

How to restore fairness after doping infringement?

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Abstract

This paper addresses the question how to restore the biggest possible amount of fairness after a discovery of doping infringement. I will analyse eight actions that could be taken: (1) disqualification and re-ranking, (2) change in official result, (3) medal stripping and medal re-awarding, (4) ban, (5) rematch, (6) legal action, (7) apology and (8) forgiveness. I conclude that the best way to restore the biggest possible amount of fairness seems to be a selected combination of actions. I also propose that re-ranking and medal re-awarding should be accompanied by a ceremony in which the new winners are celebrated because they typically did not have a possibility to enjoy their success in front of the original audience.

Introduction

Much of the philosophical discussion about doping has focused around the issue whether or not doping bans are justified or around some other version of this problem (see Gardner 1995; Lavin 2003; Miah 2010; Schneider & Butcher 2000; Simon 2003; Tamburrini 2000). However, less attention has been given to corrective and retributive actions which are used to deal with the doping infringements.

In several cases, doping infringement is discovered after an athlete has already taken part in a competition. Notable examples include Canadian Ben Johnson's 100-metre world record race, 9.79 seconds, in the 1988 Seoul Olympics and American Lance Armstrong's seven victories in the Tour de France in 1999–2005. The discovery of doping infringement typically triggers a corrective or retributive action. Johnson and Armstrong were disqualified, stripped of their gold medals and suspended. Armstrong also has faced financial and legal claims.

The aim of this paper is to address the question of how to restore as much fairness as possible after a discovery of doping infringement. In specific, I am interested in cases where the doping violation is discovered after both the competition and the medal ceremony. That is, I am partly inquiring into how to deal with past injustices (see Gibney, Howard-Hassmann, Coicaud &

Steiner 2008; Roberts 2002). Furthermore, I conceive that fairness was restored as much as possible when an unfair competition was amended into a fair one or the unfair competition was brought to as close to fair as possible.

My view posits that a competition can be unfair in different degrees. I cannot defend this view fully here, but I will give a clarifying example.

Imagine first that a participant of a cycling competition is using a hidden motor in her bicycle during a race and wins the race. The motor, however, helps her only slightly. Without it, she would have been second. Imagine now a different case. A cyclist is using an advanced hidden motor in her bicycle that gives her significant propulsion throughout the race and she wins the race. Without the hidden motor, she would have been the last. It seems that the latter instance of hidden motor was more unfair than the previous.

Following, I analyse eight post-competition actions that could follow the discovery of doping infringement. First, I discuss disqualifying the doping user and re-ranking other participants. Second, I elaborate changing official results. Third, I discuss medals being stripped and re-awarded. Fourth, I consider suspension from future competitions.¹ Fifth, I discuss a possible rematch. Sixth, I address legal actions. Seventh, I inquire into apologising, and eighth, I discuss forgiveness. I conclude the article by proposing brief

¹ Suspension can represent both pre-competition action and post-competition action.

guidelines how to use the actions. Before commencing the analysis of the actions, however, I will contextualise my approach in more detail.

Context of analysis

Angelo J. Corlett (2013, 437–442) has addressed most extensively in the philosophical literature the actions that can be taken after a discovery of doping infringement. He has considered what kind of punishments athletes would deserve and also what kind of punishments would be effective to prevent athletes from using doping. Nevertheless, his main target has still been the problem of how to justify bans of doping, and he states: “A more thorough treatment of this topic [punishing doping athletes] awaits the devising of an article or book that devotes a substantially lengthier treatment of this vital concern” (Corlett 2013, 437). I will broaden Corlett’s view by taking more actions into consideration and by adopting a more explorative, experimental, or creative attitude toward the possible actions.

The method for analysing the actions is a combination of case description and fairness evaluation. Case description consists of introducing a brief real-life example of the action, if one is available. Fairness evaluation is discussion about the desirability of the action: how well the action succeeds to restore fairness and what problems the use of the action may involve.

The way post-competition action attempts to restore fairness depends on which type of justice the action represents. For the purposes of this paper, we can distinguish among three types of justice: distributive, retributive and corrective justice (see Clark 2008; Weinrib 2002; Walker 2006). The distinction between the three types of justice is not always clear-cut, but roughly, distributive justice concerns how to allocate resources. Retributive justice is about punishing wrongdoers, and corrective justice tries to restore things as they were before the wrong was done. The majority of actions which are used to restore fairness after doping infringements belong to sphere of corrective or retributive justice.

