

PERMITTING A CERTAIN LEVEL OF DOPING IN SPORTS AS AN ALTERNATIVE STRATEGY FOR TACKLING DOPING: A CRITIQUE*

Abstract

Doping which means introducing certain substances into the body to enhance the performance of a person in sports is a prohibited practice in the sporting world today. However, some critics have proposed an alternative system whereby a certain level of doping would be permitted among athletes as a way of addressing what they see as the contradictions and inefficiencies of the current total ban on doping. Against this backdrop, this paper assesses the arguments of this school of thought, insisting that the alternative they are putting forward would not only very likely fail to address the perceived shortcomings of the existing prohibitionist regime, but might even introduce more problems for sports and society at large. The paper therefore contends that the current system should be retained in the interest of sports and the society served by sports, but that policymakers and implementers such as the World Anti-Doping Agency (WADA) and International Olympic Committee (IOC) should also pay attention to certain arguments of those who oppose total prohibition as a way of gaining more insight towards addressing some of the shortcomings of the present system.

Keywords: *Doping, Anti-Doping, Prohibitionist, Sports*

1. Introduction

Doping could be seen as ‘taking substances for the purpose of enhancing sports performance’.¹ It has become one of the burning issues of the contemporary sporting culture, inspiring discussions, policies and actions. Doping has a long history being that as far back as the ancient Greco-Roman era, humans had sought to enhance their performance by employing ‘ergogenic aids in the form of natural products, bland chemicals and animal extracts.’² However, the growth in modern science, remarkably pharmacy and biotechnology, has produced formidable advances in performance enhancement aids such that today a growing array of drugs, supplements and methods have become available for people who want to enhance their performance. It is against this backdrop that doping in sports has today been a quite visible challenge necessitating interventions, notably by the World Anti-Doping Agency, Sports Governing Bodies (SGBs) and Governments who are enforcing a total, uncompromising ban on any form of doping³. However, this total prohibition regime has come under the scrutiny of those advocating for relaxing of the current rules or outright removal of the ban against doping. Against the background

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¹ D. H. Catlin, K. D. Fitch & A. Ljungqvist, ‘Medicine and Science in the Fight Against Doping in Sport’ (2008) 246 *Journal of Internal Medicine* 100, 114. See the Council of Europe defines doping as ‘the administration to sportsmen or sportswomen, or the use by them, of pharmacological classes of doping agents or doping methods.’ Giuseppe Lippi, Massimo Franchini, and Gian Cesare Guidi, ‘Doping in Competition or Doping in Sports’, *British Medical Bulletin* (2008) 86 (1): 95-107, p. 96

² David R. Mottram ‘An Introduction to Drugs and Their Use in Sport’ in David R. Mottram (ed), *Drugs in Sports* (4th edn Routledge, London 2005) 29.

³ This global anti-doping system operates under the grand project World Anti-Doping Programme primarily overseen by the WADA. Rules and Regulations regarding doping have been codified in a document known as the World Anti-Doping Code which since 2004 has brought universal uniformity and harmonization in activities of anti-doping bodies across the world.

of this controversy, this write-up makes a case for sustenance of the current prohibitionist regime as permission of doping, to whatever extent, poses some serious danger to sports.

