

# Rules and Moral Norms in Sports

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## Abstract

First, as a foundation for the other parts, aims and secondary effects of sports are explored (1.) and the general concepts of 'norm' and 'moral norm' are defined (2.). Then various kinds of rules and norms in sports are differentiated: primary and secondary, punishing rules etc. (3.). The following parts are devoted to applied ethics: Several components and types of fairness are analyzed as to what extent they are demanded by moral norms. Formal fairness and fairness as generosity are moral duties, whereas striving for equal chances per se is not (4.). Finally some possibilities of morally reforming sports and its norms are discussed (5.).

## 1. Aims and Secondary Effects of Sports

The aims of this article are i. to clear up the difference between rules and moral norms in sports, ii. to identify and justify the most important moral norms in sports, and iii. to consider the possibilities of improving such rules and norms. The sense of rules and norms in sports is to realize the aims of sports and to optimize the outcomes of sports. Wanting to understand the sense and the desirability of rules and norms in sports we first have to consider the aims and secondary effects of sports itself.

Without intending to give an exact definition of "sport" I think there are two main characteristics of sporting activities: Firstly, sport is an activity devoted <sup>1</sup> to physical fitness, ability and health by training and challenging the physical capacities up to an individual standard of perfection. Surely, in the long run top competitive sport may even endanger health <sup>2</sup>, but in the short run it enhances physical fitness. Secondly, sport is unserious in the sense that the direct aim of the sporting action (like kicking more goals, reaching the winning post as fast as possible, performing 40 press-ups, perfect high diving) has no desirability for the agent besides the social gratification eventually granted for it, and no desirability for other people, apart from perhaps some aesthetic pleasure. Important are the activity itself and its effects but not the direct aim of the activity. (According to these characteristics training is sport, whereas taking a shower afterwards or participating in a club meeting aren't sport, although they belong to the social system of sports.) Competition, entertainment, keeping rules, striving for records or demonstrating abilities to others

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<sup>1</sup> That an activity is *devoted* to a certain aim normally includes that the agent has this aim. But in some cases, like e. g. sometimes in school sports, enhancing the sportsman's fitness is only the (paternalistic) aim of those people who organize or direct the sporting activity.

<sup>2</sup> Stichweh even defines top competitive sport as the subsystem of sport wearing out health (Stichweh, *Sport* 383).

are very important in modern sport, but they aren't necessary characteristics of sport; e. g. jogging, though being a type of sport, has none of these characteristics.<sup>3</sup>

According to these two characteristics, there is exactly one necessary aim of sports: physical fitness. But there are lots of other possible and desirable outcomes of sport, which constitute typical aims of sportsmen or of the fans and supporters of sports. The most important are:

*a) Further possible outcomes being desirable for the sportsmen:*

*Physical education* in the sense of training certain bodily capacities which are economically or militarily important is different from merely increasing physical fitness. Because of mechanization this aim of sport has lost a lot of its importance. Another aspect of physical education are some psychological effects like training endurance, discipline, or obedience. But at least obedience is an aim already more important for other people than for the sportsman himself.

*Pleasant feelings:* The mere bodily movement can be a source of physical well-being.

*Amusement of the sportsman:* Especially playing sports-games may be amusing, e. g. by creating suspense (who will win?).

*Acknowledgement and pride:* The sportsman may receive acknowledgement for his achievements from other people - up to the level of getting famous. And he may acknowledge himself too, thereby increasing his self-esteem.

*Friendship:* The cooperation with other sportsmen, especially with the members of the own team, but also with the opponents can be a source of friendship.

*Diminishing aggressions:* Living aggressions in sports is a harmless means for reducing tensions, which outside of sports may be dangerous.

*Earning money:* In professional sports with its high material rewards earning much money for many sportsmen has become such an important aim that they even risk their physical health for sufficiently high sums.

*b) Possible outcomes desirable for the audience:*

*Diversion of the audience:* Sports can contribute to the diversion of the audience in various ways: A competition or the trial of an athlete to set up a record may be exciting; complex movements or solutions of sportive problems may be elegant and aesthetic; or the spectator may be full of admiration for the sportsmen's performance. Sometimes the diversion depends on the success of the favourite team.

*Diminishing aggressions:* The spectators too may diminish their aggressions in a (relatively) harmless way by cheering the favourite team on or by demoralizing the opponent.

*Identification* with a favourite team or sportsman can enhance self-esteem. The spectator may identify himself with a certain person and its sportive achievement or certain other aspects of its behaviour; this presupposes that he highly rates these aspects. Or the spectator may consider the sportive achievement of his "own" sportsmen or even the organization of the competition by e. g. "his" club as an achievement of his social group or even of mankind as a whole and he may identify

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<sup>3</sup> This alone is reason enough why communication of physical fitness ("Kommunikation körperlicher Leistungsfähigkeit") cannot be the definitorial aim of sport - as Stichweh takes it to be (Stichweh, Sport 380).

himself with this group. In this case the sportive achievement in the eyes of the spectator (if he isn't simple-minded) is only a *symbol* for the complete cultural development of the social group.

*c) Possible outcomes desirable for the whole society:*

*Appeasement:* Sports may be a sublimation of violent or at least very serious forms of rivalry like internal or external war or economic war. Because of the unserious character of sports collectives can compete in a harmless way.<sup>4</sup>

*Self-representation of the collective:* A social group can demonstrate its capacities by the achievements of its sportsmen or by organizing big athletic games.

