

# KINDS OF FAIR PLAY AND REGULATION ENFORCEMENT: TOWARD A BETTER SPORTS ETHIC

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*It is customary for institutions that organize sporting competitions and events to exercise a considerable degree of authority over the participants. That authority is often manifested in the enforcement of penalties for infringements of fair play. This paper focuses on one concrete case from soccer, although I take the discussion to extend to other sports as well. I argue that not all fair play rules should be enforced by the respective organizing institutions, and that enforcing all of them indiscriminately is a cause of injustice, rather than promoting fairness in sports. I propose a principled way of making the necessary distinction between those fair play rules that are enforceable and those that are not.*

KEYWORDS etiquette; fair play; moral obligation; rules; sport

## **Introduction**

Fair play is a significant part of any sporting enterprise; perhaps surprisingly, however, too much care for observing fair play can lead to unfair results for the persons or teams involved. In what follows, I will be arguing against the enforcement (by means of institutional penalties) of a certain type of fair play principle encountered in sports. I will focus mainly on soccer, but the discussion should extend straightforwardly to other sports as well. The structure of the paper is as follows: in the first part, I discuss a particular case of fair play violation, and argue that enforcing sanctions against this kind of behavior is not justified. In the second part, I identify one of the main reasons why the sanctions in question might seem to be justified *prima facie*, even though they are not. That reason is a failure to make a necessary distinction between several kinds of principles of fair play, not all of which should be equally enforced. In the third part, I argue more fully that the particular situation

discussed in part one falls under non-enforceable fair play principles, and defend this claim against objections.

It is also worth stressing what I will not be arguing for in this paper. I will not be making any claims about the essence of fair play, or about the proper definition of fair play. Neither will I be discussing whether the concept of fair play is synonymous with that of sportsmanship, or, if they are not synonymous, what their relation is.<sup>1</sup> Rather, in what follows I will be assuming and deploying an intuitive and ordinary notion of fair play, which is all I need for my arguments. For example, I take it that the case of Luiz Adriano to be addressed in the next section, as well as the doping of Lance Armstrong or Maradona's scoring a goal with his hand against England in 1986, are all straightforward violations of fair play in a quite common and ordinary sense. Some of these examples may involve more than *just* violations of fair play, and some of them may be more *serious* infringements against fair play than others, but there is a clear and minimal sense in which all of them are breaches of fair play.

### **A Case Study: Luiz Adriano**

I will begin by describing a recent event from the world of soccer, which has generated a lot of comments. On 20 November 2012, FC Nordsjaelland (Denmark) played against FC Shakhtar Donetsk (the Ukraine), a match counting for the third round of the most important club-level soccer competition in Europe, namely the UEFA Champions League. The match ended 5-2 in favor of Shakhtar. The incident that makes this particular match remarkable, from the point of view of fair play, is the goal scored by Luiz Adriano for Shakhtar in minute 26. Nordsjaelland, a few moments before, had had a player injured and the referee had

stopped the game while the Danish were in possession of the ball. Since the team that resumed play was Shakhtar, common courtesy dictates that the ball be returned to the team that had it when the game was stopped. Nevertheless, what happened here was that, although one of Shakhtar's players did kick the ball into Nordsjaelland's half, the ball was picked up by Luiz Adriano, who then scored amidst astounded and reaction-less looks from Nordsjaelland's players.<sup>2</sup>

I will not discuss here whether Luiz Adriano was aware or not of the intention of his team-mate to return the ball to the Danish. I will also not address the question whether Adriano cheated. I take it that he breached the principles of fair play, but whether what he did amounts to cheating is a different and more controversial question.<sup>3</sup>

What is important to note is the decision of UEFA's Control and Disciplinary Body after the game.<sup>4</sup> On November 27, Luiz Adriano was suspended for the next game, and required to do one day of 'community football service'.<sup>5</sup> Article 5 of the Disciplinary Regulations was invoked in support of the decision. However, it is somewhat dubious whether article 5 of the Disciplinary Regulations would lend itself to this use. The most plausible part of article 5 to have been used here is letter k) of paragraph 2, where it is stated that the principles of conduct are breached by anyone "who behaves in an unsporting manner to gain an advantage."<sup>6</sup> Article 10 of the same Disciplinary Regulations specifies that "unsporting conduct" may be penalized by suspension from one competition match. It seems, therefore, that UEFA's decision was covered by the rules, and consequently legitimate.

