CRIME, SPORT, AND SOCIAL POLICY: A REVIEW OF THE ALTERNATIVES

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Abstract

Various legal and sport scholars have proposed a number of reforms to resolve the social problems that are reflected in and characterize sport. Some of these problems include criminal acts of physical violence, sexual violence, hazing, performance-enhancing drug use, gambling, illicit drug use, and homicide. The viability of seven of these legal and/or institutional reforms are critically explored and evaluated in this paper including: 1) increased social control, 2) self-regulation, 3) balanced legal reform, 4) creating federal commissions, 5) allowing sport to exist in a ‘state of exception’, 6) developing networks of social support, and 7) furthering the specialization of sports law.

Key words: Legal Issues in Sport; Sport Policy; Criminology of Sport

Introduction

The benefits of sport are well-documented. Sport can bring people together, foster health and fitness, generate income for communities, provide jobs, develop character in youth, build self-esteem, and provide a significant source of entertainment. According to Varda Burstyn (1999), "the rituals of sport engage more people in a shared experience than any other institution or cultural activity" (p. 3). There are, however, dark sides of sport that have been under-documented. Sport can be violent, cruel, aggressive, exploitative, harsh, unfair, harmful, oppressive, dangerous, destructive, and abusive. Given the significance of sport as a social institution, a pertinent task for sociologists and other social scientists is the critical examination of the social problems that are reflected in and characterize sport and, more importantly, to examine the possible social policy implications to remedy these issues.

A Brief Glimpse at the Social Problems in Sport

In recent years many problems in sport have caught the attention of the news media. For example, in 2007 Marion Jones admitted to using steroids to help her earn five medals in the 2000 Summer Olympics. In the same year, the Mitchell Report was released implicating 89 former or current Major League Baseball (MLB) players in the use and distribution of steroids. The National Football League (NFL) commissioner, Roger Goodell, instituted a new personal-conduct policy for the league after two league stars faced criminal sanction. Ben Roethlisberger was accused of sexual assault while Michael Vick was arrested for operating an illegal dog-fighting operation. In the National Basketball Association (NBA) a referee, Tim Donaghy, was found to have bet on league games including the ones he worked. Donaghy implicated over 20 other league referees as being involved in prohibited gambling. In the same year, Pakistani cricket coach Bob Woolmar was strangled to death after his former world champion team was beaten and eliminated by Ireland in the World Cup of cricket.

In the year 2008, one-time Olympic taekwondo champion Angel Matos of Cuba was suspended from the sport for life after kicking a referee in the face following his disqualification in a bronze medal match in the Beijing Olympics. At the same Olympic games, 14 athletes and
six horses were disqualified for prohibited doping; numerous others were suspended before the games even began. Tim Montgomery, once considered the fastest man on earth after posting a then world record in the 100m of 9.78 seconds, was charged with the possession and intent to distribute heroin. Also in 2008, a Mississauga teen was found guilty of manslaughter for driving another player head-first into the ground in a High School rugby match, killing the opposing player.

In 2009, NBA all-star Gilbert Arenas and his teammate Javaris Crittenton drew guns on each other in the team locker room of the Washington Wizards during a heated argument. A photo surfaced of Michael Phelps, winner of 14 Olympic gold medals, smoking marijuana which led to a three-month suspension from the sport of swimming. Retired world tennis star Andre Agassi admitted to using crystal meth during his playing career. NFL Superbowl winner Plaxico Burress got into a fight in a Manhattan night club, pulled out a gun, and ended up shooting himself in the leg by accident. Early in 2009, a 21-year-old hockey player in Ontario named Don Sanderson died after an on-ice fight.

