Sport, Human Rights and the Legacy of Pierre de Coubertin

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Abstract

This text seeks to consider the relationship between Baron Pierre de Coubertin, the founder of the Olympic Games in the Modern Era and the promotion of human rights. After an introduction, the text will try to understand how the legal background of Pierre de Coubertin - a reluctant jurist – has influenced his precursory approach of the law-base "Olympic Ethics", being that "ethical asset" inherent in the nature of sport as a human right and the consequent idea of Coubertin to achieve 'sport for all'. The analysis of the legacy of Pierre de Coubertin will then be focused on the following angles: (i) the right to sport as a human right; (ii) the role of sport in the promotion of other human rights (education via sport; sport as a promoter of the right to health; sport and the right to culture; sport and the right to a fair and equitable trial; sport and the right to peace).

Keywords

Human Rights; Olympism; Pierre de Coubertin; Sport

Mestre, A.M. (2022). Sport, Human Rights and the legacy of Pierre de Coubertin. *Diagoras: International Academic Journal on Olympic Studies, 6*, 58–77.

Introduction

Coubertin was born, in Paris, on 1 January 1863, into an aristocratic family, and died, in Geneva, on 2 September 1937, aged seventy-four, destitute and ignored, particularly by his compatriots. He died before the adoption of the major international Human Rights texts, but was born 74 years after the approval of the "Declaration of the Rights of Man and of the Citizen" by the French National Constituent Assembly on 26 August 1789. The fact that he had been both wealthy and with reduced means enabled him to understand the importance of equality between human beings whatever their social status.

It is essential, in order to understand this relationship, to consider de Coubertin's profile as a jurist and the influence of his academic and legal background on his concept of the Ethics of Sport, in general, and of the Ethics of Olympism, in particular. This is because de Coubertin's law-based ethical approach is one of the legacies he left us, which enables us to regard sport as a human right, as stated in the Olympic Charter, but which international legal instruments between states still disregard. These matters are comprised in the first and the second parts of this article.

The third part of this article focuses on sport as an autonomous human right, based on the contribution of Pierre de Coubertin, and goes on to consider another aspect, also on the basis of the French Baron's ideas and work: i.e. sport as an instrument for the promotion of human rights.

1. COUBERTIN: FROM RELUCTANT JURIST TO THE PRECURSOR OF LAW-BASED "OLYMPIC ETHICS"

The relationship between Pierre de Coubertin and law starts with the fact that the Baron was a law graduate. However, this academic background was in no way the realisation of any of his various ambitions.

According to Louis Callebat (1988, 13), Pierre de Coubertin's matriculation at the Faculty of Law was solely a matter of family tradition, and it was this that led Coubertin to study law, out of respect for his father, Baron Charles Fredy, who was a respected jurist and a judge. The study of law was therefore not Coubertin's choice, vocation, or an ambition with a view to a successful future professional career.

However, Coubertin was also the indirect author of this decision, because his parents insisted that he study law, when he refused to follow a career in the army, i.e., when Coubertin was confronted with the typical career options of young men of his social class, i.e. the army or the law, he Coubertin resolved the dilemma by choosing the law. However, this option proved burdensome, for, as Coubertin confessed in his Memoirs: *"I hated my law studies. Not only because they were boring but also because they were humiliating. I did not attend a single class. I went to the faculty to matriculate. It was a torment to have to wear the black gown with a white hood that examinees were required to wear on the day of the annual examination. Only God knows how I suffered!"*

Coubertin's rejection of the law naturally did not affect his lucidity and sang-froid and caused him to reject the role of law in his Olympic project. It would not be feasible for a sport and social project of such magnitude to be created without the assistance of law and its inherent coactivity.

Nevertheless, Coubertin always resisted the abundance of rules. Primarily, in order to defend the autonomy of sports organisations,

which is still frequently asserted, about which Coubertin stated *"the more regulations they adopt, the more constrained they become. Give Olympic organisations some flexibility."*(Monique Berlioux, 1970, 2). Likewise, and perhaps with the benefit of his albeit reluctant legal training, Coubertin advised the various countries regarding the risks that could be incurred via the adoption of *"complicated legislation, which is full of commitments and contradictions"* (Salomé Marivoet, 2007, 44). Coubertin's profile was undoubtedly that of a leader, who introduced as few rules as possible. For example, it was only in 1908 (12 years after the emergence of the Olympic Games of the Modern Era) that the International Olympic Committee was created, which worked for 14 years with very few regulations that governed either its internal organisation, or, more importantly, the holding of the Olympic Games.

In the recent 2020 Tokyo Olympic Games, which were postponed to 2021 because of the pandemic, the oath made by players, athletes, trainers, and referees, was altered, in accordance with a recommendation made by the Olympic Athletes Commission, to include the words *"inclusion"* and *"equality"*, so as to read as follows: *"We promise to take part in these Olympic Games, respecting and abiding by the rules and in the spirit of fair play, inclusion and equality. Together we stand in solidarity and commit ourselves to sport without doping, without cheating, without any form of discrimination. We do this for the honour of our teams, in respect for the Fundamental Principles of Olympism, and to make the world a better place through sport."* Anyone, who heard this oath during the opening ceremony of the most important sports event in the world, or who has just learnt about it by reading this, will say that it is difficult not to be cynical about such declarations, and to regard anyone, who believes in the purity of sport, in general, and in the Olympic ideals, in particular, as ingenuous, given the frequent negative news stories about sport. However, the reason for such an oath can easily be understood, i.e., it is necessary to strive for ethical and non-discriminatory sport.

