

Armstrong was a Cheat:

A reply to Eric Moore

Jon Pike and Sean Cordell

Department of Philosophy

The Open University, UK

Lance Armstrong was a professional cyclist who from 1999 to 2005 won a record consecutive seven Tours de France. During this time, he vigorously denied accusations of doping including the use of proscribed Performance Enhancing Drugs (PEDs). Indeed, his denial was so vigorous that he successfully sued, traduced, and in some cases ruined the careers of some of those who made such accusations. By 2013, following charges of doping by the United States Anti-Doping Association (USADA) which he did not contest, Armstrong publicly admitted to long-term doping in several ways throughout at least his Tour-winning streak. Others closely involved with Armstrong at this time testify that this was part of a wider, systemised and well-executed programme of doping in his team, US Postal Service.¹

It seems intuitively correct to think of Armstrong's (and his accomplices') doping project as a paradigm case of cheating in sport: one might ask 'if *that's* not cheating, then what is?' However, in a recent paper in this journal, (Moore 2017), responding to the Editor, (McNamee 2012) Eric Moore argues that, on a certain standard account of cheating – on which cheating requires a) violating a rule that is b) fairly enforced with c) the intention to obtain an unfair advantage – Armstrong did not cheat. Moore's argument can be set out as follows:

- P1 If Armstrong did not meet the conditions of the standard account (a) b) and (c), then Armstrong did not cheat.
- P2 Armstrong did not meet the conditions of the standard account.
- C Armstrong did not cheat.

But one person's *modus ponens* is another's *modus tollens*. Accordingly, and welcoming Moore's challenge that if he is right then 'much more needs to be said about Armstrong's doping to show that it was indeed cheating' (p.414), we contend that if Moore's conditional claim P1 is correct, then so much the worse for the standard account of cheating, since Armstrong did cheat. We will argue that two of the standard account's conditions – fair enforcement of the rules and intent to gain unfair advantage

¹ USADA 's Reasoned Decision (USADA 2012)

– are not necessary for cheating. As to the third condition, we concede that violation of some ‘rule’ – broadly construed – may be necessary for cheating, though in fact nothing in our argument hangs on whether even this is necessary. What matters, we conclude, is that Armstrong’s doping met conditions that are putatively sufficient for cheating, thus undermining the standard account. For it is sufficient for cheating that someone breaks the official rules covertly in order to gain a competitive advantage, which is exactly what Armstrong did.²

Two preliminary points are in order. First, there are surely many instances of cheating which *do* meet the conditions of the standard account. Violating a fairly enforced rule with the intent to gain an unfair advantage is one way of cheating, and quite feasibly a standard case. But our argument is that this is not the only way of cheating, so these conditions are not necessary for cheating. So, the ‘standard account’ is false, and Moore’s challenge – to show in the face of that account that Armstrong cheated – can indeed be met. Second, we have no quarrel with Moore’s version of the key events surrounding Armstrong’s doping. We concede all of the empirical claims he makes about the prevalence of doping in professional cycling during the ‘Armstrong era’. Most importantly, doping was widespread and widely known about in the Tour de France peloton and the pro teams, and anti-doping authorities were at best negligent and at worst complicit in doping.

Moore begins with the claim that doping is cheating only if the doper’s intent is to gain an unfair advantage. Call this the *Unfair Advantage Argument*. Moore’s response is that by doping, Armstrong was not trying to gain an unfair advantage, so was not cheating.

Secondly, Moore accepts the view in the standard account that cheating requires fair enforcement of the rules. Call this the *Fair Enforcement Argument*. Moore argues that anti-doping rules were not fairly enforced during the Armstrong era, so Armstrong did not cheat by doping.

Thirdly, Moore discusses the view that Armstrong’s doping was cheating because it violated the rules. Call this the *Violation of Rules Argument*. Moore’s response is to insist that, although doping was against the official rules, in some cases

² compare (Russell 2013)

the rules that matter are unofficial rules, and that doping was not against the actual unofficial rules the cyclists played by.

I

Our responses to these three parts of Moore's argument follow the order in which he presents them, so we begin with the unfair advantage argument. According to Moore, 'if enough cyclists are doping, then doping even though it provides an advantage, the advantage is not unfair' (Moore p.417).

What constitutes 'the intent to gain an unfair advantage', as construed in the standard account?³ Based on Moore's discussion, what the standard account seems to require is that a cheat seeks to gain advantage through creating or exploiting competitive inequalities. But, crucially, the advantage and inequality sought by the cheat are supposedly 'unfair' by virtue of other relevant competitors being denied the same advantage or the means to seek it. So, in order for Armstrong to have had the 'intent to gain unfair advantage' by doping and thus have been cheating, a sufficient number of his rivals would have *not to have been doping*.⁴ We take it both that Moore's argument favours this interpretation, and that it reflects the intuitive appeal of the unfair advantage condition's necessity in the standard account.

In making the case that the advantage Armstrong sought by doping was not unfair in this way, Moore asks us to consider instances of seeking advantage in sport which are permitted and accepted but nonetheless appear equally, or more, unfair than Armstrong's doping. He gives the example of Greg LeMond, who famously snatched the 1989 Tour de France overall victory by eight seconds with the (then) surprise and unique use of aero handlebars in the concluding Time Trial stage. This move alone allowed an improvement almost certainly sufficient for LeMond to overturn the previous lead of Laurent Fignon and take the title. Moore's argument by comparison is

³ Here we, like Moore, leave aside the interesting question of the actual intent of the would-be cheater in relation to what she brings about (need she intend only the advantage, or also that the advantage be an unfair one?).