In 2010, Tour de France winner Alberto Contador tested positive for a banned substance. Several professional cricket players in Pakistan were found to have been involved in illegal gambling schemes that involved rigging games and point-shaving. Former Major League Baseball player Rogers Clemens was charged with perjury for allegedly lying to Congress about his use of illicit performance-enhancing drugs during his playing career. A teenager in Colorado named Mathew Hammerdorfer was killed on the rugby field after taking a strong hit to the chest. A central sport storyline of 2010-2011 National Hockey League season has been the continued absence of Sidney Crosby who sustained a violent on-ice head injury earlier in the season. In Canada, the entire University of Waterloo football program was suspended after nine players tested positive for the use of performance-enhancing substances.

These are just a small sample of the social problems that are reflected in and characterize sport. While little attention has been paid to studying crime in sport, even less attention has been paid to the critical assessment of different policy alternatives that are geared towards remedying some of these problems. The aim of this paper is to critically assess the viability of several policy alternatives that are currently used or have been proposed.

**Policy Alternatives to Remedy Crime in Sport**

Various legal and sport scholars have proposed a number of reforms to resolve the social problems that are characteristic of sport. The viability of seven of these legal and/or institutional reforms are considered in this paper including: 1) increased social control, 2) self-regulation, 3) balanced legal reform, 4) creating federal commissions, 5) allowing sport to exist in a ‘state of exception’, 6) developing networks of social support, and 7) furthering the development of sports law.

*Increased Social Control*

The social control approach holds that the best way to deal with crime in sport is to increase criminal prosecution (Voicu, 2005). This is essentially a ‘tough on crime’ approach. From this perspective, increased crime control serves as a deterrent to keep players from committing potential criminal acts such as on-field violence, point-shaving, hazing, and steroid use. A disadvantage of this approach is that it centers on punishing the individual players who are engaging in acts, and fails to take into account the norms of sport and institutional tolerance that can lead to such acts. This approach presents a risk that criminal responsibility will be placed on the individuals committing the acts, rather than on the individuals who might be promoting and possibly benefiting from the crimes.
Self-Regulation

Another proposed approach to dealing with issues of deviance in sport is to promote self-regulation within particular bodies of sport (Eugene & Gibson, 1980; Standen, 2008). The rationale behind the self-regulation argument is that the penalties that can be provided within a sports league tend to be quick and certain. In contrast to this approach, the formal social control model is often long and drawn out as court cases can take months if not years to be resolved. Standen (2008) argues that league penalties are often more severe than legal penalties, providing a better deterrent. For example, after choking his coach in a practice, NBA basketball player Latrell Sprewell was suspended for the remainder of the season without pay and had the remainder of his contract terminated, which was valued at over 25 million dollars. According to Standen (2008), this was likely the most severe penalty given to an individual for a common assault. Two issues appear to plague this reform. First, like the social control approach it punishes the player while ignoring the individuals in positions of power who are promoting and possibly benefiting from the deviant acts. Second, the majority of sporting organizations are currently governed in this way and yet, various social problems continue to exist in sport.

Balanced Legal Reform

A third possibility that has been proposed to deal with crime in sport is through balanced legal reform (DiNicola & Mendeloff, 1983). The goal of this approach is not increased social control and prosecution of crime, as this is understood from the balanced legal reform perspective as being “as troublesome to apply as it is intrusive on play” (DiNicola & Mendeloff 1983, p. 845). Instead, the idea is to strike a balance between the need for social control in sport and the social desire for athletes to compete in violent sports. Such reforms could include writing provisions into criminal codes that specifically address violence in sport or tabling an act that clearly delineates what is and is not considered, for example, to be consensual violence, hazing, and performance-enhancing drug use in sport. White (1986) proposes that laws are clarified through a variety of “bright-line tests” (p. 1048). The purpose of such tests would be to set clear guidelines for acceptable and non-acceptable violence in sport. For example, it could be that acts of non-consensual violence become criminally prosecutable if they exist after a play has been whistled down, but that acts occurring during play are given leniency. Such legal reforms could have positive results in that increased legal attention might be paid to the intricacies of sport; however, the athlete still remains as the only focus of legal attention. Such reforms should also develop provisions that denote liabilities for others involved in the promotion and toleration of deviance in sport such as coaches, team owners, and league management officials.

