

Ethics, Laws, and Sport

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One can hardly analyze the conflict our society displays in claiming to be a pluralistic society while manifesting the characteristics of a hegemonic society without questioning the interaction of the law and society. Does the law shape society or does society shape the law? While Sage (1990) does not answer this question, his review of the two different societal structures leads one toward an answer. One would assume that in a pluralistic society, society, meaning the people, would shape the law. Likewise in a hegemonic society one might well expect that the law, as controlled by the in-group, would shape society.

Certainly the history of the United States provides many instances where laws were created, interpreted, or enforced for the benefit of the in-group. Ready examples include, but are not limited to, tax, corporate, and civil rights laws. As those examples were created in our United States society, which according to Sage (1990) is a hegemonic society, the assumption is that the law has shaped our society. Even though the United States may be in a state of transition to a pluralistic society, the concern here is to determine if the laws thus far created, their interpretations or enforcement meet ethical standards. To accomplish that goal a system of ethics must be identified and various laws and rules of governing bodies measured against that model.

For many people, ethics is nothing more than a collection of personal feelings. For them a disagreement over whether some action or policy is ethically or morally right or wrong, good or bad, just or unjust, is the same as a disagreement over preferences. But this view of what constitutes a moral disagreement is incorrect. When two persons express different personal preferences about something, the one does not deny what the other affirms. It is entirely possible for both to be correct at the same time about how each feels or what each prefers. Furthermore, it is not appropriate to ask for justification in the case of mere expression of feelings. The fact that Jack likes to eat oatmeal but Jill does not are not conflicting judgements about the value of eating oatmeal, and it is therefore inappropriate to ask each other to defend his or her preference.

The claim that eating oatmeal is the right thing to do is different because it asserts a value judgement, not a mere expression of a preference. As such, the claim has a truth value, represents a denial of the claim that eating oatmeal is not the right thing to do, and requires a justification, which might run as follows: One ought to care for one's physical needs by eating nutritional foods; oatmeal is a nutritional food; therefore eating oatmeal is the right thing to do.

People who hold the view that ethical disagreements are nothing but expressions of preferences are said to have an uncritical, non-reflective morality. While such a view may serve the purposes of the individual (e.g., permits one to express one's strong feelings of approval or disapproval), it invariably leads to irresolvable conflicts and to actions which are blatantly unethical. If Jack prefers sexist policies but Jill does not, and the expression of a preference is all that an ethical disagreement amounts to, then one should expect a fight between Jack and Jill. There is no hope of either adopting the attitude of "Come, let us reason together."

Rather than a collection of personal preferences, it is more accurate to say that ethics is a discipline. It is a discipline in two senses. First, ethics is a disciplined inquiry into determining the correct standards of right conduct. Secondly, being an ethical person means disciplining oneself to live in accordance with those standards. What is the correct code of ethics and can I subscribe to that code are the two great questions of ethics. The terms 'ethics' and 'ethical' and the terms 'morals' and 'morality' are often used interchangeably, and with good reason since both the Greek word *ethos* and the Latin word *mores*, from which the words ethics and morals are derived, originally meant customs, habitual conduct, and character. But customs, practices, actions, policies, conduct, behavior, and character traits evoke either approval (good, desirable, right, obligatory, worthy, virtuous, valuable, ethical, moral) or disapproval (bad, undesirable, wrong, obligatory not to, unworthy, a vice, of disvalue, unethical, immoral). Such evocations generate the need for a set of standards which one believes to be correct, in terms of which we can evaluate our conduct, and which can be used as a guide to living well. In short, we need a justifiable code of ethics.

The purpose of this article is to establish a principle which will form a cornerstone of a justifiable code of ethics. In turn, this code will enable us to determine whether certain laws, rules, or regulations affecting sport are, in fact, ethical. Two examples of how the established code is used are provided.

The place to begin in establishing this principle and the code of ethics is with classic utilitarianism. The classical utilitarian holds the view that the sole ultimate standard of right and wrong is the *principle of utility*, which says that the moral goal to be aimed at in all we do is the maximization of the greatest amount of good over evil as a whole. Act-utilitarians believe that we should try to see which particular action together with its consequences is likely to produce the greatest amount of good over evil for the greatest number of people. Rule-utilitarians believe that the consequences of actions should be evaluated in terms of rules or practices, which in turn are evaluated in terms of rules or practices, which in turn are evaluated by appealing to the standard utility. We determine what we ought to do in a particular situation by appeal to a rule, such as 'racism is wrong', and we determine the ethical value of our rules by asking which rules will promote the greatest general good for everyone whose interests are affected by the rule.

