembourg, Viviane Reding, EU Commissioner for Education and Culture, announced that the EU would not be funding any part of WADA's operational budget. As noted by Reding,

The Commission feels that these conditions have not been met as things currently stand. Europe is indeed expected to put up 47.5% of government funding for the WADA, while America and Asia, with the same number of representatives as Europe on the Foundation Board, would provide 29% and 20.5% respectively of the government funding of the budget. Furthermore, the WADA has been unable to provide an accurate budget forecast for the five years ahead and, under the current statutes of the Agency (the annual budget is adopted by majority vote), there is a risk that the Foundation Board could impose upon the Community fresh budgetary constraints by placing the European representatives in a minority. (European Union, 2001)

The ensuing debates would prove to be highly controversial and substantial political bickering took place about the reasons for the EU's decision to withdraw from funding Europe's contribution to WADA's working budget. From WADA's perspective, the EU introduced a number of conditions at the last minute that were unreasonable and obstructive. From the EU's perspective, WADA did not comply with conditions that were expressed well in advance of meetings (REF: European Union Brussels 3 December, 2001). By January 2002, Britain had missed its January 1st deadline to pay their share, placing WADA into a rather awkward cash-flow crisis (Bose, 2002). Regardless, the EU did not finance WADA and the 15 European countries were requested to pay their individual share of the WADA fund.

This does not entirely eliminate the involvement of the EU in funding anti-doping initiatives. Indeed, the EU has made a commitment to fund independent projects that can function alongside other WADA initiatives. Yet, it does give some reason to suppose that the trend towards harmonisation is not entirely clear. The funding issues were not the first that gave rise to EU concerns about WADA. Further concerns arose with regard to the location of WADA's headquarters. In 2000, Viviane Reding opposed the permanent premises of WADA in Lausanne. Stressing the importance that WADA

remained independent, Reding was adamant that its permanent site ought not to be in the sporting capital of the world, just next door to the IOC headquarters (SportServer, 011200).

Subsequently, WADA has been elected to a permanent site in Montreal, Canada, though here the speculations of conflicting interests do not cease and, arguably, have not instilled confidence in Europe for WADA. The Chairman of WADA is former long-standing IOC Vice-President, Dick Pound and, it could be argued, understanding the professional context of Pound is important to recognise why there might be a lack of certainty about the independence of WADA. In the year before Dick Pound would see WADA move to his home city, he would previously see his campaign for IOC Presidency fail and Canada's Toronto Bid for the 2008 Olympic Games fail. Moreover, on both occasions, the loss came second to winners that Pound would find infuriating. Evidence of this frustration is provided by the very public demonstration of his disbelief about how he came third to the other runner-up and controversial IOC member Un-Yong Kim (Christie, 2001). In the form of a letter to IOC sponsors, Pound outlined his discontent with the IOC, concerned about its stability, ethical underpinning, and future (Todd, 2001). Subsequent to losing the Presidential campaign, Pound spoke out to press that he saw very clearly that former President Juan Antonio Samaranch was backing Jacques Rogge. This would later be supported by suggestions that the Jacques Rogge victory was partly to ensure that Samaranch maintained his influence over international sport. In the case of the Presidency, Pound would have no truck with Samaranch's successor, Dr. Jacques Rogge. However, it would be particularly difficult to accept bronze medal to silver medal Kim Un-Yong.

It is interesting to remember that scandals concerning both runners-up Kim & Pound transpired the day before the Presidential vote was to be made at the 110th IOC Session in Moscow (Reuters, 2001). Kim was under investigation by the IOC Ethics Commission for proposing to offer IOC members financial benefits for their work on the Committee, something opposed by both Pound and Rogge (Wilson, 2001). The consequence of this for the presidential vote remain unclear, though it is also worth noting that Kim was against the removal of bid-city visits, which was one of the key aspects of the IOC reform, due to their links with bribery allegations. As well, two years earlier, Kim was one of the IOC members to receive severe warnings in relation to the bribery scandals of 1999. Given the controversies arising within former IOC President Samaranch's term, it might also be important to know that Samaranch brought Kim into the IOC. These details provide important information for understanding the perspective of Pound and the degree to which the EU can be confident in the management of WADA. With controversies still arising in the IOC, reflected by the allegations about Kim and the controversy between Kim and Pound, and given that WADA is still intimately tied with the IOC, the scepticism about WADA from Europe seems justified.