⁴ Or perhaps at least not doping in the way(s) or to the extent that Armstrong was. It could be argued, against Moore, that Armstrong *did* in fact seek or attain an unfair advantage in this sense by his particular way(s) of doping, even though doping in general was pervasive. For Armstrong and his team were reputed to have taken doping to an 'industrial level', such that it is very likely that his doping was way ahead of the field.

that 'it could be argued that it is more unfair to take advantage of new technology [as LeMond did] than no one else is using than it is to dope when everyone else is [as Armstrong did]' (Moore, p. 417).

Moore succeeds in showing that the advantage sought and gained by Armstrong in doping was in one sense no more – indeed perhaps less – 'unfair' than was LeMond's was in using aero-bars. But whereas Moore concludes from this that Armstrong was not cheating, we conclude that the 'intent to gain unfair advantage' is not necessary for cheating. Lemond won the 1989 Tour, and he did not cheat.

Moore's argument that Armstrong did not cheat rests throughout, as it should, on commonly held views of what cheating is or is not, on fairness or unfairness in competition, and on how we coherently apply these terms and concepts in relation to each other. Likewise, he continues this part of his argument using the example of cycling 'traditionalists' who bemoan the constantly renewing technological advances but who do not see the competitive advantages gained by such advances as 'unfair' (Moore, p.417). So, the idea here is that whatever else they might think about technology or doping, in order to be consistent with respect to gaining competitive advantages the traditionalist should not see pharmacological advances as any more *unfair* than technological ones. Indeed, in Armstrong's versus LeMond's advantage-seeking they should see the former as, *a fortiori*, *less* unfair. But we think it just as likely that if pressed further on the question of what is and what is not cheating, the sports traditionalist, along with anyone else who has a grasp on the relevant concepts, could coherently and happily concede that an advantage such as LeMond's aero-bars *is unfair* in the sense employed in the standard argument. And they can do this without having to concede either that Armstrong did not cheat, or that gaining such an advantage is necessary for cheating.

To explain, let us distinguish unfairness in the sense in which it figures in the standard account, from another familiar but quite different sense of 'unfair' which arises in the specific context of cheating. In the standard sense, of seeking to gain an unfair advantage by exploiting or creating inequalities of opportunity, the intent to gain unfair advantage arises in the general context of sporting competition, and as we have seen it is sometimes a quite legitimate, perhaps essential, part of sport. But specifically, in *cheating at sport* the notions of 'fair' or 'unfair' characteristically also attach to

certain means or methods, and not others, by virtue of those means or methods being proscribed. This special sense of fair or unfair denotes the permissibility or otherwise of certain means and not others from the off, in that certain opportunities or means are deemed 'unfair' not because they trade on or effect inequality of opportunity across the relevant competitors in a sport or contest, but because employing those particular means would transgress some already established rule(s), prescription(s), norm(s) or convention(s) disallowing the taking of certain opportunities and allow others. Now, Moore's cycling traditionalist, and others, may hold without confusion that LeMond's advantageous tactic was not unfair in *this* special sense, although his use of aero-bars may have been 'unfair' to the extent and in the sense that he exploited an inequality of opportunity (if for example Fignon and others may not yet have realised the benefits of aerodynamic positioning and bars). For in the special sense, within certain limits prescribed by competitive institutions, springing superior technology or methods in cycling is – for better or for worse – all just part of 'fair competition'.⁵ Indeed, and whilst the traditionalist may disagree, arguably this can be an exciting, laudable part of sport.

By contrast to the way in which LeMond's using the aero-bars could be seen as 'unfair', in the special sense a sought advantage is unfair because the means to gaining it are not 'open' to all competitors: they are closed off by sporting rules. So, even if in fact another competitor manages to get ahead of you in some way unbeknownst to you, or in a way which practically you could not match, nevertheless the opportunities for you to take such advantages *qua* competitor are not foreclosed by the terms of the competition. But advantages gained by proscribed means such as doping are not, at least theoretically and *de jure* normatively, open to all.

Of course, it is contestable whether we can without ambiguity, or should, deem certain means to seeking competitive advantage 'unfair' just because they are proscribed, or 'fair' because they are permitted. Fairness as equal freedom from restrictions on ϕ -ing does not amount to fairness as equal opportunity to ϕ : the fact

⁵ There is one caveat to this thought. At least one of us thinks that some supposed new techniques would not be techniques *of that sport* because they would be contrary to the essence of the sport. But our argument here does not rely on a controversial essentialist premise of this sort.

that all pro cyclists and their teams are free and entitled (within certain parameters) to benefit from the development of winning technology in secret does not mean that all – from richly sponsored to struggling development teams – have an equal chance of doing so. In addition, one might think that this ‘special’ sense of fair/unfair advantage as specific to cheating is also at best parasitic on the notion of, and possibly even just another name for, violating certain competitive rules or norms. So, to claim that the advantage sought by Armstrong in doping was unfair in this special sense might be to do no more than claim, rather uninformatively, that he violated certain rules.

We happily concede both these points because, to be clear, we are not attempting to defend the special sense or to argue that it, or any, kind of unfairness is the correct or best one to employ in judging what does or does not count as cheating. Rather, we distinguish between the standard and the special, cheating-specific, senses of ‘unfair advantage’ only in order to suggest that the plausibility of the claim that the intent to gain advantage is a necessary aspect of cheating stems from an equivocation between these two senses. That is, one may be persuaded that cheating always involves violation of a rule or norm of some sort, and thus that it always involves seeking an unfair advantage in the special cheat-specific sense. But from this there is no reason to think that it thereby involves unfairness in the inequality of opportunity sense. The error is in taking a LeMond type case, where the advantage sought and gained may not be ‘unfair’ in the cheat-specific sense *because* it is within the rules, so not conceived as part of cheating, and then inferring that the Armstrong case is not cheating *because* in his case the advantage sought is not unfair in the inequality of opportunity sense.

