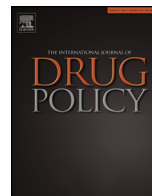




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Review

The new front in the war on doping: Amateur athletes

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ABSTRACT

The war on drugs is usually associated with criminal policies aimed at stemming consumption of drugs such as heroin, cocaine, and cannabis, less so with enhancement drugs like those used in sport. As drug use in sport, or doping, has become more visibly widespread, policies aimed at combating the issue have become more restrictive, intrusive, and harsh. In this article we draw new comparisons between the wider war on drugs and recent developments in sports anti-doping. We identify a growing trend towards criminalisation of traffickers and users, and associate that with another growing trend: the testing of amateur athletes. This article reviews the current anti-doping system, including the recent amateur policies, then considers of the results of one such program in amateur cycling. We then shift to consider the possible implications for amateurs of criminal doping laws and the recent debates about allowing medical exemptions for therapeutic use of banned substances. We show that drug use in sport can be understood as a new front in the war on drugs, with some extreme measures and many negative unintended consequences. To remedy this, we argue that amateur athletes require a separate anti-doping policy focused on minimising harms of use.

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Introduction

The phrase 'war on drugs' is most often used in connection with national policies targeting socially problematic drugs like heroin, cocaine, and cannabis. Regulations criminalising suppliers and users are the strategies of this war, and the problem is broadly assumed to be definable. Critical researchers challenge both that latter assumption and the methods used to police and punish producers, dealers, and consumers. Within that body of work the war on drugs paradigm, as both policy instrument and critical discourse, is not immediately applicable to sports. There are three likely reasons for this:

- i) sports drugs policy (anti-doping) outcomes have not had implications for other fields of social life: policing resources, criminal law proceedings, increase in prison populations;
- ii) drugs used in sports contexts are not always those demonized and problematised in wider society;
- iii) anti-doping policy is popularly seen as a necessary antidote to systematic cheating and corruption, and anti-doping agencies are thus seen as making a positive social contribution.

As harsh drug non-sport policies seem to be waning in some corners of the world, in recent years doping, and the attempts to regulate it, has moved to the centre of conversation on sport. Calls for increased surveillance of athletes and harsher penalties grew in volume and frequency in the lead up to the 2016 Summer Olympics, as scandals involving state-sponsored doping in Russia (McLaren, 2016), the hacking of the World Anti-Doping Agency's athlete database (WADA, 2016), and the re-testing of anti-doping samples from Olympic Games dating back to 2008 that led to multiple retroactive disqualifications (IOC, 2016). Efforts to address anti-doping shifted towards criminalising doping at the national level. Laws criminalising various doping-related activities already existed in several countries (Murphy, 2013), but in 2016 Kenya approved a law including penalties for use (Mygov, 2016) and the United Kingdom's Parliament debated a proposed amendment to criminalise doping (BBC, 2016). Hacked medical records brought new scrutiny to athletes' use of medical waivers, known in sport as therapeutic use exemptions (TUEs), in order to use a banned substance without facing penalty. Similarly to the war on drugs debate, the policy tools used have been criticised by researchers (Kayser, Mauron, & Miah, 2007; Møller, 2014), but the organisations responsible for controlling doping continue to follow the road of enhanced surveillance, testing, and punishments, regardless of the high numbers of inadvertent positives (de Hon, 2016).

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Criminalising doping and questioning the TUE system are not new debates in sport. What is different in anti-doping efforts in recent years, however, is the shift away from the elite athlete focus towards amateur and recreational athletes. The same rules that were designed to stop doping among international-level athletes are being transferred to non-elite, amateur sporting communities. Two major sports organisations in the United States, USA Cycling (USAC) and New York Road Runners (NYRR), made changes to their anti-doping programs that put a new focus on testing non-elite competitors in 2016. Other sport organizations, such as the International Triathlon Union and the International Boxing Association, have had amateur testing programs for several years. Including amateurs may not seem problematic at the outset, as expecting athletes to follow rules about substance use seems reasonable. As with many punitive-based drug policies, the consequences of including amateurs in a system designed for elite athletes are much more complex. Adding in the renewed focus on criminal doping laws and critiques of the TUE system, these new amateur testing programs carry legal, social, and health risks for athletes that go beyond sport.

These policies and their implications for amateur athletes are the focus of this article. We begin with an overview of the reasons for and development of the current anti-doping system, including the recent amateur policies. From there we consider the results USAC's testing program has had so far for athletes who tested positive. We then shift to consider the possible implications of criminal laws for amateurs, using the Kenyan law and debate in the U.K. as cases, and the recent debate around the validity of TUEs. We argue that anti-doping agencies and sports federations need a separate policy for amateur athletes focused on minimising harms of use through targeted education and a health-focused approach.

