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# UNOLYMPIC UNIONISM OR APOCRYPHAL OLYMPISM? IDEAS FOR FUTURE ANTI-DOPING GOVERNANCE

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## **ABSTRACT**

This article aims to present ideas for future anti-doping governance by considering the relative merits of trade union-based athlete representation (ATU) as opposed to the current system of so-called athletes' commissions or athletes' committees (AC). It therefore revisits recent examples of the rejection of trade unionism in anti-doping governance and questions the legitimacy of current arrangements.

In order to investigate the normative basis of current practice and possible revisions, the author examines the use made, in the World Anti-Doping Code, of the concept of 'Olympism'. The question is asked whether 'Olympism' is an appropriate justification for rejecting athlete representation via trade unions.

**Keywords:** Doping; World Anti-Doping Agency (WADA); athletes; trade unions; Olympism; Ancient Olympic Games

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## INTRODUCTION

This paper aims to present ideas for future anti-doping governance by considering the relative merits of trade union-based athlete representation (ATU) as opposed to the current system of so-called athletes' commissions or athletes' committees (AC). What may seem a 'rather academic discussion', is actually one that touches upon some of the currently most salient power struggles in and around anti-doping, as will be illustrated by the following two vignettes:

• Vignette 1: In November 2011, World Anti-Doping Agency (WADA) Chairman John Fahey, in chairing a WADA Foundation Board meeting, his remarks being recorded (apparently) verbatim in minutes subsequently published online for all to read, warned that certain "associations [...] were based along the lines of a union and took their authority from membership, which involved receiving paid fees to have people look at what

were described as the conditions under which they operated". Mr Fahey thought that it was "incumbent on all who believed that sport was a very different and separate operation to other workplaces to make that clear. [...] He in no way saw their role as being representative of sportsmen and women, and he urged all members not to give them any oxygen" (WADA, 2011, p. 48) (for more details, see Kornbeck, 2014).

• Vignette 2: In March 2015 the Cycling Independent Reform Commission (CIRC), appointed by Union Cycliste Internationale (UCI), recommended "that UCI facilitate the creation of a strong riders' union. The purpose of the union would be to give riders a collective voice, particularly on issues of ownership, revenue sharing, the racing calendar and anti-doping. The riders' union should also be given a number of votes in Congress, so that riders have a say in how UCI is run. Membership could be linked to voting eligibility in the presidential elections" (Marty, Haas, & Nicholson, 2015, p. 221).

What these examples show is that the choice between an in-house organised AC system (with resources provided by sports organisations themselves), as opposed to an externally organised ATU system (with resources provided by ATU members), represents a contentious field wherein claims for legitimacy, power, regulation and advocacy are fielded and exchanged. While WADA's rejection of ATU-based representation appears to match the preferences of some sports organisations, including the IOC, the proposals made by CIRC to ICU could, if implemented, constitute an alternative route to athlete representation, in that case chosen by another sports organisation. Unsurprisingly, Mr Fahey's statement was condemned vehemently by the ATU side (FIFPro, 2012) (for details see Kornbeck, 2014). Similarly, CIRC's proposals would most likely be met with resistance in some quarters of the sports movement, were they to become reality. But this raises the question: is there any normative element of the current anti-doping regulatory system that would pose a conceptual barrier to such innovation? According to the hypothesis to be explored in this paper, the references made in the World Anti-Doping Code (WADA, 2015) to 'Olympism' could indeed pose such a conceptual obstacle. But would this obstacle be inherently insurmountable?

## **PURPOSE**

To explore whether the Code's references to 'Olympism' are inherently insurmountable, we need to look at how the Code draws on the Olympic heritage, as promoted by the Olympic movement, to build legitimacy. This exercise will be performed in full conscience of the fact that, although the modern Olympics are not mere copies of the Ancient ones; they would be unthinkable without their Ancient precursors, from which they derive much of their magic. Though today's IOC and affiliates constitute a powerful business franchise organised around a Swiss charity (for legal arrangements see Mrkonjic, 2013), Coubertin's heart rests in a stele in Ancient Olympia. It therefore seems warranted to enquire into the relation between contemporary 'official' Olympic attitudes and practices, and what we know about athlete representation in the Ancient world