2. The Prohibitionist Regime versus the Opposing Perspectives

As stated above, currently, there exists a prohibitionist system which seeks to control doping by placing a total ban on all forms of doping; an uncompromising stance that also holds athletes strictly liable for any doping-related substance found in their sample, i.e. irrespective of whether such was deliberately taken or otherwise. The rationale for this above policy has been given as follows: First, doping is banned in order to safeguard the integrity of sports by ensuring fair competition through elimination of ‘cheating’. In other words, doping is viewed as contradicting the very spirit of sport as it is motivated by the quest to win at all cost including by dishonest means. Doping is thus perceived as capable of undermining the dignity of the sporting culture as well as the role model status of sportsmen and sportswomen.⁴ Secondly, prohibition of doping is founded on health considerations being that certain forms of doping certainly have adverse health effects including given the fact that some of them do produce addictive effect. Hence, sporting bodies and anti-doping agencies are concerned about the health wellbeing of sport participants by insisting that they exclude whatever method that poses challenge to their health.⁵ This consideration equally relates to the quest to advance the ‘spirit of sports’ given that sports should ideally promote wellbeing and life and not ill-health and death. As desirable as the above goals definitely are, it may still remain to be seen how much the current anti-doping measures have succeeded in exactly bringing them about – at least satisfactorily.⁶ In fact, some commentators have argued that it has actually failed in this regard. They hinge their contention primarily on the claim that the ‘policy is inherently contradictory, as it fails to achieve its stated aims of detecting and eradicating drug use, protecting the integrity of sporting competition, and preserving parity on the field.’⁷ Arising from these criticisms is the proposal that the current anti-doping measure be replaced by a more pragmatic alternative. While some persons such as Claudio Tamburrini⁸ have called for outright unbanning of doping, others such as Jack Anderson⁹ have suggested that certain level of doping be permitted as a way of better realising the very aims for which anti-doping measure became necessary.

3. Why the Prohibitionist Regime Should Remain

In arguing that the proposal for permitting certain level of doping does not serve as a better alternative to the current policy and could in fact result in more contradictions than are currently obtained, this write-up will be guided by a pragmatic approach that considers any anti-doping strategy as desirable only to the extent it is able to advance the above stated goals. This is a result-oriented assessment that uses as its criterion the extent an anti-doping strategy succeeds in addressing the very fear that apparently gave rise to the anti-doping ideal in the first place. The question thus becomes: to what extent

⁴ Bengt Kayser, Alexandre Mauron and Andy Miah, ‘Current Anti-Doping Policy: A Critical Appraisal’ (2007) 8 *BMC Medical Ethics* 1472, 6939

⁵ Ibid.

⁶ Giuseppe Lippi, Massimo Franchini, and Gian Cesare Guidi expresses this challenge thus: ‘Following implementation of educational programmes and intensification of in- and out-competition testing, it was expected that the substance-abusing behaviour would decrease. Unfortunately, this has not been the case. New, more powerful and undetectable forms of doping are now abused by professional athletes, although sophisticated networks of distribution have developed’ 99.

⁷ Op. Cit. n.4

⁸ Claudio Tamburrini, ‘Are Doping Sanctions Justified? A Moral Relativistic View’ (2006) 9 *Sport in Society* 199, 211

⁹ Jack Anderson, ‘Doping, sport and the law: time for repeal of prohibition?’ (2013) 9 *International Journal of Law in Context* 135, 140

does the suggestion for permitting a certain level of doping satisfy this criterion? We attempt to answer this question under the subheadings below.

Permitting Doping Could Trigger Doping Rivalry

Those who argue for permitting a certain level of doping seek to contradict the prohibitionist argument that allowing any form of doping in sport would be tantamount to permitting cheating, thus removing from sport its essential ingredient of fair competition.¹⁰ They contend that sporting competitions could hardly be described as fair in the first place, as variations in individual natural abilities, socio-economic backgrounds, geographical environment and extent of access to training facilities inevitably intervene to rob sports of the much taunted ‘level playing ground’. Consequently, permitting doping could in fact be a way of addressing this injustice by giving athletes who are otherwise disadvantaged an opportunity to compensate for this.¹¹

However, this argument tends to assume too much to the effect that only those ‘disadvantaged’ athletes would go for such ‘certain level’ of doping when it is permitted. The very idea of competition implies that each competitor is continually seeking a way to gain advantage over a fellow competitor, hence it would be misleading to assume that a competitor would generously surrender his/her natural, geographical or socio-economic advantage by failing to avail him/herself of such permitted ‘certain level’ of doping knowing that his/her assumed ‘disadvantageous’ counterpart is benefitting from such. Consequently, it is the writer’s opinion that such strategy, rather than solve the problem of doping, would only introduce a sort of ‘doping rivalry’ where ‘disadvantageous’ athletes would seek to make up with doping while the ‘advantageous’ ones would like to retain their advantage by joining the doping bandwagon. Thus, sport might become exposed to a spiral of *doping-counter-doping* frenzy which momentum no one can say for sure whether and where it could be arrested.¹² This way, doping becomes a legitimate competition strategy and which does not solve the real challenges which doping poses to sports and for which it has been prohibited in the first place.

