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SPORT, ENHANCEMENT AND HUMAN RIGHTS

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Sport, enhancement and human rights¹

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Abstract: This paper examines enhancements within the field of sports based on human rights. There is a discussion about the most commonly used standards and references to reject artificial performance enhancement for athletes. This paper also discusses the references and standards of philosophical discussion on human enhancement as applied to sports. Finally, we support diversity-based humanism or inclusive transhumanism, i.e., an open-minded approach to enhancements although fulfilling individual rights.

Keywords: Enhancements, human rights, doping, transhumanism.

Until recently, rational or scholarly analyses of sport were deemed unimportant.² However, there are now major law firms, law schools, specialized journals or legal studies focusing on sports. We are steadily building a sports philosophy primarily concerned with sports-related ethical problems or, better said, ethics in sport.³

In Continental Europe, this is a recent phenomenon.⁴ There are still very few sports analyses from a human rights perspective, despite (i) the political, educational and sociocultural role of sports and athletics;⁵ and (ii) the consideration of sports as a tool for social inclusion.⁶

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² Valenciano, M., *Buen deportista, mejor persona: ética y deporte*, Proteus, Barcelona 2010, p. 13.

³ López Frías, F.J., *La filosofía del deporte actual*, Qua.Pe.G, Rome 2014.

⁴ In the English-speaking world, this sports philosophy came earlier thanks to Paul Weiss. See Weiss, P., *Sport: A Philosophical Inquiry*, Southern Illinois University Press, 1969. On the history of sports science, see R. SWANSON and J. MASSENGALE (EDS.), *The history of exercise and sport science*, Champaign (IL), Human Kinetics, 1997.

⁵ Salardi, S., *Lo sport come diritto umano nell'era del post-humano*, Giapichelli, Torino 2019.

On another note, there is no doubt that emerging technologies is the hottest of all topics right now, also within legal studies. Artificial intelligence, robotics and neuroscience, along with bio-legal issues, are in the spotlight. Within the aforesaid scholarly analyses, enhancement plays a very prominent role. Indeed, sports are often used as a testing ground for human enhancement. However, a human rights approach has not been present until very recently, and it remains a minority approach.⁷

This paper deals with the role of technological enhancement in sports, relying on the human rights discourse or, better said, within the human rights framework. Considered in isolation, sports, enhancement and human rights have been extensively studied, but this is not true for the interconnections between them.⁸

1.- Introduction: sport and human rights

From an academic standpoint, sport can be defined as “a predominantly physical human activity played either individually or in teams with the aim of fulfilling oneself or achieving other goals.”⁹

Sporting activity has many overlapping dimensions. For instance, we draw a line between professional sport, i.e., where the sporting activity provides athletes and players with frequent earnings allowing them to make a living; and amateur sport, i.e., any other sporting activity for leisurely purposes.

There is also a distinction between competitive sports, youth athletics and recreational sport. Youth and recreational sporting activities have a different purpose from that of competitive sporting events, where winning is the ultimate aim. There are also differences between youth and recreational sports: the first are mostly educational, whereas the latter are leisure-related.

See also a disability-oriented categorization of sports, including (i) conventional sports; (ii) paralympic sports; and (iii) inclusive sports. This categorization allows to differentiate between sports played only by persons with disabilities (paralympic sports) from inclusive sports, where the

⁶ Article 2 of the European Sports Charter, first established in 1992 by the Council of Europe and subsequently revised in 2001, defines sport as “all forms of physical activity which, through casual or organized participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels.”

⁷ See Pérez Triviño, J.L. *The Challenges of Modern Sport to Ethics: From Doping to Cyborgs*; Lexington Books: Lanham, MD, USA; Plymouth, UK, 2013.

⁸ In Spain, the reference work in this regard is López Frías, F.J., *Mejora humana y dopaje. Una propuesta crítica*, Reus, Madrid 2015. However, it barely has any references to human rights.