#### **METHODS**

The paper is based on the following theoretical assumptions. Anti-doping governance can be structured with or out without athlete involvement. If athlete involvement is chosen, athlete representation may be ensured with or without seats attributed to athlete representatives on anti-doping governing boards, etc. If a model with athlete representatives is chosen, this may be based on any combination of representatives sent by Athletes' Commissions and/or Athletes Trade Unions: AC-only, ATU-only or AC-cum-ATU style (in any possible proportion). AC representatives may be elected, as in the case of the IOC AC, though the franchise may be limited and carry bias: IOC AC candidates have been previously selected by their NOCs, not by their peers, before they stand for election (see IOC Athletes' Commission, 2012), while the WADA AC is appointed by WADA on the basis of nominations made by stakeholders, i.e. sports organisations and governments (but not athletes). ATU representatives have a mandate from fee-paying members. The WADA governance system does not foresee ATU seats on the WADA Foundation Board, though it does reserve seats for IOC AC members. Consequently it is of interest to establish whether AC and ATU representatives have taken different stances on key issues related to anti-doping policies.

Despite the methodological 'N = 1' style bias implied when very limited material forms the basis of an investigation, it is also of interest to establish whether WADA's underlying texts specifically make provisions against the inclusion of ATU representatives, in particular as regards the concept of 'Olympism' used in the Code (WADA, 2015) to justify the entire regulatory system. Similarly, the use of a total of five vignettes poses the question of their reliability. Vignettes (whether written by informants or by researchers) add an element of creativity to the research effort (Schoenberg & Ravdal, 2000), while they also carry bias in the on account of the often unsystematic way in which they are selected, constructed and presented. Yet they have a striking illustrative value.

To this end, the paper will revisit the already well-established body of knowledge from classics around the status of Ancient Olympians. In its investigation of Ancient concepts, the paper will draw mainly on a single publication (Finley & Pleket, 1976), yet desk research suggests that recent research (Coakley, 1992; Perseus Project, 1996; Spivey, 2012; Swaddling, [1980] 2011; Toohey & Veal, 2007) does not appear to have overruled the findings of the 1970s. Furthermore, the authority of Finlay and Pleket's work is attested to by Pfitzner (2013, p. 107, footnote 21), who has declared himself deeply indebted 35 years later; and by the remarkable fact that the book was reprinted 29 years later without a single alteration to the text (Finley & Pleket, 2005). As such, the lead question will be: is it reasonable for the authors of the Code to claim that its concept of anti-doping is based on an *authentic* Olympic ideal, and is it defensible on this basis to exclude ATUs from anti-doping governance? Are its critics inappropriately attached to an Unolympic Unionism, or do its proponents draw on a concept of Aprocryphal Olympism?

#### RESULTS

# ACs versus ATUs: only semantic differences?

The choice between AC-based versus ATU-based models of athlete involvement in antidoping governance has obvious semantic implications: the AC-based model is a pledge to uphold the traditional 'specificity'-based self-concept of sporting bodies, as epitomised in Mr Fahey's reference to the uniqueness of sport, as well as in the Code itself, whereas the ATU-based model is one that tends to downplay the specific character of sport and, instead, seek a rapprochement with the mainstream of society. But are these implications more than merely semantic ones? It was predictable that the election of Sir Craig Reedie (UK) as the successor of Mr Fahey (Australia) at the helm of WADA at the World Conference on Doping in Sport (in Johannesburg, South Africa, November 2013) would see a resurgence of ATU criticism and expressions of hope that Sir Craig would adopt a less confrontational style towards ATUs. In the words of Uni Global Union (Sport) General Secretary Walter Palmer, sports bodies should recognise "the positive role that unions can play" and the idea that it is "normal to have unions around the table" (Rumsby, 2013). But is there any evidence that ATU representation leads to different outcomes for athletes, or is the conflict merely a matter of symbolic interaction? Three further vignettes will illustrate this point:

