

In Protection of Whose “Wellbeing?” Considerations of “Clauses and A/Effects” in Athlete Contracts

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Abstract

Contractual agreements have become an accepted part of participation processes for athletes in a variety of sport contexts. Closer readings of these contracts, however, pose several questions regarding organizational intentions and motivations, the conceptualization of athletes as “workers,” and representation parity. In this article, we draw on four types of athlete contractual documents from both select international “amateur” and “professional” sport settings. Our key considerations include athletes’ ownership over their image and identities; medical and health disclosures; lifestyle, behavioral and body choices, and restrictions beyond sport; adherence to organizational philosophy and commitments; and social media and publicity constraints. Our exegesis here encourages sport researchers to deliberate whose “wellbeing” matters most when signing that seductive dotted line.

Introduction

For aspiring amateurs, new professional recruits, or established elite athletes, contractual agreements are an accepted (legal) part of the participatory process. The prospect of high-level competition, potential corporate sponsorship opportunities, media representation, equipment and clothing, training support, insurance and health care coverage, and travel and performance bonuses hold tempting promises for aspiring and/or successful athletes. The presence (and approval) of a written contract is often one of the nascent steps in formalizing the relationship between such athletes and their local, regional, national, supra-national, or

international governing sport authorities. Athletes (and their entourages) may be primarily concerned with training, performance, or financial resources, however the possibility of competitive participation is frequently precipitated by (and often exclusively contingent on) the acceptance of a binding pact. Although acting as a symbol of mutual understanding, the nature of contracts is to detail the terms and conditions of the athlete–sport administrator “employment” relationship. Yet, the roles, remits, characteristics, and intentions of the documents are becoming increasingly complex and nuanced as administrators attempt to amalgamate transparent and fair official participation policies in tandem with satisfying judicial duties to protect the organization, stakeholder interests, and associated commercial sensitivities. Sport organizations are, too, designing contracts that not only encompass standard expectations and obligations but also traverse wider restrictions on athletes’ personal/private lives, identities, and moral character. The focus on agency, or lack thereof, within our discussion is intended to help reiterate the political and politicized nature of athletes’ relationships with their respective sport organizations. However, we recognize that in some cases, athletes do not necessarily act of their own accord within contractual negotiation processes but rather may engage in collective bargaining with their peers to advance their shared employment interests and cares. To this end, players’ unions (e.g., Spanish Basketball Players Association, Italian Rugby Players Association, Slovenian Sports Union, Hellenic Professional Volleyball Players Association, and the Latvian Trade Union of Sport and Tourism) can serve as an effective means to advocate for the mutual concerns of particular players/player groups (recognizing here that not all players may share united views). Within agreement processes, and with the allure and prestige of competitive representation at stake, however, athlete’s (unwavering) acceptance of their contracts often becomes a *fait accompli*. Although athletes, or their families, agents, and/or unions, may,

evidently, have some recourse to discuss their agreements, the ways in which sport organizations are using contracts to delimit, constrain, and manufacture the relationship demonstrate that ethical and moral integrity, at the very least, the protection of sportspeople's well-being, may be a subsidiary concern.

Athlete contracts have received attention in recent years as scholars seek to articulate their place in athletes' sporting lives and experiences. Previous research has focused, variously, on the lives of athletes as laborers, neo-liberal ideologies and the commodification of sport-work spaces, regulation and legislation, and, concomitant power relations and ethical concerns (e.g., Connor, 2009; McLeod, Lovich, Newman, & Shields, 2014; Roderick, 2006). At the forefront of this criticism have been examinations to reveal how the context, content, and consequences of contracts affect athlete's relationships with their sport organizations, and their agency and autonomy within their career trajectories writ large. Referring to the National College Athletic Association's (NCAA) tight control of the college sport system and athlete's subsequent entry into the lucrative professional leagues, for example, Wong, Zola, and Deubert (2011) note that stakes for athletes are incredibly high with not just financial incentives on offer but also popularity, prestige, and recognition. Moreover, in addition to being seduced by the allure of greater opportunities, during the amateur into professional transition, athletes may be also confounded by an array of information from a variety of poor and conflicting sources (e.g., parents and family, peers, agents, coaches, teachers, marketing representatives, and sponsors) that make navigating contractual terrain difficult and confusing. In conjunction, the process can also place young athletes under considerable pressure as they are forced to make decisions influencing their long-term careers. Such is the state, Wong et al. (2008) lament, that athletes, and their families, "are woefully unsophisticated and unprepared to navigate the process" (pp. 554-555). Noting the

development of athlete contracts in the United States, Baker, Grady, and Rappole (2012) add that the sport organizations (such as the NCAA) now yield considerable power over the lives and fate of athletes to the extent that the latter have become marginalized in negotiation processes and lack any substantive “bargaining power” or political voice to exercise their free will. As Eckert (2006) echoes, an illusion of choice and voice, contoured by the complexities of the bureaucratic process, essentially masks legitimate and meaningful contractual representation.