*Creation of social relations:* Doing sport together may be one of the first steps of creating and intensifying social relations not only between single individuals, but also between nations (think e. g. of ping-pong-diplomacy). The unserious character of sport gives the possibility to establish an (always risky) cooperation on a low, tentative level.

*Training of desirable forms of social interaction:* In sports especially children can learn to act cooperatively and fair and to control their temper if they are urged to behave in that way by their teacher. Perhaps other fields of cooperation would have the same effect; but, again due to its unserious character, sports *is* a field where these capabilities can be learned.

These were the most important positive possible outcomes of sports, which may be aims of the different groups of interest.<sup>5</sup> But there are also possible negative outcomes, negative side-effects, which people try to prevent or to minimize. The most important are:

*Possible negative outcomes:*

*Pain and injuries to health:* Sportsmen may endure pain from accidents, overstraining, doping or foul. And they may even suffer injuries to health from these events or their consequences.

*Expenditure of time:* Sports can be a pastime for the sportsmen and for the spectators. But apart from the fact that often it isn't, this time could be used for other and perhaps better activities.<sup>6</sup>

*Expenditure of money:* Sportsmen, their clubs or a community may pay for training, outfit, sport ground, entry fees etc. And the spectators may pay for admission and travel costs.

*Frustration:* Losing a contest can be frustrating for the sportsmen and their fans. And a boring or unfair competition may be disgusting.

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<sup>4</sup> For Apel the sublimation of aggression by means of fair competition is one of the most important functions of sports (cf. Apel, *Bedeutung* 132-134).

<sup>5</sup> According to Heringer playing and winning by playing is the common aim of the players in sports (Heringer, *Regeln* 28). But this is not true: *Playing* is the action itself and not an aim pursued by doing sports, whereas having fun by playing may be such an aim. *Winning*, instead, is not a *common* aim, because each of the players wants to win himself. However, that player *s* wins, surely, *may* be an aim of *s*. But this is a special, in a certain sense only formal aim, which I have omitted here and which has to be treated later on.

<sup>6</sup> "Expenditure of time", strictly spoken, is not an *outcome* of an event in the sense of a causal consequence. Doing or watching sports, rather, does *last* for a certain time. But this time could be filled with other activities, perhaps better than sports. Therefore, "expenditure of time" simply means that a certain event has to be compared with alternative events which could fill the same time instead. Accordingly, "waste of time" means that an event has had neither (important) negative nor positive consequences and there would have been far better alternatives.

## 2. Norms and morality - some basic and general concepts

Before discussing norms in sports we have to clarify some general concepts like 'norm' and 'moral norm'. The most general meaning of "norm" ( $\text{norm}_1$ ) is only: general way of acting (of certain people under certain conditions during a certain period). In this article, instead, the expression "norm" is used in the narrower sense ( $\text{norm}_2$ ) of "social norm" or a "norm( $_1$ ) socially being in force"; we can say: a certain way  $n$  of acting (or a  $\text{norm}_1 n$ ) is a  $\text{norm}_2$  in the group  $g$  during the time  $t$  iff  $n$  socially is in force in  $g$  during  $t$ .<sup>7</sup> And a  $\text{norm}( $_1$ ) n socially is in force (in a certain group  $g$  during a certain period  $t$ ) iff 1. the people (of  $g$  during  $t$ ) follow norm  $n$  to a great extent and 2. in the majority of cases holds: if somebody (of  $g$  during  $t$ ) transgresses norm  $n$  and this becomes known to several other people then there are people (of  $g$ ) applying sanctions against the transgressor for his breaking norm  $n$ . In short: A norm socially being in force is kept in most cases, and the greater part of its transgressions is punished.<sup>8</sup> We can distinguish *formal norms*( $_2$ ) which are in force due to a procedure of legislation (and which today, normally, are recorded in writing) from *informal norms* which are not. Legal norms (e. g. laws and decrees) are formal norms, the statutes of a sports association are formal norms too.$

There is no strong consent among moral philosophers about what exactly *moral norms* are. But two features are widely acknowledged as being characteristic of moral norms, namely 1. that they can be morally justified and 2. a special form of universality, that they are apt for all societies and not only local. Taking these two features *moral norms* could be defined as very general norms which would be morally optimum in all societies.<sup>9</sup> This definition does not exclude another possibility: A certain norm might be morally optimum only in a certain society or even only in special parts or fields of a society, e. g. certain traffic regulations; ex hypothesis such norms are (or their introduction would be) *morally good* (and we should obey them), but they are not *moral norms*. It could be a moral norm and so a moral duty to obey morally optimum norms; such a metanorm would be sufficiently universal for being a moral norm. But the norms protected and reinforced by this metanorm must not be *moral norms* in the sense just defined.

The crucial point in the definition of a 'moral norm', surely, is the concept of a 'moral optimum'. For putting it more precisely one needs a function of moral desirability. In ethics several of such moral desirability functions have been developed. The most important of them define the moral desirability of a state of affairs  $p$  as a function of the individual desirabilities of this state of affairs  $p$  for all sentient beings. The best known moral desirability function is the *utilitarian*, according to which the moral desirability of  $p$  simply is the sum of all individual desirabilities of  $p$ .

<sup>7</sup> So ' $\text{norm}_1$ ' is a monadic predicate ( $n$  is a norm); and ' $\text{norm}_2$ ' is at least a triadic predicate ( $n$  is a norm in the group  $g$  during  $t$ ).

<sup>8</sup> Cf. Lumer, *Geltung* 259; Popitz, *Gesellschaft* 10; 21.

