

1.2 Fair play: ideals and realities

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Introduction

Pierre de Coubertin, often heralded as the father of modern Olympism, viewed the concept of fair play as vital to the Olympic spirit.² Coubertin was responsible for the initiative that established the International Olympic Committee (the IOC), whose Olympic Charter holds that ‘the practice of sport is a human right’, and describes the Olympic spirit as one of ‘friendship, solidarity and fair play’.³ Fair play is more than a philosophical ideal that athletes subscribe to; it is a mode of social organisation that demands dedication. It requires adherence to written rules, respect for unwritten rules and respect for fellow players, referees, opponents and fans. Fair play requires valuing friendly rivalries, team spirit, fair competition, equality, integrity, solidarity, tolerance, care, excellence and joy for sport. The ideals of fair play begin at the grass roots and extend through to Olympic and professional athletes. More importantly, in the modern world, sport stands apart from other, scripted, forms of entertainment that have predetermined outcomes.

Fair play is integral to the continued success of sport, and yet is everywhere under attack. Acts of corruption undermine the ideal of fair play by taking control of and manipulating the variables that define sport and the Olympic ideal in order to benefit specific individuals or groups. In doing so, sport is deprived of its most fundamental feature: the uncertainty of outcome.

Corrupt governance and match-fixing damage public perceptions of the integrity of sport as an arena for competition, from grass-roots competitions to international mega-events. This is alarming, particularly because international sporting institutions increasingly face allegations of corruption. The Fédération Internationale de Football Association (FIFA) and the International Association of Athletics Federations (IAAF) have been embroiled in controversy because of alleged kickbacks to selection committees during bidding processes and bribery in governance elections.⁴ The May 2015 arrest of nine FIFA officials and five affiliated corporate executives for ‘racketeering, wire fraud and money laundering conspiracies’⁵ demonstrated the capacity and willingness of the US government to fight corruption on an international scale. Subsequently, Australia, Colombia, Costa Rica and Switzerland each launched independent investigations targeting alleged bribery, money-laundering and bidding process irregularities. Qatar’s successful bid to host the 2022 men’s football World Cup has been met with sustained criticism and allegations of bribery. Despite the arrests and pending investigations, FIFA has publicly stated that Qatar’s selection will not be reconsidered.⁶ Moreover, the human rights abuses of migrant workers who labour on stadium and facility construction under the ‘kafala’ system in Qatar have created international pressure on the country to abolish the system, but to date the government has not done so.⁷ Although corporate sponsors have expressed concern about these conditions, so far no 2022 World Cup sponsors have withdrawn financial support as a result of the bribery allegations or working conditions. As participants, these companies have the capacity to effect change.

In North America, the National Collegiate Athletic Association (NCAA) faces a continuing backlash over its corporate sponsorship practices, which yield hundreds of millions of dollars per year in profit by exploiting athletes who, in return, receive little more than the dim and fragile hope of a professional

career following their collegiate experience.⁸ These collegiate experiences may compromise education in favour of training elite ‘amateur’ athletes who produce success and profit for teams and schools.

Media coverage⁹ of poor governance or athletes transgressing the ideals of fair play gives the public a cause for concern as to the validity of competition, fair play and enforcement. Proving that officials accepted kickbacks, athletes used banned substances or matches were fixed can have a dramatic effect on the public’s opinion of sport. Such findings call into question every aspect of the sporting relationship, from the highest levels of governing organisations all the way to individual athletes.

The discovery and prosecution of corrupt practices create the same perception problem, leaving the public to wonder how long such practices went undetected and what historic moments in sport may have been compromised by corruption on and off the field. Corrupt practices are therefore parasitic, because they undermine and destroy the ideals of fair play ideals are integral to the continued success and growth of sport. The endemic corruption across sporting bodies undermines the ideals of fair play, and yet international sport remains a multi-billion-dollar industry.

Ideals

International sporting organisations (ISOs) make it their objective to promote fair play and meaningful competition for all participants involved in their respective sports. Promoting fair play involves clear statements on ethical values,¹⁰ the development of anti-doping programmes¹¹ and the promotion of participation in sport. As this *Global Corruption Report* shows, however, the realities are often very different from the ideals.¹²

Enforcement is often controversial and litigious even where it is limited in scope. The World Anti-Doping Agency (WADA) is one of the best-known proactive institutions, but its mandate is limited to combating doping in sport; WADA does not address corruption in other forms. WADA's director-general, David Howman, has suggested that it is time to create a sport integrity agency to address corruption beyond WADA's current scope, including gambling, match-fixing and bribery.¹³ These acts of corruption engage the interests and stakes of all parties: athletes; fans; coaches; sport organisations; stakeholders; corporate sponsors; and, when public actors are involved, national governments. The FBI's FIFA investigation marks a turn in enforcement methods: charges were laid under the United States' 'RICO' statute,¹⁴ a law typically used to prosecute organised crime.

