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# The Spirit of Sport and the Medicalisation of Anti-Doping: Empirical and Normative Ethics<sup>1</sup>

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## I. Introduction

There has been much discussion in academic conferences and sport policy-makers with respect to the role of anti-doping (McNamee and Møller 2011; Hanstad, Smith and Waddington 2008). Put simply, there is a potential schism between the overarching function of anti doping — is it first and foremost a sports-related issue, or is it more generally to be understood as a public health issue? (Møller *et al.* 2009)? It is clear that these two aspects are not mutually exclusive such that the question cannot simply be a case of which should be its focus. Sports are, after all, social practices, engaged in by hundreds of millions of people. What goes on in these practices, to the extent that it affects the health of its participants, must also be a public health issue, irrespective of its (disputed) significance.

Nevertheless, one particularly problematic aspect of present anti-doping policy relates to the existence of what are often and variously referred to as “social drugs”, “recreational drugs” or “substances of abuse”, in the list of prohibited methods and substances that comprise “doping” as defined the global body responsible for anti-doping: the World Anti-Doping Agency (WADA).

The focus of this article is whether and how the presence of Cannabinoids on the Prohibited List (PL) is justified or not. Many scholars, scientists, and key actors in anti-doping policy — in confidential interviews — have argued that it should not be included. They argue that the presence of Cannabinoids is present on the Prohibited List merely as an extraneous and unwelcome function of governmental intrusion on sport and not because of any coherent

anti-doping policy. In effect, it is thought to be a political intrusion that is paternalistic and, in effect, a “moral policing” of high-profile athletic populations. They argue, moreover, that the criterion, which facilitates Cannabinoids’ inclusion on the PL (that it is against the “Spirit of Sport”), is conceptually vague and should be removed. They believe this will negate the presence of Cannabinoids on the PL. In short, they seem to be arguing that Cannabinoid use ought not be thought of as “doping”.

In this article, I argue to the contrary — that Cannabinoids should be retained on the Prohibited List; that its use may be thought of as doping; and that the Spirit of Sport criterion, though vague, is still a defensible criterion for the demarcation of “doping”. To achieve this, I critically discuss the legitimacy of Cannabinoid inclusion in the light of contemporary literature on “enhancement”, and introduce the findings of a recent empirical investigation into anti-doping policy with a sample of international key actors in anti-doping policy.

In the first section, I describe the definition of doping and the current state of policy flux in anti-doping, then I set out the extant and the proposed criteria for a method or substance to be considered doping (i.e., for inclusion on the Prohibited List). I review then one bioethical critique of the Spirit of Sport criterion (Foddy and Savulescu 2010), and a recent challenge by an internationally recognised group of scholars and scientists working in the field of anti-doping (the International Network of Humanistic Doping Research) to remove the criterion. I then included narrative data from key actors on the international scene of anti-doping such as Heads of National Anti-Doping Organisations, Heads of Medicine and Science in Anti-Doping Organisations, and senior members of the World-Anti Doping Agency (WADA), before arguing against their position and for the status quo.

## **II. What is Doping, and What are the Criteria by Which a Method or Substance May be Considered for the List of Prohibited Methods and Substances?**

Following the Ben Johnson scandal at the 1988 Seoul Olympics, the subsequent Dubin enquiry and the Tour de France scandal in 1998, the IOC established a working group to formulate a robust and independent international body to regulate doping in sport. In consequence, the WADA was set up. Following a UNESCO convention, signed by nearly all nation-states in the world, the World Anti-Doping Code (WADC) came into effect in 2003. It was agreed that WADA would be funded jointly by nation-state signatories and the Olympic Movement, while National Anti-Doping Organisations

(NADOs) are funded by nation-states but are typically — though not always — independent of direct political control. This system of dual funding is germane to later considerations of the chief functions of an anti-doping organisation (ADO).

The WADC, which is the heart of global anti-doping policy (ADP), was amended in 2009 and this second revision is still in effect. It is currently in the second phase of its second revision. On 1 January 2015, the third version will come into operation. It is important to detail both since there is a significant conceptual shift in procedure.

Since 2009, WADA defines doping in relation to a violation and then it subsequently lays out a procedure and criteria for inclusion as follows. The definition of doping is consistent between 2009 and the proposed 2015 Code. It is a formal definition only in terms of the types of violations that exist. There are only minor amendments to the nature of Anti-Doping Rule Violations (ADRV) and therefore the current revisions (2015) are cited here. What becomes evident then is that doping is not per se defined by prohibited substance ingestion. That is one, perhaps the most typical but not the only, form that doping can take. Thus:

#### **ARTICLE 1 DEFINITION OF DOPING**

Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.10 of the *Code*.

WADC 2015 — Version 1.0

Additionally, the following constitute anti-doping rule violations:

#### **ARTICLE 2 ANTI-DOPING RULE VIOLATIONS [ADRVs]**

- 2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*.
- 2.2 *Use* or *Attempted Use* by an *Athlete* of a *Prohibited Substance* or a *Prohibited Method*.
- 2.3 Evading *Sample* Collection.
- 2.4 Filing Failures and Missed Tests.
- 2.5 *Tampering* or *Attempted Tampering* with any part of *Doping Control*.
- 2.6 *Possession* of a *Prohibited Substance* or a *Prohibited Method*.
- 2.7 *Trafficking* or *Attempted Trafficking* in any *Prohibited Substance* or *Prohibited Method*.
- 2.8 *Administration* or *Attempted Administration* to any *Athlete In-Competition* of any *Prohibited Method* or *Prohibited Substance*, or *Administration* or *Attempted Administration* to any *Athlete Out-of-Competition*

of any *Prohibited Method* or any *Prohibited Substance* that is prohibited *Out-of-Competition*.