- Vignette 3: One of the most controversial anti-doping cases in recent years was the CAS case International Skating Union (ISU) v Pechstein, in which an unusual blood value had sufficed for a ban (McArdle, 2011). Significantly, indirect evidence was seen as sufficient to impose a sanction without recourse to direct evidence, raising the question of guilt acutely (Kornbeck, 2015a). Crucially, from October 2013 onwards. Ms Pechstein, a federal police sergeant, received support from the German police trade union (Gewerkschaft der Polizei, GdP), who decided to sue the ISU on her behalf including criminal charges (perjury) as well as civil compensation claims (Der Tagesspiegel, 2013). The German sports confederation (DOSB) initially referred to her as guilty, and to her decision to take the case to court as inappropriate (DOSB 2013). But when she was acquitted, in January 2015, by a court in Munich as well as by a panel of independent scientists appointed by DOSB, the latter rehabilitated her unconditionally, insisting that she had been innocent all the time (Stein & Hannemann, 2015). GdP praised the courage of DOSB President Alfons Hörmann in admitting that DOSB had consistently erred until then (GdP, 2015). The GdP involvement is evidence that a mainstream trade union went counter to the preferences of the sports movement and the anti-doping system, and without a court ruling Ms Pechstein would most likely never have been acquitted. No AC seems to have spoken out, be it for or against Ms Pechstein. While GdP is not an ATU, its role nevertheless makes it seem plausible that any independent unions may provide an alternative form of athlete representation and advocacy.
- Vignette 4: One of the most controversial proposals made as part of the revision of the 2009 Code was the one to abolish the requirement for a B sample, although the testing of the B sample is often the only procedural means for indicted athletes to claim their innocence effectively. While the proposal (inconspicuously floated in the middle of the

revision process) was met with firm resistance from ATUs, the EU, some governments, and a range of sports organisations (Kornbeck, 2015b), it was favoured by the IOC and WADA. Surprisingly, it received wholehearted support from the WADA AC: "Removal of the B sample is a matter of trust. If athletes trust the anti-doping system there shouldn't be any difficulties in doing so; [...] The right to a fair hearing would be quicker and less complicated without the B sample; Faith in laboratories is crucial. Laboratories must be held responsible for the quality of their work" (WADA AC, 2011).

• Vignette 5: When the entry into force of the 2009 Code led to streamlined and, in many cases, more arduous athlete surveillance in accordance with so-called 'whereabouts' requirements (requiring athletes to provide whereabouts constantly to allow tracking them for testing purposes, but also allowing sanctions to be imposed for three no-shows), the matter became highly controversial and dragged political actors from the mainstream of society (in particular from the European privacy and data protection community) into the conflict (Waddington, 2010). However, on a privacy issue related to the storage of samples, the WADA AC had already resolved, in November 2005, that "clean athletes have nothing to hide" (WADA AC, 2005a); and they did not oppose the 'whereabouts' requirements.

The material presented in Vignettes 3–5 suggest that the AC model leads to outcomes that differ radically from those achieved through ATU representation. These selected examples are corroborated by further, numerous, documented ones (see Kornbeck, 2014); they confirm the mission of the WADA AC in its own words: "Members assist in raising awareness about anti-doping and the promotion of the Play True message, as well as actively liaising with and providing feedback to government, regional and national leaders about anti-doping initiatives" (WADA AC, undated). The text does not even mention the possibility of critically representing athletes' interests vis-à-vis WADA; indeed the WADA AC has adopted guidance to AC members on how to react to "athletes who do not support the fight against doping in sport," including the following recommended response: "This is an inaccurate message sent by an isolated athlete. [...] If the athlete in question does not want to follow the rules, then he has no place in the sporting community" (WADA AC, 2005b). One scholar concluded that the AC "can hardly claim to be the legitimate representative of athletes in general" (Waddington, 2010, p. 265). But if AC versus ATU representation leads to dissimilar outcomes, then what is the role of Olympism?

## **Unolympic Unionism?**

As a cross-cutting justification for all provisions found in the Code, a preambulatory section called the 'Fundamental Rationale' includes the following programmatic statements: "Anti-doping programs seek to preserve what is intrinsically valuable about sport. This intrinsic value is often referred to as 'the spirit of sport'. It is the essence of Olympism, the pursuit of human excellence through the dedicated perfection of each person's natural talents. It is how we play true. The spirit of sport is the celebration of the human spirit, body and mind, and is reflected in values we find in and through sport' (WADA, 2015, p. 14).