For the most part, contracts formalize an exclusive relationship between sport organizations and their athletes. However, the increasing demands of commercialized professional sport have necessitated that sport organizations establish ever-closer corporate partnerships as they seek to adequately resource their athletes, fulfill sporting commitments, and (in some cases) generate revenue to ensure their economic sustainability (Carlson & O’Cass, 2012; Chappelet & Bayle, 2005; Ferrand & Pages, 1999). National Olympic Committees, international and national sport federations, and even local and regional bodies, for instance, often offset limited public funding by seeking corporate endorsements and sponsorship arrangements with domestic, transnational, or international domestic partners. Although such arrangements may seem commonsensical, they also have had implications for athlete contracts, and overall athlete management, as sport organizations become particularly sensitive toward the protection of their commercial enterprises and companies’ all-important brand identity and image. There has, Eckert (2006) attests, been a Hippocratic shift in the focus of sport organizations and their contractual approaches; namely, from doing no harm to the athlete, to doing no harm to their commercial interests. Sport organizations’ corporate fears have, in this regard, led to the introduction, and increasing predominance, of moral and/or character clauses within contracts that although levied at athlete behavior, are,

essentially, designed to protect the sport organization and mitigate any risk (real or perceived) that the athlete might present to their enduring corporate relations.

Moral clauses, and/or clauses that impose restrictions on the character, attitudes, or athlete “conduct” (in particular outside sport), are, Auerbach (2005) notes, essentially a response to the paradigm shift sport–athlete–corporate relationship and the prevalent market-place climate of risk aversion. Such clauses (which we examine shortly) provide the sport organization and/or the corporate affiliate with the rights to rescind the contract or impose financial punishments or participation restrictions on athletes they deem to have brought the body or its business partners into disrepute. With the financial deals between sport organizations and companies often receiving exorbitant figures, the use of such clauses, Auerbach (2005) adds, has become a normalized part of industry practice and a consequence of ideologies in which youth are perceived as morally unstable, immature, potentially/inadvertently disruptive, malleable, contractually naïve, and thus prone to present considerable commercial risk. To this end, sport organizations (in association with the affiliated commercial partners), Auerbach (2005) highlights, are using every more lengthier and articulate clause to counter a wider variety of infringements and risky scenarios. Such broad brush strokes may afford the organization legal scope to deal various athlete infractions; however, the extensive nature of clauses can also serve to obfuscate the athlete–organization relationship and leave the athletes uncertain about the extent of their freedoms, abilities, and responsibilities. The concomitant danger is that with the possibility of lucrative deals on the line, athletes appear willing to embrace whatever contractual conditions are laid out for them, moral and corporate image protection clauses included.

Therefore, the purpose of this article is to re-energize debates that continue to problematize athletes as commodities. Although this has been a topic of discussion in the

literature for several decades (e.g., Ingham, Blissmer, & Davidson, 1999; Roderick, 2006; Stewart, 1989; Vinnai, 1976), it appears from a contractual and organizational perspective, little has changed. Although appearing to act in athletes' best interest (as evidenced by the establishment of athlete commissions, ethics committees, and the Court of Arbitration for Sport), sport organizations have still maintained a dominant hand in contract construction and negotiation processes. Such support, however, is predicted on dealing with athletes and their concerns once they are already in the elite sport system, or at least competing under the auspices of a national organization or professional body. The significance of our approach here is that we focus on the earlier stages of athletes' careers and attend to specific role contracts play within transitional periods that might potentially change athletes' sporting trajectories. Athletes, even with the potential assistance of agents, family members and/or coaches, appear to have little influence over the terms and conditions of their employment without necessarily jeopardizing their contractual acceptance, high performance participation, individual reputation, and rapport with the organization. For us, what shapes athletes' interactions and employment relations with their parent organization *before* they are officially "signed-on" warrants much closer contemplation and critique. Our aim is to present a series of contract clauses that exemplify some of the issues regarding how sport organizations have continued to operationalize their institutional power and exert considerable and questionable authority over athletes' autonomy, lives, identities, freedoms, and behaviors. In doing so, we encourage a reconsideration of athletes' representation and participation in contractual processes, and we advocate sport organizations to better account for athletes' agency in their work.

Conceptual Framework

Our critique is guided by Baker et al.'s (2012) articulations of consent theory, and, Auerbach's (2005) examinations of organizational morality and corporate protection. Regarding the former, Baker et al. (2012) attend to the fairness of the bargaining process and the inequities of representation. They argue contracts comprise implicit bias that privileges sport organizations and the power they yield in the contractual negotiation process. This is referred to as the doctrine of unconscionability. The doctrine of unconscionability (also referred to as unconscionability, unconscionable bargaining [power], or inequality of bargaining power) has emerged as a prominent theoretical framework within contemporary contract law (Baker et al., 2012; Browne & Biksacky, 2013; Hesselink, 2013; Hillman, 2012; McKendrick, 2014; Posner, 1995; Priestley, 1986). Whereby classical contract theory presumes perfect conditions for contractual formation and implementation, that all parties have equitable resources, and that all parties enter into contracts freely and partake in the bargaining process equally, unconscionability accounts for issues of inequity, representation, and consent. Unconscionability, essentially, refers to instances where contractual terms, clauses, and conditions are particularly unjust, and, inherently biased toward one particular party. "Unconscionability is not intended to erase freedom of contract," Browne and Biksacky (2013) remind us, "but to assure that the agreement has resulted from real bargaining between parties who had freedom of choice and understanding" (p. 214).

