Understanding the transnational legal ordering of global sport through the lens of the United Nations-International Olympic Committee partnership

Abstract

Recent controversies around sport mega-events draw attention to governance concerns in global sport; however, they provide limited insight into the transnational legal orders that shape global sport governance more generally. This paper examines the transnational legal ordering of global sport, with the aim of rethinking dichotomies around "hard" and "soft" law commonly employed in the sociological study of law. Drawing upon findings from a six-year, multi-sited ethnographic study of global sport governance, it analyses different regulatory practices and strategies leveraged by the International Olympic Committee (IOC) in conjunction with the United Nations (UN) in relation to sport, drug regulation and development. In doing so, it unearths complexities and contradictions that emerge in the governance of sport, particularly how transnational legal orders both reveal and maintain conflicting ideologies and interests between UN and IOC agendas. The paper concludes with a reflection on how the sociological analysis of transnational legal orders in sport can provide insights that aid in better understanding the pressing concerns of inequality crystallising around sport mega-events.

Introduction

Recent controversies around sport mega-events highlight the extent to which global sport directly impacts citizens other than sport participants and fans. Protests against the Brazilian government's spending on sport-related infrastructure and security erupted before and during 2014 Fédération Internationale de Football Association (FIFA) World Cup. The securitisation spurred by the World Cup reportedly cost over 850 million U.S. dollars, and, if previous

Olympic Games are any indication, the price of security for the upcoming 2016 Olympic Games in Rio de Janeiro will exceed 1 billion U.S. dollars (Arnold 2014; Fussey, Coaffee, Armstrong & Hobbs 2012). In a similar vein, the 51 billion-dollar price tag of the 2014 Winter Olympic Games is notable; however, the Sochi Games are perhaps better remembered for conflicts around human rights, as Western onlookers and local activists criticised the Russian government's "gay propaganda" laws that criminalised images normalising homosexual relationships.

The examples from Brazil and Russia reveal tensions that arise as nation-states pursue agendas—be they related to security, development or politics—bolstered by sport mega-events. Scholarship critical of sport mega-events calls for further scrutiny of how mega-events are brokered under the guise of delivering economic development (e.g., Fussey et al. 2012; Horne & Manzenreiter 2006; Matheson & Baade 2004). Despite addressing relationships between global corporate entities and national regimes, analyses rarely consider the various legal orders that facilitate sport mega-events. Instead, the nation-state emerges as culpable for failing to provide for its citizens while the role of sport entities remains unclear. This paper offers a preliminary discussion of the governance arrangements in global sport, with the aim of rethinking dichotomies associated with legality in order to glean insights applicable to the pressing concerns of inequality crystallising around mega-events. Recognising that global sport is comprised of corporate, regulatory, state and nonstate actors, I discuss how nonlegal entities contribute to transnational lawmaking in this field. Drawing upon findings from a six-year, multi-sited ethnographic study of global sport governance, I trace the transnational legal ordering of global sport by examining different practices leveraged by the International Olympic Committee (IOC) in conjunction with the United Nations (UN).

The Transnational Legal Ordering of Global Sport

The framework, transnational legal orders (TLOs), aids in understanding how social orders become legalised through mechanisms that transcend national boundaries. It captures the array of actors—private and public, legal and nonlegal—involved in transnational lawmaking. TLOs, according to Terry Halliday and Gregory Shaffer (2014), are a

> *collection of formalized legal norms and associated organizations and actors that authoritatively order the understanding and practice of law across national jurisdictions*. We construe "associated organisations and actors" broadly to include any organization or social formation, including networks. By "actors," we refer both to collective actors and to individuals whose activities and careers cross national boundaries. By "authoritative," we refer to the acceptance of the legal norms as reflected in law's understanding and practice. Nation-states remain central to TLOs (we do not live in a post-national world), but they do not alone define the territorial boundaries of legal ordering.

Legal and transnational dimensions may define TLOs, but they are flexible in terms of territorial scope, the fields they govern and the extent of their influence. As TLOs take shape against the backdrop of globalisation, they are dynamic networks, and their influence can be uneven when considered across space and time.

Because TLOs can be complicated amalgamations, this paper focuses on one influential private-public partnership, the UN-IOC partnership, to illuminate the key tenets of the transnational legal ordering of global sport. Interactions between the UN and the IOC demonstrate how a nonlegal actor, the IOC, enables legal pathways into spaces as diverse as sport, drug regulation and development. They also reveal the hybridity of TLOs. Hybrids bring together "synergies" between hard and soft law, that is, binding and non-binding mechanisms (Trubek & Trubek 2005: 304). In this case, hybrid arrangements refashion the scope assumed of both law and sport, eroding conventional understandings that jurisdiction is

based primarily on hard, or public, law. To elaborate, I discuss two domains in which the UN-IOC partnership informs the development of TLOs: the regulation of athletes' performance enhancement and the use of sport for development programming. These examples are robust TLOs that demonstrate how a global sport actor—and its interests—informs transnational lawmaking.