⁹ Cazorla Prieto, L.M., *Deporte y Estado*, Labor, Barcelona 1979, p. 83.

practice is between people with or without disabilities under the same rules. Also, conventional sport refers to any sporting activity played by persons without disabilities. Nonetheless, this definition might be overly broad, and it most likely misses many subtleties and specificities regarding both the consideration of sports themselves and what qualifies as persons with disabilities.

There is no doubt that the prior distinctions have an impact on any discussion regarding sports and, obviously, on any discussion connecting sports, rights and enhancements.

Additionally, in order to apply a human rights approach to any field, we need to be aware that human rights are instruments that could be addressed from various perspectives, thus assuming that the meaning of “human rights” can vary. Although it might seem surprising, this is also true when discussing human rights from a strictly legal perspective. Human rights have an ethical and political dimension that affects their applicability and meaning.

Nevertheless, almost all human rights theories agree that they are instruments to achieve a dignified human life. Scholars almost unanimously consider that, within this context, fundamental rights are actually human rights enshrined in a Constitution (i) aimed at safeguarding human dignity; (ii) providing a legal standard for any other conducts or public action; and (iii) being secured or particularly protected with respect to other entitlements. Non-discrimination (in its positive and negative dimensions), inclusion or diversity policies, as well as public and private autonomy, are essential standards for the human rights discourse. Accordingly, human rights are meaningless if not connected with the fight against any barriers hindering human dignity.

As noted above, it is uncommon to establish a connection between the rights and sports discourses or frameworks. Sports and human rights can be brought together in a threefold manner. First, one could argue that sports allow to fulfill individual rights. Second, we could claim that practicing sports is a right. Third, sporting activities are subject to a bunch of rights and obligations.

Silvia Salardi referred to the first link between rights and sport. She begins by arguing that sport can be a useful tool for the fulfillment of rights, adding that practicing sports (generally speaking) should comply with the rights at stake. According to this Italian Professor, values in sport have to do with the underlying worth of rights, and practicing sports thus reinforces the legal interests protected by rights.¹⁰

Sporting activities will qualify as human rights as long as they are considered ethical and have a legal or regulatory basis. In other words, in order for sport to be considered a human right,

¹⁰ Salardi, S., *Lo sport come diritto umano nell'era del post-humano*, cit. See also, Kidd, B., “Los derechos humanos en el deporte,” *Apuntes: Educación física y deportes*, no. 78, 2004, pp. 70 *et seq.*

we need to depict it as a reasonable moral claim tied to a dignified human life founded on legal provisions or a legal basis.

Although it can be somewhat complicated to connect the practice of sports with daily life needs or activities (references or standards that I have used elsewhere when taking a rights-based approach), we have traditionally considered sporting activities as having ethical significance—dignified human life, free development of personality, an instrument to achieve essential interests...¹¹ Very few Constitutions provide sporting activities as a human right. At an international level, no treaties or conventions expressly refer to sports as a right or entitlement. However, non-binding international instruments do enshrine the practice of sports as a human right. Article 1 of the 1975 European Sport for All Charter, passed by the Council of Europe, is worded as follows: “Every individual shall have the right to participate in sport.” Also, the Olympic Charter (4th Principle of Olympism) states that: “The practice of sport is a human right. Every individual must have the possibility of practicing sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.” Finally, Article 1 of UNESCO’s International Charter of Physical Education, Physical Activity and Sport, revised in 2015, states that physical education, physical activity and sport is a fundamental right for all: “Every human being has a fundamental right to physical education, physical activity and sport without discrimination on the basis of ethnicity, gender, sexual orientation, language, religion, political or other opinion, national or social origin, property or any other basis.”