These efforts are not a recent phenomenon. The need for such efforts was already recognised by Pierre de Coubertin, who, in 1920, introduced an Olympic oath in the following terms, at the Olympic Games of the Modern Era: *"I promise, in the name of all competitors, that we will participate in these Olympic Games, while respecting and obeying the rules to which we are subject, in the true sporting spirit, for the glory of sport and the honour of our teams."*

In 1920, there was none of the commercialisation, professionalisation, or globalisation of sport that exists today, which gives a lie to the idea that fraud and inequality in sport are a consequence of the fact that sport has moved away from amateurism and minimal massification. This conclusion leads us to ask why the self-same Coubertin, who exalted these principles, rules, and values as inherent in sport, considered that the athletes' oath was of fundamental importance? The truth is that the oath was one of the aspects that Coubertin took from the Olympic Games of Antiquity, and revived. He certainly did this because he understood the timelessness of the need to commit to the rules.

In 776 B.C.E., athletes, coaches, judges, relatives, friends, aliptas (slaves who anointed the athletes) and alitas (guards) had to take a solemn oath before an imposing statue of Zeus, "Sovereign of Olympus", the "Oath-God", and over the palpitating strips of boar flesh that were offered to him. According to Pausanias, the oath had the following text:

"Beside this image it is the custom for athletes, their fathers, and their brothers, as well as their trainers, to swear an oath upon slices of boar's flesh, that in nothing will they sin against the Olympic Games. The athletes also take an additional oath that they have complied strictly with the training regulations for ten successive months. And that they will not have recourse to magical or unfair procedures. An oath is also taken by those who examine the boys, or the foals entering for races, that they will decide fairly and without taking bribes, and that they will keep secret what they learn about a candidate, whether accepted or not."

By their oath regarding sport-related, ethical, and deontological issues, which has an effect similar to a formal preventive adhesion, or incorporation, procedure, sportspersons were effectively subjected to the rules, on pain of perjury. The function of oaths in sport, and in other areas (i.e., in medicine, in the case of the famous Hippocratic oath) was to consolidate and strengthen contracts. Oaths were a more intensive and effective form of self-commitment, in the presence of witnesses, and a guarantee, and a subjection to divine authority, in the event of breach.

We can now understand that the awareness that sport can involve unethical conduct dates back to the earliest days of sport competition in Ancient Greece, and that conduct that sought to vitiate competition results existed in those days, so that the oath was a preventive measure employed to combat such undesirable conduct. The matter essentially at issue was corruption, as violence was uncommon, and doping did not yet exist. Filostratus explained this phenomenon as a loosening of customs and a pleasure-seeking attitude that arose among athletes, because of their corrupt lust for money, and the consequent practice of buying and selling victories. The situation was also vitiated by the conduct of coaches and representatives, who had little concern for their own ethics, or the ethics of athletes, and whose major concern was their own gain. There is also another possible explanation, i.e., some athletes, who were accustomed to a luxurious life, preferred to lose the Games voluntarily, in exchange for a good bribe. There is also another possible reason: corruption did not result in the forfeiture of the winner's title and crown, even though it involves a heavy penalty. Furthermore, we cannot overlook another aspect that could explain this corruption, i.e. the rivalry between cities, and political disputes, as the crowning ceremonies involved the exaltation of the athlete, his father, and the city/community to which they belonged. An even more simple explanation, given by the Greek philosopher Lucianus, also cannot be excluded, i.e. that corruption could simply be a consequence of an athlete's dishonesty, of the desire to win at any price, or of despair that caused the athlete to cheat. This explains why, notwithstanding the oath, there were various cases of corruption in the Olympic Games of Antiquity, all of which resulted in the imposition of penalties by the Olympic Senate, which were duly publicised, for the purposes of transparency, deterrence, and prevention.

Coubertin, who based himself on history, which he valued much more than law, understood the need to retain and preserve the oath, for the reasons stated, and in terms very similar to the original, particularly in the context of modern sport that will always attract more corruption. For, while corruption has apparently been inherent in sports competitions since the earliest days, there was then only one winner, and no records, unlike the Olympic Games that Coubertin revived.

Coubertin's motives can therefore easily be

inferred. Namely, that the prior assumption, by the sportspersons involved in the Olympic Games, of an obligation to comply with the rules, would ensure compliance with Sport Ethics and Olympic Ethics prior to the Olympic Games.

2. THE "ETHICAL ASSET" INHERENT IN THE NATURE OF SPORT AS A HUMAN RIGHT: PIERRE DE COUBERTIN AND "SPORT FOR ALL"

2.1. Human rights: the concept and legal protection of it in international law

The United Nations (UN) defines human rights as *"universal legal rights that protect individuals and groups from the acts or omissions of governments that infringe human dignity."* (http://gddc.ministeriopublico.pt/pagina/o-que-sao-os-direitos-humanos). Human rights are therefore a series of rules that are intended to defend the human person against abuses of power by the state bodies". "The basis of the concept of human rights is the concept of the inherent human dignity of all members of the human family". The "principle of human dignity, is essentially a general and reciprocal duty, of each person in relation to all other persons, and a duty to respect their dignity" (Irineu Cabral Barreto, 2015, 7).

Human rights are universal, inalienable (no one, other than the existing legal order, may deprive anyone of the said rights), indivisible or inseparable, interdependent or complementary, irrevocable (cannot be abolished), non-transferrable to third parties, and cannot be renounced or waived.

Human rights are crafted by the constituent legislators as fundamental rights, and are defined as such in the international human rights instruments. Human rights are overarching in relation to the internal constitutional legal order, as autonomous personal rights, which are guaranteed by international law.