The final contextualising note is a disclaimer about my terminology. I talk about discovery of doping infringement throughout the paper, but this description would be a false identification in cases in which the athlete did not actually have any doping substances in her or his body. A deficit test method or bribed testing personnel could generate this kind of situation. Furthermore, even though an athlete has doping substance in her or his body, it is possible that she or he was ignorant about the substance or was coerced to take it. For instance, the coach might have given the substance to her or him without her knowing about it. I will address these concerns when talking about bans.

1. Disqualification and re-ranking

A typical action after the discovery of doping infringement is disqualification of an athlete: He or she is removed from the official hierarchical order of athletes in that competition. To put it more simply, the athlete is not anymore among the official finishers of the competition.

Disqualification of an athlete usually improves the positions of other athletes. After Ben Johnson's disqualification from men's 100-metre dash in the 1988 Seoul Olympics, American Carl Lewis was moved to the first position. However, American Marion Jones' disqualification in 2007 from the first position in women's 100-metre race in the 2000 Sydney Olympics did not lift Greece Ekaterini Thanou to first place, as Thanou had been involved in doping test avoidance in the 2004 Athens Olympics. Thanou kept her second place.

Disqualification attempts to make the competition as if the doping user had not participated in the competition at all. This action seems to restore fairness best in an indivisible sport competition that consists of independent athletic performances (see AUTHOR). Competition is indivisible if it cannot be reduced or divided into sub-competitions. A single 100-metre race is an indivisible competition. Athletic performance is independent if it does not require an opponent and can be performed in a similar way without other participants, as in performances of 100-metre race or javelin. Therefore, Johnson's disqualification from the 1988 Seoul

final seemed to restore a big amount of fairness among the participants of the final race.²

Disqualification may restore fairness weakly in multipart sport competitions or in sports competitions that consist of dependent athletic performances (see AUTHOR). Multipart competition, such as football's World Cup tournament, can be reduced or divided into other competitions. Athletic performance is dependent if it requires an opponent as in athletic performances of football or tennis. Therefore, disqualifying the winner of a tennis tournament and positioning her or his opponent as the winner of the tournament would disregard the efforts of those who lost to the doping user during earlier rounds. Furthermore, as a whole, the Olympic event of men's 100-metre race in Seoul in 1988 was multipart competition because it had heats, quarterfinals, semi-finals and the final. Ben Johnson's disqualification failed to restore fairness for the athlete who was the first one who did not qualify for the final from the previous round.

A noteworthy shortage of re-ranking is that it does not restore the feeling of winning in front of audience. Re-ranking is only a change in the official hierarchical order of athletes. Therefore, sport organisations should make

² Ben Johnson and Lance Armstrong have complained that it was unfair to pick them because others also were using the prohibited substances. This seems to be a justified concern, but in order to focus on the fairness-restoring capacity of the possible actions, I will ignore this issue in the paper.

an effort to try to respect those athletes who are re-ranked afterward.

There could be an annual ceremony in which the new winners are hailed.

The ceremony also could be organised in a connection with remarkable competition of the sport, such as world championships.

Setting the proper time window for the use of the disqualification and re-ranking is challenging task. That is, how long after a competition should we still disqualify a doping user? Belarusian hammer-thrower Ivan Tsikhan was disqualified in 2014 due to a doping violation, eight years after his 2006 European Championships victory in Gothenburg. Consequently, Finnish Olli-Pekka Karjalainen rose to the first position in 2014.

A specific question related to the proper time window is the problem of whether or not we should disqualify an athlete even after her or his death. Imagine that a doped athlete dies one month after a competition and the discovery of the doping violation occurs two months after the competition. It seems that disqualification is more appropriate at least here than in a case where the athlete dies 50 years after the competition and the use of doping is discovered 60 years after the competition.

2. Change in official result

The official hierarchical order of athletes is based on their official results.

By official result I refer to the number accompanied by unit of

measurement that officials have assigned to the athlete's performance. (see AUTHOR). Ben Johnson's original official result in Seoul in 1988 was 9.79 seconds, and it was later fully erased. I understand this erasure as a change of official result. The erasure of Johnson's official result implied his disqualification.

Change in official result could be milder than full erasure, at least theoretically. Imagine if the International Olympic Committee (IOC) would have added 0.5 seconds to Ben Johnson's official result after the discovery of his doping violation. His new official result then would have been 10.29 seconds, and his new position would have been seventh. This kind of post-competition change in official results would fit best in sports that involve independent athletic performances, like the 100-metre race or long jump. I have no data, however, that the partial change of official result would ever have been used due to a doping violation. Nevertheless, in motor sports, time sanctions sometimes are employed after the race is over. For instance, a Formula 1 jury set a 30-second post-race time penalty for Kimi Räikkönen in the 2015 Russian Grand Prix due to his collision with another car.