Nonetheless, the case is not so easily dismissed. First, there is the problem of vagueness. The disciplinary regulations are stated in rather vague language, so that it may be hard to say what counts as unsporting behavior at one particular time. Is gesturing toward the

supporters of the other team after scoring a goal and inviting them to keep quiet unsporting behavior or not? Such behavior has never been sanctioned by UEFA, but arguably one could make a case either way.

More important than the problem of vagueness, but related to it, is the fact that there was, in this instance, no precedent whatsoever for UEFA's application of article 5 in this way. This might lead one to conclude that a breach of justice occurred, for the following straightforward reason : any system of regulations that involves the possibility of punishment, if it is to be just to those it addresses, has to make it clear to the potential rule-breakers which types of behavior constitute rule-breaking and which do not. This is the reason why laws are not, ordinarily, applied *ex post facto*.

One might object that UEFA's article 5 did provide for this kind of infringement, so the punishment was not unjust. A lot of philosophers would consider Adriano's actions *evidently and unambiguously* unsporting. These philosophers will therefore not be moved by the preceding kind of argumentation. Nevertheless, the more precise way to state the complaint is not so much that the regulations did not provide for unsporting behavior (they obviously did, and in this the supporters of UEFA are correct), as that these regulations had not been interpreted in this way before. In other words, the case is not so much like cases where a law is lacking altogether or is underspecified. The situation at hand is more akin to cases where the law exists and is unambiguous, but is not enforced. Adultery laws are a prominent example, as are laws against fornication or profanity, in the US states where they exist. Few, if any, people are prosecuted nowadays for these offenses, although the laws have not been repealed.<sup>7</sup> The case of Luiz Adriano is not entirely the same (since people were prosecuted

for adultery in the past, but no one had been penalized for scoring a goal in that manner before), but I believe this is ultimately the more illuminating analogy.

There is another important reason why this penalty incurred by Adriano may seem unjust. It is that other instances of unsporting behavior are not being punished in the same way. For example, playing the ball with one's hand is unsporting, and may give one an advantage in the game. Likewise, diving in order to trick the referee and obtain a penalty kick. But none of these has been punished by UEFA with suspension. A straightforward application of article 5 would require punishing these offenses with suspension, and also sundry more that occur in a soccer match. Consistency in applying the disciplinary regulations would thus lead to over-regulation, and that is indeed a very serious problem. As a matter of fact, all unsporting behavior offenses are provided for in the rules of the game, and may be sanctioned with yellow or red cards.<sup>8</sup> So there does not seem to have been a need, in the case of Luiz Adriano, for further action on the part of UEFA.

That said, there do appear to be cases where UEFA's intervention, after the game, and its punishing the player, is legitimate. For example, suspension for one match or more can befall someone for provoking spectators, pestering or insulting an official, assaulting an official, uttering racial slurs, doping and so on.<sup>9</sup> It would be hard for anyone to deny that penalties for these kinds of offenses are welcome. The referee, during a match, can only do so much to penalize someone for falling afoul of the rules of conduct. Sometimes, as in the situations enumerated above, it does not seem that that is enough, and that is why our intuitions would lead many of us to agree with UEFA that heavier penalties are necessary.

If this is correct, does this not undermine my arguments above concerning Luiz Adriano? If UEFA is right to enforce these sorts of regulations, does it not also have a right

to do so in the case of Luiz Adriano? I believe that the answer to this question is ‘No,’ and that the previous argumentation stands. To see this, however, we need to draw a distinction between different kinds of fair play principles that govern the game of soccer (and other games and sports as well). It is only by paying attention to the distinctions that I am about to describe that we can make sense both of UEFA’s being essentially right to impose sanctions in the cases mentioned above, and of many people’s intuition that what happened in the case of Luiz Adriano was an abuse. In other words, we need to draw a line between the two types of case. The terminology that I am going to detail below is meant precisely to draw such a line.

### **Three Types of Fair Play**

A game such as soccer, I wish to suggest, involves three kinds of principles of fair play. The first I will call ‘FP-1’.