Human rights can be placed in different categories, i.e. human rights that are intended to ensure freedom, which are referred to as first generation human rights, rights that seek to establish equality, which are called second generation human rights, and third generation human rights, which enshrine the aspiration of fraternity and solidarity. When considered in greater detail, civil and political rights are first generation rights, i.e. the right to life, the prohibition of torture, degrading treatment and slavery; and the non-retroactivity of criminal law; economic, social and cultural rights are second generation rights, e.g. the right to education, the right to participate in cultural life; and the right to benefit from scientific progress; the new rights, or third generation rights, include the right to a healthy environment; the right to development; the right to peace and security; and the right to the common heritage of mankind. However, there are schools of thought that identify fourth generation rights, i.e. rights that claim new social models. These rights include technology society rights and also, for example, matters related to biology/genetics.

There are various international protection systems in the international human rights framework, which are as follows: the worldwide system, on the one hand, and regional systems, on the other, i.e. the European system, the European Union system; the US system, and the African system. There are various regional organisations that issue human rights rules, such as the United Nations (UN) and its specialised agencies, the Council of Europe, and Organisation of African Unity, which is

now called the African Union.

Given the international nature of these organisations, there are many multilateral treaties that protect human rights, which include general and more sectoral treaties. These multiple sources combine in the various systems referred to above: i.e. in the universal system, within the UN, of which the primary instrument is the 1948 Universal Declaration of Human Rights (UDHD), although it is not legally binding. The international regional protection of human rights, essentially involves the following:

(a) In the European system, of the Council of Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms, the 1950 European Human Rights Convention (EHRC), which is particularly important, alongside other important sources, particularly the 1966 International Covenant on Civil and Political Rights (ICCPR), and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), which give binding legal effect to human rights and guarantee many substantive rights.

(b) The relevant instrument in the European Union system is the 2000 Charter of Fundamental Freedoms.

(c) In the American system, within the ambit of the Organisation of American States, the relevant instrument is the 1948 American Declaration of Human Rights and Duties.

(d) In the African system, within the ambit of the African Union, the primary instrument is the African Charter on Human and People's Rights, which was issued by the Organisation of African Unity, which is now the African Union, in 1981.

2.2. The Right to Sport as a Human Right

> *"The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play." (Olympic Charter, Fourth Fundamental Principle of Olympism)*

According to natural law theorists, sport is inherent in human beings, because of its essential nature: human access to sport cannot therefore be subject to the whim of legislators, or the opinion of the majority. The Right to Sport always exists, and human beings, because of the essential nature of this right, are always entitled to it. The inclusion of the Right to Sport in international and other legal instruments is therefore merely declarative. Accordingly, and according to this position, sport must be considered to be a human right. Likewise, if we follow the legal theorist Pierre de Collomb (Korcha, N. & Pettiti, C. 2003, 47), who maintains that sport is a human activity in the fullest sense of that term, because it is in sport that humans engage their most precious asset, i.e. their bodies, we will probably reach the same conclusion that sport should be considered to be a human right.

An identical conclusion can be reached on the basis of the statement in the Introduction of the *World Player Rights Policy*, adopted by the World Players Association: *"Players are first people and then players (...). Consequently, players are at the intersection between sport and human rights"*. This view of players is supported by the French legal theorist Jean-Pierre

Marguénaud (2003, 43) according to whom sport organisations, cannot, on the basis of the *Lex Sportiva*, surrender to the temptation to operate in a closed circuit, and evade the influence of human rights, as if sportspersons were somehow not primarily people.

It follows therefore that if sport is deemed to be inherent in the human person, and, as we have seen, there are various ways to reach that conclusion, the Right to Sport can be seen to be based on the fact that sportspersons are human beings, who have the right to practice the sport of their choice (Jean Morang 1992, 6), and who are also entitled to invoke human rights in their defence.

However, it should not be thought that this position is generally accepted. If we refer to those constitutions that refer to sport, it will be seen that many of them do not consider sport to be a fundamental right. Furthermore, there are many countries whose constitutions do not even refer to sport.

Moreover, some important court decisions have rejected the view that the Right to Sport is a Fundamental Right/Human Right.

Firstly, the French Conseil d' Etat has already decided (Ordonnance du CE, 22 Octobre 2001, no. 239194, D. 2002, 2709) that neither the right to practice sport, nor the right to participate in sports competitions, are fundamental freedoms, as understood by the law (article 521(2) of the Code of Administrative Justice), notwithstanding the fact that they are a matter of general interest recognised by law, particularly in the case of high-performance sport.

It has also been decided in the United States of America (James A.R. Nafziger, 2004, 130-131) that there is no right to compete in organised sport competitions. This occurred in a country, where Congress refused to legislate a right of athletes to compete internationally, but rather chose to refer to an "opportunity" to participate (Idem, p. 324), when it was called on to counterpose the right of athletes to choose the sport in which they want to compete, on the one hand, and "organisational rights" that decide the eligibility of an athlete (or of a team to which the athlete belongs), to compete in a competition (on the basis of factors such as age, weight, status (i.e. amateur or professional) or, the athlete's performance, on the other hand. The World Anti-Doping Code is a relevant source regarding these eligibility criteria and refers to the issue of whether the athlete is, or is not, suspended from participation in an event because of infringement of anti-doping rules, when the *"fundamental right of sportspersons to participate in sports competitions"* is restricted (World Anti-Doping Code, *"Purpose, Scope and Organization of the World Anti-Doping Program and the Code"*).

The issue of the relevance of eligibility rules in this debate, is also clear in a CAS decision during the Sydney Olympic Games (Arbitration CAS Ad Hoc Division (O.G. Sydney) 00/001 United States Olympic Committee (USOC) and USA Canoe/Kayak/ International Olympic Committee (IOC) Award of 13 September 2000, According to CAS, *"there is no "justice" rule in the Olympic Charter which provides that the practice of sport is a fundamental human right, which would, in any event, create an external limit to Olympic ineligibility.*

Two additional matters are noteworthy regarding the Olympic Charter.