<sup>9</sup> A somewhat more exact definition would be:  $n$  is a moral norm in  $g$  during  $t$  iff 1.  $n$  is a norm in  $g$ , 2.  $n$  is general and  $g$  includes all members of the society, and 3. in all societies at all times it would be morally optimum (better than lacking this norm and better than alternative norms) if  $n$  would be a norm there.

Utilitarianism is economically efficient in the respect that an action is regarded as morally better than another one if it serves one person more than the other or if it serves more people. But utilitarianism perhaps is not *just* because it does not regard if the beneficiaries of an action are needy or not. Therefore another moral desirability function has been invented: *leximin*: For deciding if a state of affairs  $p$  is better than an alternative  $q$  one first has to regard the person being worst off under the condition that  $p$  and the person being worst off under the condition that  $q$ ; if one of these two persons still has a higher desirability level then the appertaining state of affairs is morally better; if these two persons are equally bad off we have to regard the two persons being worst off but one under the condition that  $p$  and under the condition that  $q$  respectively; if one of them has a higher desirability level the appertaining state of affairs is morally better; if not we have to regard those two persons being worst off but two; and so on. Leximin does regard neediness - however, the extent is too extreme: Leximin would sacrifice the health of a hundred people for getting a trace of higher utility for the person worst off; and this is not economic. *Utilex* is a synthesis of these two moral desirability functions taking into account neediness as well as economic efficiency.<sup>10</sup> *Utilex*, to a large extent, functions like Utilitarianism; but before adding the individual desirability levels these have to be multiplied by the values of a concave weighing function, i. e. a monotonously ascending function which first rises steeply and then more and more softly. Because of this weighing function improvements for people being bad off are valued higher, and not equally (like in utilitarianism) to those of people being better off, but not infinitely higher (like in *leximin*). - Though being different, these three moral desirability functions in many important cases generate the same preference order between given alternatives.

This is not the place for further discussing moral desirability functions. In this context the only important thing is that there are such moral desirability functions, with often equal or similar appraisal of given alternatives.

According to the above given definition and according to all three moral desirability functions, one moral norm is e. g. to keep agreements if there are not preclusive reasons, such as deceit or compulsion or disadvantages for third parties or that the personal situation of at least one of the parties has remarkably changed with regard to the agreement. The sense of this norm is to protect cooperation: Normally, all the parties consenting to an agreement about a cooperation will have an advantage of this cooperation but only under the condition that all participating parties keep their agreements; and one-sided breaking of the agreement would often result in even higher gains for the corresponding party. Thus, without the norm of keeping agreements the danger of being cheated after an agreement would be too high, and therefore nobody could rationally consent to an agreement. Instead, the sanctions of that norm lessen the temptation to break the agreement. Accordingly, in many cases only the norm of keeping agreements makes mutual advantageous and voluntary cooperation possible. And because the cooperation, ex hypothesis, is mutually advantageous it augments the sum of the individual utilities of the participating parties and it augments the utility of the party being worst off. Therefore, the norm of keeping agreements is

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<sup>10</sup> For a more exact description and justification of *Utilex* see: Lumer, Altruismus, chap. 7.

morally better than no pertinent norm, according to utilitarianism, to leximin, and according to utilex, which lies in between the two other desirability functions.

Other moral norms are refraining from bodily injury or from insults. These norms are part of the corpus juris; so they are formal moral norms.

Apart from moral norms, which make certain actions morally obligatory, there are *supererogatory acts*. These are actions which are morally good (according to the moral desirability function) but are not a moral duty.

### 3. Types of rules and norms in sports

Having explained moral norms, now the time has come to differentiate between the various types of rules and norms in sports. First we have to regard *rules*. *Technical rules* set standards for (better) reaching certain aims. Warming up before doing strenuous sport is such a technical rule. On the other hand there are *rules of a game*, especially a sports game, which constitute and define what counts as playing that game. Because not all kinds of sport are exercised in the form of playing a game, e. g. jogging or gymnastics, not for all kinds of sport rules in this second sense exist; but for the greater part there are such rules.

The rules of a game systematically 1. restrict the possible actions of the players, and 2. they prescribe (internal) aims for the players' actions, e. g. to kick more goals than the opponent or to arrive as fast as possible and faster than the opponents at the winning post. The rules create a separation of the inside, i. e. the world of the game, and the outside, i. e. the world of unrestricted possibilities of action. The games of sport do not only have *internal ends* but also *external ends*, especially physical fitness and amusement of the players (cf. the list given above in section 1). The *internal ends* belong to the rules of the game, the *external*, however, do not. But the games are constructed precisely in such a way as to attain certain external aims by following the rules. One aim of the restrictions of the possible alternative actions in sports (e. g. in soccer the prohibition of hands) is training certain skills for example; and another external aim is that by requiring skilful actions for reaching the internal ends of the game a pleasant thrill is provoked if the player will be successful, and admiration or pride may arise from his success. The expectation that certain external aims will be realized is the motive for the players to join the game and thus to accept its rules and restrictions to possible actions.<sup>11</sup> - Another function of the rules is to standardize certain aspects of the action and thereby to make achievements comparable.

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<sup>11</sup> The two principles in Heringer's concept of fairness are: 1. to define 'fairness' from the idea of the game and 2. to conceive this idea as something internal of the game (Heringer, Regeln 28). Therefore he takes actions with consequences outside the game for unfair (ibid. 36). Both principles are wrong, I think. Ad 1.: The function of moral norms is not restricted to guarantee realization of the game's ends; above that they serve for warding off dangers and possible negative effects. Ad 2.: Surely, there are the internal ends of games; but only the external ends are really important; and the rules of a game are designed for reaching these external ends. A game without consequences outside the game would be useless.