As examples of this purported Olympism, an expressly non-exhaustive list is provided, including 'Ethics, fair play and honesty', 'Health', 'Excellence in performance',

'Character and education', 'Fun and joy', 'Teamwork', 'Dedication and commitment', 'Respect for rules and laws', 'Respect for self and other Participants', 'Courage', as well as 'Community and solidarity', to conclude thus: "Doping is fundamentally contrary to the spirit of sport" (ibid., p. 14). What may be the single most crucially normative section of the Code thus links the anti-doping system of the Code very narrowly to the Olympic heritage of the IOC.

Apart from the fact that worldwide sport is far more than the Olympic movement, and the fact that the concept requires operationalisation to become meaningful (Loland & Hoppeler, 2012, p. 352), it has been used successfully in establishing Olympism and the equally vague 'spirit of sport' as the yardstick of anti-doping. Although the modern Olympics differ from the Ancient Games, just like the ideology and rules of the IOC have changed over time, altering the 'Olympic legacy' in the process (Chatziefstathiou, 2005; Chatziefstathiou & Henry, 2007, 2008, 2012), they draw large portions of their attraction from them, and their rules draw legitimacy from the vaguely noble Greco-Roman legacy. This however begs the question whether today's 'Olympism' was also that of the Ancient world and, more specifically, whether the ATU-reticent part of WADA's message is matched by anything 'Olympic' as regards the Ancient Games which are still drawn upon as a source of legitimacy for today's Games.

In Ancient Olympism, the Gods "issued no Ten Commandments" (Finley & Pleket, 1976, p. 20). Oaths were sworn to Zeus, as "the patron of justice and the punisher of injustice, but again not as its creator" (ibid., p. 20). Although the Olympic festival was essentially religious, the human nature of the rules was recognised, though the Gods could be invoked to have them respected. In classical times, the Games benefited from the hospitality of Elis, a small and politically weak *polis* (ibid., pp. 22–23). They were governed and managed by the local authorities, not an international committee (ibid., p. 24), and there was nothing comparable to WADA or the CAS. It was as if today's Games were to be held permanently in Lausanne under the authority of its council and aldermen. Elis alone set the standards.

"The 'true amateur' never existed in Antiquity" (Finley & Pleket, 1976, p. 131), when – rather than pledging fair-play – competitors "prayed for 'either wreath or death'" (ibid., p. 21) and "defeat brought undying shame" (ibid., p. 20). The claim that ancient Greek athletes were amateurs appears to be a myth (Young, 1984) and, according to a more recent piece of scholarship, "that this sentiment has a bogus justification from Classical antiquity is surely proven" (Spivey, 2012, p. 267). Today's sport organisations see law suits by athletes as inappropriate, as seen in the Pechstein case (Vignette 3), because the Signatories of the Code expect that "each government will respect arbitration as the preferred means of resolving doping-related disputes" (WADA, 2015, Article 22.4, p. 116). Signatories are sport organisations, as governments cannot sign the Code; their expectation is that governments will discourage the use of their own courts, because arbitration is believed to be more appropriate in a sporting context.

Given that the 'Fundamental Rationale' applies in a cross-cutting fashion to the Code in its entirety, we may further infer that Pechstein's lawsuit and her trade unionism were both Unolympic. Yet the Greek word *agon* denotes both a sporting contest and a lawsuit (Finley & Pleket, 1976, p. 21). Stadia and courtrooms were a ritualised battlegrounds; the stadium knew no second or third places: only winners (ibid., p. 22). Records were not

kept, measurements were mostly impossible and there was no notion of winning in bad style (ibid., p. 22): what counted was winning visibly as perceived by the audience and referees. No handshake was practised before or after contests (ibid., p. 40) and the gruesome *panktration* knew no fair-play rules (ibid., pp. 39–41); winning was what mattered.