Firstly, the text of Rule 44.3 of the Olympic Charter: *"Any entry is subject to acceptance by the IOC, which may at its discretion, at any time, refuse any entry, without indication of grounds. Nobody is entitled as of right to participate in the Olympic Games."* A word to the wise...

Secondly, a relevant decision of the IOC Ethics Committee regarding a previous decision of the Management Committee of the FIVB (International Volleyball Federation) regarding the suspension of the Argentinian Volleyball Federation and the resulting suspension of its players from all regional, or world, competitions, i.e. the temporary suspension of the exercise of their Right to Sport, entirely for administrative reasons and when the said players were not guilty of any offence in relation to the FIVB. The Ethics Committee's decision contains the following passage: *"The Ethics Committee draws attention to the fact that the right to sport is a fundamental principle and that this right, as recognised and stated in the Olympic Charter, should not be confused with idea of "sport for all", but extends to all levels of sport, including so-called high-level or international-level sport. (...) the Fundamental Principles in the Olympic Charter do not give rise to an unconditional right to participate in competitions; consequently, each International Federation may determine the limits of the said right to participate in competitions, subject to the proviso that the said limits must not be contrary to the Fundamental Principles"* (CAS no. 3/03). Here too there can be no doubt: there is no right to participate in Olympic Games, and this example can be transposed, *mutatis mutandis*, to other sport events. Accordingly, this right is limited by the eligibility rules regarding participation in events.

Accordingly, while it is clear that the eligibility rules are inapplicable in a non-competitive context, which would certainly open up the possibility that the right to ludic, recreational, and informal sport is a human right, it is nevertheless true from the matters just described that it is not clear, or generally accepted, that sport is a human right, *per se*.

It may well be, given the matters described above, that one of the reasons that helps to explain this situation is the fact, referred to in detail below, that sport is never expressly codified in International Public Law instruments as a human right. For:

There are no Public International Law instruments in which sport is expressly codified as a human right. A "Universal Declaration of Human Rights" (1948) (UDHR), which is the foundation of the international human rights defense system, refers to *concepts such as "well-being"* (Article 29(2) and *the right of "every person" "to leisure activities"* (article 24), but does not refer to sport. Prior to the UDHR, the "Complement to the *Declaration of the Rights of Man*" (1936), *which was produced by the League of the Rights of Man and Citizen, refers to "time for leisure activities"* in the context of the "right to life" (article 4), but without any express reference to sport. The "International Pact on Economic, Social and Cultural Rights" (1966) and the "African Charter on Human and Peoples Rights" (1981) (articles 12(1) and 16) likewise only refer to a right to sport implicitly, when they prescribe that "Every individual shall have the right to enjoy the best attainable state of physical and mental health". Even in more recent texts, e.g. the "European Union Charter of Fundamental Rights" (2000), in which sport might be expected to be a priority, sport is not mentioned.

Curiously, specific intergovernmental instruments such as the "Geneva Convention Relative to the Treatment of Prisoners of War" (1949) enshrine the right to sport in the following terms: *"the Detaining Power shall encourage (...) sports and games amongst prisoners"* and *"shall take the measures necessary to ensure the exercise thereof"* and provides that *"Prisoners shall have opportunities for taking physical exercise, including sports and games"*.

Similarly, a Resolution of the UN Economic and Social Committee (1977) provides that *"Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits."* (Rule 21 (1))

There are also three other important UN human rights conventions: i.e. the "Convention on the Elimination of All Forms of Discrimination against Women" (1979), according to which equality between men and women presupposes *"The same opportunities to participate actively in sports and physical education;"* (Article 10(g)); the "Convention on the Rights of the Child" (1989) which provides the right of the child *"to rest and leisure, to engage in play and recreational activities appropriate to the age of the child"*. the "Convention on the Rights of Persons with Disabilities" (2006) which provides measures to be implemented by states in order *to permit persons with disabilities to participate in recreation, leisure and sport on an equal basis* (article 30).

It is understandable, from a historical perspective, that sport was not seen as a priority, so that the right to sport was not viewed as an autonomous right, but rather as an ancillary right, or as a part, or consequence, of other rights. In other words, sport does appear in the main binding International Public Law instruments as a personal right, but is referred to either tacitly, or expressly, as a means to exercise other human rights, or as a means to affirm and protect other human rights.

Soft *law* intergovernmental instruments that refer to sport also have a relevant role, e.g. the "UNESCO International Charter of Physical Education and Sport". Article 1 of the 1978 version of the Charter, which is entitled *"The practice of physical education and sport is a fundamental right for all"* provides in Article 1.1 that *" Every human being has a fundamental right of access to physical education and sport, which are essential for the full development of his personality."* The 2015 version of the Charter adds *"physical activity"* to the material scope of the right, which is expressly stated to be *"a fundamental right of access"*, and makes an increased stress on the principle of equality, as expressed in non-discrimination. The "European Sports Charter" (1992), which was issued under the auspices of the Council of Europe, requires states *"to enable every individual to participate in sport"*, in line with the approach originated by the "European Sport for All Charter" (1975), according to which *"Every individual shall have the right to participate in sport."* (art. 1).

It is therefore notable that there is no express enshrinement of sport as a human right, at state level. As noted above, such a provision can only be found in the Olympic Charter, a document issued by the International Olympic Committee (IOC), a non-governmental body. The Olympic Charter, in the felicitous text adopted in July 1996, defines sport as a human right, in the following terms: *"the practice of sport is a human right.* Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play." (Fourth Fundamental Principle of Olympism). Secondly, the *"Defence of and respect for human rights"* is one of the operational requirements that must be implemented by the Organising Committee of the Olympic Games, cf. *"Host City Contracts Operational Requirements"* (June 2018).

