

## Editorial

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Ghandi once wrote that there is just the same inviolable connection between the means and the end as there is between the seed and the tree. Ghandi's point was that depending upon which means we adopt the end or result will always be different. We reap exactly what we sow, he said. His aim was to show that only with fair means can we produce fair results.

### **What has all this got to do with doping?**

I am slowly coming to the position that the problem of doping in sport is a symptom of something much deeper. One of the leitmotifs of doping in cycling has been the idea of the *omerta*. The *omerta* has been traditionally used to refer to the silence of the mafia. In cycling it has been a term applied to the custom surrounding cycling's collective silence concerning doping. The collective who engaged in this silence were not simply the professional cyclists but also others involved in the sport such as its administrators and its media.

In recent times the question has been quietly raised as to whether the UCI treats its entire constituency equally in relation to both cyclists returning from doping bans and to cyclists currently facing doping bans. Part of this debate has included whether there exists or not a black list of cyclists who are being, de facto, prevented from returning to top level competition. At the other end of the procedure questions are asked as to whether all, for example, those who were involved in the Spanish police enquiry known as *Operacion Puerto*, are being treated by the cycling authorities in an even handed manner.

In cycling, probably as in other sports, there exists an environment where if you do the right thing by cycling, cycling will do the right thing by you. But one has to ask at times whether this right thing is actually the right thing. There is no doubt that an old boy's network exists within cycling and that it seeks to protect its base. In fact it may be better to suggest that there are more than one old boy's networks, but this is not the point.

As a researcher of the problematisation of doping in cycling one constantly must walk a fine line. One is immediately suspect as it seems the question as to the correct means in the just war against doping are the exclusive domain of the sport's helmsmen. In many ways this simply appears to be another form of the *omerta*. The silence has simply shifted from the question as to whether doping exists to now being a silence as to the means being used to achieve the end. What we are not allowed to ask at the risk of being black listed or at least de facto excluded is the question as to whether the means that are being used in the fight against doping are themselves good means which are in the end going to produce good results?

Gandhi's Truth Force (*satyagraha*) was a unique synergism which included ethical principles found in British law and religion and in Hindu tradition and culture. Gandhi's inspiration from British law was the idea of equity which acts on a person's conscience, binding them to it, rather than acting as a binding legal rule. Central to the idea of the English tradition of equity is the concept of the fiduciary. The concept of fiduciary of course has a history pre-dating antiquity.

The fiduciary is one who must not use their position in order to achieve a profit, benefit, gain or privilege for themselves or for a third party. The fiduciary must avoid at all times a conflict between their duty to those that they owe the obligation and their own self interest. A fiduciary has other obligations flowing from their position of power including to treat those falling within a particular class equally and to treat different classes fairly. They have a duty not to act capriciously or unreasonably. Their overriding duty is one of good faith.

When one is entrusted or one undertakes to act for the benefit of others one relinquishes one's private interests. We see this requirement arising in the case of those involved in affairs of government. They have a duty to their constituency and a duty to avoid using their position as a means to further self interest. Similarly those that are entrusted by their constituency to positions of power in the administration of sport can be seen as having similar fiduciary obligations.

The office holders of national cycling federations as well as the international governing body are not entrusted with their power in order for them to serve

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their own self interests. They too have duties to avoid conflicts of interests and to treat all those that they are elected to serve fairly and equally.

Related to this are concerns of good administrative practice which may invalidate an exercise of power. For example the rules of natural justice or procedural fairness must be followed. Furthermore there are rules relating to the apprehension of bias on the part of a decision maker. Along with this an administrator must always act within the limits of the power granted to them by the rules and acts outside of that power are invalid.

These issues raise questions as to the legality of various circumstances.

For example:

- Imagine if certain parties (for example: managers, directors, riders, sponsors, federations, nations or teams) were in one way or another providing a benefit to administrators or related third parties with the result that the rules are not applied evenly and equally?
- Imagine if certain riders were pursued for infringements whilst others allegedly guilty of the same or similar offence were not?
- Imagine if family members of an administrator was benefitting from a relatives position of power?
- Imagine if an administrator leaked information to the press despite a rule forbidding them from doing so?
- Imagine if administrators decided to skip steps in a procedure, such as not issuing required warnings before a rule violation could be found?
- Imagine if administrators purported to introduce and enforce anti-doping measures knowing that these measures were in fact unenforceable in law?
- Imagine if administrators had knowledge of teams' involvement in doping and knowledge that on being found positive riders' were paid inducements not to publicly disclose the team's involvement?
- Imagine if an administrator made public statements prior to the hearing or an appeal to the effect that a certain rider will never win again?

If one was to accept what one hears on the rumour mill one might be tempted to jump to the conclusion that some of these hypothetical situations were actually based in fact. Some recent events, such as those surrounding

Rasmussen and Valverde, may be interpreted by some as even suggesting that there is some basis to such assumptions.

In any event, if one did come to the conclusion that any of these scenarios had some basis in fact, one would have to then seriously question whether or not cycling's helmsmen were properly performing their duties in good faith. If one was to arrive at this position then subsequently one would have to question whether the means adopted in the just war against doping in cycling were in fact a means which will in the end produce a fairer sport of cycling.