In understanding how we might advance practices of negotiation and consent, unconscionability is a useful tool, namely, because it acknowledges that signees are to a degree fallible, that is, in this case, not necessarily rational or informed. Moreover, it provides courts with the legal parameters to intervene in contractual disputes. To note, however, unconscionability is concerned primarily with contract construction, negotiation, acceptance,

and the initial consent processes rather than proceeding cases caused when terms, conditions, or party expectations change or are infringed on. Typically, unconscionability becomes a concern when one of the party may be larger, better resourced, have superior or priori knowledge and thus be more informed, and/or have the power and jurisdiction to set contractual conditions (Baker et al., 2012; Browne & Biksacky, 2013; Hesselink, 2013). The emphasis within unconscionability, and indeed what matters in legally determining the grounds of the doctrine, is essentially on evidencing the exploitation of weakness (e.g., as a result of the age or limited experience of the lesser party, absence of priori knowledge, diminished mental capacity, and inability/limited opportunities for negotiation, inequitable resources, and/or severe external pressures). Such a situation creates an imbalanced relationship that runs contrary to good conscience and faith, mutual understanding, and reasonable expectation (Posner, 1995; Yee, 2001). As such, to enforce the contract could be considered unfair.

Browne and Biksacky (2013) identify two types of unconscionability, substantive and procedural. Substantive unconscionability focuses specifically on the unfair terms and consequences that might arise from their imposition. Procedural unconscionability, however, “examines how each term became part of the contract and the actual process of bargaining” (Browne & Biksacky, 2013, p. 221). Procedural unconscionability is particularly relevant in the context of examining athlete contracts and the ethical presumptions and (administrative, economic, political) contextual conditions that precipitate their formation and influence athlete power when consenting. “Procedural unconscionability,” Browne and Biksacky (2013) further, “can result from any of the following elements: (1) absence of meaningful choice; (2) superiority of bargaining power; (3) the fact that the contract is an adhesion contract; (4) unfair surprise; or (5) sharp practices and deception” (p. 222). Unconscionability of this type

often occurs in negotiations between larger parties (e.g., for our purposes, national governing bodies) and individual signees (e.g., athletes). Although inequitable terms and bargaining bias may be evident in other legal processes, unconscionability often occurs in the use of standardized contracts where “boilerplate”/generic terminologies and clauses are used, or, in contracts of adhesion, based on “take it or leave it” principles. The issue with the formation of such contracts is that they do not adequately account for the aforementioned relationship inequities between the parties, appropriately allow the signee to exercise free will, or provide opportunities to fairly negotiate the terms and conditions of acceptance (Browne & Biksacky, 2013; McKendrick, 2014; Posner, 1995; Priestley, 1986).

In sport, the unconscionability doctrine has received only limited attention, primarily from sport law scholars working in the United States investigating inequalities of negotiation and representation between the NCAA and its constituents (e.g., Baker et al., 2012; Hanlon, 2006; Johnson, 2012; Stippich & Otto, 2010). Such scholars argue that athlete contracts, as a distinct form of contract, require closer scrutiny, largely due to the immense and increasingly substantive power large sport organizations (e.g., the NCAA) have been able to yield over athletes and the evidently limited opportunities athletes have available to participate in fair and just contractual construction and bargaining. Recognizing the utility of the doctrine as both a theoretical framework and legal device, Baker et al. (2012) foreground unconscionability within their (sport-related) theory of consent. For Baker et al., the conditions of contemporary sport that hold lucrative participation, association, and commercial appeal for athletes, have created a problematic contractual environment in which fairness, equity, trust, “good faith,” reason, and “informed consent” cannot be guaranteed (Hanlon, 2006; Johnson, 2012). This may lead to the athlete’s passive acceptance of the contracts, lack of understanding of the implications of clauses and e/affects, and potential employment tensions. In response, Baker et al. (2012)

advocate changes including semantic improvements, legal representation, athlete engagement in negotiation, education, and “opt-out” possibilities (to which we will return later in our discussion).