From a scholarly perspective, Karlos Castilla discussed the possibility of considering the practice of sports as a human right in “El derecho humano a la práctica del deporte.”¹² He refers to practicing sports as an individual right to perform predominantly physical activities, whether individually or in teams, for recreational or competitive purposes, in an organized manner and subject to certain rules. According to Prof. Castilla, the core of sports practice is individuals’ ability to freely choose (i) a physical activity (sport); and (ii) the level at which he/she would practice it. In

¹¹ There is an international process that underlines this dimension of sport. In this vein, the report entitled “Sport for Development and Peace: Towards Achieving the Millennium Development Goals” provides that: “sport—from play and physical activity to organized and competitive sport—is a powerful and cost-effective way to support development and peace objectives.” In late 2003, the UN General Assembly adopted a resolution on the role of sports as a means to promote health, education, development and peace. After, designated 2005 as the International Year of Sports and Physical Education, specifying that “the United Nations relies on sports seeking peace and the achievement of the Millennium Development Goals.” UNICEF established the international sports for development thereby coining the notion of “sports for development.” In 2015, the UN General Assembly adopted the 2030 Agenda for Sustainable Development, providing 17 Sustainable Development Objectives (available at: <http://www.un.org/sustainabledevelopment/es/objetivos-de-desarrollo-sostenible/>). It is worded as follows: “Sport is also an important enabler of sustainable development. We recognize the growing contribution of sport to the realization of development and peace in its promotion of tolerance and respect and the contributions it makes to the empowerment of women and of young people, individuals and communities as well as to health, education and social inclusion objectives” (paragraph 37 of the Agenda).

¹² See *Fair Play, Revista de Filosofía, Ética y Derecho del deporte*, 2015.

the view of Prof. Castilla, the right to engage in physical activity deserves a varying degree of protection depending on whether we are dealing with professional sports, semi-professional sports, recreational-competitive sports, purely recreational sports or occasional-recreational sporting activities.

The practice of sports can thus qualify as a human right. However, the presence, role or impact of human rights in such practice is a different issue altogether.

Sports are subject to specific sets of rules and authorities. Sport has its own regulatory framework having some overlaps and also certain differences with respect to the general legal framework. There are three types of rules governing sports. First, the provisions governing each sport (regulations, game rules or competition rules); second, general provisions governing sports or athletics in general (sports law); finally, there are also non-specific sports law provisions that can have an impact on the practice of sports and sporting events (general law). These three frameworks sometimes run parallel, but in some cases they may apply jointly, and they can also be in conflict at some point.

The human-rights-oriented studies on these frameworks have focused on sports law and its connection with the general legal discourse. However, it is hard to find a study on the competition rules and regulations from a rights-based perspective, in spite that this dimension gives rise to key questions.¹³

In any event, the connection between sports and human rights poses major challenges. Throwing technology into the equation gives rise to more challenges and concerns.

Indeed, the increasing presence of technology in sports is bringing benefits from a human rights perspective, some of which related to the game rules. However, the impact of technology also raises some concerns, the most apparent being related to the use of technology to enhance athletic performance.

2.- Enhancement and sport: doping

Technology has become an essential part of sports, whether professional or not. It allows to verify results in competition (think of video replay systems, for instance), to make sports available to a greater audience and, admittedly, it also allows for artificial performance enhancement. For the most part, technology investments in sports have performance-enhancing purposes, always seeking

¹³ I dealt with this matter in De Asís, R., “Derechos Fundamentales y Reglamentaciones Deportivas,” in A. de Asís e I. Hernández (coord.), *Estudios sobre el dopaje en el deporte*, Dykinson, Madrid, 2006, p. 18.

not to cross the red line: doping. Indeed, artificial performance enhancement in sports usually has to do with doping.

It is hard to discuss doping broadly, since it encompasses a wide array of performance-enhancing methods and practices. For the purposes of this paper, doping will mean any use of artificial athletic performance-enhancing drugs or technologies. I am aware that this definition is controversial.¹⁴ Firstly, because not all substances or technologies used to gain a competitive edge qualify as doping. Secondly, because the meanings of “natural” and “artificial” remain unclear.

Furthermore, this discussion can go in different directions depending on the sporting activity at hand. Also, as stated by Loland, being for or against banning doping is closely tied to the very understanding of sport.¹⁵

Indeed, the scholarly approaches that link the practice of sports and human rights (see the three lines of reasoning noted above) often support the prohibition of doping.