(FP-1) FP-1 principles are principles without which the game of soccer as it is intended to be played could not take place.

The above statement is not aimed at providing necessary and sufficient conditions for something to count as an FP-1 rule. It is meant, rather, to identify a very general (and inevitably somewhat vague) property common to all these rules so as to gather them all under the same rubric. It will shortly be apparent what these rules are.<sup>10</sup> The modality in the formulation should cause no metaphysical distress to anyone. It is only there to draw attention to the fact that FP-1 principles are constitutive of the game of soccer.<sup>11</sup>

But how is it possible, one might ask, that fair play principles are constitutive of the game of soccer? I will provide a couple of examples, and add an important methodological comment. First, the examples: handball is one FP-1 principle constitutive of the game in my sense, because without it soccer would not be soccer as we know it any more, it would be some other kind of activity, where handling the ball with the hand would be permitted. Handball is obviously intended to prevent a player from gaining an unfair advantage over her adversary, and therefore to maintain fair play on the pitch. Fouls constitute another relevant example. If a player is incapacitated and cannot play, that would destroy the game as it is meant to be played. The purpose of the game is not to have players be brutalized, but to have instead a clean game. Without the foul, soccer would be a different sort of activity. The foul, just like the handball rule, is clearly intended to preserve fair play and to prevent any team from enjoying an unjust advantage over the other. Thus, one can think of FP-1 principles as internal to the game of soccer. They are tightly connected to the structure of the game, and are actually a very part of that structure.

And now, a methodological *caveat*: I quoted handball as a constitutive rule of soccer, although this might be disputable. Some may consider it a regulative rule, involving penalties for breaking the constitutive rules. Nevertheless, I am not discussing here the contrast between constitutive vs. regulative rules. I tend to agree with theorists like Graham McFee and Klaus Meier that the distinction is not at all easy to draw.<sup>12</sup> Thus, to avoid complications and unnecessary worries, I will be adopting here Meier's suggestion that regulative rules are best seen as an extension of constitutive rules. So I am using the term 'constitutive' in this enlarged sense. Nothing essential to my discussion hangs on this policy, but it is convenient.

It is to be noted that not all rules constitutive of soccer are FP-1 principles. Rules concerning corner kicks, free kicks, how to start the game, and many others, are constitutive of the game of soccer, but are not particularly addressed to the issue of fair play. There may also be rules whose status is debatable, such as the offside.

Let me now go on to the second kind of fair play principles.

(FP-2) FP-2 principles are principles that are not directly connected to the structure of the game, but whose purpose is to promote an atmosphere of cordiality, respect, and equal opportunity on the pitch (and sometimes outside of it).

It is obvious that these principles are very much like general rules of social behavior. In fact, they are exactly that. There is nothing soccer-specific about FP-2 principles, unlike FP-1 principles. This type of rule is sometimes encoded in official legal documents of the state, and violation of them may lead to fines or even prison sentences for perpetrators. For example, unsporting behavior such as spitting at the opponent or doping, both of which fall under the heading of FP-2 principles, are, in many legislatures, punishable by the law as well. From the point of view of the game of soccer, in which we are interested here, they are clearly fair play rules. It is not fair play (and therefore unsporting behavior) to spit at another person or to use performance-enhancing substances. The same holds for provoking the spectators, insulting an official, shouting racist things at another player, assaulting an official and so on. FP-2 principles are rules that have been imported from general societal conduct and applied to the game of soccer. And rightly so, since soccer is a social activity like many

others, and the same rules should apply (or, at any rate, there is no reason why these rules should suddenly cease to apply in soccer).

Consider the following analogy: one founds a private organization, say a golf-club. The social rules prohibiting lying and cheating continue to hold (and should do so) for this club, even if perhaps they are not stated anywhere in the founding chart. In virtue of that, it would be permissible for the club-council (or whatever regulating body there may be) to exclude anyone who lies and cheats, because they have violated general societal rules that are to be observed by everyone. Similarly, it is arguable that, even if there is some offense of the FP-2 kind that was overlooked by UEFA when they first formulated the disciplinary regulations, they would still be justified in enforcing the rule.