To add to this framework of unconscionability and consent, it is useful also to draw on Auerbach’s (2005) related contractual work on athletes and corporate protection. The prevailing concern for Auerbach (2005) is that sport organizations presuppose a duty of care to athletes but that this moral responsibility is a subsidiary of their predominant obligation to protect their corporate image. In the interests of safeguarding the organization against perceived commercial threats, moral clauses that dictate athletes’ behaviors, ideals, and values have become increasingly central to the contractual process. Auerbach (2005) states,

Morals clauses, also called public image, good conduct or morality clauses are provisions included in an endorsement contract granting the endorsee the right to cancel the agreement in the event the athlete does something to tarnish his or her image and, consequently, the image of the endorsee or its products. (p. 3)

Whereas moral clauses of the past were deemed relatively inconsequential aspects of contractual processes, as professional stakes are raised (*vis-à-vis* endorsements, branding, and revenue generation), moral clauses have become characteristic features of many sport contracts. Against the prevailing neo-liberal context in which protecting corporate partnerships matter, sport organizations are becoming particularly proactive in imposing moral clauses to preserve their lucrative economic relationships.

The issue with this mentality is that it presents athletes as potentially problematic entities. As a result, within contracts, organizations tread a fine line between “clarifying” acceptable behavior that conforms to the institution’s professional ethos versus preventing actions that

could have potentially damaging consequences on the endorsees. Tougher contractual provisions, Auerbach (2005) suggests, may be the supreme safeguard for corporate endorsees; however, such clauses, which we analyze below, evidence an institutionalized/normalized industry attitude in which athletes are conceptualized as morally unstable, potentially problematic, malleable, contractually naïve, and compliant. We are, obviously, mindful here of the ground work done on docent “active” bodies and that within critical legal studies that scrutinizes sport organizations’ regulatory powers and the consequence for protecting and advancing athlete’s interests and well-being (e.g., Connor, 2009; McLeod et al., 2014; Roderick, 2006; Stippich & Otto, 2010). While respecting this scholarship, we find that when used in conjunction with unconscionability and consent scholars such as Baker et al. (2012), Auerbach (2005) helps articulate the inherent issues of morality and ethical concern and care that lay (or at least should lay) at the heart of the contractual process. Irrespective of the corporate and organizational demands that now characterize some individual’s sporting lives, Auerbach (2005; and rehearsing unconscionability scholars here too) essentially reminds us that athletes do not deserve to be marginalized and stigmatized by moral clauses that effectively most serve the interests of the sport organization and its inequitable relationship power. Contract construction and negotiation should, thus, do better at evidencing a genuine concern for the athlete first and foremost.

Method

Due to the difficulties in acquiring these contracts and the sensitive nature of these documents (i.e., several included confidentiality clauses), we sourced four contracts from national sport settings and a professional club: three from the national sport level in three

countries and one from a professional club. Professional contracts, in this instance, referred to employment documents between athletes and professional clubs that are not publically funded. National level contracts mostly related to domestic team responsibilities and reflected funding and support coming primarily from the government via national administrative bodies. Due to the sensitive nature of the data, we have censored identifying elements.

In keeping with the interpretive nature of this work, and the data, an inductive document analysis was undertaken (Bowen, 2009; Fereday & Muir-Cochrane, 2006). Initially, data were coded (i.e., assigned a descriptive label) in light of meaningful words, clauses, and incidents (i.e., meaning units). Both researchers separately coded the contracts. The “meaning units” were then discussed, and the related clauses were compared and contrasted. The coded segments were aggregated in light of commonalities and/or distinctiveness (e.g., media, social media, physicality, health risk, corporate expectations). The resultant topics were collapsed into wider themes of which the “Discussion” section of this article is structured: athletes’ ownership over their image and identities; medical and health disclosures; lifestyle, behavioral and body choices, and restrictions beyond sport; adherence to organizational philosophy and commitments, and social media and publicity constraints.

Data and Discussion

Athletes’ Ownership Over Their Image and Identities

Elite athletes’ bodies undergo regular scrutiny as part of the spectacle of modern sport performance. This said, increased exposure via conventional and new media forms *and* the rampant commercialization of sports practices writ large have exponentially increased

surveillance and critique of athletic bodies and the meanings ascribed to, and inscribed on, their flesh. The preservation and promotion of an athlete's physicality and image, therefore, are of utmost importance. Thus, it is unsurprising, perhaps, that contractual clauses have emerged that address, and in some cases dictate, athletes' bodily forms in addition to merely their function. One of the most significant groups of clauses in this regard relates to athletes' ownership over their image and identities. Clauses that stipulate that the athlete must transfer the ownership of his or her image and identity to the organization were common. For example,

National Contract 1. The [athlete] agrees to allow [the organization] to use the [athlete's] name, image, likeness, voice, performance, and appearance in events or activities (including photographs, film, and recordings of the [athlete's] training, performance and appearance). No use is permitted under this clause whatsoever by any party if such use would be detrimental to the reputation of the [athlete] or otherwise derogatory or offensive.

National Contract 2. The [athlete] agrees not to allow your identity to be used by any party, including your own personal sponsors, for advertising, sponsorship, endorsement, fundraising, or promotional purposes, including on their websites and blogs, without the prior written approval of the [organization's] commercial director.