In a classic paper on just this issue, Gardner (Gardner 1989) carefully distinguishes a pre-rules ‘unfair advantage argument’ from a post-rules argument against the use of *prohibited* substances and methods, because their use would be unfair. This is an important distinction, often missed. Gardner goes on to argue that there is not an obvious case against prohibiting PEDs on the basis that they give competitors an unfair advantage (though there may be for other reasons: their propensity to alter the responsibility of athletes for their own results, for example.) It might be taken, then, that the lesson of Gardner is that the ‘unfair advantage argument’ as he construes it, is unsuccessful in motivating a ban on PEDS. But this is a wholly different matter from arguing that using PEDS which are banned does not provide an

athlete with an unfair advantage. And it does not seem plausible that accepting *pre-rule*, that PEDs might not be unfair, might bolster the claim that their use *post-rule* could or should have the same normative status. Rules make a difference.

On a closer examination of the unfair advantage argument and a suggestion as to why it might seem plausible, it is not clear why intent to gain unfair advantage, as it figures in Moore's presentation of the standard account, should be a necessary condition of cheating. We see no further reason to think that it is.

II

For the second part of his argument that Armstrong did not cheat, Moore highlights the absences of fair enforcement of the anti-doping rules in the peloton during the Armstrong era. We call this the Fair Enforcement Argument. Anti-doping regulations were easy to get around for the cyclists, whilst at the level of enforcement, corruption of officials and blind-eye turning to protect top riders was reportedly rife.⁶ The anti-doping rules were enacted sporadically and unequally across the sport and competitive cohort to which they supposedly applied. Again, seen in this light the part of the standard account that says cheating requires fair enforcement of the rules is *prima facie* plausible. If sanctions for transgressing sporting rules are not practically applicable, or not applied with equal force to those found transgressing, then how could transgressors in these circumstances effectively be cheating? But again, however, we deny that fair enforcement of rules is in fact required for cheating.

Moore grounds the Unfair Enforcement Argument on an appeal to contractarian moral theory:

Sporting contests are socially constructed institutions. Without a set of agree[d]-upon rules there would be no such thing as the Tour de France, much less a winner. It seems then that sporting contests are paradigmatic social constructs whose rules are given moral justification according to contractarianism. (Moore 2017: 418)

Moore thinks that the normative force of sporting rules – the way in which the rules are binding on competitors – derives from a kind of bargain between parties that limits pursuit of individual self-interest in order to maximise shared self-interest. Moore's

⁶ Again, we have no quarrel with Moore on the extent or seriousness of this complicity.

thought, then, is that if and when the bargain is not being widely held the 'contract' to limit one's self-interest – in the cyclists' case by abiding to rules including those which proscribe PEDs – loses normative force. Here Moore approvingly cites Russ Schafer-Landau:

When those around you are saying one thing and doing another, and cannot be counted on to limit the pursuit of their self-interest, then you are freed of your ordinary moral obligations to them. (Schafer-Landau 2015) (Moore 2017: 418)

For Moore, this maps onto the Armstrong case insofar as widespread non-compliance to official cycling rules, due partly to weak or inconsistent or corrupt enforcement of those rules, meant that the normative reasons cyclists had for obeying those rules were weakened to the point of disappearance. Our main argument will be that whilst Moore falls short of fully establishing this last point, a developed argument on the same lines could support an all-things-considered justification of doping in the circumstance of the EPO era Tour de France peloton. However, such a justification of doping would not show that it is not cheating.

Firstly though, does Moore show that by virtue of unfair enforcement of anti-doping rules, Armstrong and his fellow competitors were freed of their obligation to adhere those rules? This question is worth some discussion, as the notion that they were freed of it, and thus justified in doping, is the foundation of the Unfair Enforcement Argument.

Moore contends that '[t]he lesson of contractarianism is that the moral status of the rules is conditional. I agree to them on the condition that others follow them as well' (p.419). But this is slightly too quick. For in some cases, non-compliance frees one of certain moral obligations, and in some cases, it does not. This ought not to be a surprise: we do not live in an ideal world; and we cannot always count on others to limit the pursuit of their self-interest, and yet we do have some uncontroversial moral obligations to abide by rules.

What then, are our obligations in conditions of partial compliance in general? As David Miller has recently pointed out, three broad answers are available:

- Do *more than* is required in conditions of full compliance: take up the slack⁷
- Do *just* what would be required in conditions of full compliance but no more: don't take up the slack.
- Do *less than* would be required in conditions of full compliance. [Miller calls this 'grouching'] (2011: 233)

Intuitions about what is appropriate for an agent in conditions of partial non-compliance vary according to the particular cases. One variable factor is the extent of non-compliance. A second is the degree of disadvantage to compliers that accrues from their compliance: what is the cost of complying amidst widespread non-compliance? A third is the efficacy of complying in the face of non-compliance: what good is done by complying? A fourth consideration is the possibility of unintended consequences: complying, in the face of widespread non-compliance may encourage further non-compliance; it lets the others off the hook. Finally, there is the nature of the duty in question. Cases of saving drowning children (Singer 1972) generate intuitions about absolute duties, and those intuitions tend to justify the first option: taking up the slack.

The Tour de France peloton in the EPO era was a case of partial compliance. All riders were under a *prima facie* obligation to refrain from using doping products in order to secure fair competition, but a large number did not in fact comply with that obligation. How does this correspond to the three options laid out by Miller? The most salient factors here are the degree to which the peloton is non-compliant, and the cost in terms of the disadvantages that fell to the compliant minority. A 2015 report by the Independent commission for cycling makes for stark reading. Take the first factor. What was the degree of non-compliance?