Utilitarians all agree that the right actions are to be determined by what is good for the whole and that what is good and bad are capable of being measured and balanced against each other by the use of some method or other (e.g., use of cost/benefit analysis), but they have historically split over the question of what constitutes the good of the whole. Plato (1929) and Aristotle (1953), the first utilitarians, held that the good of the whole is to be defined in terms of *virtue* or excellence (e.g., wisdom, courage, self-restraint, and justice), the acquisition of which would enable one to find well-being. For both of these philosophers, the purpose of the state and its laws is to enable individuals to achieve the good life.

Jeremy Bentham (1948), who is considered to be the founder of modern utilitarianism, held the view that the supreme good of all sentient creatures was the pursuit of pleasure and that all actions are to be evaluated in terms of seven rules: intensity, duration, certainty, propinquity, richness, purity, and extent. John Stuart Mill (1979), a disciple of Bentham's, substituted *quality* as well as quantity into the evaluation of pleasures. Under his analysis, for example, individual liberty is a primary social good because it is qualitatively superior to the denial of liberty. His discovery is now called "Mill's Principle": Individuals should be free to choose any action as long as it does not harm others (Mill, 1947).

Contemporary utilitarians have rejected the view that the good of the whole can be defined in terms of maximizing pleasure or minimizing pain primarily because of the problem of the interpersonal comparisons of utility (i.e., the problem of comparing the pleasure or satisfaction that Jack gets from eating oatmeal with the pleasure or satisfaction that Jill gets by eating something else). Most contemporary utilitarians are called 'preference utilitarians,' which holds that the actions should be evaluated not by their tendency to maximize pleasure or minimize pain but by the extent to which they promote the satisfaction of individual preferences or interests. The good of the whole is defined as what all individuals choose under these conditions.

Whatever theory of the good is arrived at, utilitarianism faces one major obstacle so serious that the theory has to be modified. Our popular culture is replete with examples of the well-being of innocent individuals sacrificed for the good of the whole. Our culture is laden with incidents where the majority in pursuit of the greatest good for the greatest number has persecuted or degraded the few for the supposed benefit of the greater portion of the mass. Embracing utilitarianism in its purest form has resulted in the exploitation of people and of natural resources as we, as a country, have pursued progress and greater wealth. Utilitarianism by itself is inadequate because it ignores the rights and duties of the individual. In response to this problem, Immanuel Kant (1959) expounded his theory of ethics which is now referred to as Kantianism.

According to Kant, what makes an action right or wrong is whether it conforms to the categorical imperative. The categorical imperative commands us to act in such a way that whatever principle or rule of interaction we apply to others we apply to ourselves, and conversely. For Kant, we should treat others as well as ourselves as *autonomous* agents, that is, agents who act in accordance with this principle and in so acting are self-determining agents. We are obligated to treat others and ourselves always as ends, never merely as means to ends; in other words, we should treat all persons, including ourselves, with respect and dignity. This is in essence,

Christianity's Golden Rule, "Do unto others as you would have them do unto you." Kant demonstrated that the Golden Rule is both rational and a moral rule. Variants of this rule are found in most if not all of the world's major religions and in the beliefs of many primitive cultures.

According to Kant, we have two sets of duties founded on the categorical imperative: duties to others and duties to ourselves. As to others, we have a duty not to make promises we do not intend to keep (and to keep the ones we do make) and a duty to rescue those in real distress if we are able. As to the ourselves, we have a duty not to take our own lives when we grow weary of living and a duty to develop our real talents. The guiding ethical ideals underlying both sets of duties are these: Do not coerce or harm others and do not allow yourself to be coerced or harmed; give to others and expect from others equal consideration; live, enable others to live, and live the best that you can. In sum, persons should be treated with respect and dignity, as having intrinsic worth.

From these two sets of duties we can derive two sets of rights. All persons have the right not to be harmed, to be free from *unwarranted* intrusion by others, to equal treatment; and all persons have a right to minimal welfare. In the United States Constitution, the first set of rights is protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments; the second set of rights is protected by welfare statutes and regulations found at the federal, state, and local levels. The point of Kantianism is that individuals possess the rights and duties founded on the principle of respect for individuals which the welfare of society as a whole cannot override.

Contemporary ethicists have attempted to combine the advantages of Kantianism and utilitarianism into a coherent ethical standard. This standard in turn provides the foundation for any code of ethics which purports to provide a sound guide for action. The standard can be formulated in the following way. If an action or policy promotes the best interests of everyone concerned and violates no one's rights, then that action or policy is morally acceptable, that is, it is either morally required or morally permissible, depending upon the nature of the action or policy.