Here, we find that any opportunities for athletes to have a say over their image and its presentation have been largely removed and any notion of consent has essentially been taken for granted as given. Thus, the assumption here is that the athlete agrees to passively comply and essentially forfeit his or her person. The athletes' acceptance of such clauses could be considered a normalizing practice in the elite sport context in which sport organizations yield

uncompromising authority, which allows them to dictate the terms of participation as they desire. Such clauses imply that all aspects of the athlete relating to his or her person are parts of the “product” to be acquired by the organization. Accepting this logic, aspects of the person that might be considered private, personal, or sacred (e.g., in keeping with some indigenous cultures, this would refer to names, likenesses, and photographic images) are no longer treated as such, rather are crafted as “property” with substantial economic value to the organization, in doing so, significantly undervaluing the symbolic value to the athlete and his or her cultural and belief systems, thus, reiterating Baker et al.’s (2012) concerns regarding the unconscionability and fairness of the bargaining process, and the inherent power imbalance.

Organizations’ contractual controls of the body are even more pronounced when it comes to clauses relating to athlete’s corporal choices and lifestyle behaviors. This is particularly evident with regard to tattoos.

National Contract 1. The [athlete] agrees not to display tattoos that may cause offense or conflict with the commercial partners while carrying out [sport]-related activities (including any activity required of the [athlete] under this agreement) at [competitions] and other events connected in any way with the team.

Guidance notes: Athletes using tattoos to bypass advertising rules relating to the [organization] and the commercial partners will be in breach of this contract. It is recommended that the [athlete] consult with the performance director if he or she has any tattoos that may be displayed, which may be offensive and before getting any tattoos that may be displayed and may be offensive.

The concerns here are not merely regarding the nature and visibility of existing ink but also extend to “potential” consequences, brand damage, and offense that might be caused by tattoos the athlete may acquire in the future. It is not enough here that the organization mitigate the effects of existing tattoos, thus implying that they are willing to partially accept this form of identity expression, but that ultimately, the organization, having already assumed “ownership” of the athlete, has the right to intervene if and when a tattoo may conflict with its brand identity or commercial agendas. Interestingly, these clauses are not a discernable feature of the professional contract we examined.

With clauses such as those above, the issues are twofold: First, tattoos may infringe on or have the potential to disrupt the organization’s commercial relationships; second, that possibly offensive tattoos are problematic to the ethos of organization and the corporate image it wishes to protect. Tattoos are a normative way for people to personalize and communicate *the self*, giving it a positive distinction (Atkinson, 2003; Dickson, Dukes, Smith, & Strapko, 2015; Hawkes, Senn, & Thorn, 2004). However, the clauses here suggest that the right to tattoo acquisition is no longer solely an athlete’s choice beyond the sport context, but rather a potential behavior to be controlled, monitored, and approved as part the organization’s commercial strategies and surveillance measures. Rehearsing Auerbach, tattoos, thus, present a risk to the organization that necessitates contractual mediation. Such opportunities might exist as part of broader negotiation discussions. Nevertheless, the point here is that within the contracts we examined the organizations have assumed that: a) the athlete’s skin is merely an additional entity to be owned and risk to mitigate, and b) that the athlete’s identity expression and wishes remain subsidiary to their intentions.

Medical and Health Disclosures

Further to concerns about the athletes' images and inked exteriors, organizations have extended this interest into the overall quality of the "product" in which they wish to invest, that is, the state of the athlete's body, health, and well-being. For the organization, the emphasis lies in ensuring the athlete, in which they are investing, is at the point of signing in optimum condition and maintains this throughout the duration of their employment. Medical and health clauses, to this end, serve as effective ways to evaluate and monitor athletes' bodies while adding a useful safety mechanism for the organization particularly in cases where the quality of an athlete's physique and well-being might deteriorate and may potentially jeopardize his or her performance. Sport organizations' infringement on athletes' medical and health rights has come under scrutiny in the last decade (Hanstad & Loland, 2009; Møller, 2011; Sluggett, 2011; Waddington, 2010). One predominant area of concern within sport has been the imposition of the World Anti-Doping Agency's (WADA) Whereabouts Programme. The program is designed to monitor athletes' lives in and beyond sport and essentially foster a culture of surveillance that discourages their use of performance-enhancing substances. WADA's initiatives, including the creation of biological passports that detail athletes' genetic and physiological composition and dispositions, have generated condemnation for infringing on privacy and personal freedoms (Halt, 2009; Møller, 2011; Overbye & Wagner, 2014; Sluggett, 2011; Waddington, 2010). The imposition of WADA's various initiatives is symptomatic of the wider institutionalization of anti-doping practice and rhetoric that has come to characterize organizational controls over athletes' health and personal freedoms (Overbye & Wagner, 2014). By extension, bio-surveillance measures such as WADA's activities, and others identified in clauses we examined, appear to be accepted contractual conditions. Against this backdrop, it is evident that the creation and refinement

of medical and health clauses within the contracts we examined serve to further fortify the organizational power sport bodies have over their athletes and the constrained opportunities athletes have, in return, to assert their personal freedoms. The clauses below demonstrate the extent to which the organizations expect athletes to disclose medical and health-related concerns.