From riders' testimony to the CIRC, it is possible that [the estimate of 60-80%] may be modest for the peloton in that era, given that some put the percentage at 90+% across the peloton.' (Marty, Nicholson, and Haas 2015: 34)

Take the second factor. What was the performance disadvantage accruing to non-doping riders in the EPO era?

⁷ I.e. go further than merely fulfilling one's own obligations, so as to redress the imbalance of others failing to fulfil theirs.

The average gains in performance varied depending on the individual's physiology, but estimates put that gain at between 10-15%. (Marty, Nicholson, and Haas 2015: 33)

This sheds some light on the third variable. What *good* is done by complying with anti-doping in the peloton at this point? The answer is tricky and to a large degree counterfactual. This is because non-doping riders do not appear to have lasted very long. Riders like Christophe Bassons performed an exemplary role – for a little while. But the general suggestion that one must behave in a certain way in order to secure one's heroic place in history seem to us to be typical of supererogatory demands. These are demands that are more than can reasonably be asked of an agent, though it is a good thing if they can meet them⁸. Perhaps, too, there were unintended consequences of staying clean in the EPO-era peloton, by providing cover for the dopers and putting off the day when the Augean stables would be cleaned up. And anyway, no children (directly) died.

So there were undoubtedly difficulties for non-doping athletes, which counted in favour of doping in order to compete and earn a living in the sport. 90% non-compliance, 10-15% advantage, the supererogatory nature of the demand to set a good example since compliance does little good, unintended effects, and the imperfect nature of any residual demand of justice together means that the case for grouching is overwhelming. There was hardly any place in professional cycling for non-doping riders, and as CIRC concluded:

'The rider was confronted with a stark choice, either to fall away from professional riding or dope.' (Marty, Nicholson, and Haas 2015: 40)

Thus we think that a developed contractarian-based argument from non-compliance could support the conclusion that pro-cyclists in the Armstrong era were to a large extent freed of their obligation to obey anti-doping rules.⁹ But to develop this,

⁸ On specifically sporting supererogation see Alfred Archer (Archer 2017)

⁹ At least, such an argument could be developed from the perspective of the individual competitor. A proponent of collective responsibility could argue that the relevant *group* itself had a moral responsibility to eschew rule-breaking doping in the first place or 'clean up'

Moore would need at least an argument to show which options are best, and which options are permissible, rather than moving as he does from widespread non-compliance to a rule straight to having no obligation to adhere to that rule. Simple non-compliance does not establish this, as shown by examples like the drowning child case, where the obligation to 'take up the slack' (do all you can to save the child entirely regardless of what others are doing with regard to saving this child or other children) seems clear.

Similarly, note the limited scope of what such an argument could justify. It would also be too quick to infer that a contractarian defence of cyclists' doping in the Armstrong era thereby justifies all or any particular case(s) of doping, or does so to the same extent. One could grant that doping *per se* in the circumstances was in general justifiable 'grouching', but deny that some particular doper was thereby justified in *his* doping whatever form it took or whatever means he took to dope. For it is one thing to agree with Moore's interlocutor that '[i]f the others do not follow the [anti-doping] rules, then I am not required to follow them either' (Moore, p.419). It is another thing to suppose from this that with respect to doping *anything goes*, least of all a justification for breaking a series of sporting, legal or moral prohibitions in order to pursue doping, which is what Armstrong is alleged to have done.

But let us return to the supposition that Moore could nevertheless establish that Miller's 'grouching' is basically the most reasonable option in the doping case, and that the other two options (doing your share or taking up the slack) would be supererogatory. Then he may be able to show at least that the basic moral obligation to follow the rule in question is overridden or obviated in non-ideal contexts of non-compliance such as this.

The problem now is that this would not establish that a competitor in these circumstances would *not be cheating* by doping. It could show that, in these special circumstances, this kind of cheating was permissible and that in some cases, one can a)

the sport in response to its prevalence. On this kind of view, the collective responsibility may not be reducible to, or fully explicable by, individuals' responsibility- and thus may be untouched by the type of contractarian argument which Moore proffers. Arguments for this kind of collective responsibility can be found in Isaacs (Isaacs 2014) and Pettit (Pettit 2007)

cheat and b) be justified (all things considered) in cheating.¹⁰ The basic idea behind this thought is that of moral pluralism in recognition of the possibility of conflicting values, principles and duties, including moral ones. Moral pluralism has been defended in different ways and at length, most notably by W.D. Ross for whom, for example 'a *prima facie* duty to keep a promise can be overridden by a *prima facie* duty to avert a serious accident, resulting in a proper, or unqualified, duty to do the latter (Ross 2002 [1930]: 18). More recently Michael Stocker has argued for the possibility and conceptual coherence of 'morally mixed acts' in situations of moral conflict, which in the sense of action-guidance one ought to do but in another, evaluative sense, one ought not to do (Stocker 1990).

To get a sense of how we think this kind of view figures plausibly in the case of cheating, consider other acts such as lying or, to borrow from Ross, keeping promises. We can make a reasonable moral *presumption* against doing the former and in favour of doing the latter: moral reasons count against lying and in favour of keeping promises. But we may also consistently say that in certain – perhaps very rare – circumstances, acting contrary to those reasons may be permissible and all-things-considered justified. Lying or promise-breaking in order to prevent a great(er) evil or avert disaster, for example. And in holding this, we need not let go of the moral presumptions against or in favour of such acts: I really do *have* a duty not to lie that does not somehow evaporate in life-threatening circumstances – but right here, right now the duty to save lives overrides it.