FP-2 principles, external to the game as they are, convey to it a well-defined and recognizable status among other social activities. Thanks to FP-2 principles, the game of soccer is recognizable *as* a serious social activity, as opposed to a barbaric or anarchic endeavor where twenty-two players try to put a ball in a net at any cost. FP-2 principles are, consequently, absolutely essential to the pursuit of soccer as a socially permissible kind of activity. We can conceive of the game of soccer as involving only constitutive rules (FP-1 principles among them), and it would still be recognizably soccer. The social dimension, however, which is encoded in the FP-2 principles, would be lacking. If FP-2 principles were not observed, soccer would not be a socially acceptable enterprise, since concepts such as respect for the other person, or human dignity, would have no place in such a game.

It is worthwhile noting that there are sports which by their very nature violate some of these rules: rugby, judo, boxing, kickboxing and the like. Not even these, however, flout *all* social conduct conventions. Not every kind of punch is permitted in boxing, for example. So,

violent as they may be, these sports are far from entirely lacking FP-2 principles and thereby sliding into street fighting.

There is, however, a third kind of principles, besides the two already mentioned, and this is the one that gets confused with the FP-2 principles and leads to misapplications of the rules of fair play, such as was the case with Luiz Adriano.

(FP-3) FP-3 principles are not constitutive of the game, and neither are they essential for the acceptability of soccer as a worthy social endeavor. Instead, they are rules of etiquette.

FP-3 principles are not required in either a constitutivity sense (like FP-1 principles) or in a social sense (like FP-2 principles). One of their defining characteristics is that they are optional, not mandatory. They are also more transient and subject to change than FP-2 principles, with which they are often confused. Admittedly, I do not have a set of necessary and sufficient conditions for what constitutes a rule of etiquette, either in general or in the special case of sports. Given the fluid character of these rules, it would be very hard indeed to deliver such necessary and sufficient conditions.

One feature that FP-3 principles share with FP-1 principles is that they are both connected to the specific game in question, unlike FP-2 principles, which are not. FP-2 principles encode essential moral principles which are applicable in any social situation. FP-3 principles, on the other hand, are context-sensitive, they are generated, just like all rules of etiquette, by a specific context in which they occur. Table manners, for example, were generated in the context of polite eating at the table. Similarly, the various formulas that are

to be used when addressing nobility or royalty were conventionally generated in those specific contexts, and do not apply in any social situation whatsoever, as does an FP-2 principle such as ‘Do not verbally insult people.’

Some examples from sports will show what I take etiquette in sporting contexts to mean: shaking hands before the game starts, exchanging shirts after the game ends (in soccer), apologizing for a ball that hits the net and falls over on the other side (in tennis), helping an opponent player to get up (if she is down and extends a hand), helping an opponent to get rid of muscle strain by pressing down on her foot, and so on, are all examples of rules of etiquette that players adhere to most of the time. These principles require no special sanctions in case they are violated. The most a player risks by flouting them is appearing rude, or ill-mannered. There have not been penalties in tennis, for example, for not apologizing if one’s ball touches the net and falls into the opponent’s side of the court. Likewise, nobody has been punished in soccer for refusing to exchange shirts at the end of the game. Thus, the infelicity associated with failing to comply with this kind of rule is by no means as serious as that associated with failure to observe the more general FP-2 principles.

It has been suggested that FP-3 principles are not actually a new kind of principle, but should be viewed, instead, as an extension or application of general FP-2 principles to the various sports contexts.<sup>13</sup> FP-2 principles, on this view, would include injunctions against violating the spirit of the game, and while some of these violations are pretty serious (and deserve punishment), some are not as serious and may be overlooked. While I agree that whether something is an FP-2 or an FP-3 violation may ultimately be a matter of degree, I do not think that renders the distinction useless, and certainly the existence of borderline cases does not prove there is no distinction to be made. We need not think of FP-2 principles as

having such forms as ‘Respect your opponent,’ ‘Do not violate the spirit of the game,’ and other such wide and general formulations. If we construe them this widely, then of course the context-bound FP-3 principles will appear to fall under them (you respect your opponent one way in fencing, another way in soccer). My distinction between FP-2 and FP-3 principles is meant, rather, to capture the contrast between ‘Do not be racist,’ ‘Do not punch people for no reason’ (social rules) and ‘Do the fencing salute,’ ‘Apologize for winning the point with help of the net’ (context-bound sport etiquette).<sup>14</sup> It may be that, at some higher level of analysis, *all* of these are expressions of respect in some sense, and so members of the same genus. But that should not cause us to lose sight of their *specific* difference.