Among the rules of game we have to differentiate between *primary rules*, which simply prescribe what to do (under certain conditions), and *secondary rules*, which prescribe what to do in case the primary rules have been broken. The free kick (in soccer) after foul play or after hands and the disqualification after three times fouling a jump in long jumping are such secondary rules. The sense of secondary rules is to allow the continuation of the game although the primary rules have been broken, perhaps with fewer players. Secondary rules may provide that breaking the primary rule has certain negative consequences for the player; such secondary rules would be *punishing rules*. Sometimes it is not easy to decide if a rule is primary or secondary. This especially could be the case when formal and informal rules of "a" <sup>12</sup> game may differ. E. g. in professional soccer customs get increasingly rougher than the official rules prescribe;<sup>13</sup> thus, according to the informal rules accepted by all the participating players, certain (official) "fouls" may be allowed; in their opinion, there is no *primary* (informal) rule forbidding that. Accordingly, there *cannot* be a secondary (informal) rule which punishes breaking the primary rule. For the players, there is only a *primary rule* providing that in certain situations, namely after an uncovered (official) "foul", a free kick has to be taken. The free kick then no longer is a punishment but something like a deduction of points for being unable to stop the opposite player by softer means. Things get even more complicated if different players follow different (informal) rules.

Some of the primary rules demand actions which surely are within the power of the player, like not to use one's hands or not to foul; let us call them "*normative rules*". Other primary rules only set standards the achievement of which already is a difficult and not always satisfiable task, like not fouling a jump (in long jumping) or like how to serve (in tennis); I call them "*achievement rules*". Those normative rules which are protected by secondary punishing rules are morally relevant; as we shall see later they are protected by moral norms.

*Law of the sports associations:* Above the rules of a game is the law of the sports associations, regulating the organization and preparation of sportive competitions and tournaments in organized sports, especially the conditions of participation in a competition: Which players are professionals or amateurs, the division into leagues, what drugs may be used or not, how a tournament has to be organized etc. The most important sanctions of the law of the sports association is the suspension or expulsion of players or teams.

*Law:* In Germany there is no special law for sports, but the general law covers this realm too, at least in principle. However, some laws are weakened in that breaking them is not prosecuted, e. g. bodily injury in boxing. One juridical justification for this is that in this case the victim has agreed to the risk of getting injured by his opponent (in analogy to the patients agreeing to the operation) (Günther, Klassifikation 184). But this justification does not hold in cases when one of the players breaks the primary rules. Another justification for not even intervening in such cases, then, is that the *law of the respective association*, especially the punishing secondary rules,

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<sup>12</sup> In fact with different sets of rules this would no longer be *one* game; but it would be two similar games. And it would depend on the intention of the players which game they play.

<sup>13</sup> Pilz (Fairness) very impressively documents this process.

has a subsidiary function to state law (ibid. 177); and there are sport associations threatening their members with punishment if they institute criminal proceedings against other members (ibid. 178). This form of sole responsibility may be acceptable but only if the law and rules of the association are sufficiently good morally.

*Moral norms:* 1. According to the definition given above, the *rules of sports* cannot be moral norms because they are not sufficiently universal. They may be changed very quickly; and we can avert following them simply by not playing such games. 2. However, there might be *moral norms* (exclusively) *for sports in general*, although for the moment I don't see any. 3. And, surely, the *general moral norms* hold in sports. The norm of keeping agreements perhaps is the most important moral norm being effective in sports. This norm holds here because playing together seems to require an (at least tacit) agreement between the players that they will play *a certain game* together, thereby each of them having certain advantages. Then the norm of keeping agreements morally obliges the players to follow the normative among the primary rules of the *agreed* game; and though these rules are *not* moral norms (cf. 1.), they are protected by the moral norms, and it is a moral duty to follow them.

Often it is not clear what game the players have agreed to play, and even the players themselves may have divergent opinions about this. This divergence may give rise to moral reproaches or indignation because one player thinks that another player acts contrary to his (moral) duties, as is the case in soccer if the other player follows rougher informal rules. But, surely, such a form of misunderstanding is only *sometimes* the reason for a seemingly immoral foul: Normally a foul is prohibited by a shared primary (normative) rule and protected by a secondary punishing rule; then such fouls are against the norm of keeping agreements. In professional and semi-professional sports, however, with their rougher *informal* rules many formal fouls, according to the shared informal rules, are allowed, and there is only a *primary* rule that after such acts a free kick has to be taken (cf. above); such fouls do not break the (tacit) agreement and hence are *morally* allowed.

The norm of keeping agreements also holds for the relation between players and spectators: The spectators have payed or at least have spent their leisure time for watching an exciting and interesting game; and the players obtain (more or less) money for their achievement or at least get the chance of being admired by the spectators. This seems to be a tacit agreement too; thus, both parties are morally obliged to keep the agreement: The players have to exert themselves, thereby providing an exciting game; hence in soccer passing back is a form of fraud on the audience. And the spectators have to appreciate the achievements of the players as far as this is compatible with being partial to one's favourite team. So spectators must not applaud a goal of the opposing team, but they should not boo for it or for excellent performances of the non-favourite team and they should publicly acknowledge the winner.