Many provisions, statements and declarations on sporting activities provide that sports must rely on the athlete’s natural talent and ability without external help unless expressly allowed. The explanatory preamble of the Spanish Sports Act (*Ley del Deporte*) is worded as follows: "This Act seeks to prevent the use of prohibited substances or unlawful methods to artificially enhance performance. The reasons for this are (i) the health risks of performance-enhancing drugs for athletes; and (ii) the need to preserve the spirit of sport."

In “Derechos fundamentales y deporte,” a scholarly work published in 1994, I discussed anti-doping rules and regulations. Specifically, I argued that anti-doping rules are grounded on both the ultimate meaning or essence of sporting activities (the integrity of sport) and the athletes’ health.¹⁶ Performance enhancement through technology has changed a lot since then, but this twofold justification remains applicable.

Accordingly, anti-doping rules are based on the consideration that sports practice should only involve the performers’ natural talent, i.e., their physical and psychological ability. Nevertheless, the public dimension of sports adds a set of principles, legal interests and specific goals, namely equality and education.

The notion of equality is often invoked to justify these regulations. Given the need for equality of opportunities, the applicable rules prohibit any modification of the resources available in

¹⁴ See various meanings of this term in ROSEN, D.M., *Dope: A History of Performance Enhancement in Sports from Nineteenth Century to Today*, Praeger Publishers, Wetsport, 2008.

¹⁵ Loland, S., “Technology in Sport: Three ideal-typical view and their implication” in *European Journal of Sport Science*, 2 (1), 2002, pp. 1 *et seq.*

¹⁶ De Asís, R., “Derechos fundamentales y deporte,” in *La Constitución y el deporte: X Jornadas Unisport sobre Derecho deportivo*, coord. por José Luis Carretero Lestón, 1994, pp. 93 *et seq.*

the competitive setting.¹⁷ The starting point for any sports achievements should be a level playing field and that athletes be on an equal footing, solely relying on the athletes' natural talent and skills. However, the notion of equality in sports allows for certain nuances.

First, this approach to sports allows for differences in treatment that simply qualify (without undermining it) the notion of "same-rules-for-all." See, for instance, the different rules, standards and thresholds for men's and women's competitions, on the one hand, or for athletes with and without disabilities, on the other. There are also different rules depending on the competitors' age, weight, etc...

Second, self-evidently, the athletes' ability is not always "natural talent," but rather the result of many other overlapping factors. If we argue on the basis of skills, abilities and talent, we must always relate it to access and opportunity. For example, athletes with good eating habits have a greater chance of success than competitors with a poor diet, just like access to the relevant material, financial and human resources (e.g., sports psychologists or better facilities) enhances performance. Thus, considering the impact of resource availability on performance, we should qualify and adjust the understanding of sports integrity. Obviously, this is not exclusive to sports, but we should take into account.

This aspect has a much greater impact on professional sports, where the principle of equal opportunity seems contrary to fact. In fact, financial aspects definitely affect professional athletes, thereby enlarging the gap between athletes with and without resources.

Admittedly, a general ban on performance-enhancing drugs and technologies can only be justified on grounds of equality. However, equal opportunity could also be achieved taking a loose or wholly permissive approach, acknowledging that there would be some degree of inequality arising from unequal access or unequal opportunity.

Therefore, resorting to equality to justify anti-doping rules raises some concerns. Additional principles must apply.

Assuming the educational role of sports in contemporary societies, one of these principles should be education. Sport embodies several values and is thus an example of the type of activity we want for our society.¹⁸

This claim, however, also raises some concerns. The most obvious one could be that the aforesaid general ban does not apply to other fields, such as job performance. We want employees

¹⁷ Loland, S. and Mcnamee, M., "Fair Play and the Ethos of Sports: An Eclectic Philosophical Framework," in *Journal of the Philosophy of Sport*, 27, 2000, pp. 63 *et seq.*

¹⁸ See, in this regard Salardi, S., *op cit.*

to enhance their performance as much as possible, and we (even socially) accept the use of performance-enhancing drugs and technologies if necessary.