One philosopher who is very clear that there is a distinction between the two kinds of principles, although he does not formulate it in the language I have been using, and comes at it from a somewhat different perspective, is Robert Simon. In addition, he also makes what I take to be the same point concerning enforcement that I have been stressing. At one point Simon discusses the case of two golfers, Annika and Josie, the latter of whom, through no fault of her own, arrives at a golf competition without her golf clubs. The question is whether Annika should lend Josie her own golf clubs, and here is Simon’s assessment:

Although Annika should be encouraged to lend the clubs to Josie, and may be subject moral criticism on the basis of poor sportsmanship for not doing so, it is controversial whether she is morally required to make the clubs available to Josie and should be formally punished or penalized for failing to do so, at least at the professional or top amateur level. Failing to lend her opponent the clubs arguably is in a different moral category than, say trying deliberately to disable an opponent or bribing an official. (Simon 2010, 53).<sup>15</sup>

As will be obvious, I agree with Simon that the actions he mentions are in clearly different categories. Simon is correct to point out that there is something strange about the claim that Annika would be morally required to lend her clubs to Josie. If Annika had such a moral obligation toward Josie, arguably that would mean that Josie had a right to Annika's clubs, in the envisaged situation. But how could she have acquired a right to Annika's clubs? It seems implausible that Josie would acquire this right in virtue of having forgotten her own clubs at home.<sup>16</sup> In addition to my basic agreement with Simon on this point, and as concerns the further question of penalization, I am also arguing that not only is this question, in Simon's words, "controversial", but downright wrong.

Starting, then, from this general distinction between FP-2 and FP-3 principles, it is not hard to design a relatively reliable test to check whether something is an FP-2 principle or an FP-3 principle. The test is this: if it is conceivable that behavior regulated by a disciplinary rule in sports is the object of some criminal law, then that rule is an FP-2 principle. If that is not conceivable, it is an FP-3 principle. Two observations are in order: first, the analogy with the legal case is appropriate, since many laws in the criminal code overlap with general moral principles at work in society at large, and are designed precisely to guard society against violations of rules of the kind I have been calling 'FP-2.' Second, the way in which I am using the term 'conceivable' is not to be taken in any broad logical sense. By that standard, anything whatsoever could constitute an object of criminal law. What I mean is rather that, given the social practices a society is engaged in at a certain point, something may or may not be a permissible matter for the criminal law to address. For example, putting two cubes of sugar in one's tea is not (and has probably never been) a matter that the criminal law should

be concerned with. Selling alcohol without a license, on the other hand, does fall within the province of the criminal law. I will return to the application of the test in what follows.

To return to soccer for now, one remark that needs to be made is that there are other rules of etiquette that usually hold in a game of soccer as well as in real life, but since they are not connected specifically to the game, I do not group them with FP-3 principles. For example, spitting on the pitch may be considered to violate a general rule of etiquette, but is not an FP-3 principle, since it has nothing to do specifically with soccer (incidentally, it is also not penalized).

What I have said so far shows in a convincing manner, I believe, that there are these three kinds of principles, and that we do as a matter of fact distinguish between them, and in particular between FP-2 and FP-3 principles. There is definitely a difference between insulting the referee, provoking the spectators or being violent on the pitch, on the one hand, and not shaking someone's hand or not exchanging shirts at the end of the game. What remains to be shown is that Luiz Adriano's action falls under the latter rubric.