2.3. The Right to Sport as a Human Right: the legacy of Pierre de Coubertin

It must be concluded, in the light of the matters stated above, that legislators seem to

be unaware of what the Spanish legal theorist Rafael de Asis (1989, 2-3) notes in excellent terms: *"In any event, the consideration of sport as a human right means that it must be considered to be an ethical asset and have a basis in law. Accordingly, if sport is to be considered a human right, it has to be presented as a justified moral pretention and be linked to a legal provision. (...) traditionally it has been considered to be an ethically relevant activity (dignified human life, free development of the personality, an instrument that satisfies fundamental legal assets...)".*

As we stated above, Pierre de Coubertin saw a perfect and necessary symbiosis in the link between law and the Olympic Ethic. This provided a very solid basis for the claim that sport should be enshrined as a human right in international state legal instruments, just as it is enshrined in the Olympic Charter.

Coubertin had a view of Sport and Olympism that was marked by egalitarianism and universalism.

As far as egalitarianism is concerned, Coubertin's thought was in line with what is now referred to as "Sport for All", i.e. the idea that everyone, without exception and without unjustified discrimination of any type, is entitled to practice sport: *"Sport is not a luxury object, or an activity for the lazy, or even a muscular compensation of brain work. Sport is a possible and non-work-related source of internal perfection, for everyone. Sport belongs to everyone equally and nothing can replace it when it is lacking. The same can also be said from an ethnic point of view: sport belongs to all races."*

For, as Patrice Cholley (1996, 10) stresses, egalitarianism is one of the fundamental ideas in the educational and social thought of Coubertin, and is also the basis of the principle of the systematisation of sport and the promotion of sport at all levels. Regarding this the said author cites a relevant thought of Coubertin, which, we think, demonstrates that sport places the aristocrat and the plebeian on the same level, to a certain extent: *"The advance of sport irritates the defenders of class war and is sympathised with by those who seek more peaceful ways to achieve the changes they desire in the way society is organised. The practice of physical exercise does not create more equal social conditions, but does make social relations more equal, and it is probable that, in this, shape is more important than background."*

Fortunately, this approach of Coubertin continues today, and appears in the foundational texts of sports organisations, such as the Olympic Charter, issued by the IOC, and the FIFA Statutes (See, for example, Article 4 of the FIFA Statutes), which enshrine a proclamation of non-discrimination. Sport organisations essentially converge in the proclamation of the texts of International Public Law, which prohibit all discrimination on the grounds of sex, race, colour, nationality, language, religion or opinions, public or other opinion, national, ethnic or social origin, membership of a national majority, fortune/ wealth, birth, property, disability, age, or sexual orientation.

However, it is obviously necessary, in the interest of intellectual rigour and honesty, also to mention the misogynist views of Coubertin, who forbade women to participate in the Olympic Games. We do not sympathise with this opinion, but with the opposite view, according to which *"the roots of the participation of women in sport lie deep in human rights"* (OHCR, 2002, p. 66). Nevertheless, and not wishing to excuse or launder Coubertin's position, it is no misinterpretation of his ideas to state that, other than a very personal view of the role of women in society, and the vulnerability and fragility of their bodies, when compared to men, Coubertin makes a distinction between

the issue of access to sport, regarding which he did not have a markedly discriminatory view of the status of men and women, and access to competitive sport, particularly the Olympic Games, in which he considered women not to be fit to participate. In other words, and in line with what we stated above regarding position in legal theory and case law that there is no right to participate in the Olympic Games, Coubertin considered that the sex/gender-based eligibility requirements for a mega-event such as the Olympic Games were justified.

Coubertin had a very clear view regarding universalism: *"The fundamental rule of modern Olympics is based on two words: All Games, All Nations, and not even International Olympic Committee, the highest authority regarding such matters, has the power to change this. I add that a nation is not necessarily an independent state, and that the geography of sport may sometimes differ from political geography.* (Müller, N & Todt. N. S. (Ed.), 2015) the slogan - *"All Games, All Nations"*, which was introduced in 1912, and was intended to signify Coubertin's intent to create a "community" of all sports, and athletes from all nations, a type of Janus, with his two faces, i.e. the national face and the international face. Coubertin's thought did not appear to contain any aim to mitigate national pride and belonging, by subsuming them in a larger and internationalist project. His aim was to achieve co-existence between internationalism and patriotism, through sport, in a context in which respect and non-discrimination would vanquish oppression, and defeat violence and destruction, and therefore contribute to international reconciliation between peoples, with a view to peace.

The meaning and scope of Internationalism and Universalism are so convergent that the following passage from the "Sport Reform Charter", dated 13 September 1930, combines and summarises them in a manner that clarifies the thought of Coubertin: *"No nation, no class, and no occupations are excluded".*

3. THE ROLE OF SPORT IN THE PROMOTION OF OTHER HUMAN RIGHTS: THE LEGACY OF PIERRE DE COUBERTIN

> *"Olympism is a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind. Blending sport with culture and education, Olympism seeks to create a way of life based on the joy of effort, the educational value of good example, social responsibility and respect for universal fundamental ethical principles.*
>
> The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity."
>
> (First and Second Fundamental Principles of Olympism)

3.1. The role of Sport in the promotion of other Human Rights

In addition to the aspect of sport as an autonomous Human Right, there is another facet to the relationship between Sport and Human Rights, which we shall now consider: Sport as a factor ancillary to other human rights, on the basis that it is possible to attain other human rights via sport (Peter Donnely, 2008, p. 42), and that sport must be used as a vehicle to promote other human rights. In fact, sport may even be a tool to promote respect for the fundamental values in the UDHR (Alberto Scavarelli, 2003, p. 280). Here too, Pierre de Coubertin also left a tangible legacy, which we shall now explain briefly.