Anti-Doping Regulation in Sport

Doping is often recognised as undermining fair competition in sport. A global regulatory regime spearheaded by the World Anti-Doping Agency (WADA) aims to prevent, deter, and adjudicate anti-doping rule violations. Governed by the World Anti-Doping Code and backed by the UNESCO International Convention Against Doping in Sport, regulation outlines the requirements and procedures to ensure that government signatories pass legislation that supports WADA's mission.

The UNESCO Convention Against Doping in Sport and the World Anti-Doping Code work in tandem, offering a clear instance where a hybrid arrangement creates binding enforcement mechanisms (Henne 2010). When the Convention came into force in 2007, only 41 states had ratified it, so WADA added clauses to the 2009 version of the Code to ensure that more countries became signatories. The revised Code introduced contingencies that, if not met, lead to the revoking of sport-related privileges, including the hosting of sport mega-events. Article 22.6 of the Code states that a government's failure "to ratify, accept, approve or accede to the UNESCO Convention by January 1, 2010, or to comply with the UNESCO Convention thereafter may result in ineligibility to bid for Events" as well as "symbolic consequences and other consequences pursuant to the Olympic Charter" (WADA 2009: 114). In other words, the IOC, which also funds 50 per cent of WADA's budget, enables the agency to provide incentives and enforce penalties targeting governments. Consequently, the number of State Parties to the UNESCO Convention has surpassed 160.

These arrangements also codify expansive and intrusive regulations that apply to multiple geographic areas and sports. Random drug testing in and out of competition, monitoring athletes' daily whereabouts and blood profiling are now common practice in elite sport. WADA actively encourages innovation to detect new substances and to develop new methods of surveilling athletes. Technology firms and pharmaceutical companies, such as Hoffman LaRoche, which has a vested interest in marketing them for use in sport and other workplace environments, are among WADA's partners. Elite athletes come in direct contact with surveillance apparatuses on a daily basis, and failure to comply with regulatory requirements can result in a two-year ban from sport. Thus, an anti-doping rule violation can stem from ingesting a banned substance or failing to perform one's regulatory duties. Although WADA uses objective tools to detect evidence of doping, the premise upon which it employs them is imbued with Olympic ideologies that pre-date its establishment. Historically, the success of the Olympics has hinged upon the tacit acceptance that Olympic sport is distinct on the basis of its presumed purity versus other professional sports (Keys 2006). Ian Ritchie (2014) characterises the presumption of Olympic purity as a "foundation myth," one that helped to galvanize support for the Olympic Movement during the 20th century. Even though the IOC abandoned its foundational amateur ideals, which purported bodily and moral purity (Gleaves & Llewellyn 2014), a commitment to purity remains embedded in anti-doping regulation. This is evidenced by the criteria used to determine doping. A substance or method must meet two of the following criteria to be considered doping: whether the athlete perceives it to be performance enhancing, whether it hurts the athlete's health and if it violates the "spirit of sport," a vague and subjective criterion (Ritchie 2014). As a result, the host of substances tested for exceeds performance-enhancing

substances and includes many recreational drugs.[1] Further, the use of testing and surveillance maintains a regulatory gaze directed at individual athletes and not the global sport systems that both incentivise and demonise doping.

The hybrid arrangements of the anti-doping regime enable it to bind nation-states, governing sport bodies and athletes to its rules, instilling Olympic ideologies over indoctrinated legal commitments to privacy, bodily integrity and procedural justice (Henne 2010: 316). Its regulatory practices, which are comprised of mostly nonlegal mechanisms typically characterised as coercive forms of soft law, also entail harder, binding features that disrupt traditional dichotomies of law.

The Sport for Development and Peace Movement

The Sport for Development and Peace movement advocates sport and physical activity as a meaningful way to pursue the eight UN Millennium Development Goals. It builds upon UNESCO's 1978 acknowledgement that sport is a "fundamental right for all" and that everyone should be able to participate in sport, play and physical activity. The UN, however, did not formally acknowledge or invest in Sport for Development and Peace programming until 2008, when the UN General Assembly passed Resolution 63/135. The Resolution establishes an international working group on sport for development and peace and a Special Adviser hosted by the UN Office on Sport for Development and Peace (UNOSDP).

The duties of the UN Special Adviser—currently Wilfried Lemke, who has a background in professional football and politics, not development—entail a few key responsibilities:

> to promote sports as an instrument for development and peace both within the United Nations system and externally, and to encourage the establishment of partnerships in this area. There are many high-quality projects underway that use sport as a vehicle to

[1] In Aotearoa New Zealand and Australia, for instance, the majority of anti-doping rule violations stem from testing positive for cannabis metabolites, with bans from sport ranging from 4 months to 10 years.

> promote development and peace. These must, however, function cohesively in order to be effective.[2]

The Sport for Development and Peace movement is not a uniform campaign under the direction of the UNOSDP. An array of actors operate in this space, including sport and non-governmental organisations, national governments, private companies and even the armed forces contribute to sport-for-development efforts. Various stakeholders develop and deliver programs targeting a range of issues, including racial and ethnic discrimination, gender inequality, economic growth, disability, crime prevention, peacekeeping and reconciliation, as well as HIV/AIDS and other health-related afflictions. Many programs pre-date the UN initiative, many as components of larger development and public health projects.