Permitting Doping Could Amount to Injustice

Even if one is to agree with the claim that permitting certain level of doping would advance justice in sport by giving the ‘disadvantaged’ athletes an opportunity to make up, we must, however, not fail to also concede to the fact that permitting doping would potentially create another form of injustice for some other athletes. This is because athletes who may for personal reasons of moral, religious or health nature, or as matter of sheer personal inclination, cannot opt for doping would remain cheated. Similarly, an athlete might, due to similar reasons, be disposed to only a particular form of doping which incidentally could be inferior in effectiveness to another form which another athlete might just be too disposed to. Thus, while justice might have been done for this athlete in principle – by permitting him/her equal doping opportunity as others – he or she is in practice suffering injustice because the means of obtaining the said justice is – for reasons of personal morals, religion, health, habit, etc –

¹⁰ Kevan, T., Adamson, D. and Cottrell, S., 2002. ‘Sports Personal Injury: Law and Practice’, Sweet and Maxwell, London, p.251, have argued following the case of *Baxter v. IOC* [CAS 2002/A/376] that: ‘even the slightest use of a banned substance is highly prohibited’.

¹¹ Op. Cit. n.9, pp.135, 140

¹² This possibility of athletes indulging in the self-multiplying act of seeking to out-dope rivals is evident in the observation by Giuseppe Lippi, Massimo Franchini, and Gian Cesare Guidi that ‘Competing is connatural to humans. Whether in the world of sport or other areas of contemporary society, people are constantly seeking for means to improve their performance and doing better than others, bursting the large diffusion of a variety of dietary supplements, ergogenic aids and performance-enhancing substances’, 104.

inaccessible to him or her. Thus, we can see the sense in one of the purposes for the current global anti-doping regime which is ‘To protect the Athletes’ fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes worldwide.’¹³

Difficulty in Enforcing the Prohibition Law does not Imply the Law is Ineffective

Furthermore, those who support permitting certain level of doping as a way of fighting doping in sport also rely on the argument that the resources at the disposal of anti-doping agencies and SGBs have proved inefficient in substantially reducing doping among sportsmen and women. In the first place, this argument hinges on the fact that enforcing the current ban on doping has proved quite expensive without actually achieving so much and that improving the monitoring mechanisms for better performance would require much greater investment which could prove unbearable.¹⁴ It is therefore the contention of these commentators that continuing with the current policy would amount to sheer waste of scarce resources.¹⁵

In response to this argument, this writer contends that the fact that existing mechanisms cannot adequately enforce a law does not alone indicate that the society does not benefit from such law. This is given that achieving compliance with any law or regulation does not always depend on the strength of the monitoring and enforcing mechanisms. Stated differently, a law does not entirely rely on the force of sanction to enjoy compliance. When a required behaviour or conduct is made a law, in addition to the threat of sanction that comes with it, it equally acquires – by virtue of having become a law – some sort of sacredness or symbolic force that morally compels compliance – with or without the threat of sanction. Hence, a law does not just appeal to human sense of fear but also (and perhaps more desirably) to human sense of what is good or bad, desirable or undesirable, honourable or dishonourable, dignified or debased – in short to human reason and conscience. This logic explains why a lot of people would comply with the law irrespective of whether they are in remote or immediate danger of facing sanction. It would in fact be foolhardy and impracticable for any society to seek to achieve satisfactory compliance with the law by relying solely on sanctions in the face of the vast imperfections of human social system. Definitely, humans have since known better and so, despite the gargantuan mechanisms of the law and the attendant systems of sanctions mounted to guard the society, every people in every age have sought to maximise character training given in formative institutions such as the family, schools, religious groups and other bodies in their quest to produce law abiding citizens. Such character formation ensures that individuals are morally disposed to obey the law; that their worldview is such that respects social symbols – including the law. One way of creating social symbols is the law; giving something a force of law clothes it with some irresistible sacredness that would appeal to any ‘cultured’ person.