Preserving the athletes' health is also grounds for anti-doping rules. Self-evidently, a reasonable practice of sports is health, but at certain levels sport can also be harmful or even unhealthy. In any case, health-related arguments take us directly to a classic topic in legal and political philosophy, i.e., paternalism.

Ernesto Garzón Valdés provided the following definition for legal paternalism: "to interfere with an individual's liberty [who is considered basically incompetent] in order to prevent him or her from harming him or herself."¹⁹ The core of this definition is the notion of "basically incompetent." Miguel Angel Ramiro, in "Sobre el paternalismo," claims that, in order to be considered incompetent, a person must be unable to (i) sufficiently assess the risks involved in his/her activity; (ii) preserve the assets or legal interests that he/she considers valuable; or (iii) acknowledge what is in his/her best interest. In other words, those who qualify as incompetent are very unlikely to succeed when facing challenges or problems throughout their lives. Thus, incompetence means ignorance, ineptitude, lack of reason or coercion.²⁰

Arguably, paternalistic measures are justified if there is evidence of basic incompetence. Along these lines, it is worth examining if athletes are, or can be at any point, basically incompetent.

There is no general valid answer for all the possible cases. This is why the health-related line of reasoning, pertaining to the risks for the athlete, is not a solid argument. Other than this health argument, let us discuss coercion. We should examine the actual autonomy of the athlete, i.e., whether he/she is using substances or technologies freely, with no external actors forcing him/her to use performance-enhancing methods.

In sum, none of the arguments within the scope of sports constitute sufficient grounds to take a clear stance on doping. As a result, we decided to address doping from the perspective of human enhancement and, particularly, examining the justification thereof.²¹

3.- On human enhancement

The clash between therapy and enhancement (i.e., between therapeutical and enhancement treatment) is a classic topic within the ethical discussion of new technologies and bioethics. This

¹⁹ Garzón Valdés, E., "Sigamos discutiendo sobre el paternalismo," in *Doxa*, 5, 1988, p. 155.

²⁰ Ramiro Avilés, M.A., "A vueltas con el paternalismo jurídico," in *Derechos y libertades*, no. 15, 2006, pp. 211 *et seq.*

²¹ See López Frias, F.J., *Mejora humana y dopaje. Una propuesta crítica*, cit.

clash has major implications, since it allows to draw the boundary between what is considered admissible and what is not from an ethical perspective.

In November 2018, He Jiankui, a Chinese scientist, was all over the news worldwide after claiming to have created two genetically-edited babies. More specifically, he had modified the gene called CCR5, used by HIV as the gateway to attack our immune system. As criticism mounted, He Jiankui responded that he had performed a therapeutic intervention.

Within sports, and particularly professional sports, we more easily accept enhancements as long as they do not qualify as doping.

Nonetheless, both the notion of “enhancement” and “therapeutic intervention” remain unclear. A given technique or medical product could be considered both therapy and enhancement. The same happens with sports. This whole situation becomes apparent in sports for persons with disabilities.

In 2009, in its report “Human Enhancement Study,”²² the European Parliament defined enhancement interventions as “any modification aimed at improving individual human performance and brought about by science-based or technology-based interventions in the human body.” But this definition fails to (i) draw a clear distinction between enhancement and therapeutic interventions; and (ii) provide criteria or standards to determine when can these be deemed acceptable.

Consequently, it might make sense to question whether we should focus so much on this distinction. As aptly noted by Lydia Feito: “Why is it more important to put our efforts into improving our intellectual and affective abilities instead of materially enhancing them? Why do we think that biological modifications alter or undermine our human nature or human identity? Why do we consider that ‘an enhanced self’ entails the loss of identity once we have assumed that us humans are dynamic and constantly changing due to the effect of a wide array of factors?”²³

We often discuss enhancements based on a standard or “parameters of normalcy.” However, as pointed out by Carlos Lema,²⁴ this is precisely the issue with the notion of enhancement: taking as a starting point a standard or notion of “normalcy” that, if exists (which is questionable), would be both misleading and perhaps deprived of moral value.