In applying this standard to particular cases, we will find that there are instances where individual rights place an absolute constraint on the promotion of the best interests of the whole. In other instances, we will find that the best interests of the whole are so vital or compelling that individual interests have to be sacrificed or severely diminished. In most cases, it is necessary to balance promotion of interests against the promotion of interests of the whole. There is no mechanical test for how to strike this balance; each case must be tested on its own merits. What is proposed here is that any action, be it a legislative enactment, judicial ruling, or institutional policy or by-law, can be ethically sound only if it successfully complies with this standard.

We wish now to present two examples of laws, rules, or regulations to be scrutinized in light of this Kantian-Utilitarian standard, to determine if they are, in fact, ethical. Each law, rule, or regulation so examined will be stated as an issue, and each will deal directly with sport.

■ IS IT MORALLY ACCEPTABLE TO REQUIRE ATHLETES TO SUBMIT TO URINALYSIS EXAMINATION?

There are good Kantian-Utilitarian arguments on both sides of this issue. It can be argued that prohibiting, and requiring urinalysis tests to detect, the use of performance-enhancing drugs (e.g., anabolic steroids) and the use of illegal drugs (e.g., cocaine) in or outside athletic competition is justified because it promotes the best interests of all concerned and violates no one's rights. The public interest is served because drug-free athletics preserves the ideal of sport as the search for excellence in performance and promotes fair competition by removing incentives to cheat. Concerning the latter, the use of performance-enhancing drugs gives individuals unfair advantage over those who choose not to use them, and the addiction to illegal drugs could tempt individuals to "throw games" or "shave points" in order to get those drugs. Even where the individual athlete is made aware of the dangers of drug abuse (e.g., the physiological damage done to an athlete as the result of the heavy use of anabolic steroids), the public has a legitimate interest in protecting individuals against self-harm, where the risk of harm is great and clearly defined. Furthermore, athletes are expected to submit a large part of their personal life to the team concept, and drug use can have a negative effect on team spirit or team morale.

It can also be argued that the individual athlete's right not to be coerced or harmed is violated if he or she is pressured to take performance-enhancing drugs in order to keep athletic performance at peak levels, the maintenance of which is a condition for employment. Others are harmed if they are forced to indulge just to remain competitive, or if they risk injury by those playing under the influence of drugs. The young are harmed when they are driven to use either recreational and performance-enhancing drugs in order to emulate stars who serve as role models. Nor does prohibition and mandatory testing of either type of drug violate an individual's right to choose even if it were true that drug use posed no harm to others or to oneself. Athletes are free not to enter the field of competition where drug use is prohibited. If they choose to enter, then they are committed to the enforcement of the rules of competition, including the rule, if one is in place, which prohibits the use of banned and illegal drugs and requires urinalysis to detect their use.

Arguments on the other side of the issue are equally compelling. It could be argued that since there is no consensus on the ideal of sport, nor should we expect one in a pluralistic society, banning performance-enhancing drugs in the name of an ideal should be dropped. Besides, the conception of sport has been altered so radically by advances in sports medicine that a new conception of sport is emerging, one which allows performance-enhancing drugs in order to enhance the concept of competition in desirable ways. Furthermore, the action of banning illegal drugs and requiring urinalysis tests is really a cover-up for deeper, more complex problems with sports, e.g., America's love affair for winning at all costs (Padwe, 1989). Requiring athletes to make their personal lives subservient to team spirit substitutes a totalitarian vision of sport that is for the traditional spirit of athletic competition (Thompson, 1982). The real problem with using indiscriminate urinalysis testing to detect illegal drug use is that it violates the individual athlete's personal

autonomy, one's privacy rights. An athlete has, as we all do, a personal life separate from his or her work life. Athletes do not surrender, as none of us do, their privacy rights when they choose to work for an employer. A sure test that we do in fact understand the chagrin that many athletes feel when required to submit to urinalysis is brought home by Kant's categorical imperative; would we, as teachers, truck drivers, etc., tolerate, as a matter of course, urinalysis to detect illegal drug use? The answer is surely, no, we would not. What then is the difference, it is asked?