Now, despite the controversy over what may or may not count as cheating (hence the current debate with Moore), we see no reason to exclude cheating from the status of such an act. Cheating is, like lying or promise-breaking, something against which moral reasons appear to count, but those reasons may not, in all and any circumstances of conflicting reasons, be the *practically* decisive ones. So far we have conceded for the sake of argument that Moore could, with a contractualist account, show just this: that the basic obligation to adhere to anti-doping rules was overridden in the Armstrong era. This could amount to a justification, all things considered, for cyclists

¹⁰ For further discussion of the view that cheating may be morally permissible, or even required, see Upton (Upton 2011) and Royce (Royce 2012)

cheating. In the Armstrong era riders had a *prima facie* or *pro tanto*¹¹ moral duty not to cheat, but this may have been overridden when they had a right or duty to pursue their profession, and the only alternative to cheating by doping was professional failure.

Contrary to all this, Moore takes his contractarian justification for doping as showing that doping is not cheating:

[t]he lack of enforcement of the rules resulted in their lacking, the moral status that would require me to follow them. Thus, contractarianism provides another reason to think that doping was not cheating, because the rules were not fairly enforced. (Moore p.419)

The general conceptual point we have sought to make in response, is that whilst justifying some act of cheating may affect its moral status, it does not thereby stop it being cheating, any more than successfully justifying a lie – as a ‘white lie’ – makes it into something other than a lie. One type of question about acts such as lying (or cheating) concerns whether it is or is not justifiable and if so under what circumstances. Another kind of question asks what constitutes lying (or cheating). And whilst both ‘lying’ and ‘cheating’ are normatively laden concepts, to answer one question is not simply to answer the other, as Moore seems to think is this case.

But note finally that in order to see this conceptual point about cheating, one does not have to buy a moral theory such as Ross’s or Stocker’s (and we do not need or have the space here to argue for any such moral theory). For the point would hold for someone who, for example, had no truck with ‘all-things-considered’ justifications or *pro-tanto* moral reasons and proposed by contrast that in certain circumstances – perhaps including Armstrong’s – cheating is simply the *right* thing to do. Consider the statement: ‘It’s cheat or be cheated- dog eat dog, so you weren’t wrong to cheat, and no one should blame you.’ Whether or not such a justification for cheating is itself credible or uttered in good faith, we do not think that it is incoherent or nonsensical.

¹¹ Others since Ross such as Susan Hurley (Hurley 1989) have adopted the term ‘*pro-tanto*’ (to this extent’) to supersede Ross’s earlier use of ‘*prima facie*’ (‘on the face of it’) in a similar context. Though this may appear a subtle shift it is, in this context, an improvement in precision.

We round off our rejection of the Fair Enforcement Argument by presenting a counterexample which also illuminates our positive claim of what is sufficient for cheating, namely that someone breaks the official rules covertly in order to gain a competitive advantage. It seems to us that covertly seeing to it that the rules of one's sport are unfairly enforced so as to gain a competitive advantage (where such tampering itself breaks official rules- hence 'covertly'), is at the very least consistent with cheating at that sport. In fact, if at least some of the allegations of bullying and bribery against Armstrong and his team are true, and if all this was done to further the doping cover-up, then his case is exactly this kind of counterexample to the standard account. We would like to suggest more strongly, a) that such a case would on the face of it *constitute* cheating at that sport, and that b) this suggestion chimes with the concept, and common-sense usage, of 'cheating' in the context of sporting competition.

It is thus difficult to see how fair enforcement of rules can be necessary for cheating if making them unfairly enforced can *be* cheating. *Contra* the Fair Enforcement Argument: if Armstrong and his camp successfully contrived to thwart fair enforcement of anti-doping regulations in order to dope and get away it, then it would be absurd to say that Armstrong could not have been cheating *because* the anti-doping rules he thwarted were not fairly enforced. And *pro* our positive account of what is sufficient for cheating: even if these particular allegations against Armstrong were in fact false, the point is that we can quite clearly imagine (or probably find actual) cases that involve, facilitate or simply *are*, acts that effect unfair enforcement of rules to one's advantage. Acts, that is, such as bribing officials or threatening potential informers so as to cover-up and get away with rule-infringing practices that provide competitive advantages. We take this to be a paradigm case of cheating, and that the onus is returned to the proponent of the standard account to show otherwise.

III

In his paper, Moore aims to show "how the rules of coordinating and constitutive conventions provide a more in-depth understanding of how it is that the conventions of sport modify the official rules." (Moore 2017: 420) Much in Moore's account hangs on the idea that there was an alternative informal set of rules in which doping was allowed, that this informal set of rules was a convention, and that riders'

following that convention meant that they were playing by the actual rules, so not cheating.

We have two lines of attack here, which are, however, quite different. The first is to suggest that doping in the Tour de France was neither a constitutive convention nor a coordination convention, because it wasn't a convention. The other is to suggest that, *pace* our first argument, even if it is held that doping in the EPO-era Tour de France can be explained as a convention, nothing normative hangs on this.

An important distinction to be made is between the *explanation* of the emergence of some regularity and the *justification* of a regularity, and the two prongs of our argument map to this distinction, in that we first assess the explanation of doping as a convention, and second look at normative matters.

There seems to us to be a fundamental problem in Moore's account of Armstrong-era doping as a Lewisian convention. Lewis's work, as he makes clear, is a response to Quine: and attempts to give an account of convention that explains the supposed conventions of language even though they are unlike ordinary conventions as agreements.