If we assume that “normalcy” or “the standard” is both contrived and conventional and we deprive it of moral value, we could apply it to sport only for organizational purposes, e.g., to

²² Available at: https://www.itas.Kit.edu/downloads/etag_coua09a.pdf. Last accessed on 14 December 2020.

²³ See Feito, L., “Neurofármacos y mejora humana,” in AA.VV., *El mejoramiento humano. Avances, Investigaciones y reflexiones éticas y políticas*, Comares, Granada 2015, pp. 94 *et seq.*

²⁴ Lema, C., “Intervenciones biomédicas de mejora, mejoras objetivas y mejoras discriminatorias: ¿De la Eugenia al darwinismo social?,” in *Annales de la Cátedra Francisco Suárez*, 49, 2015, pp. 367 *et seq.*

establish categories or types of competitions. But this does not help us regarding the discussion about enhancements.

Still, we use parameters of normalcy to reject radical uplifts (i.e., permanent, irreversible and unassessable enhancements),²⁵ leading us into unknown territory where we lack ethical standards. In these cases, as noted by Carlos Lema, in addition to implementing unprecedented changes in nature, we are concerned about having the decision-making power to perform such interventions.²⁶ According to Lema, this concern would be mitigated if we became aware that there are objective enhancements, i.e., enhancements that are both suitable and positive for all. Nevertheless, although some scholars claims that there are “objective enhancements,”²⁷ these are questioned by those who consider that the very notion of enhancement is relative and dependent on context and culture.

Even admitting that there is such a thing as an “objective enhancement,” a rights-based approach would require to further discuss discrimination. Note that enhancements can be inherently discriminatory, but they can also constitute discrimination on grounds of equal access.

For instance, enhancements could be inherently discriminatory if they contribute to further discriminate or stigmatize a certain group. This is common when technological progress is projected onto the field of disability taking a medical perspective of these situations.²⁸

Furthermore, enhancements can be discriminatory in terms of access, if they restrict it to few people, countries or institutions. We should keep in mind that one of the major ethical challenges for these technologies has to do with guaranteeing equal opportunity for the enjoyment thereof, and thus with the possibility of bridging (or enlarging) the gap between rich and poor athletes or countries.

Discrimination, one of the central elements of the rights-based approach, can appear regarding enhancements in the field of sports and provide grounds to question them.

Obviously, this discrimination-related objection is useful only for egalitarians.²⁹ Some other scholars claim that a society with enhanced persons would provide more chances for redistribution

²⁵ Khushf, G., “Stage Two Enhancements,” in F. Jotterand (ed.), *Emerging Conceptual, Ethical and Policy Issues in Bionanotechnology*, Springer, 2008, pp. 203 *et seq.*

²⁶ Lema, C., “Intervenciones biomédicas de mejora, mejoras objetivas y mejoras discriminatorias: ¿De la Eugenia al darwinismo social?,” cit., p. 374.

²⁷ See Singer, P., “De compras por el supermercado genético,” translated by J. Seoane, *Isegoria* no. 27, 2002, p. 36.

²⁸ I discussed this issue in De Asís, R., “Derechos y situaciones de vulnerabilidad,” in Marcos del Cano, A. (ed.), *En tiempos de vulnerabilidad: reflexiones desde los derechos humanos*, Dykinson, Madrid 2020.

²⁹ For instance, J. Savulescu supports genetic enhancements even if they increase social inequality. See Savulescu, J., *¿Decisiones peligrosas?: Una bioética desafiante*, Tecnos, Madrid, 2012, p. 45.

as a result of these enhancements and thus fewer persons to care for.³⁰ These insights, however, are not easily applicable to sports and athletes.

Aside from discrimination, certain enhancement interventions could jeopardize or even undermine the free development of personality, i.e., the development of a dignified human life, which is the basis for individual rights. Some enhancements could threaten the moral development of personality. Many thinkers claim that moral development entails significant efforts and sacrifices that can disappear as a result of technological enhancement. These technologies have the ability of considerably lessening our autonomy and accountability,³¹ and thus our own moral agency.