Approach

This article builds upon early case study work by the authors (Henning & Dimeo, 2015), which used media coverage and arbitration documents to contextualise and classify specific anti-doping cases. We aim here to extend that discussion by drawing upon discourses of drug criminalisation and legalisation in both sports and social drug use. To do so, we develop a macro-level analysis of global issues through media and policy sources. We analyze anti-doping policies developed by the World Anti-Doping Agency (WADA), cases involving amateur athletes tested under current policies, and new proposals for further escalating rules on doping in sport. In our analysis of WADA policies we used the WADC and Prohibited Substances List, which are the foundational documents governing the global anti-doping program. Drawing on the historical development of anti-doping policies and critiques of the resultant system, we provide a review of the rationale for the policies as they stand, and the underpinning philosophy of anti-doping. We then review the policies regarding anti-doping testing for amateur athletes developed by USAC and NYRR.

Though sports such as boxing and weightlifting include high-level amateurs in their testing programs, and student-athletes are tested in inter-university competition, USAC and NYRR include competitive amateurs as well as recreational participants. The large majority of participants do not seek to place among the top competitors at events, and may participate for reasons completely unrelated to winning. These athletes represent the full range of ages, experiences, motivations, and lifestyles. Amateurs, then, cannot be considered as a homogenous bloc or as necessarily similar to elites. Further, these organisations oversee many mass participation events each year that attract thousands of participants to each, making their impact immediate and relevant for a large number of amateurs. For these reasons we examine how these two policies will be implemented and their rationale.

Following this, we examine two developments within anti-doping: the use of national level criminal laws to deter and punish doping among athletes and the debates around the legitimacy of the TUE system. We draw on media coverage from news outlets of record providing reports of the criminal law development in Kenya and proposals in the U.K. Parliament. These reports were analyzed for background to the proposals, specific policy proposals put forth by government officials, any ensuing debate, and the evidence or argument offered by any officials or stakeholders.

One of the central challenges of policy case studies is re-defining sources of information and modes of analysis. As outlined above, several key sources are publicly available documents which allowed us to understand the policy frameworks and institutional arrangements that support, guide and help implement anti-doping. These documents pertain to global sport, national governments and localised sporting agencies. The emergence of increased anti-doping at amateur levels is in fact a localised decision within a global paradigm. Media sources have proved very helpful in highlighting cases where these decisions are made, and are manifest in testing and sanctioning of athletes. Methodologically, we need to treat such sources with healthy scepticism, seeking to cross-reference facts where possible, and avoiding the simple repetition of basic claims and subjective inferences. Thereafter, we found information on the websites of sports organizations (for example, decisions to sanction specific athletes), we checked blogs and other internet forums for other insights, and where available reviewed arbitration documents. In essence, we took a case study approach, being led by the questions, and searching for adequate sources which, due to the sensitive nature of the subject, are not always fully open and transparent.

Background: drug use in sport

Anti-doping efforts are based on a strategy of surveillance, detection, and punishment, similar to aspects of the war on drugs. Researchers have noted the links between efforts to stem illicit drugs outside of sport and the development of anti-doping policies within sport (Coomber, 2013; Dimeo, 2009; Hoberman, 2005; Møller, 2009). Doping substances were not always banned in sport, as they were accepted in professional sports during the first half of the 20th century (Christiansen, 2009). However, use of performance enhancing drugs (PEDs), or doping, was considered to directly conflict with amateur sporting values (Christiansen, 2009; Gleaves & Llewellyn, 2014). Gleaves and Llewellyn (2014) detail the early regulations around doping, going as far back as the 1920s. These early efforts paved the way for later regulations beginning in the 1960s and expanding through the doping scandal-ridden decades of the 70s, 80s, and 90s, such as Ben Johnson's positive test at the 1988 Olympics and the 1998 Festina Affair at the Tour de France (Gleaves & Llewellyn, 2014). These culminated with the creation of WADA in 1999.

The current approach to doping parallels the legalistic prohibitionist approaches of war on drugs policies (Mazanov, 2013; Stewart & Smith, 2010). The World Anti-Doping Code (WADC), which went into effect in 2004, indicates that anti-doping's purpose is to preserve the 'spirit of sport', which it calls an 'intrinsic value' of sport and encompasses values such as ethics, health, dedication, joy, and respect for others (WADA, 2015: 11). Researchers have critiqued the spirit of sport as an unclear concept underpinning anti-doping (Mazanov & Connor, 2010; Smith & Stewart, 2015; Waddington, Christiansen, Gleaves, Hoberman, & Møller, 2013). Further critique has been levelled against the inclusion of health as a reason for banning a substance, based on the paternalism of this approach (Kayser & Broers, 2012) as well as the lack of practical health promotion or protection for athletes afforded by anti-doping (Henning, 2016; Kayser & Smith, 2008).

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