Professionalism and trade unionism appear to have gone hand in hand at the Ancient Games, although they were structurally as well as ideologically different from the modern Games, even if they did resemble today's in some other aspects (Finley & Pleket, 1976; Kornbeck, 2014). All the four major Games of the Hellenic world (the so-called Pan-Hellenic Games) offered prizes, in addition to the floral/vegetal wreaths/crowns which have become so emblematic in posterity: wreaths/crowns of olive (Olympian), laurel (Pythian), wild celery (Nemean) or pine (Isthmian) on account of the specific affiliation of those plants with the gods concerned. In contrast with the modesty of these cultic prizes, the amount of monetary prizes appears to have increased steadily over time (Finley & Pleket, 1976, p. 24). Monetary prizes are known from the 2nd century BC onwards, when they already could amount to the size of a skilled worker's annual wages (ibid., p. 56), and athletes appear to have been "all equally professional" (ibid., p. 57) – and proud of it, it seems. So were their home cities, regularly offering them additional prizes, honours, pensions, erecting statues of them, etc.: "Victorious athletes were professionals in the sense that they lived off the glory of their achievement ever afterwards. Their hometowns might reward them with free meals for the rest of their lives, cash, tax breaks, honorary appointments, or leadership positions in the community. The victors were memorialized in statues and also in victory odes, commissioned from famous poets" (Perseus Project, 1996).

Unsurprisingly, this professionalism led to a certain proto-trade unionism over time, although the use of modern concepts to denote Ancient social practices obviously carries a certain bias. From Roman times, original evidence had survived, including a papyrus from AD 194 representing the membership certificate of a boxer named Herminus (first discovered in the British Museum and reported in 1907) (Finley & Pleket, 1976, p. 81; Plate 26 between pp. 90-91). This document shows that high fees were paid (just like today's trade unions are found in highly professionalised sports, where membership fees give unions the means to ensure independent representation). There is even evidence of unions having set up office in Rome, in order to be closer to the relevant departments of the Imperial administration (ibid., p. 81). Guilds were organised along the lines of priesthoods, each being devoted to a particular god. In this they differed from today's unions, but not from other professional associations found in Antiquity (ibid., p. 80). The existence of professional guilds – as early as the 2nd century BC – is affirmed by Toohey & Veal (2007, pp. 20-21) as well as Spivey (2012, p. 206) who further underscores the existence of epigraphic evidence (including 'the Neronian club house at Olympia') (ibid.). Drawing on Coakley (1992, p. 56), they quote Xenephanes (5th century BC) as a critic of professionalism. They note that those who favour a less professionalised version of the modern Games "have harked back to the Ancient Games", where this reading cannot be sustained by historical fact. "But therein lies another Olympic myth" (Toohey & Veal, 2007, p. 22).

These findings on athlete trade unionism in Antiquity seems to be uncontested. But then why would WADA be so successful in using 'Olympism' the way they do, and why should they want to do so in the first place?

## DISCUSSION

## Apocryphal Olympism?

Although the Olympic movement has mutated over time (Chatziefstathiou, 2005; Chatziefstathiou & Henry, 2007, 2008, 2012), it continues to hark back to the Ancient Olympics. Together with the semantic effects of using words like 'Olympics', 'Olympic' or 'Olympism', the tastefully scholarly set-up of the Olympic Museum in Lausanne, or Pierre de Coubertin's stele in Olympia all build powerful bridges to Antiquity. Although the IOC dropped its amateur clause in the 1980s and now seems set to continue along the same path, a certain cultural lag may be at play, since it used to govern an amateur movement for so many decades.

The writings of IOC President Avery Brundage abound in references to an Olympism, the apocryphic nature of which does not seem to have been on the radar of their author. To Brundage, "sport to be sport must be amateur. If it is not amateur, it is work or business, and the participant is a professional" (Brundage, 1954, p. 20). The Ancient critic of professionalism, Xenophanes, was familiar to him (ibid., p. 21), who never missed an opportunity to emphasise the role of Coubertin in crafting the modern Olympic ideal. Rome was seen as decadent, Hellas as noble: "This amateur conception was something new - it belonged, to the so-called 'Golden Age' when civilization blossomed and flowered as never before. Alas, the Games became commercialized, excesses appeared, denounced by the scholars and philosophers of that day and age who cried out against the subsidization and proselyting of competitors, the over-emphasis and the other abuses; the 'Golden Age' came to an end and the glory of Greece faded" (Brundage, 1957, p. 62). He even blamed the loss of amateur sports for having enabled the Barbarian invasions and the breakdown of the Roman Empire (Brundage, 1956, p. 50). "The ancient Games were at least semi-religious in character and they were amateur in nature, with emphasis on grace and beauty of body, mind and spirit" (Brundage, 1955, pp. 16-17). Brundage never seems to have worried much about checking the historiographical or philological details behind his sweeping statements and kept stating and restating that the Greek Games knew no professionals.