### **In Defense of Luiz Adriano**

I hold that giving the ball back to the opponent is an FP-3 principle (and, consequently, not subject to penalization in the way FP-2 principles are). An important piece of evidence for this claim comes from noticing that this rule is closely tied to the game of soccer, and seems thus to be on a par with the other context-sensitive rules of etiquette that I have mentioned, rather than with the much more general social and moral rules of the FP-2 variety. Another consideration in favor of this position is that eliminating this kind of principle would not damage either soccer as a rule-governed game, or its status and

reputation as a civilized social activity. Again, this points to the fact that we are dealing with an FP-3 principle here. The principle does indeed promote cohesion and an amicable atmosphere among the players, but not to the extent that FP-2 principles do. There is nothing *essential* that this kind of rule contributes to the game of soccer as a social practice. Therefore, there is no reasonable justification for enforcement of this rule at the institutional level of UEFA.

A third argument for my position takes into account the test I suggested above as a means of discriminating between the two kinds of rules at issue. Is it conceivable that giving back the ball to the opposing team be made a part of the criminal code? The answer is clearly ‘No.’ This kind of rule could not possibly be regulated by the criminal code. Hence, this is an FP-3 principle. In contrast, things such as bribery, insulting an official or provoking the spectators, which are all offenses according to UEFA, do look like plausible candidates for criminal regulation as well (indeed, many criminal codes include penalties for this type of behavior). They constitute, therefore, FP-2 principles.

One might object, at this point, that the case of Luiz Adriano should be deemed as an instance of a violation of an FP-2 principle, on the following grounds: returning the ball to the other team is an expression of the recognition of a previous imbalance that needs to be set right. The referee stopped the game because one team had a player injured, so they were at a disadvantage. However, this does not sound plausible: in a soccer game, the imbalance created by having an injured player, is not nearly great enough to create serious unfairness in the game. There is ample evidence for this: teams often continue playing in ten (instead of eleven), while the injured player receives medical care on the side. The game does not stop if a team has an injured player, and nobody on that team may complain if the other team scores

in the interval that their own player is out.<sup>17</sup> Given these facts, it is quite irrelevant to the fairness of the game which team has the ball. It is much more likely, as I have argued, that returning the ball is just an expression of courtesy, and not an acknowledgment of any real unfairness.

Another kind of worry one could press against my interpretation of Adriano's case relies on an influential view defended by J. S. Russell, to the effect that the explicit rules of the game are not the only tools in sport adjudication. In 'Are Rules All an Umpire Has to Work With?' Russell argues convincingly that, just like judges in their legal decisions, sport umpires do and should use background moral principles that supplement the explicit written rules. (Russell 1999). These principles have to do with implementing the letter of the law in such a way as is conducive to the integrity of the sport. For example, Russell's first principle of adjudication states: "Rules should be interpreted in such a manner that the excellences embodied in achieving the lusory goal of the game are not undermined but are maintained and fostered." (Russell 1999, 35). Moreover, Russell also argues that there is another crucial principle at work in decision-making in sport, namely "the consent principle," which "preserves games as institutions that reflect respect for persons." (Russell 2004, 147). Now, these sorts of principles could be naturally extended to cover the way in which the Disciplinary Regulations of UEFA are interpreted. Therefore, it might be claimed that Adriano violated one of these principles, and so, most likely, an FP-2 rule.

I will say a couple of things in reply. First, these background moral principles are quite compatible with my analysis of Adriano's case. That is, these principles, in themselves, do not yet tell us which kind of FP rule Adriano violated. This is because the principles themselves involve an unexplicated distinction between an etiquette-sense of lack of respect

for the opponent and a more morally serious lack of respect (similarly, when deciding how to best achieve the lusory goal of the game, one has to pay attention both to etiquette and to more serious moral business). So, the suggestion is that the FP-2/ FP-3 distinction can be replicated at the level of Russell's principles. This observation is not a sufficient defense of my view, however, as it also does not settle where exactly Adriano went wrong. I have provided above reasons why I think he falls into the FP-3 rather than the FP-2 category, but more needs to be said here, which brings me to my second point.