“When did we ever agree with one another to abide by stipulated rules in our use of language? We did not. If our ancestors did, why should that concern us, who have forgotten.... The sober truth is that our use of language conforms to regularities – and that is all.”(Lewis 2002 [1969]: 2)

So Lewis's project in *Convention* is an attempt to reply to this sceptical account provided by Quine, by showing how conventions can operate without explicit agreement. The importance of Lewisian conventions then, is that they explain something that is previously unexplained – the arbitrary adoption of one pattern amongst alternative candidates. One necessary condition for the conventionality of some arrangement is that for every putative conventional arrangement, there is another, alternative convention such that the choice between the two options is arbitrary. In the standard case of whether to drive on the left or the right, there are two alternative regularities and the choice between them is, in an important sense, arbitrary. The question of which convention to opt for is answered merely by the fact that others act according to that convention. If others drive on the right, you should

drive on the right, and if others drive on the left, you should drive on the left. This is nothing to do with any intrinsic attractiveness of driving on the right, or on the left – there is no such intrinsic attractiveness. This point is made in the standard Stanford Encyclopaedia of Philosophy account:

Our choice of a convention from among alternatives is undetermined by the nature of things, by general rational considerations, or by universal features of human physiology, perception or cognition. (Rescorla 2015: 6)

But here the problem is foregrounded: performance enhancing drugs, like EPO, work (that is, make endurance athletes faster) precisely *because* of universal features of human physiology: this makes athletes who take EPO functionally superior to athletes who do not. The choice between doping and non-doping cycling is anything but undetermined, if one wishes to go as fast as possible.

A similar claim about arbitrariness is made by Marmor:

Arbitrariness is an essential, defining feature, of conventional rules.... a rule is arbitrary if it has a conceivable alternative. If a rule does not have an alternative that could have been followed instead without a significant loss in its function or purpose, then it is not a convention. (Marmor 2009: 11)

Lewis himself, when defining conventions, (and as Moore points out p.421) stipulates that there must be an alternative convention R' available for actors to adopt, and which would be adopted if at least all but one actors adopted it:

(4) everyone prefers that everyone conform to R on condition that at least all but one conform to R

(5) everyone would prefer that everyone conform to R' on condition that at least all but one conform to R' (Lewis 2002 [1969]: 76)

There is a consensus, then, that conventions rest on the possibility of alternative patterns of behaviour that are related in a particular way to the putative convention. This makes the putative convention arbitrary with respect to its alternative. Consequently, if the alternative is not arbitrary, then the regularity is not a convention. One non-arbitrary way in which regularities can be related is by being functionally superior/inferior. If this is the case, the adoption of the functionally superior regularity

is explained *not* by the fact that everyone else does it, but by the fact of its functional superiority.

Ruth Millikan's account of conventions is significantly different to Lewis's; nevertheless, this aspect of conventions rests on a shared understanding which she merely draws out particularly well:

Not all reproduced behaviours are conventional behaviours. Handing down a skill is not, as such, proliferating a convention. I learned from my mother, and she from hers, to open a stuck jar lid immersing it in hot water. Opening jars this way is not thereby conventional. To be thought of as conventional, a reproduced pattern must be perceived as proliferated due, in important part, to weight of precedent, not to its intrinsically superior capacity to produce a desired result, or due, say, to ignorance of any alternatives. (Millikan 1998: 166)

Doping in cycling is much more like the technique of unscrewing a jam jar lid by immersing it in water than it is like the informal convention holding back the peloton if the leader has a puncture: Doping is a *technique*, not a *convention*. So we agree with Moore that "doping was too effective to forego" (p. 424) but we think that this – and not a Lewisian account of coordination conventions is what explains its widespread adoption in the Armstrong-era peloton. Moreover, of course, it is a technique that is banned by the formal rules of the sport. This is why it was carried out covertly rather than publicly, and later we will say something about why this also undermines doping's supposed status as a convention in the relevant sense. In pursuing doping individual cyclists and their teams, and individual doctors and their teams looked for different ways of improving their performance and this was a competitive search for biotechnological developments that would make a cyclist go faster, not an exploration of conventions.

The second line of attack is to accept, for the sake of argument, that doping in the peloton was a convention, and then ask what hangs on this. Arguably, nothing does. Here is Marmor:

[W]e should keep in mind that the fact that a convention is deep does not render it morally or otherwise justified. Some conventions, even deep ones, may be quite problematic, even morally disturbing. Morality, as I have assumed all along, cannot be reduced to conventions. Conventions, by themselves, cannot

determine whether a certain conduct is morally warranted or not. It all depends on the reasons for having the relevant convention in the first place. (148)

So an argument to the effect that doping in the secret race was a justified convention needs to achieve two things: first to show that it is properly a convention, rather than a technique and second, to show that the convention is morally permissible. These two requirements are in tension with each other. Working on Millikan's account of conventions above, it is necessary to show that a regularity in behaviour was adopted not because it was technically superior, but because it was a convention, and doping fails this test. Doping was generally adopted because it was an effective means of enhancing performance.

There is a more general lesson here. To describe some practice as conventional is often to deny its normative force, rather than to explain or affirm such force. The tradition that marriage is only between those of a different sex is a *mere* convention, say its critics. Nothing hangs on it, apart from the weight of tradition. There have been some careful attempts such as by Owens (Owens 2017) to show that conventions do generate obligations just by being conventions. Perhaps we ought to be neighbourly just because there is an established convention of neighbourliness. But such attempts carefully distinguish between the independent power of whatever it is that is obligatory or impermissible and its being a *convention*.