Although Brundage's (or even de Coubertin's) writings are not in force as IOC or WADA rules, still the Code in force is based on a concept of Apocryphal Olympism that is not recognised in the Code. We might therefore look for alternative explanations and ask if the current arrangement favour any actors in particular.

In this vein, it seems worthwhile recalling that, according to one sport historian, the emergence of anti-doping rules can be interpreted as a successful agenda designed to promote (predominantly middle/upper class) amateurs against (predominantly working class) professionals at an earlier stage of the history of modern Anglo-Saxon sports (Gleaves, 2011). According to another study by the same historian, the very first anti-doping rules may have emerged, in 19th century equine sports, with a view to protecting the interests of the gambling market (Gleaves, 2012).

Taken at face value, these findings would indicate that anti-doping is not essentially about athletes. Our comparison of today's use of 'Olympism', connected with WADA's reticence towards ATUs (and with the available knowledge of 'Olympism', professionalism and trade unionism in Antiquity) essentially echoes the already familiar

verdict that some of Coubertin's "claims concerning the appeal to the spirit of the Ancient Games are based on assumptions which are not necessarily empirically grounded" (Chatziefstathiou & Henry, 2012, p. 114). The fact that such key policies can be pursued for decades based on references, some of which may be lacking empirical grounding, is significant in that it suggests that sport, as a system of social organisation and social practices, may demand total submission from its constituents.

# **Unolympic Unionism?**

Claims to the 'specificity' of sport are legion. Sport may not be the only sector raising such claims, yet in today's world it may be more successful than many others. Is it because sport is more like art (Edgar, 2013) than like science or technology? Is it because sport (as so often claimed by its governing bodies) provides services to society that no other sector can provide? Is it due to psychological inertia, legal precedence and/or political path dependency? Or is it because networks based on sport are too powerful to be resisted, including because they offer opportunities for mutual benefits? These hypotheses cannot be tested in the concluding section of a paper, yet they do indicate potentially fruitful paths for further reflection on the issues raised here. They do not, however, answer the question why Apocryphal Olympism should be relied upon to portray ATUs as the illegitimate manifestation of Unolympic Unionism. In most contexts, the best communication strategy would seem to be one based on hard-tested facts the veracity and relevance of which are not directly open to contestation by opponents. That this does not seem to be a source of concern seems significant in itself: perhaps because the world of sport precisely is *not* 'most contexts'?

At the heuristic level, critics may argue that this adds little of novelty: if 'Olympism' has been distorted in general, why should anti-doping be any different from other aspects of sports governance? A reply to this critique could be that anti-doping bodies could either drop the reference to 'Olympism', or they could admit ATUs to the table and maintain 'Olympism' as a lead value, this time in greater accordance with historical fact. Quite another matter is the question whether the time is propitious for enlarging effective collective bargaining to new categories of workers, as it has been noted that the crisis seems to have curbed rather than strengthened such rights in the EU workforce as a whole (Clauwaert & Schömann, 2012). If workers' rights are diminishing in general, and the crisis provides a welcome foil on which to argue for such reforms, how can sport be expected to perform better?

Maybe the answer should be drawn from the prodigious ability of sport to create growth as well as employment in the middle of the crisis (SportsEconAustria et al., 2012). Its elasticity makes it more resistant than many other sectors: sport can actually afford to offer better-than-average conditions for workers. As it happens, not all athletes are workers (though the scale between amateur and professional is one beset with the greatest diversity of grey shades), yet improving workers' rights could lead to improved representation and advocacy for amateur and recreational athletes as well. If ATUs are successful not merely in negotiating more equitable, people-friendly rules and practices in the interest of their members, such reforms would of necessity benefit all athletes – non-workers as well as workers.

Finally, the discussion and findings of this paper should not be taken as supporting narrow bargaining practices in the exclusive interest of a few, well-aid, unionised athletes. "After all, the ultimate accountability forum is the general public" (Peers & Costa, 2012, p. 460), and just like the current system suffers from too many rules and arrangements having been carved out behind closed doors, so would future rules and arrangements suffer, if they too were to emerge in a similar way. An enlargement of the franchise ought to be accompanied by an increase in transparency. But transparency may be needed anyway to make anti-doping sustainable in the long term (Kornbeck, 2015a).

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