Based on this, it is argued that removing to any extent the tag of prohibition from doping would alter the moral judgment people make on doping, thus reducing or completely suppressing whatever scruple they might have nursed about it were it to remain prohibited by law. As long as doping remains legally prohibited, there remains some moral force to its undesirability, implying that while many athletes might be flouting the law, there would be many yet who, prompted by moral, religious and personal

¹³ World Anti-Doping Agency, *World Anti-Doping Code 2015* (WADA, Quebec 2015) 11

¹⁴ Giuseppe Lippi, Massimo Franchini, and Gian Cesare Guidi argue that ‘The high number of athletes testing positive for anti-doping controls attests that the current strategy might be analytically adequate to unmask most (but not all) doping practices, but it is probably ineffective to prevent athletes to dope and modify this upsetting trend.’ Giuseppe Lippi, Massimo Franchini, and Gian Cesare Guidi, ‘Doping in competition or doping in sport?’ (2008) 86 *British Medical Bulletin* 95, 107

¹⁵ *Op. Cit.* n.9, p.141

principles, would willingly choose to obey. Perhaps, removing some part of this ban could result in some of these complying folks losing some of their interior moral strength that has produced the compliance.¹⁶

Those who propose for permission of certain level of doping are, in this context, arguing from a wrong assumption that a law can be effective only to the extent its enforcement mechanism is effective. Permitting some level of doping based on this reasoning would be flawed given that we would be at the risk of losing the compliance of not only those athletes who for reverence for the legal symbol have shunned doping but also those of them who despite the weaknesses of the enforcement mechanism have complied for fear of being caught. The basis of our argument would be reinforced if we pay attention to the fact that today, athletes find it even harder ‘to resist the pressure to use illicit aids’¹⁷ simply for the reason that there is increasing speculation that drugs such as cannabis, cocaine and marijuana are indeed legal and socially acceptable. Stated the other way round, because the public opinion is tending to remove the tag of illegality from use of certain drugs, athletes are losing the moral strength to do without them.

Permitting Doping Destroys the Normative Symbolism of Sports

Further, in arguing that the current anti-doping strategy lacks effective mechanism for satisfactory monitoring and implementation, those who promote the permission of certain level of doping also observe that the prohibitionist strategy is indeed counter-productive; i.e. resulting in or even multiplying the very evil which anti-doping regulation is meant to suppress.¹⁸ Their concern has been mainly that the ban on doping has led to the thriving of underworld (i.e. black market) doping business with the attendant effect of poor quality control that exposes athletes to health hazards.¹⁹

While this argument surely has its merits, using it as a basis for allowing certain level of doping as a way of better controlling doping in sports would, in the opinion of this writer, amount to doing some significant disservice to sports and human society in general. This is because this argument fails to appreciate that apart from safeguarding the health of the athletes, there is another hugely important, more intrinsic, but this time, purely symbolic implication of prohibiting doping in sport. This role corresponds to the symbolic role of sport itself in human society which particularly manifests when sport takes the form of public competition. In this sense, the very aesthetics of sport is, at least in principle, founded on human ‘natural capabilities’; in other words, sporting competitions are supposed to be a glorification of what a human person can achieve employing his or her nature-endowed abilities

¹⁶ Sir Arthur Porritt, first Chairman of the IOC Medical Commission, apparently in an attempt to emphasise that moral symbolism as against rigid legalism is the basis of anti-doping regulation, sensationally observes that ‘to define doping is, if not impossible, at best extremely difficult, and yet everyone who takes part in competitive sport or who administers it knows exactly what it means. The definition lies not in words but in integrity of character’ David R. Mottram, 26