Freedom from injury is another moral norm. Serious fouls are forbidden by it, too. But this or other norms may be restricted in certain sports, e. g. boxing, under the condition that all persons involved freely agree and that this restriction is advantageous for all participants. This is similar to

the juridical evaluation of such cases. Apart from the question if agreed exceptions from the general norm always are *really* advantageous for all participants, there is the possibility that doing other sports which do not allow bodily harm may be better for all direct participants and for the whole society too and thus may be morally preferable. This is a question of a moral reform of sports, which will be treated in the last section. The justification for partially repealing a moral norm by mutual agreement is that freedom from injury is a rather simple norm, which usually, but not always has morally good results. Punctual agreement instead is a much more precise instrument, which can provide even better results under special circumstances. Therefore agreements allowing exceptions from the general moral norm may have priority over this norm.

Further moral norms being effective in sport will be treated in the following section.

*Supererogatory acts:* Letting the opposing team win would not be morally good under normal circumstances because thus the competitive sense of the game is ruined with disadvantages for all persons concerned: The generous party has lost the possibility of victory; the spectators do not watch a thrilling competition; and for the winning team having won the game cannot be a source of pride. Another thing is renouncing accidental advantages, e. g. in soccer playing with only ten players if the opposing team by bad luck has lost one player and has no substitute for him. This can be a morally good generosity: This renouncing is better for the beneficiary because an ex hypothesis accidental bad luck is compensated; it is better for the spectators because the game gets more suspense that way; and the generous player may have an advantage too, namely that in case of winning he can proudly ascribe his success to his fitness. But often this latter advantage is exceeded by the disadvantage of thereby reducing the chance of winning. Then such generosity is *morally* better than its egoistic alternative, *but for the generous player* it is worse. There is no moral norm which would demand this generosity; therefore it is a supererogatory act but not a moral duty.

Overtly playing with a handicap, instead, is *not* a supererogatory act, but simply another game. In many situations it is the better game: If one party has no chance of winning, e. g. if adults play against children, there is no incentive for either party to exert itself; and so it will be a boring game for all the players and eventual spectators. This will be different with an adequate handicap; and even if the better player now loses he still knows that he is better and that by being burdened with the handicap he has been acknowledged as being better.

## **4. Fairness - some special moral norms in sports**

### **4.1. Components and types of fairness**

Fairness seems to be *the* moral norm for sports. In the actual section I shall examine to what extent this thesis is true. But "fairness" even if restricted to the context of sport has several meanings. The most fundamental of them being that of a complete sporting ethos purely realized in Victorian times. Kuchler describes it as an ethos "which in the situation of agon takes the opponent as a partner, in contest keeps the sense of playfulness, pays attention to keeping the rules and to equal chances, does not value victory higher than anything else, gives the right attitude towards

victory and defeat, spurs on to exerting all one's energies, refuses dishonourable and unequal advantages, helps to overcome endured injustice, in all these situations and questions can decide generously and greatheartedly, thereby [...] having part in the virtues of honesty, justice, modesty, self-discipline and magnanimitas (greatheartedness, noblesse)." (Kuchler, Sportethos 156) This ethos is noble in the double sense of excellence and of being aristocratic; and at least in certain regards it is bound to a particular social situation where people need not worry about their financial maintenance and therefore use sports as a pastime. Because of this eventual social particularity the noble ethos of fairness perhaps is neither appropriate for the present times nor an ethical norm (cf. Apel, Bedeutung 114). But because it is an extensive ethos it comprises all the other limited forms of sporting fairness. So we may analyse the various components of the extensive ethos and investigate separately to what extent they are moral norms.

The most important components of the noble ethos of fairness mentioned in the just given quotation are:

1. *Self-discipline*. (If isolated this attitude is not called "fairness".)
2. *Playfulness* comprises not to value victory high. (This attitude too is not called "fairness".)
3. *Fairness as basic moral attitude*: Taking and accepting the opponent as a partner.
4. *Fairness as (striving for) equal chances*: The fourth form of fairness comprises refusing unequal advantages, honesty. This form of fairness is facilitated by playfulness, because then having better chances does not have a high value.
5. *Formal fairness* means to keep the rules, especially when the judge (probably) would not detect a breaking of the rules.<sup>14</sup>
6. *Fairness as generosity* includes helping the opponent (as long as this does not pervert the contest), modesty, noblesse and overcoming endured injustice.

*Justice* is a generic virtue and can be considered as comprising the last four forms of fairness.

The first two components of the noble ethos of fairness, i. e. self-discipline and playfulness, are in the first place valuable for the subject itself and only secondarily for other people; they are *prudential* and not moral virtues. And since "fairness" is associated with morality these two virtues are not regarded as forms of fairness. A certain and modest form of playfulness, namely not to overrate victory and to enjoy the diverting aspects of sports, is good even for professionals. Because self-discipline and playfulness thus are better for the subject itself there is no need for punishment by others in case of absence. Therefore, these two attitudes often are not at all demanded by social norms, even less by moral norms.

Taking and accepting the opponent as partner in the sense of respecting his personality, desires and individuality is a rather general moral attitude. Kant's practical form of his categorical imperative, to treat oneself and other persons as an ultimate end (Kant, GMS BA 66 f.), seems to

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<sup>14</sup> Lenk has distinguished formal and informal fairness (Lenk, Werte) using the term "formal fairness" in the same sense as just defined. His "informal fairness", on the other hand, would be equivalent to a conjunction of 1. formal fairness, 2. fairness as basic moral attitude, 3. fairness as generosity and 4. perhaps striving for equal chances.

demand nearly the same. This moral device is rather comprehensive (in fact for Kant the categorical imperative is the only moral imperative) and general; and, above that, it is a general attitude or a (not always clear) principle for designing specific norms and not a norm itself which prescribes certain actions. (Therefore I have called this form of fairness a "basic moral attitude".)