Federal Commissions

Another proposed institutional and legal reform would be to create governing bodies that have the specific purpose of mediating sporting disputes (Blackshaw, 2002; DiNicola & Mendeloff, 1983; White, 1986). This would allow for increased specialized knowledge regarding sport cases, quicker responses/settlements than the legal system, and less intrusion on the sport. In terms of intrusiveness on sport, giving players a criminal record can be problematic since they often have to cross international lines for their sport. A commission to handle disputes in sport currently exists in Canada called the Sport Dispute Resolution Centre of Canada (SDRCC). At present, however, this commission does not routinely deal with all matters of sport dispute in Canada. The cases it disputes tend to involve labour agreements, rather than incidences of crime and deviance in sport. Further developments of this and other federal commissions could allow for specific attention to sport-related issues without burdening legal
systems. A difficulty faced in prosecuting acts of deviance in sport is the challenge to understand the rules and norms of a given sport and the legal conventions surrounding the possible criminal incident in that sport. A federal commission could develop this specialized knowledge to effectively deal with the intricacies of both the sport and the law.

A State of Exception

Rather than specific attempts to deal with legal matters in sport, another approach to reform could be to allow sport to exist in what Georgio Agamben (2005) terms a “state of exception” (p.1). Agamben (2005) refers to the state of exception as a state of lawlessness during times of wartime crisis. Sport, seen outside the jurisdiction of the law, could be treated as a state of exception existing outside formal governmental control and regulation. This does not necessarily suggest that there are no rules, but that these rules would be beyond governmental regulation. Just as there are rules of engagement during wartime crisis, sport could have its own rules of engagement existing outside Canadian law. This notion ties to the German legal notion of Socialadaquanz, which requires that “society tolerate those injuries that are unavoidable concomitants of playing the game the way society desires it to be played” (Michigan Law Review Association, 1976, p. 177). With few potentially criminal cases involving athletes ever ending in actual criminal charges and convictions, North American sport already appears to exist in a state of exception and yet this only appears to exacerbate the issues. As such, this approach does not appear as a viable solution.

Networks of Social Support

In the National Football League, a number of services and support networks have been created to help players after their careers as professional football players have ended. For example, the National Football League Players' Association (NFLPA) has developed a Retired Players' Association to tackle issues that face the lives of those who have retired from the sport. Recently, the Retired Players' Association won a legal suit for 28.1 million dollars in damages for contractual violations of 2062 former NFL players. Other organizations have emerged such as the Fourth and Goal Foundation, which provide financial and social services assistance to retired players and their families. Retired players in many other leagues do not appear to have similar support services, which could help to alleviate many of the problems players and their families face after their playing careers have ended resulting from chronic pain, addictions, mental health problems, and health care bills.

Developing a Specialization in Sports Law

Sports law is not recognized as a type of law in Canada or the United States. No Canadian universities offer a specialization in the area of sports law. Several law schools offer a class in sport law, but none offer a concentration. Even in the United States where several universities do offer specializations in sports law, there is still no such thing as sports law. In both Canada and the United States, sports law falls into other legal categories such as: criminal law, administrative law, civil law, contract law, employment law, labour law, procedural law, and substantive law. Developing a concentration in Sports Law could allow for increased specialization of legal professionals with knowledge of the intricacies of sport and the law, as well as further research in law faculties and in other disciplines specializing in issues related to sports law, crime and justice.
Concluding Remarks

There is no single solution that will likely cure the social problems that are reflected in and characterize sport. There are, however, several alternatives that should be employed in varying degrees to help remedy these problems. This task must include continued research on crime and deviance in sport, an expansion of specialized legal services and knowledge that pertain to sport, increased criminal liabilities extending beyond just athletes, the establishment of more networks of social support for current and retired athletes, as well as the development of governing bodies of sport that have a combination of legal authority and specialized knowledge of the intricacies of sport. It is through this sort of concerted effort that crime in sport must be addressed.

References