We believe that the issue of banning and testing for the use of performance-enhancing drugs should be kept separate from the issue of testing for illegal drug use. Concerning the former, two points must be made. First, we agree that once a performance-enhancing drug ban has been imposed on a particular sport as a condition of competition, then it is not a violation of an athlete's privacy or autonomy rights to require him or her to submit to urinalysis. This would fall under rule enforcement as athletes agree to abide by the rules of competition when engaging in a particular sport. A second more controversial point is that there is at least one good Kantian-type reason for supporting the ban on such drugs. For Kant, individuals should treat others and themselves as persons, as ends in themselves, not as objects or means to ends imposed from without. Athletic events which permit or encourage the use of performance-enhancing drugs treat competition as a contest between bodies, which are used to accomplish externally imposed, other-directed goals, e.g., victory at all costs, not as a contest between persons, where such inner-directed characteristics as motivation, courage, dedication, and intelligence dominate (Simon, 1984).

As for recreational drug use, we believe that there is no urinalysis as a matter of course. Athletics, though an important and vital American institution, is not in the same class as intelligence gathering, public transportation employment, law enforcement, or military action, where one could demonstrate the connection between drug use and grave public harm. There is no compelling public interest or social necessity that would require random or matter of course illegal drug testing of athletes. Such tests represent a destruction of privacy and an offense to personal dignity.

■ ARE PROPOSITION 48 AND ITS OUTGROWTH PROPOSITIONS ETHICAL?

In 1983, the NCAA passed Proposition 48. This ruling required entering collegiate freshmen to have a 2.0 grade point average in eleven core curriculum courses and either a SAT score of 700 or above or an ACT score of 15 or above before they could receive athletic financial aid. Partial qualifiers (those who met either one but not both of the requirements) could receive aid but could not play or practice for one year and lost one year of eligibility. Six years later Proposition 42 was passed and eliminated partial qualifiers. Non-qualifiers could receive no financial aid. In 1990, Proposition 26 reinstated the partial qualifier with the same restrictions as in Proposition 48.

In 1992, the NCAA passed Proposition 16 which is to take effect August 1, 1995. Proposition 16 requires a grade point average of 2.5 in 13 core curriculum courses and an SAT score of at least 700 or an ACT score of at least 21 or a 2.0 grade

point average and a 900 SAT or a 21 ACT score. A sliding is used for scores in between.

Do the propositions stand up under the Kantian-Utilitarian standard? First, do the propositions respect the rights of individuals? Perhaps the greatest criticism of the propositions has been the disproportionate number of black athletes declared ineligible. This has led some observers to state that the rule discriminates against black student-athletes and others to charge that it is a deliberate attempt to limit the number of black athletes participating in order that less skilled white players can play. The clear indictment is that these are racist rules. If these charges are true, then the black athletes are not being treated as persons, as ends in themselves. The propositions do not meet the Kantian-Utilitarian standard and are, therefore, not ethical.

Others claim that these rules prevent some individuals from learning necessary skills to provide them opportunities to earn a living as professional athletes after they have ended their college careers. This too would seem to show an indictment showing infringement of individual rights.

Still others state that these edicts prevent the school from fielding the best possible athletic teams. That is to say, the rules prevent the whole university community from enjoying the high quality athletic performances and the financial and recruiting benefits that would otherwise be available. This charge, if accepted, would show that the rule does not promote the well-being of the whole.

Another viewpoint is that the propositions are in the best interests of the individuals in that they provide added incentive to athletes aspiring to play on college and professional teams to do well in school. They also provide impetus to school personnel and other interested persons to provide a quality education beginning in kindergarten and continuing throughout. In short, they are seen as a way to be more assured that black children are provided with the educational foundation needed to have a 'legal playing field' in the classroom. In this argument, rather than limiting individual rights, these propositions are seen as enhancing them for student-athletes, especially those from minorities.

Those that embrace this viewpoint also see the propositions as promoting the well-being of the whole. In this instance though, the whole is seen not as merely the university or the NCAA but as society itself. If through education the knowledge and abilities of any group are expanded, then society as a whole will benefit from the expanded contributions made by that group. Furthermore, the purpose of higher education is to expand knowledge and scholarship in the humanities, sciences, arts, and other forms of human endeavor that will help humanity reach its 'ideal state'. As entrenched in society as athletics may be, one must question whether it is the purpose of higher education to provide for either consumers or future producers. Further, even if athletic participation was considered to be a privilege, it would not outweigh the right of the individual to a quality education, the right to be treated as a person, and the right not to be forced below a certain standard of living.

We find the latter viewpoint the most rational and therefore find that Propositions 48, 42, 26, and 16 do respect the rights of individuals and do promote the well-being of the whole. They withstand the test of the Kantian-Utilitarian standard and are therefore found to be ethical actions.

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