#### 4.2. Fairness as striving for equal chances

The other three forms of fairness are more serious candidates for moral norms. - That several players have equal chances is far from being a clear principle. There are two extremes. The first is the *result-principle*: Everybody may take part in the competition under the condition that he keeps the rules; the person having accomplished the best performance is the winner and receives the prize. But circumstances may favour one player, e. g. if he plays with the sun in his back or if he plays on his preferred underground; and the players may differ considerably in their natural or acquired abilities. Then chances are equal according to the result-principle, although the probabilistic winning chances for the various players are very different. The other extreme therefore is the *compensation principle*, according to which all factors causing different chances have to be balanced some way or another, with the effect that the probabilistic winning chances are really equal and that it is pure chance who will win. One way of doing this are handicaps. In between these two extremes lies the *achievement-principle*, that only favouring or disfavouring circumstances are balanced and that alone the differing abilities decide who will win. This principle however is not very clear because there is no sharp distinction between abilities and circumstances: Good or bad abilities in the final analysis always are a result of favouring or disfavouring circumstances, e. g. that someone has good genes or has received a good education. Therefore every time it has to be fixed anew what counts as circumstance and what counts as ability. - At a first glance the principle of equal chances may be perfectly clear; but it is not: Each of its interpretations seems to be unfair in a certain respect: The result-principle is not fair because impeding factors are not taken into consideration; the compensation-principle is not fair because it does not appreciate subjective efforts and achievement; and each principle in between them is partially unfair in both respects. The problem is that, due to the unclear distinction between abilities and circumstances, two different moral intuitions get mutually inconsistent: reward for achievement versus compensation for handicaps.<sup>15</sup>

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<sup>15</sup> Apel assumes that there is a *certain* general principle of equal chances ("die Chancengleichheit") in ethics and that the rules in sports are concretizations of this principle (Apel, Bedeutung 112 f.). But, firstly, such a general moral principle would face the same obstacles as just described for a principle specifically for sports: It is far from clear *which* form of equal chances should be the moral one; and each principle out of the continuum of principles violates some moral intuition. Secondly, sport, unlike some parts of the law, does not at all seem to be a social institution with the aim of realization of morals. And I think it cannot be because there is no necessity to engage in sports. Sports rather is a sphere of action for realizing the aims described above in the first part; and the general moral norms do hold in this sphere too. So if there is a certain form of equal chances the most important end is to stimulate an exciting game, in professional sport furthermore it is an end to find enough players who take part because they strive for a prize and think they have a chance to win

The rules of and around a game can prescribe different forms of equal chances. Games based on the result-principle very often are boring for the players and for the spectators because the winner is already clear from the beginning; there is no suspense, it is frustrating for the designated loser and pointless for the designated winner. Games based on the compensation-principle are less problematic; but they may be boring too because pure chance decides who will win; they may be frustrating for the better player because his ability is not sufficiently rewarded; and they are not sufficiently challenging: All training success immediately will be balanced by handicaps. Therefore in most sports rules hold which lie between these two extremes: Some circumstances in professional sports are standardized to a certain degree, e. g. the admissible instruments (rackets, shoes, ski etc.), medicaments, change of ends, home game, others not, e. g. financial possibilities, psychic support for training. In amateur sports sometimes handicaps are used; instead of this in professional sports there are various prizes for the different natural classes (sex, age, weight, disabled or not); and the disadvantages of the result-principle are mitigated by division into leagues. Such regulations differ historically, between professional, spare time and other forms of sports, and according to the branch of sport; and they differ in such a way that they prescribe very different principles of equal chances on the scale between the result principle and the compensation principle. Thus my thesis is: There is no moral norm for individuals to strive for a certain form of equal chances. Instead the rules of the respective game prescribe which principle of equal chances has to be followed; and only due to formal fairness the players have to follow these rules, thereby striving for a certain form of equal chances. The rules of a game, which imply that a certain principle of equal chances holds in the game, have the effect that the participant (player or as spectator resp.) has different advantages and disadvantages. If it is a good game many people can engage in it and make use of it. They can freely decide if they want to cooperate with other people and participate in a certain game, thereby accepting a certain principle of equal chances, or not.

### 4.3. Formal fairness

*Formal fairness*, i. e. to keep the rules, is not a moral norm, but it is *demand*ed by the moral norm of keeping agreements under the condition that there is an (at least tacit) agreement to keep the rules. As I have explained above, these rules agreed upon must not be the formal rules, written down in the statutes of the respective sports association. (Here we have to deal with two different meanings of "formal": "Formal" in "formal fairness" means something like "minimal", whereas in "formal rule" it means "explicitly stated".) The norm of keeping agreements protects the institution of voluntary and mutual advantageous cooperation; not keeping the agreement would be a sort of fraud. So if sportsmen have (tacitly) agreed on competing for a prize under certain conditions which exclude fouls and if then one of them plays foul, thereby increasing his chance of winning, this is a form of fraud. (Surely, a foul including physical injury can additionally be morally reprehensible because of offending the norm of freedom from injury.) Morals provide punishment

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it. But it is no end of sports to socially realize a moral form of equal chances. On the contrary, people who are not the sporting type seem to be discriminated more by the social system of sports.

for such behavior because it jeopardizes the institution of cooperation and in severe cases can threaten appeasement. There are some exceptions of the norm of keeping agreements; e. g. if one party could not foresee some negative consequences for which the other party is responsible, as it can be the case when adults compete with children; then it may be immoral to demand keeping the agreement. But such exceptions already are part of the norm of keeping agreements. Some games could be reformed; in some cases it might be better if some of their restrictions were removed. But so long as these restrictions are part of the rules agreed upon the possibility of reformation does not constitute a reason for exemption; and to take advantage of such rules is not immoral (as long as no specific exceptions hold, like the one mentioned); e. g. if there are no stronger restrictions on doping it is morally allowed to take advantage of this opportunity. The norm of formal fairness also holds for the relation between players and spectators: There is an (at least tacit) agreement between them that the players do their best in striving for victory, thereby usually giving an exciting competition, and that the spectators pay for this by money or by acknowledgement. - To sum up: Keeping agreements and thereby being formally fair is one of the most important moral norms in sport.