National Contract 2. It is an essential requirement of this agreement that the [organization] is kept fully informed if you are suffering any physical or mental injury, illness, condition, or impairment that might prevent you from preparing or competing in the [event] to the highest possible standard. As such, you agree,

- a. to disclose to the [organization] any illness, injury, or condition that may prevent you preparing for, or competing in, the [event] to the highest possible standard as soon as you are aware of it.*

National Contract 3. Any information obtained about you that relates to your fitness or otherwise ability to compete in the [event] to the highest possible standard in the [competition] shall also be made available to the [manager] or his or her nominee. The [manager] also reserves the right to disclose this information to other relevant [committee] personnel where [the manager] considers this genuinely necessary.

As the clauses indicate, the athletes must comply with the full disclosure of their medical histories. However, there appears to be some scope for the athlete to judge and determine what he or she chooses to reveal or conceal. This may seem in the athlete's best interests by enabling the disclosure of information to remain at his or her discretion while concomitantly

demonstrating the organization's interests in the protection of his or her well-being and health. The concern here, as articulated in the National Contract 3 clause, is that the contracts and organization's intentions transcend the conventional privacy of the doctor-patient privilege. No longer are athletes' health privacies protected by medical convention; instead, the ownership of health and well-being information becomes the preserve of the organization that may utilize and freely disseminate it as and when it deems appropriate.

In addition to the acquisition and use of medical and health information, in some cases, organizations have extended their power within contracts to include the ability to sanction athletes whose bodies and behaviors do not conform to expectation. In the clause below, the organization has the capacity to admonish athletes in writing (and thus be on record) for their weight gains (note: no reference here to weight loss). Moreover, the consequences of body infractions extend to monetary fines.

Professional Contract. The [athlete] agrees that if at any time the [athlete's] weight is more than xx kilograms, each time [the organization] shall have the right to admonish in writing the [athlete] and after 15 days, if the weight is not reduced below said limit, to impose on [the athlete] a fine of up to 5% of [the athlete's] annual compensation without bonuses.

Our point here is to highlight that sensitivities and subjectivities surrounding athletes' health no longer are exclusively theirs alone. Not unlike with their image or inking, health knowledge in this case has become divorced from the individual and subsumed as another facet of the organization's authority and becomes a tool in maintaining the inherent power bias in their athlete relations (Auerbach, 2005).

Lifestyle, Behavioral and Body Choices, and Restrictions Beyond Sport

The clauses regarding body control and organization intervention do not stop here. Rather, the clauses extend to manage athlete's lives and behaviors outside of sport. Although the intention of the clauses might be performance-orientated (e.g., by ensuring the athletes' peak performance), they raise concerns about where the remit of the organization ends and the athlete may be separated from his or her sporting obligations and work.

Professional Contract. The [organization] shall grant the [athlete] a minimum of 35 calendar days of holidays per year of duration of this contract. Given the particular characteristic of the activity, said period of holidays should be spent entirely from 1 [month] until 4 [subsequent month] of each year of duration of this contract.

National Contract 1. The [athlete] understands and accepts that [the sport] and other training activities carry a risk of physical injury and the [athlete] agrees to take all reasonable care to avoid causing harm to [the athlete] and others and agrees not to undertake any hazardous or dangerous activities without the prior consent of the [manager] (a "hazardous or dangerous activity" is one that requires special insurance).

Here, we see a shift in the contracts from athletes considered to be potential liabilities to athletes considered to be "investments" needing to be protected. What appears to matter is how organizations use contracts to insure/ensure the quality and commercial viability of their product. Such clauses might also serve as a test of athlete's loyalty and commitment to the "cause." Recalling Auerbach (2005), our examination reiterates organizations' presumptions about the alleged necessity of regulating athletes' possibly wayward lives and the real or perceived threats to the institution's image, identity, and success.

Adherence to Organizational Philosophy and Commitments

An additional part of the organization's ways of protecting its image, and maintaining its influence over athletes' non-sporting lives, has been the development of clauses relating to institutional philosophies, often alternatively couched as "moral codes," "values," "ideals," "mission," "culture," and "ethos." Within the organizations examined in this article, their philosophies generally emphasized the exceptional environment set by high performance/elite participation. Such settings necessitate behavioral, moral, ethical, and principled standards of the highest order. Moreover, they assume athlete's adherence to codes of practice, performance, *and existence* that align with the organization's aims and ambitions.