In further support of Pound's challenged approach to anti-doping, during the 2001 IOC session, Samaranch reprimanded Dick Pound for the state of doping in sport. Dick Pound, recognised by many for having saved the IOC from financial ruin and for being the most influential figure in international anti-doping, was being told he has not done his job properly, one day before the Presidential vote. While conclusions about this are difficult to substantiate, they are perhaps important facts to remember when unravelling the situation of anti-doping in sport. As well, the 2008 Games were awarded to Beijing instead of Toronto, which would reinforce a feeling that the IOC Reforms were not entirely complete, given that they were awarded to a country where Kim is also highly influential.

After, some rather heated and often public discussions between the new IOC President and the – now resigned – IOC Vice-President Dick Pound, Pound was later reinstated in a new role, considered by some as a sweetheart deal. Also subsequent to this, it was revealed that Dick Pound's legal firm received substantial amounts of money from the IOC for work relating to IOC business (Wilson & Stubbs, 2001). While Pound defended this income as reimbursements for legal advice, it would be unhelpful press coverage for his image as Chair of the WADA, the supposed guardian of sporting ethics.

Now, with WADA, firmly located in Dick Pound's home city, things seem to be going his way, though one can understand if Europe and other agencies lack confidence in the transparency of WADA and its independence from the IOC, particularly since Pound is now located within a central IOC role. Nevertheless, the EU is not entirely removed from WADA and it would not be accurate to conclude that the relationship is openly antagonistic. Rather, Viviane Reding has expressed her interest to work with WADA in order to ensure that the conditions required of the EU are met as soon as possible. Moreover, the EU provides funding for WADA through individual projects, such as WADA's web-based educational programmes, the Athlete Passport project, and Independent Observer activities (WADA, 2001).

Challenges to Anti-Doping: Harmonisation or Genetic Modification?

This overview of activities in the anti-doping world in the last 3 years gives some indication that the challenges ahead remain ambitious. The EU has not lessened its commitment to the project of anti-doping. Yet, there would seem to be some difficulty with ensuring that the EU is working with an interest to pursue the same measures as WADA. One interesting circumstance in international sport at present, which will surely be a test for the ability to harmonise anti-doping policy is the prospect of genetic modification. This case is particularly pertinent to the present discussion concerning anti-doping and Europe for a number of reasons.

First, neither WADA, nor any other anti-doping authority has yet dealt with the many kinds of applications of genetics to sport. To this date, WADA has given some time to considering the matter. In March 2002, WADA held a closed conference in Cold Spring Harbour, New York, focused specifically on addressing the implications of genetics for sport (WADA, 2002). Also, the IOC Medical Commission held a meeting in June 2001, with an agenda to discuss the implications of genetics for sport (IOC, 2001). Consequently, the prospect of genetics remains somewhat outside of the rules for anti-doping policy. Unlike with the doping issue in general, ethical decisions about genetic modification can be made *before* the technology is in place and causing problems for sport. This provides a very useful opportunity to ensure that policy regarding the ethical status of genetics in sport is practicable and justified. Importantly, this does not imply deriving some hard and fast ethical principles that can determine the value of genetics in sport that is non-negotiable. Rather, it is about ensuring a suitable forum for discussion and re-evaluation of policy, which has been lacking so much in general anti-policy discourses. For genetics, there is a possibility to be proactive, rather than reactive, as can be said of anti-doping policy since the 1960s.

A second reason for recognising the importance of genetic modification for the governance of anti-doping in sport and, perhaps, the main reason for why these new technologies are important from the European perspective, is that decisions concerning these technologies cannot and ought not to operate independently from broader bioethical policies of non-sporting organisations. Such discussions will benefit immensely from the expertise within non-governmental organisations and governmental committees, which have invested into considering the broad ethical issues arising from genetics in society. Moreover, such international bodies as UNESCO, the CoE, and the EU can be seen as investing into inter-governmental decision making in relation to genetics. For example, within UNESCO exists the International Bioethics Committee, within which there is a working party titled the Inter-Governmental Bioethics Committee. For a detailed overview of bioethics in Europe, see Rogers & Durand de Bousingen (1995), particularly Chapter 8. Conversely, to understand more about sport in Europe and the importance of how Europe is particularly well placed to progress in developing policy about genetics in sport, see Gardiner, et al. (2001).

The varying organisations within Europe are working to develop policy in relation to biomedical ethics. Of course, Europe is not alone in this pursuit. Indeed, it would not be accurate to undermine the value of other governmental organisations that are developing legislation of policy in relation to genetics. Though importantly, Europe has made considerable progress in its interest to consider inter-governmental policies and has a substantial variety of countries at various levels of development in genetics, which can make for a particularly fruitful future. Importantly, there continues to be a lack of links between mainstream bioethics and sport. The WADA conference in 2002 can be seen as some progress towards making these links. Yet, there has yet to be any

serious acknowledgement from non-sporting institutions, which are dealing with sport policy issues, that genetics is of serious concern. One of the few to make such links is the Australian Law Reform Commission (ALRC). In 2001, the ALRC published a paper about issues regarding the protection of genetic information, noting that sport is a context where this might give rise to serious legal and ethical concerns. It is interesting to note that Australia can be seen as one of the few countries actively pursuing genetic research for sporting performance. The Australian Institute for Sport (AIS) has invested into research with the Prince Alfred Hospital in Sydney with a view to identifying performance genes that could boost muscle mass, increase endurance, reduce injury time and even preselect the next generation of elite athletes (Miah, 2002).