¹⁷ Op. Cit. n.14, p.105

¹⁸ Ibid., pp.135, 137

¹⁹ Giuseppe Lippi, Massimo Franchini, and Gian Cesare Guidi amply articulate this fear: ‘The World Wide Web is the most striking example. So far, there are plenty of resources and virtual stores on the Web, offering a variety of doping products, from androgenic anabolic steroids to recombinant hormones. From a clinical perspective, this is unacceptable. First, as most of these manufacturers are not forced to strict or certified production procedures, the claimed products may be unsure and harmful, in that they are of dubious quality and sometimes cut with products that are toxic, posing additional threats to the health of the users. Desolately, they may even turn to be unhelpful, because there is no guarantee that they really contain the supposed ergogenic agent. Then, there is no effective legal control, and virtual stores cannot be identified and pursued. Finally, the hazard of this form of cheating is low for the athlete, as banned products can be shipped anonymously to the buyer’, 101.

– his/her ‘pure’ nature. Based on this, the sporting culture could be summarised as representing a communal celebration of certain dimensions of human *natural* physical and mental endowments. If this is so, introducing any ‘foreign’ element, in the form of performance-enhancing drugs, into sports would – at least in principle – contaminate the ‘pure’ naturalness of sport, so destroying its spirit and undermining its essence as a symbolic ‘arena’ for demonstrating the pristine human values of hard work, persistence, honesty and fairness. This role of sport as a symbolic element for value reinforcement in human society is given expression in a phrase like ‘spirit of sportsmanship’ commonly deployed as an admonition even to people who compete in non-recreational fields of life such as politics. In justifying its anti-doping regime, the Council of Europe trenchantly expresses this sublime symbolism of sport:

...sport is a force for social integration, tolerance and understanding. As the single most popular activity in society today, sport plays a most distinctive role. It is open to all, regardless of age, language, religion, culture or ability. Sport provides the opportunity to learn to play by commonly agreed rules, to behave with fairness in victory and in defeat, and to develop not only the physical being, but also social competences and ethical values. Its positive role in education is also increasingly acknowledged.²⁰

Therefore, as long as doping remains absolutely illegal, sport stands better chances of retaining – at least in principle – this symbolic place. Contrarily, permitting some level of doping might bring about a shift in communal perception of sport as a domain of pure nature, pure hard work and pure fairness. The emphasis here is not on the extent the anti-doping measure actually succeeds in removing doping, but on the extent sport *officially* continues to wear the tag of naturalness, fairness and honesty; the extent the public continues to see sport as intolerant of cheating and desperation. However, this is not to say that we should unreasonably continue to pander to symbolism at the expense of practical considerations; but our argument is that even as we explore more efficient ways of controlling doping, this symbolic role of sport should not be ignored either. Therefore, suffice it to say at this point that allowing certain level of doping as an anti-doping strategy fails in its objectives if it cannot safeguard the very symbolism (i.e. ‘spirit’) of sporting competition.

Permitting Doping Cannot Be Justified by Appeal to Human Rights

Another argument against the current anti-doping system is that the current prohibitionist anti-doping regime sometimes could constitute violation of human rights of athletes. For instance, it has been argued that ‘Rules and sampling procedures associated with testing protocols impinge on athletes’ privacy to an unreasonable degree and violate basic notions of personal freedom and self regulation’.²¹ But this argument would be weakened if attention is called to the fact that elite sport is a vocation and like all other vocations, could be subject to specific rules which any person who willingly enters into the vocation has consented to comply with. This time, any claim of right violation as a result of application of this rule could lose its force. In the case of *Meca-Medina v Commission*²², the Spanish Court of Justice dismissed the plaintiffs’ appeal who argued that the anti-doping regulations of the International Olympics Committee and International Swimming Federation (FINA) contradict the *Articles 81 and 82*

²⁰ Council of Europe, *for a clean and healthy sport: The Anti-Doping Convention*, (Strasbourg Cedex) 1 <<http://www.hrw.org/topic/international-justice/international-criminal-court>> accessed 15 March 2015.