National Contract 1. The [athlete] recognizes that, as an elite competitor within the [program], [the athlete's] behavior will reflect on [organization] and the sport. Accordingly, the [athlete] agrees to conduct himself in a fit and proper manner at all times during the membership period. Furthermore, the [athlete] agrees that, at all times during the membership period, he will,

- a. make a positive commitment to supporting and achieving the aims and objectives of the [program] and as and when reasonably requested by [organization], use all due skill and ability in promoting the commercial partners.*
- b. project a favorable and positive image of the sport and the [organization's] programs and the commercial partners by adopting high standards of behavior and sensible appropriate dress standards when appearing in public or carrying out duties in relation to the [program]; this includes showing consideration to other travelers and guests when traveling or staying away with [organization's] teams.*

To this effect, 'acceptable behavior', 'conduct yourself in a fit and proper manner', demonstrate 'appropriate respect and understanding', making a 'positive contribution', 'behaving reasonably' and with 'restraint', projecting a 'favourable and positive image', 'maintaining a positive attitude' have become the standard contractual nomenclature. Imbedded in these clauses is a lofty idealistic sporting altruism that restricts individualism and expression.

By complying with the organization's philosophy, athletes are also accepting their roles in the maintenance and development of the business and its brand. As such, contracts, which essentially frame athletes as corporate employees, have been put to use to ensure individuals' commitment, and loyalties extend beyond the performative and service the greater needs and agendas of the organization as a commercial entity (Baker et al., 2012). In the contracts we examined, athletes are routinely obligated to satisfy the organization, and help fulfill corporate relations, by agreeing to give their non-training time, energy, and participation to support "the cause."

National Contract 1. The athlete agrees to engage in a maximum of 8 full days of appearances in any year of the membership period, to include 3 days in support of [the organization's] programs. Attendance at an appearance shall be calculated in half days units of not more than 4 hr each. The [athlete] shall make these attendances where reasonably requested to do so by [the organization], save that the [athlete] shall not be obliged to adhere to any such requests if to do so would clearly conflict with or otherwise impair the performance of his other obligations under this agreement, in particular as to training and competition.

Such a clause echoes our earlier point regarding the extended influence of the organization in being able to shape athletes' lives outside of sport. Here, it appears that participation at the elite level asks more of athletes and their lives than merely performative perfection; rather, they expect athletes to fulfill organizational obligations. Clauses that specify athletes undertake organizational "work" require that they "buy into" the organizational philosophies, become smiling advocates, and willingly accept the institution's ways, while silencing any potential opinions they may have to the contrary.

Social Media and Publicity Constraints

The aforementioned clauses appear designed to ensure athletes appropriately serve the best interests of the organizations they represent. Athletes, whose image and value are built on their sporting success and public popularity, are a key part in how the organization projects itself at the national and international levels and engages with external stakeholders. Within this imperative, impression management matters. In terms of operating a successful business enterprise that has a reputable public image, it thus might make sense for sport organizations to exert tight controls over athletes, specifically in terms of *what* they say and *how* they might represent the brand. In this regard, sport bodies, not unlike those elsewhere, are paying particularly close attention to their Internet presence as their prominent brand interface and the consequences for public relations (Christ, 2007). However, given the rapid growth in social media, in which new technology modes have presented athletes with fresh opportunities for interaction and exposure, sport organizations seem ill equipped to effectively mitigate athletes' actions online. What results, as evidenced by the clauses, is a generic approach that attempts to dictate the terms of e-participation *and* police both real and *perceived* incursions that might disrupt commercial agendas, effect stakeholder relations, and generate public criticism. Sites

and applications such Facebook, Twitter, Snapchat, and Instagram have precipitated the need for organizations to carefully consider how they balance athletes' desires for identity expression, fan interaction and self-promotion, and protecting their own reputation and commercial interests (Frederick, Lim, Clavio, Pedersen, & Burch, 2014; Lebel & Danylchuk, 2014).

National Contract 1. The athlete agrees not to make any public statement, which is derogatory to [the organization], the [program], any commercial partner, or any of the bodies working to promote high performance sport . . . nor to make any public statement, which constitutes a "personal" attack on another sporting competitor. Fair comment on a fellow competitor made without the use of offensive language where the substance of the comment is known (or can be shown) to be true will not constitute a "personal attack . . ."

National Contract 3. Are entitled to make public comment or communicate with the media relating to your personal preparation for the [event], providing those comments or communications comply with the remainder of this clause; not to make or endorse any public statements that may have a negative effect on any member of the actual or potential team either at or in the build-up to the [event].

a. Are not to create an actual or implied connection between any personal sponsors and the [national] team, [organization], its commercial partners . . . in any forum including social media, blog, or Internet platform.

As evidenced by these clauses, the potential for athletes to "misuse" social media represents a considerable liability that warrants proactive mitigation. Such clauses aim to circumvent infringements and legal/economic damage to the organization. Thus, we revert

to an institutionalized mentality whereby athletes are considered volatile, problematic, “risky,” and unpredictable entities whose lives, in and beyond the performative sport context, necessitate manipulation and control.