The fundamental difference between me and the objector is that I claim that Adriano violated an all-things-considered minor etiquette rule, whereas my objector believes that he violated an important principle about respect. I will attempt to break this intuition-deadlock by pointing to what I think is the source of it. That source is a certain conception of etiquette presupposed by the objector. On this view, etiquette is a non-moral concept. Since Adriano clearly did not show respect to his adversaries, he cannot have just violated etiquette. However, that is not the only possible view of etiquette. Karen Stohr has recently argued that principles of etiquette are grounded in higher moral principles, which she calls 'manners', and which are expressions of fundamental moral values that we all share, such as respect (see Stohr 2012). If Stohr is correct, then I need not disagree that Adriano was disrespectful of the game and his opponents. But this leaves it open that the kind of disrespect he showed stemmed from a violation of etiquette. The scale of disrespect is a continuum, and my claim is not that Adriano is not on the scale at all, but rather that he is still at the bottom. Since we are dealing with moral failure in both cases (FP-2 and FP-3 violations), it is easy to mistake a lesser degree of culpability for a greater one.<sup>18</sup> This is certainly no knockdown argument, but

I hope that locating the source of the disagreement may render my positive arguments in the beginning of this section more palatable.

Nevertheless, even with these precautions, one may still not be convinced. I can see at least two ways to further the worry that Adriano did something seriously wrong. One would be to argue along the following lines: if play is not stopped, the injury of the player may be made worse, and may even threaten the player's career in the long-run, and this surely is a serious moral matter.<sup>19</sup> This is correct, but the case at stake is different: the etiquette rule requires that the ball be given back *after* the game was stopped and then resumed, and the player has been or is being taken care of (in soccer, the game need not stop while a player is being treated by medical staff, since that can happen outside the pitch). So Adriano was *not* being indifferent to the potentially serious medical consequences of the opponent's injury. As I have claimed, he was merely being rude.

A second way of furthering the objection that Adriano's behavior falls under an FP-2, and not an FP-3 principle, would be to employ one of Russell's more specific characterizations of the consent principle, as the principle that "regulates and sets certain conditions for entry into, and exit from, a game." (Russell 2004, 147). The idea would be that, at the moment Adriano scored, the Danish did not actually count as participants in the game, because they had not yet given their consent to resume the game until the ball was again in their possession. In that case, Adriano would be violating an important principle that defines the conditions in which the game may take place. However, I think this interpretation does not sit well with the empirical evidence. For one thing, according to the rules of soccer, the ball was obviously in play once kicked back by Shakhtar's players. Second, the referee had no power to annul the goal scored by Adriano; it was a valid goal, which indicates, I

believe, that the conventions governing the game, including the consent principle, were back into place. Consider, moreover, what would have happened if, in the attempt to kick the ball back to the Danish, Shakhtar had accidentally scored, say, by some mistake of the Danish goalkeeper. That would have been a valid goal, imputable to the incompetence of the goalkeeper. This indicates, again, that the Danish were participants in the game once the ball was already back in play.

Let me take stock. I have argued that we need to draw a distinction between three kinds of fair play principles, and that enforcing the first two types is essential for the game of soccer. Enforcing FP-2-type principles, I said, is understandable and justifiable at the level of UEFA regulations, because of the kind of social activity that UEFA is promoting through soccer. But there also remain offenses that had better not be enforced at this level. Here, the main argument is the familiar one having to do with over-regulation. Among the offenses that should not be regulated by the disciplinary rules are violations of FP-3 principles. Regulation of FP-3 offenses does not stand or fall with regulation of FP-2 offenses. FP-2 and FP-3 principles are, in general, independently motivated, and should be separately addressed.

An auxiliary argument that might also be offered in favor of not enforcing FP-3 principles is based on the difficulty of implementing sanctions in some situations. For example, suppose one team refuses to give back the ball after an injury. A similar case would be one where a team refuses to kick the ball out when one of the opponents is injured, perhaps because they are pressed for time (this is actually quite common in soccer). Who should be suspended by UEFA? The first player who did not give back the ball or kick it out? (Perhaps he thought his team-mate was in a better position to return it to the other team, in an appropriate region of the pitch). The second player? The entire team? If a team of players is

in any of these situations, and if someone has to be penalized, it seems like all of that team's players who touched the ball should be. But that just seems too harsh. These kinds of questions show that situations such as these can become unmanageable pretty fast. There just isn't any point in trying to come up with sanctions to cover all the possible ways in which things might go wrong on the pitch as concerns FP-3 principles.

The account I have provided of the three types of principles allows us to reconcile the need for regulation of essential offenses, and at the same time to steer clear of the perils of over-regulation.