The basis for questioning whether harmonisation or genetics will be the biggest challenge for anti-doping is not to propose that one should overshadow the other. Rather, it is to recognise that genetics now presents a situation where the kind of harmonisation that can be sought by WADA or European anti-doping organisations is further complicated. Policy about using genetic technologies in sport must also take into account the broader bioethical implications of such decisions, while in the past it has been able to isolate its own sporting reasons for rejecting doping. Indeed, it is interesting to note how separate are anti-doping campaigns and the approach to raising awareness about drugs in general. One might conclude that the success of anti-doping policy in sport can be attributed to it having remained isolated from other kinds of anti-drug campaigns, more closely linked to governmental initiatives. Arguably, anti-doping organisations in sport have been far more concerned with catching 'cheaters' than recognising that the problem in sport is also located in a social context.

In relation to genetics, this need not be the case. Indeed, there are very good reasons for why anti-doping organisations should, first, look to the way in which governments are addressing the ethical issues relating to genetics, before seeking to enforce sporting ideals at a global level. While it can be argued that discussions about genetics are overly exclusive to richer, more scientifically oriented countries, it is not accurate to say that there are no concerns about the internationalisation of policy. Indeed, recent events such as renegade scientists fleeing to countries where regulation does not prevent their scientific investigation, presents a global social issue of great importance. This, then, is a matter that must be discussed at an international level, recognising the different kinds of value system between and within cultures. If discussion remains only at the sporting level, it is not clear that any such sensitivities will be acknowledged.

For this reason, it is suggested that anti-doping policy – if such a term is appropriate – can be best informed not by seeking harmonisation without a context. In order for us to harmonise, we must first agree about the value we are supporting by seeking harmonisation. Without any clear and justifiable reasons to harmonise, its importance lacks value, coherence and the likelihood of success is lessened. A discussion about

the ethical status of various kinds of genetic modification can enrich that discussion because it is largely experimental and because it elucidates weaknesses in the consistency about anti-doping policy hitherto unseen. This is not about trying to ensure all participating bodies agree on a particular policy. Rather it is about ensuring a process of deliberation, which ensures that diverse opinions are voiced and give due weight. This is why the matter is also one of management and governance.

Conclusion: Independence Day?

One of the lingering questions about anti-doping policy, now that the WADA is receiving 50% of its budget from governmental contributions, and the fact of it being outside of the IOC HQ city of Lausanne, is whether it is sufficiently independent. If one accepts that chair of WADA, Dick Pound, does not have any conflicts of interest in his position and that the relocation of WADA to Montreal is a further step towards independent policy making, then some confidence can be found in the future of anti-doping. Alternatively, if one stands fundamentally opposed to the manner in which anti-doping discussions have evolved – their overly ‘anti’ stance – then very little seems different. There continues to be a lack of clarity about what makes one form of performance modification legitimate and another morally repugnant, a problem also recognised by Houlihan (2001), though which has been addressed somewhat by WADA’s revised anti-doping code. There remains an uncertainty precisely about why sport is so against some methods of doping and seemingly indifferent to others. Importantly, there does not seem to be the interest to invest into ethical research that might seek to bridge this gap. Against this, the USADA has recently (2002) awarded research money to the bioethics institution, *The Hastings Center*, to research the ethical implications of altitude chambers, EPO, and gene therapy. Again, this gives due reason to suppose that the links between sporting and non-sporting ethical institutions is of value, particularly as regards genetic modification.

Nevertheless, in order to achieve a useful process of harmonisation, it is imperative that such discussions take place, as it is also important that the manner of the discussions is addressed. The transparency of the WADA budget, sought by the EU does not give much confidence in the new face of anti-doping and it is not desirable that such an institution as the EU cannot give its full support behind such an important initiative. This does not mean that the EU approach is likely to be any more desirable or successful. However, from the perspective of governance, it seems far better placed to draw upon a broader, less conflicting body of expertise than WADA. Nevertheless, this is not to suggest WADA’s role is redundant, only that the kind of autonomy it seeks, is misplaced. While independence from the IOC is consistently sought, governmental relationships require further exploration.

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