Habermas draws upon the notion of human dignity, i.e., what actually allows us to recognize one another as members of the same species, claiming that there is no justification for any intervention that could alter such recognition.³²

To some extent, this notion has been a standard or reference to justify doping. As for doping, the key would be to verify whether it removes human nature.³³ Based on this standard or reference, for instance, we would reject the three types of enhancements which, according to López Triviño, could affect athletes in the near future: genetic doping, bionic implants that would turn athletes into cyborgs and the creation of hybrid humans and chimeras.³⁴

However, this line of reasoning just took us to the notion of “a standard” or “normalcy.” It is hard to set out our defining or distinct features, what defines us as humans, as well as to claim that they remain unchanged throughout the history of humanity. We should not disregard the fact that we all suffer radical changes throughout our lives, i.e., we can be naturally enhanced or experience major improvements that neither affect our personal identity nor challenge our “human nature.” If this is the case with natural improvements, why should it be different regarding artificial enhancements or uplifts?³⁵

³⁰ See Harris, J., *Enhancing Evolution. The Ethical Case for Making Better People*, cit., p. 120.

³¹ See Ach, J.S., “Improving human performance?,” in J. S. Ach, J.S. and Lüttenberg, B. (eds.), *Nano- biotechnology, nanomedicine and human enhancement*, Berlin 2008.

³² See Habermas, J., *El futuro de la naturaleza humana. ¿Hacia una eugenesia liberal?*, Paidós, Barcelona 2010, p. 50.

³³ See Lopez Frías, F.J., *Mejora humana y dopaje. Una propuesta crítica*, cit.

³⁴ Pérez Triviño, J.L., “Deportistas tecnológicamente modificados y los desafíos al deporte,” in *Revista de Bioética y Derecho*, no. 24, January 2012, p. 6

³⁵ Bostrom, N. and Ord, T., “The Reversal Test: Eliminating Status Quo Bias in Applied Ethics,” in *Ethics* 116, 2006, pp. 656 *et seq.*

4.- Closing remarks

The difference between enhancement and therapy are not settled issues within philosophical discussion. However, we do need boundaries in order to provide incentives and set limits. This matter should not be left to the market and *laissez faire*.

The necessary standards and references should rely on the framework provided by humanity to deal with these issues: human rights. But we must be able to adapt the human rights discourse to technological progress without subverting it.³⁶

In this regard, examining technological advancement from a human rights perspective requires (i) that inclusion and non-discrimination be considered in any enhancement or intervention; and (ii) focusing on removing any existing barriers. Therefore, from a human rights perspective, we should be open to enhancement as long as they (i) do not entail any form of discrimination; (ii) allow for universal access; and (iii) do not undermine any rights at stake.

In a recent scholarly article, Migle Laukyte and I discussed the need to be open-minded towards enhancement and its ethical and legal challenges, although fulfilling individual rights. This approach should allow to overcome the problems posed by modern humanism and postmodern transhumanism relying on a proper human-rights-based understanding of technology, i.e., the so-called inclusive transhumanism or diversity-based humanism (also designated as humanism of diversity).³⁷

As is well-known, within philosophical discussion there is a clash between two conflicting approaches to technological progress: transhumanist stances vs. humanism. The difference between these two revolves, *inter alia*, around their respective approaches to human enhancement. However, their references and standards are not that different.

Transhumanists defend human beings' freedom to use technology in order to enhance their lives. Transhumanist thinkers firmly believe that technology can solve contemporary social problems,³⁸ and thus consider that enhancement technologies should be widely disseminated.

Note, however, that advocating for the improvement of human beings' living conditions is not exclusive to transhumanism. Individuals have always been concerned with enhancing their condition and skills. This drive for improvement can also be found in modern humanism, where the human rights philosophy emerged.

³⁶ See De Asís, R., *Una mirada a la robótica desde los derechos humanos*, Dykinson, Madrid 2015.