#### 4.4. Fairness as generosity

Another form of fairness includes generous actions and omissions, like helping up players especially of the opposing team who have fallen down, in soccer to refrain from kicking at the ball if there is a risk of hurting another player (even though kicking may be formally allowed), or waiting for opposing players until they are ready. The common core of these examples is that the subject does without a small advantage or accepts small disadvantages for the greater benefit of others. This norm also holds in everyday life; e. g. to keep open a door for another person with packages in both hands today is a moral obligation: The loaded person and bystanders expect such help and they disapprove of refraining from it, perhaps they frown, shake their heads or make some critical remark, all being informal punishments. If the social benefit is much more greater than the personal disadvantage and if this personal disadvantage is not so great absolutely (and if some other conditions hold) being generous seems to be a moral *obligation*. But if the relation between social benefit and personal disadvantage diminishes and the absolute desirability of the disadvantage increases, then generosity is less and less obligatory, and it gets more and more an admirable supererogatory act. Thus, refraining from a rather dangerous kicking at the ball is a moral obligation, and often the spectators boo or hiss (informal punishment) if the player does not refrain and severely fells another player, although this action may be formally fair. Agreeing to postpone a competition because of a momentary indisposition of the opponent, although the competition would otherwise have been won on account of the opponent's default, instead, is an admirable supererogatory act.

Specifying the just given explanations, the corresponding *norm of increasing social desirability* can be formulated this way: If  $a_1$  is a personally optimum action for a certain person  $s$  and if there is a set  $a^\circ$  of alternatives  $a_2$  to  $a_n$  (for  $s$ ) which would be morally much better than  $a_1$

and personally at most a bit worse for  $s$  then  $s$  must perform the morally best action  $a_m$  among the alternatives  $a^\circ$ , with the exception of: other obligations intervene,  $a_l$  is a punishment on another person, or to do  $a_m$  would be too much to expect because  $s$  had to follow the norm of increasing social desirability very often lately. The sense of this norm simply is to increase moral desirability in a very flexible way if there is a good opportunity to do so, i. e. if the personal costs are low and the social gain is high; moreover, this norm does not expect too much from the subjects.<sup>16</sup> This norm does not demand letting the other party win: As the personal defeat is part of the moral desirability it would balance the opponent's winning, so the moral desirability thereby would at most remain the same. But even if the costs of losing are much higher for the opponent than for oneself, e. g. because losing the game would mean falling back to the lower division, the norm does not demand letting him win: Firstly, by letting him win another club or player would fall back and thus be harmed; secondly, the spectators are cheated out of a game with full efforts of all competitors; thirdly, such a game would not give the possibility of acknowledgement and pride for no opponent; and fourthly, such behavior would be formally unfair.

## 5. Moral reforms of sports

So far we have considered morals in sports only on the *micro-level* as morals for individuals. On a *meso-level* we have to consider the moral desirability of rules and norms of sports themselves and on a macro-level the moral desirability of social conditions for sports.

The *rules of the various sports games* are reformed constantly in practice (players agree to modify a certain rule) or formally by the respective sports association. Usually, the reason for such reforms is raising social or moral desirability of the games: to make them more exciting or to adapt them to the individual preferences. The only problem here could be if such reforms are really morally better. It may be questionable e. g. if a reform which is an improvement for the sportsman is not much worse for the spectators.

Some well-known problems of sports for the present can be localized on the level of the *law of the sports associations*, especially *doping* and a certain form of *brutalization* in some professional sports. Pilz very impressively has described and documented the last process as an erosion of sportive morals, which already begins in public schools and which reaches its maximum in professional sports (Pilz, Fairness 29-32). Professional footballers consider (formal) fouls as necessary for winning and as okay if not detected (ibid. 26). Footballers who do not foul are considered as bad players, fouling is trained systematically, and, therefore, also the opponent's fouls are accepted as a form of professionalism (ibid. 27 f.), so that meanwhile the informal rules are much rougher than the formal rules. In addition to this, not the players but the *judge* is considered

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<sup>16</sup> The act utilitarian norm, always to do the morally best, however, would expect too much. Therefore, among other reasons, it is not a social norm actually being in force. The norm of increasing social desirability reduces this act utilitarian imposition in several regards: The required action may be disadvantageous for the subject only to a small extent, and the social gain must be much higher than the personal loss. Besides this there are the exceptions.

as responsible for keeping the rules (ibid. 27). If this is true it would mean that there is no internalization of any morals<sup>17</sup>, which surely is a big problem.