## Notes

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<sup>1</sup> For these important questions, see, for example, Keating (1964), Feezell (1986), Wigmore and Tuxill, (1995), Butcher & Schneider (1998), Loland and McNamee (2000). There are also some remarkable book-length treatments of the subjects, such as McIntosh (1979), Loland (2002), Simon (2010).

<sup>2</sup> Interestingly, Sigmund Loland and Mike McNamee, at the beginning of their (2000), present a very similar case that occurred in a match between Arsenal and Sheffield in the FA Cup in England. Loland and McNamee are interested in developing a conception of fair play that can handle such cases, and not so much in whether or why it is wrong to have this kind of fair play enforced by an external agency. They too, however, start from the fact that there is obviously something wrong with this sort of behavior.

<sup>3</sup> For the debate on cheating, see, for example, Leaman (2007), Feezell (2004) ch.7, Simon (2010) ch.3. For the reactionary view that the concept of cheating does not pick out any morally relevant action-type, and is not therefore too useful in ethical analysis, see Russell (2013).

<sup>4</sup> UEFA (Union of European Football Associations) is the governing body that regulates all European soccer competitions.

<sup>5</sup> The communiqué can be found at <http://www.uefa.com/uefa/footballfirst/matchorganisation/disciplinary/news/newsid=1899812.html>.

<sup>6</sup> See the Principles of Conduct in the UEFA Disciplinary Regulations (2011).

<sup>7</sup> See Husak 2008, 18, and references therein.

<sup>8</sup> See the FIFA Laws of the Game (2012).

<sup>9</sup> See Articles 10 and 11 of the Disciplinary Regulations. In general, the more serious the offense, the heavier the penalty. Fines are also provided for as a disciplinary measure.

<sup>10</sup> The same kind of comments apply to the statement of the other two kinds of fair play rules as well. One might wonder why my formulation of these principles contains no normative language, since they are after all fair play principles. This is because in these formulations I am *not stating the principles*. I am talking *about* the principles, in an attempt to identify them collectively. Similarly, my utterance of 'Motorcycles are those bike-like metal things everybody's riding around here' is only meant to identify for an audience the class of motorcycles; it is not giving the definition of a motorcycle.

<sup>11</sup> The way I am using 'constitutive' here is not necessarily meant to overlap with Searle's technical sense (adopted by philosophers of sport) as explicated in Searle (1969). My sense is closer to his, however, than to other conceptions (see my comments in the main text). Constitutive rules, according to him, are rules essential to what it means to be playing the game in the first place, and they are to be contrasted with regulative rules,

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which regulate already established playing practices. The history of the use of the constitutive/ regulative distinction is pretty muddled. For an excellent overview and critique, see Carlson & Gleaves (2011).

<sup>12</sup> See McFee's discussion at the beginning of chapter 2 of McFee (2004), and also section IV of Meier (1985). Perhaps McFee is ultimately correct that we should only speak of constitutive and regulative *uses* of rules, depending on the context.

<sup>13</sup> Thanks to an anonymous reviewer for suggesting this.

<sup>14</sup> According to the Olympic rules and regulations, the fencing salute is not optional. This is the kind of etiquette rule that has become ossified and integrated as part of the explicit rules of the sport.

<sup>15</sup> Simon, however, does not talk of such principles in terms of rules of courtesy or manners, as I do. Cf. also Fraleigh 1984, 126.

<sup>16</sup> There may be those who disagree with my going from a moral obligation on the part of Annika to a correlative right that Josie is supposed to have. However, even if we were to address only the issue of a potential moral requirement on Annika and stop at that, as Simon does, the implausibility of such a requirement should already be evident. Since Annika (by not lending her clubs) does not harm anyone and also, apparently, does not violate any explicit or implicit agreement with Josie or the organizers of the tournament, the onus is on the objector to this line of argument to provide an explanation of how exactly this moral requirement is generated.

<sup>17</sup> The only exception, where the game stops, is when the goal-keeper is injured, since a team cannot play without a goal-keeper.

<sup>18</sup> This kind of unnoticeable slide is stressed by Driver (2007). Driver, however, takes the traditional view that etiquette does not encode moral principles.

<sup>19</sup> An anonymous referee suggested this to me.

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