"Sports and Drugs: Are the current bans justified?"

Lavin

Strategy

• To argue that the traditional prohibitions on PEDs are defensible
• But, Lavin defends these prohibitions by appeal to democratic consensus
The Philosophical Debate

- Like Brown, Lavin thinks the philosophical debate about PEDs and restrictions on their use revolves around Restorative and Additive drugs.

- However, Lavin thinks there is good reason to reject the distinction between restorative and additive drugs and their use in sports.
  - He considers four cases which blur this distinction.
  - Lavin also notes there are problems with the distinction of drugs and nondrugs in sports.

First Argument Against Restorative/Additive Distinction

- Restorative drugs are thought to serve a medicinal purpose and to not take athletes beyond their "natural peak".
  - As Case 1 highlights, Marax is not simply a restorative drug since it includes a stimulant.
  - The assumption is that this stimulant allows one to go beyond one's "natural peak" and this property distinguishes restoratives from additives.
What is Natural Peak?

- The problem is that it is not clear what constitutes one's "natural peak"
  - "...if a natural peak is to be the litmus test for distinguishing between restoratives and additives, it should be possible to determine what a natural peak is." (264)
- Athletes engage in training routines designed to take them beyond their "natural peak"
  - e.g., weight training, interval training, high mileage, etc.
- Multiple factors are involved in peaking, including weather, motivation, diet, age, emotional state, etc.
  - Is any training that occurs prior to an athlete achieving a "natural peak" to count as an additive?

Altering Performance and Additives?

- Is a drug's ability to alter an athlete's performance sufficient for it being considered an additive?
  - Case 2: Walton's use of pain killers allowed him to play when he would not have otherwise been able
  - Are pain killers additives?
- Should additives be those drugs that are harmful and have no restorative effects?
  - Case 2 again is problematic—analgesics had harmful effects for Walton and would then be considered additives (despite the fact they are clearly restoratives)
  - Borrowing from Fost: "it is probably difficult to sustain a sharp distinction between restoratives and additives for super athletes." (265)
Distinguishing Drugs from Nondrugs

- How does one distinguish drugs from nondrugs? Effects? Chemistry?
- The FDA says that drugs are substances that have the intended effect of influencing "the structure or any function of the body." (265)
- Chemistry alone cannot distinguish drugs from nondrugs
- The FDA has to list prohibited drugs to identify those understood as additives
- "Regulators in either case would have to keep in mind that there is no universally agreed upon objective criteria for identifying drugs and only drugs." (266)

Rationales for Traditional Prohibitions

1. "The argument from fairness: the substance gives the use an unfair advantage.
2. The argument from danger: the substance endangers the use to an undue degree.
3. The argument from coercion: the substance, if its use were permitted, would force athletes to use a dangerous substance that they would otherwise not genuinely wish to use." (266)

- Lavin thinks these traditional rationales are not persuasive once one realizes the blurry line between restorative/additive and drug/nondrug
Unfairness Argument

- Argument from unfairness is not so much about breaking the rules, since constitutive rules of sports do not really include prohibitions against drugs.
- Rather, what is usually meant when one says using drug $x$ is unfair is that the drug is (i) unnatural, (ii) is risky, or (iii) results in coercion.

Failures of Traditional Prohibitions

- Problem is that none of these traditional prohibitions provide a basis for prohibiting PEDs.
  
  (i) No clear distinction between natural and unnatural (e.g., some training regimens not natural—exotic diets)
  
  (ii) No clear reason to prohibit some risks rather than others (e.g., high-mileage training)
  
  (iii) The decision to play injured may coerce others to also play injured, especially when playing a match is the whole point of training.
Lavin's Position

- Lavin distinguishes his view from Simon's view
  - Lavin thinks Brown's response to Simon is correct and devastating
- Lavin thinks it is permissible to impose certain restrictions in sport
  - These restrictions usually do involve issues of harm and unfairness

One Further Feature

- "But one further feature is involved. Prohibited substances share the property of being commonly, or at least publicly, disapproved. Other substances may very well be just as dangerous as forbidden substances but fail to meet the test of pervasive disapproval…. As I would want to put it, something approximating democracy operates to justify prohibitions…. I propose that some core set of ideals of sport covertly operates to favor the adoption of certain prohibitions rather than others. Current prohibitions, then, do not capture a timeless ideal of sport." (268)
Regulations in Sports

- Regulation in sports is "a democratic attempt to enforce and perpetuate widely accepted ideals."
- To the extent that widely accepted ideals are (morally?) defensible, then regulation of certain substances is defensible.
- Lavin does not think that the lack of a single ideal of sport leads to libertarianism (a la Brown).
  - Rather, the lack of a single ideal leads to a consensus about how best to achieve some democratically decided view of sports.

Consensus Without Argument is Empty

- Some might argue against Lavin and say that democracy has a history of moral failure.
  - Democracy poisoned Socrates, endorsed slavery and segregation, and frequently supports self-defeating and irrational agendas.
  - Majority rule does not guarantee that a decision is right or beneficial or moral.
  - What is needed is a sound argument.
  - What good is consensus without a sound argument?
Lavin's Response

- Lavin realizes he cannot "give a fully satisfying response to this plea for good reasons."

- Nonetheless, he thinks there is an "unconsciously grasped ideal of competitive sport" whenever there is consensus about some regulations needed to protect some ideal of sport

- Two Arguments by Analogy in Support of Lavin's Consensus Model
  - Language competency
  - General education requirements

Language Competency

- Language speakers can distinguish grammatically correct from incorrect sentences, even though they are often not aware of the relevant grammatical rules

- Similarly, Americans tend to agree on what is morally right and wrong

- By analogy, in competitive sport there are
  a. commonly held ideals of competitive sport;
  b. these ideals guide thinking about what substances should be regulated; and,
  c. discovering these ideals will provide the arguments justifying consensus to regulate certain substances.
Achieving the Ideal

- Regulation advances attempts to realize the ideal of competitive sport
  - Even if there is no definitive line by which to determine additive drugs, regulating some drugs moves closer to achieving the ideal
- By analogy, universities have general education requirements but there is no reason to think that any set of gen. ed. requirements make an ideal educated person
  - The requirements work well enough toward achieving the ideal
  - "The ideal rationalizes, without mandating, specific regulations or requirements." (270)

Important Features of Consensus

1. Consensus includes the shared opinions from diverse interest groups
2. The competitive ideals of sport discovered in consensus should elicit a "visceral dislike" of the regulated substances
3. Regulation should be respect history
   - Without these three features, there's likely to be unrest and disillusionment in the regulations
   - "Consensus often can do the work of reason. (271)