But for now, we will set this argument aside and address conventionalism in the context of sport. According to conventionalism, in addition to the formal constitutive rules of sport there are implicit conventions. D'Agostino (D'Agostino 1981) calls this the 'ethos' of the game. Feezell (Feezell 2004) gets at a similar idea when he discusses the 'prescriptive atmosphere' of a sport. In the third section of his paper, Moore wants to show that the rules of a game can be both informal and formal. Against formalists, he holds, following D'Agostino, that the rules don't just include the formal rules but also the ethos. So, for Moore, a sport is constituted by both its formal plus the informal rules.

However, we need to distinguish here between informal rules that augment the rules of the sport and informal rules which contradict the formal rules of the sport. An

argument for augmenting informal rules - rules that fill in the gaps - does not need to deal with a status conflict between the two. There are plenty of these informal rules, or conventions of the peloton and some of them are discussed by Moore: for example, the convention that a rider ought not knowingly to take advantage of another rider's mechanical breakdown. This mirrors the convention in soccer of handing possession back to a team that has put the ball out of play to enable medical attention to be provided for one of its players. Because these augmenting rules do not conflict with the formal rules of the sport, there is no need to construct a priority argument to cover them. But an argument for informal rules that contradict the formal rules needs a priority argument as well. It needs to show that, when and why one set of rules trumps the other. And, at first sight, the burden of argument would seem to be on those who argue that informal rules can trump formal rules. An anti-formalist argument for the *existence* of augmenting informal rules is not enough for this; the dialectical need is much more burdensome. And it is not clear that D'Agostino would endorse this trumping status in the way that Moore needs, for reasons that will become clear.

The example that Moore uses, again following D'Agostino, is that the official rules of basketball say that it is a non-contact sport. But, as it is played, it almost invariably involves contact. In this way, the conventions that govern the sport seem to contradict its formal rules. And Moore thinks that something like this is also true of the contradiction between the anti-doping formal rules of cycling and the convention that allows doping.

However, there are some striking disanalogies between the two cases. First, take the role of officials in implementing the informal rules. D'Agostino claims that basketball referees provided an official interpretation of the formal rules: the convention "governed official interpretations of the formal rules" (p.420). Were the interpretations of UCI commissaries governed by an informal convention, in the same way that the basketball referee overlooks contact to maintain an exciting sport? No: there was no official sanctioning of doping by *ad hoc* decisions on the field of play. They did not wave play on, even on Moore's account. Rather, they couldn't stop the doping, or find a test for EPO, or they were corrupt in ways that are not relevant to the account of contact in basketball. Basketball referees who wave on the game are not corrupt. The evolution of a sport away from the written rules but in full view of the spectators,

by means of official interpretation is significantly different from the silent and secret doping of the Tour de France even if the officials were culpable and complicit in turning a blind eye.

Secondly, according to D'Agostino, a formal rule which is conventionally altered is still operable:

Of course, when I say that the players and officials (in effect) conspire to ignore certain rules in certain situations, I do not mean to suggest that these particular rules cease to have any possible bearing on the conduct of the game."
(D'Agostino 1981 p. 14)

In other words, D'Agostino holds that in his example, the ethos does not contradict, but limits the application of the rules.

Thirdly, it only makes sense to argue for this view when the spectators, fans and media are excluded, and Moore rather gives the game away with a critical qualification: "I will focus *only* on the cyclists themselves, since they are the ones actually playing the sport and doing the doping." (423, our emphasis). It might be reasonable to argue that conventions can override the official rules and become part of the sport if the spectators, fans and media are in on the understanding, (as they are in basketball). But it is not so reasonable when these parties are removed from consideration and told quite explicitly that there is, or should be, no such convention. The cost of this focus, is to split the Tour de France into two: the advertised, televised, observed, and lucratively sponsored, game; and what Tyler Hamilton has aptly called the "secret race." (Hamilton and Coyle 2013) Moore's coherent claim, therefore would be that in the secret race the dopers were not cheating each other. But that claim would reduce the argument that dopers, including Armstrong, did not cheat to a level of triviality. Trivial truths are not thereby unimportant, and it may be worth directing our attention to them. If the sense in which Armstrong did not cheat is ultimately trivial, and the sense in which he did cheat is ultimately considerable, then an argument to the effect that Armstrong did not cheat is misleading. D'Agostino himself points us towards the basis for the morally relevant difference between body contact in basketball and doping in the Tour de France:

Most habitual spectators would find a game of basketball in which no rule prohibited actions were performed an extremely strange game of basketball.

But such a game is, from the formalist point of view, an ideal game of basketball. We can explain the perceived “strangeness” of such a game only when we take into account the prevailing ethos of basketball, according to which all sorts of rule-violating behaviour is, in fact, “acceptable” (D'Agostino 1981 p. 16)

But it is not the case that *spectators* of the Tour recognised and accepted doping. To see this, we do not need to find empirical evidence from survey data of spectators of the tour. Some were possibly more sanguine and more suspicious about the Armstrong years than the authors of this paper, who were both fooled, if only for a little while. But that is not the main point. Armstrong repeatedly and angrily denied that he had doped and aimed to discredit those who accused him of doping in a vicious way. This is not the attitude that would be expressed by a basketball player ‘accused’ of body contact in a game: they would not say: ‘I’ve been videoed many times, and there has never been evidence of physical contact from me in a game; the person says so is lying, alcoholic, whore.’ But this is, effectively, what Armstrong said. (O'Reilly 2014: 191- 203, 04, 05, 23-53, 54 and passim for ‘lying’, ‘alcoholic’, and ‘whore’)

A basketball player could not do this because the rule infractions concerned are open and transparent to all who watch basketball: they could not be otherwise, given the nature of the violation and the nature of spectating. So these are conventions that *everyone* accepts, that no one hides or could hide, and no one denies or could deny. This is a relevant difference between the two cases, which undermines Moore’s case that the basketball case, and D’Agostino’s reading of it, can be applied to Tour de France doping. This difference further underlines our claim that it is sufficient for cheating that someone breaks the official rules covertly in order to gain a competitive advantage. For in Armstrong’s case, circumventing the official rule covertly was essential to the cheating. We have doubted that enhancing performance by doping, in secret and contrary to the sport’s rules, could be a convention in the sense Moore claims it is. It was, in any case, cheating.