3.1.1. Education via Sport

It can be said that Pierre de Coubertin's project was more an educational project than a sport project, or at least that the project was equally an educational project and a sport project, in various respects.

Coubertin viewed sport primarily as an educational resource: the issue was not the education of the body, or by the body, but the education of the human being, as a whole, with a stress on the building of character through sport, so that the Olympic Games was a symbol, and an example to fortify the objectives of sport.Coubertin thought that an educated person would be more aware of his/her value, but would also be aware of the limits of their knowledge, which is something that is inextricably linked to international relations and the search for peace (André Senay & Robert Hernet, 1956, 58): for Coubertin education through sport (an athletic education) was a first step towards education for peace, i.e. in the context of a reform of the university education system: *"demand higher education in all countries as a basis for peace between peoples."* (Richard D. Mandell, 1990, 61)

According to Coubertin, sport and physical education were also a successful tool to put an end to aggression, which the Baron considered to be intrinsic and spontaneous in human beings. Accordingly, the virile energy of sport would help to shape the character of human beings in their daily relationship with themselves, and their neighbours. The educational reform that Coubertin sought to implement was therefore based on a type of physical education unlike that then prevalent, which focused on gymnastics based on analytic, rigid, and authoritarian exercises which were primarily intended to train male pupils. Until then, physical education was essentially intended to strengthen the body and the character, in a manner very similar to military training, as a way to control the agonistic and competitive tendencies typical of adolescence and youth, particularly among boys (via a focus on the "races" as a basis of a masculine sense of duty) with a need for self-affirmation, which was a quality that Coubertin wished to discourage.

Coubertin was primarily opposed to German militarised athletics and to Swedish gymnastics, both of which were marked by an authoritarianism, which disregarded experimental pedagogy. Coubertin's insistence on gymnastics, reveals his view that sport based on hierarchy and obedience, which led to uniformity of conduct and blind discipline, was dangerous and would contribute to the promotion of the nationalism and militarism, opposed by Coubertin's pacifism (Antonio Lombardo, 2007, 52-53).

What Coubertin wanted was sport based on social, moral, and patriotic virtues, with a liberating, solidary and unifying ethos, which was able to both pacify and virilise young people. This idea was to be implemented via the introduction of sports and games in secondary schools, as a part of physical education classes. In his anxiousness for peace, Coubertin insisted on showing that a child's school years were a stage of life in which experience of freedom should be permitted, and physical vigour should be promoted, without repressing bodily impulses. Secondary education was therefore a stage in which children and young people should be educated and guided, but not for political and religious manipulation. The view of education as an "initial phase of life", a source of human progress, and an ethical challenge, was central to the Olympic Movement.

This entire view of Coubertin amounted to an understanding that sport is an essential component of the development of the personality of all citizens, and is a vehicle of formal and informal education. The body and the mind are educated through sport. Sport is therefore one among other aspects of the human right to education, as provided in Article 26 of the UDHR. Which states, at paragraph 1, that "everyone has the right to education", and in paragraph 2 that *"Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace."* For the reasons already stated, which will be discussed further in section 3.1.5, this paragraph 2 could easily have been written by Pierre de Coubertin, as is evident from the keywords it contains: i.e. "human personality"; "understanding"; "all nations"; "all racial groups"; and "peace"...

It is particularly noteworthy in this regard that the UN has argued for the inclusion of adequate physical education provision in the curricula of children and young people, which includes the presence of qualified personnel, and is not considered to be either play or entertainment (UN, CDN, General Observation no. 17 (2013), para 14 d) & 58 g)). The UN has argued that education systems should provide information regarding the impact of the acquisition of healthy lifestyles, which also provides children and young people with the information they need in order to make informed decisions (UN CDN, General Observation no. 15 (2013), para 4).

3.1.2. Sport as a promoter of the Right to Health

Coubertin stressed that *"(…) good health is a prerequisite for a full life, as we lose time when we are ill, and time is money"* (Vermet 105). As we have seen, Coubertin's entire educational project was focused on the harmonious physical and mental health of young athletes. Sport as a promoter of health really was one of Coubertin's objectives. However, the Baron went even further in the link between Sport and Health, and, in the final chapter of his famous Olympic Memoirs, which were published in 1930, argued "against excessive training", a phenomenon which still exists, while also, and in a very contemporary approach, defending the "development of a sport medicine based on the state of health rather than the morbid case, which is very sharply focused on the examination of the individual's psychological characteristics". It can therefore also be said that Coubertin viewed the link between sport and health, both in terms of sport as a means to promote health and prevent illness, and in terms of the protection of the health of sportspersons.

According to the Preamble of the Constitution of the World Health Organisation, *"Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition. The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States."*

The right of citizens to health is a prerequisite of a dignified life and involves the positive obligation of states to take measures to combat and prevent health hazards, to promote

healthy lifestyles, and to improve the general well-being of the public, which necessarily includes the promotion of physical activity, physical exercise, and lifelong sport. Citing ngelo Vargas & Eliane Cunha Gonçalves (2002, 10), *"as far as the specific issue of health is concerned, it should be noted that the social sciences have long since identified the epistemological characteristics that enable us to understand that basic attention to the health of the public involves nutritional education, the practice of physical exercise and sport, as preventive measures, with a view to good levels of health. In this, leisure and sport activities are an essential aspect of education, culture, and health."*

Measures that promote health for all, i.e. public health, must therefore include measures to promote sport for all, in order to achieve health through sport. There can be no doubt that sport is one of the ways to recognise *"the right of all people to enjoy the best possible state of physical and mental health"* (Article 12 OHCHR) and with this, *"well-being"* (Article 25 UDHN). Sport therefore promotes health, as a way to promote *"the right of all people to enjoy the best possible state of physical* and mental health", as provided in Article 12(1) of the ICESCR.