Breivik has analyzed the doping problem as a *prisoner's dilemma* (Breivik, Games).<sup>18</sup> The brutalization in professional sports also is the consequence of a prisoner's dilemma: Not fouling, playing formally or even informally fair reduces the winning chances if the opponent fouls. The result is double punishment: Both parties dope and foul, producing the well-known negative consequences of injuries to health and being treated roughly resp., and the winning chances remain the same as if they had not done so. (The technical "armament" in professional sports and the immense intensity of professional training itself are further developments which are due to similar prisoner's dilemmata.) This, surely, is a situation of possible moral improvement, because commonly to refrain from doping and fouling would be better for both, and the contests would remain as exciting for the spectators as before. But appealing to the players' morals, thereby presuming that the differences in the desirabilities of the alternatives are not too great, would be naïve (Franke, Leistungssport 15), because of the prisoner's dilemma and the very low sucker's payoff. A successful means for the desired improvement, instead, is intensifying controls and tightening punishments, not only for the players but also for the trainers and the medical service.<sup>19</sup> Thereby the subjective costs of doping and fouling have to be increased in such a way as to make cooperation better than non-cooperation.

However, the thesis that the decisions about doping and fouling are prisoner's dilemmata is only half the truth: In leisure-time sport because of different outcomes than in professional sport the prisoner's dilemmata do not exist. 1. The specific consequences of winning are much less important: There is no financial reward and only little acknowledgement for the pure achievement (only a small number of spectators and friends is involved, and they acknowledge achievement only as *one* aspect among others). 2. Other outcomes are more important: diversion during the game, friendly relations with the opponent, and acknowledgement for fair play and for the subjective efforts. Because of these different consequences the preference order is different as compared to professional sport: 1. Mutual fair play (i. e. mutual cooperation) is better than 2. fouling without

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<sup>17</sup> Pilz has called these attitudes "formal-informal fair play" (Pilz, Fairness 25). This then only would be an euphemism for the lack of any morals.

<sup>18</sup> This means a situation with a problematic preference order: 1. Temptation: If one player dopes and the other does not (i. e. non-cooperation versus cooperation) the first one will have his best outcome: high winning chances, though perhaps health is impaired. 2. Reward: If nobody dopes (i. e. mutual cooperation) the winning chances are equal, and no harm is done to health; this is the second best outcome. 3. Punishment: If both parties dope (mutual non-cooperation) the winning chances are equal too, but health is impaired; this is a worse result. 4. Sucker's payoff: The worst outcome for a player results if he does not dope whereas the other does (cooperation versus non-cooperation), because his winning chances are minimal. In such a situation doping individually is better, irrespective if the other player dopes too or not. So, both players will dope, and the outcome for both will be punishment, although the result would have been better *for both* if they had not doped (reward).

<sup>19</sup> Wagner and Keck have developed some corresponding suggestions for solving the doping problem: cf. Wagner/Keck.

being fouled (non-cooperation versus cooperation), which is better than 3. mutual fouling (mutual non-cooperation), and this is better than 4. playing fairly while being fouled (cooperation versus non-cooperation). The preference order over the doping alternatives is slightly different because doping in the situation of leisure-time sport is worse anyway: 1. Mutual refraining from doping (mutual cooperation) is better than 2. refraining from doping while the opponent dopes (cooperation versus non-cooperation), which is better than 3. mutual doping (mutual non-cooperation), and because of the otherwise disturbed balance in the game this may even be better than 4. doping while the opponent refrains from doping (non-cooperation versus cooperation). In both cases mutual cooperation has the best consequences for both players; if both are rational they will play fairly and refrain from doping.<sup>20</sup>

The analyzed difference between professional and leisure-time sport above all is due to different circumstances, namely the high *financial rewards* and threats and the immense *acknowledgment of achievement* (as compared to acknowledgement of fairness). Pride and self-esteem for fair play can hardly balance this. Another but secondary reason may be the different desirability functions: Perhaps professionals are generally more fixated on money and achievement than the average leisure-time sportsman.<sup>21</sup> So if acknowledgement of achievement and high financial rewards have become the most important consequences in professional sports this means that the patterns and forms of organization of modern capitalistic societies now have penetrated professional sports. In capitalistic economy the high rewards for achievement have the function to furnish better and more goods. But because of the unserious character of sports this seems not to be so in sports: Better achievement does not contribute anything to the major part of the aims enumerated above; the spectators e. g. did not have less diversion, lets say, 60 years ago. However, there are two exceptions: *Self-representation* of a modern capitalistic society by means of sports might require demonstration of the full economic power by exerting the best and most expensive athletes and technologies. And parallel to this, as things have developed, *identification* of the spectators with "their" team and with their collective by means of its sports team might also require highest achievement and demonstration of full economic power: Spectators now might find an (60 year) old-fashioned way of doing sports and the corresponding achievement plain and embarrassing. But both developments, from a moral and prudential point of view, imply a failure, namely an immense overestimation of economic power and achievement in general and underrating of political and social values of a society, like democracy, liberty and social support, and of

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<sup>20</sup> However, the two cases differ in the respect that refraining from doping is dominant (i. e. better irrespective of the opponent's decision), whereas fair play is better only in case the other is fair, too.

<sup>21</sup> Breivik seems to regard a possibly different preference order over the outcomes of doping versus refraining from it as a question of different subjective utility functions (cf. Breivik, 237-240; 250). I think this is an important reason (especially with regard to the spectators too) but not the most important. The most important reasons are the different outcomes as compared to a situation 60 or 80 years ago. A Coubertinian-minded player who does not foul and dope in a fouling and doping environment will lose his professional status and get only little acknowledgement. If he still wants these things he has to adapt himself to the circumstances and to realize his Coubertinian ideals in another way.

personal values, like diversion, playfulness, friendship and fairness. Reforming this situation is a task for society as a whole; sports and sports education can only be a small contribution.

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