IV

In sum, we have addressed Moore’s titular question ‘did Armstrong cheat?’, initially suggesting that Lance Armstrong’s actions in the EPO era Tour de France are a paradigm case of cheating, and subsequently defending that view by questioning

Moore's argument to the contrary and thus its basis, the standard account. First, Armstrong may not have sought or gained an unfair advantage from doping, depending on how 'unfair' is construed. But this is not necessary for cheating. Second, even if doping was in some sense *permissible* in the special conditions of the EPO era Tour de France, this does not mean that it ceased to be cheating. The erratic or ineffectual application of anti-doping rules, and the associated mass non-compliance with those rules, could in fact facilitate cheating rather than make it go away. And third, doping in the 'secret race' was not a (mere) convention, and even if it had been, that would not mean that it thereby trumped the formal rules and thereby secured normative force.

It may be claimed, then, that we have built our case on an assumption that Armstrong's case is just 'obviously' or 'plainly' one of cheating. And thus, it may be objected that the starting point of our approach is weak, given that we are countering an argument (Moore's) the thrust of which is to unsettle that very presumption. But as we have mentioned already, intuitions about and comparisons of cases, and invocations of how cheat-relevant terms and concepts are commonly employed are, at least in the present context, the only terms in which we can argue intelligibly about what does or does not count as cheating. This point is worth reiterating insofar as Moore seems to agree with it. That is, he is not advancing some sceptical or explicitly radical position on cheating *per se* (either of which would establish quite a different context and different terms of argument). So he is not, for example, making his argument that Armstrong did not cheat from a premise that the concept of cheating is meaningless or indeterminate, nor is he explicitly arguing that the concept 'cheating' is or should be something different from the common-sense concept. On the contrary, Moore presupposes and appeals to our ordinary or common-sense concept of cheating. This, indeed, seems to underpin 'standard' in the standard account which he thinks shows Armstrong did not cheat by doping.

It is in just these terms that we hope to have advanced the discussion which Moore has initiated, and in which we understand Armstrong's doping to be a putative and clear case of cheating which undermines the standard account. It is sufficient for cheating that a cheat covertly breaks the formal rules in the pursuit of competitive advantage. This is exactly what Armstrong did.

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References

- Archer, Alfred. 2017. 'Sporting supererogation and why it matters', *Journal of the Philosophy of Sport*, 44: 359-73.
- D'Agostino, Fred. 1981. 'The Ethos of Games', *Journal of the Philosophy of Sport*, 8: 7-18.
- Fezell, Randolph. 2004. *Sport, Play and Ethical Reflection* (University of Illinois Press).
- Gardner, Roger. 1989. 'On Performance-Enhancing Substances and the Unfair Advantage Argument', *Journal of the Philosophy of Sport*, 16: 59-73.
- Hamilton, Tyler, and Daniel Coyle. 2013. *The Secret Race* (Corgi).
- Hurley, S. L. 1989. *Natural Reasons: Personality and Polity*, (OUP).
- Isaacs, Tracy. 2014. 'Collective Responsibility and Collective Obligation ', *Midwest Studies in Philosophy*, XXXVIII: 40-57.
- Lewis, David 2002 [1969]. *Convention* (Blackwells).
- Marmor, Andrei. 2009. *Social Conventions* (Princeton).
- Marty, Dick, Peter Nicholson, and Ulrich Haas. 2015. 'Cycling Independent Reform Commission: Report to the President of the UCI'.
- McNamee, Mike. 2012. 'Lance Armstrong, anti-doping policy, and the need for ethical commentary by philosophers of sport', *Sport, Ethics and Philosophy*, 6: 305-07.
- Millikan, Ruth. 1998. 'Language Conventions Made Simple', *Journal of Philosophy*, 95: 161-80.
- Moore, Eric. 2017. 'Did Armstrong Cheat?', *Sport, Ethics and Philosophy*: 413-26.
- O'Reilly, Emma 2014. *The Race to Truth: My Story* (Bantam Press).
- Owens, David. 2017. 'Wrong by Convention', *Ethics*: 553-75.
- Pettit, Philip. 2007. 'Responsibility Incorporated', *Ethics*, 117: 171-201.
- Rescorla, Michael. 2015. "Convention." In *Stanford Encyclopaedia of Philosophy*.
- Ross, W.D. 2002 [1930]. *The Right and the Good* (OUP).
- Royce, Richard. 2012. 'Concerning a Moral Duty to Cheat in Games', *Sport, Ethics and Philosophy*, 6: 323-35.

- Russell, J. S. 2013. 'Is There a Normatively Distinctive Concept of Cheating in Sport (or anywhere else)?', *Journal of the Philosophy of Sport*, 41: 303-23.
- Schafer-Landau. 2015. *The Fundamentals of Ethics* (OUP).
- Stocker, Michael. 1990. *Plural and Conflicting Values* (OUP).
- Upton, Hugh. 2011. 'Can there be a Moral Duty to Cheat in Sport?', *Sport, Ethics and Philosophy*, 5: 161-74.
- USADA. 2012. "Reasoned Decision of the United States Anti-Doping Agency on Disqualification and Ineligibility."