³⁷ See De Asís, R. and Laukyte, M., "Transhumanismo inclusivo" in *Soluciones tecnológicas para los problemas ligados al envejecimiento: cuestiones éticas y jurídicas*, Dykinson, Madrid 2020.

³⁸ See Llano, F., *Homo excelsior. Los límites ético-jurídicos del transhumanismo*, Tirant Lo Blanch, Valencia 2018.

Modern humanism—which remains the prevailing discourse within society—and transhumanism agree that human nature is unique and distinct. Both frameworks rely on normalcy (embodied by model individuals and model societies) as a central reference.

The consideration of human beings as unique or distinct has been part of modern humanism, giving rise to the philosophy of human rights and the ideal of human dignity. Such specificity or distinct nature has allowed to consider humanity as unique. Note, however, that uniqueness here is not a synonym for singularity: when applied to human nature, uniqueness is tied to perfection.

Within this context, such distinctiveness and perfection arise from “the standard,” i.e., a construct of “normal” traits allegedly shared by all human beings. This standard is represented by the body and the mind. Perfection thus results from the further development and enhancement of this standard through social constructs, giving rise to human excellence. As human beings depart from these perfect traits, they become less distinct, thereby moving further away from being considered human.

Modern humanism’s starting point is thus an approach to human nature, which becomes increasingly distinct as it keeps getting closer to the standard of excellence arising from social constructs. Human dignity is achieved as we reach these levels of excellence. Transhumanism goes a step beyond humanism. The transhumanist starting point is what humanists considered the “excellent” human being, which is deemed imperfect by transhumanist, thus seeking to enhance it (striving for human excellence) through technology. Human dignity is achieved when these excellence levels are reached. For humanists, human excellence was the aim, whereas according to transhumanists, such ideal of human excellence is the starting point.

Both schools of thought underestimate human diversity, as evidenced by their approach to human enhancement. Modern humanist thinkers believe that technological uplifts are tools that allow to achieve equality, i.e., to get “abnormal” beings closer to normalcy or “the standard.” Transhumanists consider that the use of enhancements is also justified as an instrument to remove our weaknesses and imperfections.

Therefore, we should support the so-called diversity-based humanism or inclusive transhumanism. This humanist discourse is not at odds with technology. Enhancements become controversial if (i) justified from a discriminatory and stigmatizing model of humanity; or (ii) based on a social structure promoting discrimination and lacking equal opportunity. Accordingly, in order to settle this concern, it is necessary to change society by normalizing or standardizing it. After this, enhancements will not fall within the scope of a specific framework only pertaining to certain people. Rather, enhancements will be part of a mainstream approach to society where the freedom to perform enhancements will be justified as soon as these (i) are available to all; (ii) fail to

undermine the rights of human beings; and (iii) fail to eliminate diversity (which is both a reality and an essential asset within society).

Diversity-based humanism or inclusive transhumanism advocates for technological development to the extent that it does not encourage discrimination but rather provides a remedy for social shortcomings (whether environmental, behavioral, etc.). Diversity-based humanists do not oppose enhancements, but they do set certain priorities relating thereto. The enhancement discourse must be, in the first place, a matter of social and political intervention.³⁹

The potential impact of embracing this diversity-based humanism regarding sports-related enhancements is yet to be determined. In any case, the main effect has to do with the priorities in the use of performance-enhancing technologies in sport. Thus, the main priority should be to remove existing barriers for sports practice. In other words, enhancement technologies should be aimed at ensuring universal access to sport. Having fulfilled this top priority, technological improvements should be implemented to secure and maximize the guiding principles of sports and sporting activities.

Relying on these two references or standards, artificial performance enhancement in sports can be less controversial. Nonetheless, the reasonable use of performance-enhancing methods should be in line with the human rights discourse, and it should bring along more sports categories and types of competitions, in order to remain compatible with the guiding principles of sport.

³⁹ See Hall, M.C., *The Bioethics of Enhancement: Transhumanism, Disability, and Biopolitics*, London: Lexington Books, London 2016.