The spectre of corruption haunts notions of fair play in sport and undermines the ideals of modern Olympism. A sport integrity agency, similar in structure to WADA, could enlist and leverage the combined efforts of government and sport organisations in order to proactively target corruption. Existing institutions, such as WADA and the newly developed Voluntary Anti-Doping Association (VADA),¹⁵ offer frameworks for a broader regulatory and administrative solution that places positive obligations on those involved in corrupt practices. While aspects of a broader solution to stamp out corruption in sport exist, more needs to be done to reach the ideal espoused by ISOs and the Olympic movement.

Realities: moving forward

Promoting and achieving fair play in sport by eradicating corruption requires the engagement of all stakeholders and the introduction of authoritative enforcement mechanisms. Battling corruption in sport requires more than statements espousing Olympic ideals. The discovery and prosecution of corruption

attracts public scrutiny and undermines the credibility of not just the sport but its governing organisation as well. If ISOs are viewed as ineffective at purging corruption from their respective sports, fair play will continue to operate as an illusory ideal instead of a reality.

Notes

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² Pierre de Coubertin, *Olympism: Selected Writings* (Lausanne: IOC, 2000), p. 588.

³ International Olympic Committee, *Olympic Charter: In Force as from 8 December 2014* (Lausanne: IOC, 2014), p. 11, www.olympic.org/Documents/olympic_charter_en.pdf.

⁴ *The Globe and Mail* (Canada), 'Three FIFA board members under investigation in World Cup bid corruption probe', 27 November 2014, www.theglobeandmail.com/sports/soccer/three-fifa-board-members-under-investigation-in-world-cup-bid-corruption-probe/article21820656. See also *The Guardian* (UK), 'Questions for IAAF president's son over \$5m request to Doha amid 2017 bid', 10 December 2014, www.theguardian.com/sport/2014/dec/10/questions-for-iaaf-presidents-son-over-5m-request-to-doha-amid-2017-bid.

⁵ US Department of Justice, 'Nine FIFA officials and five corporate executives indicted for racketeering conspiracy and corruption', 27 May 2015, www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and.

⁶ *The National Post* (Canada), 'No, the 2018 and 2022 World Cups won't be moved over FIFA scandal: everything you need to know about the cases', 27 May 2015, news.nationalpost.com/sports/soccer/no-the-2018-2022-world-cups-wont-be-moved-over-fifa-scandal-everything-you-need-to-know-about-the-cases.

⁷ Al Jazeera America, 'Amnesty: Qatar lagging on labor reforms', 21 May 2015, <http://america.aljazeera.com/articles/2015/5/21/amnesty-qatar-lagging-on-labor-reforms.html>.

⁸ *The New York Times* (US), 'Day of reckoning for NCAA', 6 June 2014, www.nytimes.com/2014/06/07/opinion/nocera-day-of-reckoning-for-ncaa.html?_r=0.

⁹ See, for example, a discussion on the various scandals plaguing FIFA during Sepp Blatter's 17-year presidency: *The New York Times* (US), 'FIFA scandals while Sepp Blatter has been president', 22 May 2015, www.nytimes.com/aponline/2015/05/22/sports/soccer/ap-soc-fifa-election-scandals.html. On television, John Oliver's two FIFA specials on *Last Week Tonight*, a late-night US comedy show, have together received over 15 million views online. The high-profile public arrests of FIFA officials created international news coverage, from small newspapers to international newspapers of record. With respect to the NCAA, the alleged educational institutions' use of athletics and athletes for profit has also become part of the public discourse; see *The Atlantic* (US), 'Why hasn't Congress investigated corruption in the NCAA?', 9 April 2014, www.theatlantic.com/entertainment/archive/2014/04/why-hasnt-congress-investigated-corruption-in-the-ncaa/360391.

¹⁰ See, for example, the preamble of FIFA's Code of Ethics: Fédération Internationale de Football Association, *FIFA Code of Ethics: 2012 Edition* (Zurich: FIFA, 2012), www.fifa.com/mm/document/affederation/administration/50/02/82/codeofethics2012e.pdf.

¹¹ See, for example, the programme changes introduced by Brian Cookson after he had been elected president of the Union Cycliste Internationale (UCI) in 2013, including, but not limited to, partnerships with anti-doping ISOs, internal and external legal counsel, policy boards directed at doping prevention, and rigid use of the Athlete Biological Passport: Union Cycliste Internationale, 'UCI Anti-Doping Programme', www.uci.ch/clean-sport/anti-doping.

¹² See, for example, International Weightlifting Federation, 'Mission', www.iwf.net/focus-on-iwf/about.

¹³ David Howman, 'Supporting the Integrity of Sport and Combating Corruption', *Marquette Sports Law Review*, vol. 23 (2013), p. 247.

¹⁴ Racketeer Influenced and Corrupt Organization, part of the Organized Crime Control Act of 1970: USC tit. 18 §§1961–1968 (1970).

¹⁵ See the VADA website: <http://vada-testing.org>.