Change in official result faces the same issue of setting the proper time window as disqualification.

3. Medal stripping and medal re-awarding

Medal, trophies or other similar symbols typically are stripped and reallocated when there is a relevant change in the official hierarchical order of athletes. As described earlier, Carl Lewis got the gold medal after Johnson's disqualification, but Thanou did not get the gold medal after Jones's disqualification. The re-allocated medal can be exactly the same physical object as the previous athlete first got or a fully new medal. In order to respect the new medallists, medal re-awarding could happen in annual ceremonies which I proposed in the context of disqualification and re-ranking.

To my knowledge, medal reallocation in doping cases has always been connected to changes in official hierarchical order of athletes. In other types of cases, however, medals have been re-distributed without changes in the official hierarchical order of athletes. For instance, in the men's 200-metre final in the Beijing Olympics, Churandy Martina of Netherlands Antilles (currently Netherlands) originally was second and Wallace Spearmon of the United States originally was third. They both were disqualified, however, before the medal ceremony because they stepped outside their lanes during the race. As a consequence, American Shawn Crawford and Walter Dix received the second and third position and got the medals. Crawford gave later his silver medal to Martina because he believed that Martina deserved it more than him (Chadband 2009).

The problem of the right time window for medal stripping and medal re-awarding is very similar to that for disqualification and re-ranking but adds the practical challenge of a physical object. It may be easier to change the official hierarchical order of athletes after 50 years of the competition than to get back a 50-year-old original Olympic gold medal.

4. Ban

Ban, or suspension, can be temporary or for a lifetime. In 1988, Ben Johnson got a two-year ban. A lifetime ban may follow if the same athlete is caught twice. Johnson was caught again in 1993 and then received a lifetime ban. However, American sprinter Justin Gatlin avoided a lifetime ban after his second doping violation by collaborating with anti-doping officials. He suffered a four-year ban for his second doping violation.

Use of the ban seems to have three goals: punish the wrongdoer, prevent the wrongdoer from benefitting from the wrong done (that is, prevent the athlete from having the possibility to compete under the performance-enhancing effects) and forestall other athletes from using doping.

The length of the ban appears to affect how well the purposes are met: The longer the ban is, the better the purposes are met (see Corlett 2013, 437–442). For instance, an athlete is less likely to benefit from performance-enhancing effect after six years rather than after one year. Nevertheless, it

is not evident that extremely long bans would best restore the fairness because of the three possibilities mentioned earlier: conviction of an innocent athlete, an athlete's ignorance about doping substances in her or his body and coercion. If we gave a very long ban for an innocent athlete, it seems that we could not restore much fairness.

The proper time window for ban seems shorter than for other possible actions. A ban is not effective if it is given to a person who has ceased her or his athletic career ten years ago.

Ban and change in official result could be conjoined into a new post-competition action: constraint for official result. For instance, after discovery of the doping infringement of a sprinter, the athlete could get the following constraint for four years: During the first year after the violation, 0.4 seconds would be added to his official result in each of his 100-metres races. During the second year, 0.3 seconds would be added; during the third year 0.2 seconds; and during the fourth year, 0.1 seconds.

The drawback for the constraint of official result is that it would transform simple sports, like a 100-metre race, into more complex sports, because the athlete who crosses the finish line first would not necessary be the winner. Therefore, constraint for official result could fit best for events where athletes do not perform simultaneously, such as road cycling time trials.

5. Rematch

To my knowledge, a rematch has not been used to settle a doping infringement. Instead, the dominant corresponding action has been disqualification. We can list three reasons for disqualification's dominance over rematch as a fairness remedy. First, it is easier and cheaper to execute a disqualification than to organise a rematch. Second, disqualification probably would restore as much fairness as a rematch in sports that typically have most of the doping problems, that is, in sports that involve independent athletic performances. Third, there is no need to give a rematch to doping user. It would be only for the non-doped athletes.

Rematch could offer the most fairness for multi-part sport competitions that involve dependent athletic performances such as tennis. However, the problem of giving a new chance for wrongly treated athletes in a rematch is that an athlete who performed well in the original competition may fail in the rematch.