²¹ Bengt Kayser, and Aaron C T Smith, ‘Globalisation of anti-doping: The reverse side of the medal’ (2008) 337 *British Medical Journal* 85, 87

²² [Unreported, October 25 2004] Case T-313/02

of the EC Treaty hence amounting to a restriction of competition.²³ The court upheld the position of the IOC and the European Commission that the anti-doping rules are ‘purely sporting rules’ and therefore are not subject to community law. In other words, athletes are involved in a special vocation and so subject to the rules internal to such vocation.²⁴

Related to this argument of human rights is the claim that absolutely prohibiting doping denies athletes enjoyment of acts that are legally and morally acceptable within the larger society. In other words, it imposes on them strictures that fall outside the boundaries of the society’s legal and ethical restrictions. Thus, Kayser and Smith observe that outside ‘the sporting field, enhancement technologies like cosmetic surgery and eye surgery and use of substances like caffeine, fluoxetine, modafinil, sildenafil, methylphenidate, and anti-ageing drugs are an increasingly accepted social behaviour; this places zero tolerance for enhancement in sport at odds with broader social values.’²⁵

However, it must be said that the decision in *Meca-Medina v Commission*²⁶ reveals the weakness in this argument. The fact that the generality of the people by law enjoy certain inalienable rights would not always mean that those who enter certain special vocations would not be subjected to special ethical (or even legal) regulations, even at the expense of their larger legal rights, in the interest of the vocation and the society at large. This is seen in many vocations such as the legal, medical and military professions, and to deny the appropriateness of such *special* regulations is to deny the appropriateness of the *special* status conferred on such professions in the society. Elite athletes occupy a special position with special prestige, special privileges and above all special social responsibility as role models; they are an embodiment of the society’s value aspirations in the area of hard work and honest success.²⁷ Consequently, they are morally bound to conduct themselves above the standard of an average person – at least in certain things. Therefore, special regulations imposed on them (including as related to doping) are merely in conformity with the nature and demand of their vocation. To express the matter more profoundly, those who oppose the total ban on doping on the grounds of its discriminatory restrictions on athletes are merely ignoring the irrefutable sociological truth that no human society, no matter how small, is completely monolithic but a conglomeration of varying sub-cultures along, for instance, vocational, class and religious lines – each sub-culture requiring a certain degree of uniqueness in values and standards for its own wellbeing and the efficient functioning of the entire society. If elite sport is properly seen as a sub-culture along vocational line, then its right to impose certain unique regulations on those who embrace it deserves to be respected.

Campaign/Medical Guidance Cannot Effectively Substitute for Prohibition

In offering an alternative to the current punitive enforcement strategy, proponents of permission of certain level of doping argue that it would be more fruitful to employ campaign and medical guidance

²³ See also the current banning of Nicky Watt by UKAD for 8 years following a positive test to a prohibited substance <http://www.ukad.org.uk/news/article/ice-hockey-player-banned-following-anti-doping-rule-violations/> accessed 13th March, 2015

²⁴ This is, however, not to say that the court would never intervene when such ‘purely sporting rules’ become unreasonably prejudicial to an athlete’s rights. In *S and Marper v United Kingdom [2008] ECHR 1581*, for instance, the ECtHR held that it amounts to violation of the right to privacy to hold DNA samples of individuals who were arrested but eventually acquitted or have the charges against them dropped.

²⁵ Bengt Kayser, and Aaron C T Smith, ‘Globalisation of anti-doping: The reverse side of the medal’ (2008) 337 *British Medical Journal* <<http://www.bmj.com/content/337/bmj.a584>> [accessed 15th April, 2015].

²⁶ [Unreported, October 25 2004] Case T-313/02

²⁷ BBC, 2015: See Lance Armstrong’s Confession on the use of PEDs during all seven of his Tour de France wins. <http://www.bbc.co.uk/sport/0/cycling/30955902> [Accessed 22nd April, 2015].