Rethinking Clauses and A/Effects

Underlying the aforementioned concern over moral clauses, and with the discontent over sport contracts in general, are significant issues regarding athlete welfare. What is important, and what we question, is the prevailing ethical high-ground organizations presume, and the de-centering and marginalization of the athlete in this process. Our suggestions here are guided by the encouragement, too, of Browne and Biksacky (2013) who admit that especially where unconscionability, moral infringement, and “informed” consent are concerned, contract construction and negotiation are an inexact science, and interpretation can be particularly subjective. “There will always be,” Browne and Biksacky (2013) note, “some imbalance between contracting parties in terms of power, wealth, understanding, experience, and information” (p. 255). As such, what is needed is for concerns over individual freedoms, liberties, and agency to be fundamental to contract formation. In practice, they suggest, this means development of improved organizational guidelines that better account for the irrationality and lack of a priori knowledge of the signee and allow possibilities for greater modification and negotiation. Players’ unions and the processes of collective bargaining may offer some opportunities to strengthen athletes’ advocacy in contractual negotiations (and arbitration processes). Yet, the presence of questionable clauses within individual and generic team contracts across sports suggests that more work needs to be done to better understand athletes’ efficacy, experiences, and representational power in these forums.

An effective contract should, at least, be designed to protect both/all parties. As Auerbach (2005) reiterates, sports contracts, certainly with regard to the unconscionability of terms, are fundamentally flawed in this regard. With the participation stakes so high and with the means to elite participation at the discretion of the sport body, the organization is naturally at an unfair advantage in terms of parity of representation in the negotiation process. As the clauses reveal, such a privileged position enables the organization to preserve their best interests, first and foremost, and to conceptualize athlete well-being as both an investment to be stringently protected and their behavior a liability to be moderated.

To crystalize our concerns at this juncture, it is possible to make several recommendations that offer ways we might rethink contractual approaches and enhance athlete–organization relations. One primary recommendation, we believe, should be for the organization to acknowledge the inherent power imbalance that exists as a normalized part of the employment sphere, but that is fortified by the type of contracts they utilize. Toward this end, it appears that organizations have adopted contracts from the corporate world and have made slight modifications to reflect the physical nature of sports “work”; however, as evidenced in the above clauses, these contracts are not a “best fit” for the contemporary sport world. We recommend that organizations consider the purpose of these contracts in terms of the high performance culture and objectives and if the purpose can be achieved via an alternate forum (e.g., athlete workshop, informal discussion). Such a suggestion might go some way in recognizing the athletes’ agency and, consequently, build positive relations between the athlete and the organization. Moreover, this approach might allow the organization to still preserve its public and commercial integrity in tandem with enabling individual’s greater autonomy and opportunity to exercise his or her own judgment and free will. Should organizations not be willing to forego contracts, it is worth encouraging athletes

to negotiate the terms. This collaborative effort will allow for a mutual understanding and appreciation of each others' roles.

In the event that contracts are used, we suggest first, that athletes critically understand what they are signing up to. This may entail taking time to carefully read contracts and seek independent advice but, we suggest, might start with simply more rigorously questioning *why* contracts comprise particular inclusions and exclusions. Sport organizations may be increasingly adept at delimiting their relationships with athletes, yet athletes' compliance and complacency should not be taken for granted. In addition, we recommend then that athletes should also be supported by their representative in understanding their ability and right to object to particular clauses. This is certainly the case if they feel there are clauses that might compromise their individual identity and expression, go beyond the performative requirements of the sport, or push their basic rights, freedoms, and liberties. In addition, athletes should advocate for alternatives to contracts as a way reminding the organization of their agency.

Conclusion

The purpose of this paper was to draw upon contractual clauses as a means of extending previous considerations of athletes as particular forms of workers. In examining a range of clauses across several different sport organizations, it is possible to appreciate the ways in which the non-sport sector employment ethos has manifested itself in the construction of athlete contracts and inherent organization power relations therein. As we have evidenced across five themes—*athletes' ownership over their image and identities; medical and health disclosures; lifestyle, behavioral and body choices and restrictions beyond sport; adherence to organizational philosophy and commitments; and social media and publicity constraints*—our concerns focused on whose well-being contracts essentially protect. Although the

organization might argue that these obligations and duties outlined in the contracts are conducive to the “effective” management of their programs, we argued that contracts implied adherence to the organizations’ respective high performance agendas. Moreover, as these particular contracts indicate, although athlete protection is important, what is valued more is organizational safeguarding. With this in mind, contracts are riddled with assumptions about who athletes are and what they might do. This seems to be a reactive response to risks that are with or without precedent. Building on the theoretical foundations we have outlined (i.e., Auerbach, 2005; Baker et al., 2012), we advocate a move *away* from the athlete as a passive participant in the process, and, *toward* greater acknowledgment of the athlete’s interests in contractual construction, negotiation, and implementation. Our more “radical” hope would be to arrive at a point at which written contracts become superfluous to participatory requirements at the elite level. Such a paradigm shift would need to be precipitated by organizations abandoning their neo-liberal corporate agendas and advancing a more empathetic, trusting, and appreciative approach to athlete care and well-being.

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