The proper time window for rematch seems to be very narrow. It might be questionable to organise a 100-metre re-race after five years, or even one year after the original competition because some participants may have already retired or been injured.

6. Legal action

The most typical legal actions are imprisonment and monetary compensation. Marion Jones was imprisoned in 2008 for six months for lying in the court about doping. The Finnish Athletics Federation set a 50 000 euros fine for the Finnish shot-putter Ville Tiisanoja after the discovery of his doping infringement in 2006. Furthermore, as Corlett (2013, 441–442) pointed out, legal actions should be extended to those persons who are providing the doping substances to athletes.

Legal actions stand out from the previous five actions in the sense that legal actions are external to sports and the five previous are internal to sports. Thus, the primary purpose of legal action does not seem to be restoring the fairness of competition. The proper time window for legal punishments, and the proper severity of them, should be in accordance with other legislation if the other legislation is rightful.

7. Apology

In the context of doping violations, the most relevant meaning of apology seems to be personal or individual expression of regret by an athlete. In this respect, apology resembles voluntary medal re-awarding but differs from all the other previous actions, which are set by the officials of the sport or by some other governing body.

A memorable apology in sport was expressed by Finnish cross-country skier Mika Myllylä who was caught in the 2001 Lahti World Championships. After the discovery of his doping violation, Myllylä published an open letter “My testimony to citizens of Finland”. It was a touching piece of almost poetical text in which he stated: “From the bottom of my heart, I wish to apologise my mistake from the people of Finland and from the whole sport world. [...] I will kneel, accept my defeat and ask peace for my soul.” (see AUTHOR)

The proper time window for apology appears to be wide. It begins after the doping violation and extends until the death of the athlete. In other words, expressing a sincere apology for a past doping violation even decades afterward seems to be more desirable than no apology at all.

Apology seems to promote fairness best when it complements other post-competition actions.

8. Forgiveness

To forgive a doping user is, roughly, to renounce a feeling of indignation toward her or him. Forgiveness can be a personal expression or a public declaration by the official of the sport or other governing body. Many individuals apparently have forgiven Mika Myllylä who has shown remorse and paid a great price for his doping violation. The discovery of his doping

violation commenced a downhill period in his personal life, including a divorce and alcohol abuse. Myllylä died in 2011 at age 41, ten years after the doping incidence.

Forgiveness has the potential to heal individuals but also contains the danger of continuing unfairness. If a sincerely remorseful athlete is forgiven after suffering a ban, she or he may regain self-esteem. However, if the athlete is forgiven too easily, say, a week after the doping violation and all other actions toward her or him are consequently waived, the unfairness of the violation may be preserved. Typically, the proper time window for forgiveness does not begin immediately after the violation but extends until the death of the athlete who used doping, perhaps even further.

Conclusion

I have analysed eight post-competition actions that could be used after discovery of doping infringement: disqualification and re-ranking, change in official result, medal stripping and medal re-awarding, ban, rematch, legal action, apology and forgiveness. Table 1 summarises my analysis of these actions.

	Proper time window	Capability to restore fairness of competition
Disqualification and re-ranking	at least moderate	works best in indivisible sports competition that consists of individual athletic performances
Change in official result	at least moderate	works best in indivisible sports competition that consists of individual athletic performances
Medal stripping and medal re-awarding	at least moderate	supports disqualification and re-ranking
Ban	limited	protects future competitions from unfairness
Rematch	limited	variable or limited capability to restore fairness
Legal action	conform with other legislation	the primary goal is external justice in relation to sport
Apology	very long	potential to complete other actions
Forgiveness	does not start immediately but extends very far	potential to complete other actions

Table 1. A summary of eight post-competition actions that can be used after a discovery of doping infringement.

It seems that the biggest possible amount of fairness could be restored by using a selected combination of the actions. The selection could include the wise use of the following seven actions: disqualification and re-ranking, change in official result, medal stripping and medal re-awarding, ban, legal action, apology and forgiveness. In other words, re-match would be excluded. Furthermore, the use of re-ranking and medal re-awarding would

require a ceremony to respect the athletes who missed the joy of winning in front of audience.

Even the wise use of the seven aforementioned actions does not fully restore fairness. Therefore it is important to pay enough attention to pre-competition, pre-season and pre-career actions that could make the use of doping less attractive. The history of doping infringements, however, has demonstrated that these are challenging tasks. Thus, it is as important to use the right post-competition actions in a wise way so that the maximal amount of fairness can be restored after future discoveries of doping violations.

Acknowledgements

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