3.1.3. Sport and the Right to Culture

When Pierre de Coubertin created the Olympic Games of the Modern Era, one of his aims was to provide athletes, particularly young athletes, with regular opportunities to meet in stadiums and together to become aware of the existence of an infinite and diversified world that exists beyond the living environment. The Olympic Games were conceived as intercultural meetings that contribute to peace, via a mutual understanding of historical cultures, (sharing of knowledge regarding the historical heritage of different countries).

According to Coubertin, physical education and sport education is a unique and incessant carrier of cultural education and cultural dissemination, i.e. sport is a cultural tool. It is therefore unsurprising that the French Baron included artistic and musical contests in the Olympic Games, alongside sport competitions. Given the universal character of the Games, Coubertin managed to democratise sport and culture, while also stressing the inextricable link between them. Accordingly, when we read Article 15(1)(c) of the ICESCR, which enshrines the *"Right of all to participate in cultural activity"*, we understand that events such as the Olympic Games embody this right. Practicing and watching various sports with differing origins, backgrounds, and roots, which involve people from more than two hundred countries, is clearly a moment of cultural enjoyment.

3.1.4. Sport and the Right to a Fair and Equitable Trial

In 1909, in a speech that Coubertin made regarding amateurism, he invoked the need for *"a single and absolutely independent court"* that provided *"guarantees"*, *"a sort of Hague Court for sport"* (Müller, N. & Todt, N.S. (Ed.), 2015, 656).

Coubertin's concerns regarding the independence of what is now referred to as *"sports justice"* had already been expressed publicly, in 1907, in another speech, which concerned the "role of the federations", which included the following remarks: *"The first and most vital of tasks which falls to a sports federation is to organize itself judicially. Indeed, it must be once a council of state, a court of appeal and a jurisdiction court. Its job is to maintain rules, interpret them and give judgement at last instance; it has to ratify or overturn expulsions; it has to intervene between clubs and impose solutions to collective disputes. Now if there*

is one quality which a judicial apparatus must possess, it is of course independence. Independence in this case is achieved by the constitution within the federation of a judicial board whose members must not include anyone who is an active member of any of the groups whose interests are at issue. It will be composed of former sportsmen, and mature men of sufficient experience. The federation can either leave it up to them to recruit their membership, or undertake this itself, on condition that it appoints them for a specific term of office, at least three to five years. An organization resembling this who thinks about this will clearly see the vital need to adopt it, if one is concerned about rendering the most elementary form of justice. How can one accept having the delegates of clubs as both judge and party, being called upon to assess the fairness of measures directly involving their colleagues and clubs?" (Müller, N. & Todt, N.S. (Ed.), 2015, 670).

Coubertin wanted an international court for sport, which provided the necessary guarantees. Decades later, another President of the IOC, Juan Antonio Samaranch, triggered the creation of the Court of Arbitration for Sport, in Lausanne (TAS/CAS).

Although he did not use terms such as "autonomy of sport" and "specificity of sport" that are currently in vogue, Coubertin also advocated self-regulation, because he supported the operation of sports justice under the auspices of the sports federations. Coubertin also supported recourse to specialist judges and the existence and application of rules regarding conflicts of interest. This demonstrates his fundamental concern that decisions should be independent.

The independence/impartiality of CAS has been considered by the Swiss Federal Court in the *Gundel* decision (TF 4P.217/1992, 15.03.1993) and was recently even the subject of a decision of the European Court of Human Rights, in the famous *Mutu/Pechstein* case (*Mutu and Pechstein v. Switzerland* - 40575/10 and 67474/10, Judgment of 2 October 2018 [Section III]). The issue before the court involved consideration of a CAS arbitration clause provided in the regulations of an international sports federation, i.e. the ISU. In its judgment, the European Court of Human Rights considered that notwithstanding the fact that the clause was imposed by the ISU regulations, rather than by law, it was correct to consider that acceptance of the jurisdiction of CAS by the applicant, meant that proceedings amounted to compulsory arbitration as understood in the case law of the court. However, CAS considered that there was valid justification for this: namely the interest in allowing conflicts in professional sport, particularly those with an international dimension, to be decided by a specialist and uniform jurisdiction, such as CAS, which operates as a single international court that resolves disputes that are directly, or indirectly, related to sport, quickly and economically. CAS argued further that the Swiss Federal Court has the power to overrule CAS judgments, where basic procedural guarantees are violated, which ensures compliance with Article 6 of the EHRC [this provision provides that *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial (...)*".It should also be noted that European Court of Human Rights stated in its judgment that the CAS system is sufficiently independent and impartial, i.e. in terms of its procedures for the selection and appointment of arbitrators and also, here upholding the case argued by the

applicant, that the absence of a public hearing in "less serious" cases may not be incompatible with Article 6(1) of the ECHR, but will be incompatible with that provision in civil cases, in which the public nature of the hearing is fundamental and important. (Patrícia Galán & Juan Prieto Huang).

Even more recently, the European Court of Human Rights again decided an issue regarding sports justice (Ali Riza v. Switzerland, 74989/11, Judgment of award of 13 July 2021), when it found against Turkey on the grounds of violation of Article 6 (1) of the ECHR. The European Court of Human Rights found that Messrs Riza and Akal did not have a fair and equitable trial before the Arbitration Committee of the Turkish Football Federation to the extent that the said arbitration body had structural defects, given the major influence of the members, or executives, of football clubs in the organisation and workings of the Committee. The European Court of Human Rights also held that the Turkish Football Federation had failed to take the measures necessary to protect the members of the arbitration Committee from external pressures. The independence of the Arbitration Committee was therefore threatened by the same mechanisms that Pierre de Coubertin warned could undermine sports justice, via violation of the human right to a fair and equitable hearing, as enshrined in Article 6(1) of the ECHR.