as a way of dissuading athletes from endangering their health via doping than relying on the deterring effect of punishment. Some, such as Jackson, have called for ‘permitting the controlled, medically supervised use of PEDs.’²⁸ Admittedly, this argument would have been stronger only if it can be guaranteed that the motivation of good health alone would be enough to make athletes forego their opportunity of winning as temptingly offered by PEDs. For instance, a 1982 survey²⁹ asked nearly 200 elite athletes if they would go for undetectable PEDs that would assure them success in their sport but would cause them death within five years. Fifty-two per cent of the respondents answered in the affirmative (irrespective of the death risk). Subsequently, a series of biannual surveys that ran for a decade consistently returned this same result with about fifty percent of the athletes answering that they would prefer this costly route to success.³⁰ Thus, the argument of opponents of the prohibitionist anti-doping regime that fear of sanction does not deter athletes from doping³¹ comes under serious scrutiny with this possible discovery that relying on health education and medical guidance would equally fail as fear of death would not deter the athletes either. But again, this sort of argument (by the anti-prohibitionists), as earlier suggested, may be guilty of looking only at one side of the picture by viewing doping solely from the perspective of its health impact without seeming to pay attention to its other implications to sports as a communal culture. This bias is evident in the argument put forward by Kayser, Mauron and Miah while defending the proposal to unban doping and allow athletes to take informed decisions. The authors admit that if this is done, ‘we would probably see an increase in the use of ergogenic drugs, *but this need not to lead to an increase in morbidity and mortality*’³² (emphasis supplied). Hence, the author seems less concerned about this foreseen ‘increase in the use of ergogenic drugs’ than he is about the health (life) of the athlete; a position that fails to capture the indisputable fact that sport is not all about the health of the athletes but also serves more other purposes for the society. In other words, anti-doping regulations are not all about the health of the athletes but involve a lot more towards ensuring that sport continues to play its practical and symbolic social roles.

4. Conclusion

In conclusion, even if we are to admit that the current system has failed to address its aims, it has now become clear that the proposal for permission of certain level of doping might not hold the answer either. Comparing and contrasting this proposal with the current regulatory system, one sees that while the current system might be short of satisfying its avowed aims, the proposed system is not exactly promising to positively satisfy these aims, but seems to aim at avoiding what it sees as the counter-productive results of the prohibitionist system. Little wonder it seems to have emphasised elimination of underworld doping services with its attendant health risks and its replacement with open and legal doping – thus promoting *healthy doping* as against *unhealthy doping*. But admittedly, this approach would have largely left unattended to, other needs which anti-doping measures are meant to address. Hence, we reaffirm our earlier position that this proposal cannot be described as a good alternative to the existing policy. However, this is not to suggest that the proposal lacks any worth. Far from that; this proposal, apart from representing some useful criticism of the existing system, could, given its emphasis on education and medical guidance, be found useful by policymakers in the effort to evolve a more effective anti-doping system. As earlier stated, people’s compliance with laws do not come only as a result of fear of sanction; hence integration of vigorous enlightenment programme might help improve

²⁸ Op. Cit. n.9, p.136

²⁹ Popularly referred to as the Goldman’s infamous ‘Death in the Locker Room’ survey

³⁰ Op. Cit. n.9, p.138

³¹ Giuseppe Lippi, Massimo Franchini, and Gian Cesare Guidi puts this argument thus: ‘Several top class athletes have been familiar with doping over the past decades and will probably continue to dope in the future, as their inclination to victory, their mirage of glory and money, will always overcome the risk of being found guilty’, 104

³² Op. Cit. n.4

the efficiency of the current anti-doping regulatory system by potentially inspiring informed and free compliance among athletes.

In a nutshell, without going as far as permitting doping, the current prohibitionist anti-doping measures could draw further wisdom from the proposal of those arguing for permission of some level of doping. This move would represent an eclectic approach seeking to maximise the best elements of the two methods. Of course, not to be left out are other proposals that have been made by other stakeholders and commentators towards the one important goal of better regulating doping in sport. In this regard, this writer sees as very germane the suggestion by Moller that as a way of furthering the realisation of today's anti-doping dream, our approach must find ways to integrate coaches, doctors and drug companies rather than the current system's unrealistic isolative approach that has laid undue emphasis on athletes.³³

³³ Verner Moller, *The Ethics of Doping and Anti-Doping: Redeeming the Soul of Sports* (Routledge, London 2010) 22