A distinct aspect of the UNOSDP mission is how the IOC emerges as a key partner. To solidify the UN-IOC partnership in this arena, the IOC received Special Observer status in 2009. In addition, two UN General Assembly resolutions supported the 2010 Olympic Games as a means to promote peace, achieve inclusion (particularly for indigenous peoples) and advocate for sustainability. In 2010, the IOC established the first Olympic Youth Development Centre in Zambia, with the endorsement of the UNOSDP. A second Centre opened in Haiti in 2014. The UN also formally endorsed the Olympic Truce, a time intended to be an observance of international peace, during the 2012 Olympic Games in London, even as critics cited those Games as the most militarised to date (Fussey et al. 2012). In short, a number of legal gestures render Olympic sport as an inherent good that benefits development. Some actors within the Sport for Development and Peace movement express strong sentiments about programming sponsored by the UN and IOC, arguing that their efforts are often unsustainable or fail to incorporate accepted development measures to evaluate

[2] UN Sport for Development & Peace: The Mandate', http://www.willilemke.com/content/5/The_mandate.html

outcomes.[3] Specifically, critics cite that the UNOSDP annual reports provide lofty, idyllic language about the "power of sport" without empirical evidence, even though such data are common expectations of development programming and usually required in order to retain funding. Instead, as some sceptical observers note, the infusion of private donor funds into sport-for-development programming ends when sport mega-events move onto other parts of the world. The failure of some well-established development projects in South Africa after the 2010 FIFA World Cup serves a case in point.

In sum, a key point of contention around UNOSDP's endeavours orients around the question of proof and whether the mere belief in sport, particularly the Olympic brand and the resources it can mobilise, justifies large-scale investments. Irrespective of those important concerns, the UNOSDP's influence prevails in part because of its authoritative position, which is reinforced by both the UN and the IOC.

Fashioning Transnational Legal Jurisdiction

Although only a snapshot of the transnational legal ordering of global sport, this analysis provides a more complicated picture of lawmaking than accepted dichotomies would suggest. The traditional notion of jurisdiction as associated with public actors and hard law dissolves, giving way to pluralistic legal arrangements enabled by a host of regulatory technologies that blur the distinctions ascribed to hard and soft law. This observation aligns with contentions that international law now relies on tools, among them statistics and technical measures, which have hardened soft law (Merry 2011). The regulatory maneuvers employed in global sport governance also attest to how nonlegal actors and tactics enable, facilitate and even coerce the introduction of binding interventions. In this case, the IOC, a so-called private entity, adopts various techniques to shape the flow of resources in relation to not only sport

[3] This paragraph draws from data from interviews (n=10) and participant observation conducted in Canberra and the UN Headquarters in New York between August 2012 and June 2013.

mega-events and sport-specific regulatory agencies, but also to more conventional cosmopolitan endeavours such as development.

This hard-soft symbiosis plays an important constitutive role in the fabric of TLOs and the spaces they legalise. Just as importantly, law is not necessarily the dominant regulatory tactic at work. Sport, as championed by the IOC, emerges as a powerful mode of regulation precisely because it is rarely recognized as such. Law, as deployed through regulatory technologies, can work in the service of established IOC agendas, even as it evokes competing interests. In the case of anti-doping regulation, tensions are inherent to regulation, as it upholds values that attribute moral integrity to bodily purity by embracing forms of surveillance, suspicion and punishment that undermine athletes' privacy and bodily integrity. In relation to sport for development and peace, contradictions around the UNOSDP's stated commitment to protecting human rights emerge. For example, even though the IOC claims to support human rights within a development context, the organisation forbid athletes from protesting Russia's anti-gay laws during the Olympic Games in Sochi, making disqualification the penalty for dissent. This is part of a longer Olympic history in which the IOC has squelched political dissent under the guise that sport is to be "apolitical" (Hartmann 2003), and, in many ways, the UN overlooks the IOC's contributions to human rights violations by preserving its partnership.

What, then, are the broader implications of the transnational legal ordering of global sport? A foreboding picture emerges in relation to mega-events. A new requirement for hosting Olympic Games is the delivery of legacy projects. Most prominently championed as a cornerstone of the 2012 London Olympics, legacy projects are to deliver long-term economic, sporting, social and regeneration benefits. Leaders promote such contributions as foundational Olympic values of reciprocity and community building (Tomlinson 2014). They also characterize legacy projects as tools to ensure that host cities deliver outcomes that

reflect Olympic values, rendering them a distinct regulatory technology. Despite their stated good intentions, legacy projects, like other compliance tools discussed here, may hold host cities and nations to account, but they also direct attention away from benefits enjoyed by global sport organisations. This compounds the fact that even though sport mega-events require significant investments by countries, a relatively small group of elites decides many of the terms regarding their governance. These elites are key actors in the transnational legal ordering of sport, attesting to the profoundly undemocratic character of global sport governance.

This observation prompts additional questions about global sport governance: What actors can access and deploy regulatory technologies, and under what auspices do they leverage them? Are there ways to democratise the processes that inform these choices? And, what are the implications for sociological studies of inequality, law and governance?

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