3.1.5. Sport and the Right to Peace

O Sport, you are Peace!
You promote happy relations between peoples, bringing them together in their shared devotion to a strength which is controlled, organized and self-disciplined.
From you, the young worldwide learn self-respect, and thus the diversity of national qualities becomes the source of a generous and friendly rivalry.
Ode to Sport,

Peace between nations was always a priority for Pierre de Coubertin, who believed that sport was an important engine of peace, and a rapid and effective means for the development of the individual, and of communication and understanding between peoples.

Coubertin based his humanitarian and progressive view of society in general, and sport in particular, on his conviction that there is an absolute need to promote mutual understanding between people, as a fundamental premise of a peace project. For Coubertin, respect presupposes mutual understanding and facilitates fraternity between peoples, i.e. peoples only have mutual respect when they know each other. This rapprochement operates as a means to discard exaggerated nationalism and chauvinism, to mitigate disputes, to eliminate misunderstandings and war between nations, and to attenuate rage and rancour.

Coubertin never doubted the need for each nation to know the history of other nations, and saw this as the essential basis of the educational process necessary for mutual understanding. However, the Baron knew that this was not enough, because understanding also presupposes encounter, direct contact between people who belong to different peoples, and the sharing of experience, in an international context, on the basis of equality. Accordingly, there was a need for a means to bring peoples together, on the basis of internationalism and egalitarianism. Coubertin discovered this means. He founded the Olympic Games of the Modern Era, a four-yearly worldwide event that would bring together the citizens of the entire world,

particularly young people, and be an ideal institutionalised platform and event for a worldwide process of education for peace.

As the Olympic Games are the apex of this educational process, it is natural that sport would play a significant role in the preparation of the event, and would gradually assume a twofold pacificatory role, involving the pacification of relations between social classes, on the one hand, and the pacification of relations between countries, on the other. In other words, Coubertin found in sport, the seed needed to obtain both social peace and international peace. It is therefore easy to understand Coubertin's desire that the Holy Truce, or Olympic Truce, of the Olympic era should be revived, proclaimed, honoured, and respected, in accordance with the four-yearly Olympic cycle. Coubertin viewed the Olympic Truce as *"an essential aspect of Olympism"*, which is associated with the idea of a cycle (Jean Durry, 1994, 43), a sort of temporary cessation of quarrels, disputes and misunderstandings, and that this type of *negative peace*, or armistice, or bellic interval, gives rise to a *positive* conception of peace linked to an uninterrupted and long-term structured peace project (Antonella Stelitano, 2012, 67). However, and even if the significance of the Ancient Truce was somewhat different, it nevertheless impressed Coubertin, and his interpretation of it strengthened the institution he founded, and gave it a guarantee taken from the ancient past. (Françoise Étienne & Roland Étienne, 2004, 56).

For all these reasons, Pierre de Coubertin was a major peace activist and a representative of the European Movement for Peace, whose name was even suggested for the Nobel Peace Prize.

Pierre de Coubertin was the fundamental source of the idea that peace should be enshrined in the Olympic Charter, as transcribed above, as an objective of Olympism. Likewise, the mission and role of the IOC as stated in Rule 2(4) of the Olympic Charter, requires the IOC to cooperate with the proper public and private authorities in order to place sport at the service of humanity, and therefore promote peace. The provisions in the Olympic Charter regarding the composition and general structure of the Olympic Movement, also establishes that the education of young people via sport practiced in accordance with Olympism, and its values, is a way to build a better and more peaceful world, and an objective of Olympism.

Sport can undoubtedly play a significant role in the promotion of peace, which is also an objective of the UN: *"To practice tolerance and live in peace"* are objectives in the Charter of the United Nations (Jean Durry, 1994, 43), which provides that *"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered"* (Article 3 (3)). The "Declaration on the Right of Peoples to Peace", which was adopted by the UN General Assembly on 12 November 1984, by Resolution 39/11, and solemnly proclaimed that *"the peoples of our planet have a sacred right to peace"*, and that states are required to take appropriate measures towards that end, at the national and international levels is also very relevant.

Curiously, and as a practical example of this intersection between sport and peace, the UN General Meeting has, since 1993, approved Resolutions that call for compliance with the Olympic Truce (Resolution no. 48/11, 25 October 1993), the most recent of which was approved in the context of the 2020

Tokyo Olympic Games (Building a peaceful and better world through sport and the Olympic ideal: resolution/adopted by the General Assembly, Un General Assembly, 74th Session: 2019-2020, 2019). This was even referred to expressly in the famous UN Millennium Declaration, in 2000 (Point 11-10), which urges *"(...) Member States to observe the Olympic Truce, individually and collectively, now and in the future, and to support the International Olympic Committee in its efforts to promote peace and human understanding through sport and the Olympic Ideal."* In short, sport, in its role in the promotion of peace and amicable relations between states, teaches values such as tolerance, friendship, mutual understanding, and equality, and is a didactic paradigm for the development of a democratic culture, which is characterised by solidarity and respect for fundamental ethical principles (Andrés Fernández Diáz & José Andrés Fernández Cornejo, 1999, 645). Sport is therefore an excellent tool in the search for peace, understanding between peoples and nations, respect, tolerance, and mutual aid and is therefore an important way to promote the right to peace, which is a typical third generation right. All in continuation of the path blazed by Pierre de Coubertin with the five rings, many white doves, and with the scales of justice in his hand.

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