2.9 Complicity in an Anti-Doping Rule Violation.

2.10 Prohibited Association

The number and heterogeneity of forms that ADRVs can take are noteworthy. Doping, thus defined and contrary to everyday understanding that it is biotechnological cheating, is not a unified phenomenon. Instances 2.1–3 are the object of discussion in this article. It should be noted that 2.4 is a frequent ADRV, since athletes who think they may submit a positive sample often simply refuse to answer the door to a doping control officer, flee the scene, or do not locate themselves at the time and place they have promised to be at according to the “whereabouts” data they have submitted.<sup>2</sup>

The object of most discussions in the ethics of anti-doping revolves around which substances should comprise the PL. In the current version (prevailing since 2009), it is held that at least two of the following must apply:

- 4.3.1.1 Medical or other scientific evidence, pharmacological effect or experience that the substance or method, alone or in combination with other substances or methods, has the potential to enhance or enhances sport performance;
- 4.3.1.2 Medical or other scientific evidence, pharmacological effect or experience that the Use of the substance or method represents an actual or potential health risk to the Athlete;
- 4.3.1.3 WADA’s determination that the Use of the substance or method violates the spirit of sport described in the Introduction to the Code.<sup>3</sup>

In addition is included a category widely referred to as masking agents:

- 4.3.2 A substance or method shall also be included on the Prohibited List if WADA determines there is medical or other scientific evidence, pharmacological effect or experience that the substance or method has the potential to mask the Use of other Prohibited Substances or Prohibited Methods.<sup>4</sup>

The criteria may thus be summarised as follows: (i) (potential) performance enhancement; (ii) (potential) health risk; (iii) (potential) violation of the spirit of sport. I shall ignore the masking function set out in 4.3.2. It is clear that the use of the qualifier “potential” gives the medical and scientific sub-group that determines the PL considerable latitude. Moreover, it is frequently noted

that the operations of this group are not transparent. WADA's defence of this position is based on the fact that in declaring their discussion, and the evidential basis for them, they may actually assist doping efforts by individuals and Athlete Support Personnel (ASP) such as sports physicians, scientists, pharmacologists, and so on.<sup>5</sup>

In philosophical terms, the "at least two from three" procedure takes advantage of what philosophers call "defeasibility". In the early days of analytical philosophy, it was widely thought that the meaning of concepts might be precisely understood in terms of analysis of linguistic usage that would yield individually necessary and jointly sufficient conditions (or criteria or rules) for the proper application of concepts. The work of Wittgenstein drew attention to the limitations of this theory of meaning. Where such boundedness of meaning might apply, say, in geometric concepts (e.g. a triangle is a: (i) plane shape; (ii) internally bounded; (iii) whose internal angles sum to 180°), natural languages were mostly populated by words whose meanings could not be understood independently of their usages, which were understood in a context sensitive fashion. Friedrich Waissman (1965), who had collaborated with Wittgenstein in the middle of his career, published a theory of the open-textured nature of certain concepts. Their meaning cannot be fixed rigidly to a set of conditions that exist or may come to pertain. Famously, Wittgenstein used the word "game" to illustrate the plasticity of meaning, revealed in the myriad of comprehensible uses to which the word "game" might be put, which seemed to have no essence but that were loosely related to each other. All that the different uses of the word had in common were a number of "family resemblances". This openness, he noted, did not hinder our use of those words or concepts.

HLA Hart's account of legal concepts developed the notion of defeasibility. He recognised that there were clear and less clear concepts in law just as there were clear cases of application and hard ones. In the latter, considerable interpretive work was necessary. In certain concepts, he argued, the criteria are "underdetermined". We employ defeasible interpretation when only some but not all of the required criteria apply. This allows us to recognise cases or instances that an action falls under while not fully satisfying what are thought to be exhaustive criteria. While Hart's easy/hard conceptualisation rests on accepting the more radical account of language and concept acquisition that Wittgenstein advocated, the idea of defeasibility is helpful in understanding the concept of doping generally, and the Spirit of Sport specifically.

Foddy and Savulescu (2010) attack WADA's claim that "Doping is fundamentally contrary to the spirit of sport".<sup>6</sup> They argue that it appears to be

setting out a condition: if  $x$  is not fundamentally contrary to the spirit of sport, it is not doping. And this is how Foddy and Savulescu (2010) interpret the statement. They, however, misquote WADA. They write:

However, the Code goes on to say explicitly that *all* '[d]oping is fundamentally contrary to the spirit of sport'. In other words, if a drug is banned because it is both harmful and performance enhancing, it is necessarily considered to violate the spirit of sport as well. This statement contradicts the 2-out-of-3 rule because it adds this spirit-violating property to *every* banned group. Perhaps this is a mistake, but if it is not, then WADA and its supporters are not seriously worried about health risks. Neither are they seriously worried about performance enhancement. (2010: 512)

As I have said, this is an illustration of how a concept's openness or under-determination allows for misreadings. The point of defeasible criteria is to allow for the application of criteria that are not jointly sufficient. The meanings of words can mutate and shift in relation to the contexts of their use. The WADC does *not* say "all doping", which is what Foddy and Savulescu (2010) accuse it of. The simple addition of one word leads them astray in their critique. Nevertheless, they have pointed to a lack of clarity that might easily have been avoided. It can seem in tension with their two-from-three, defeasible approach. Simply removing the statement would help avoid this charge. Moreover, because of the lack of transparency of the PL group, we do not know in practice whether it is the Spirit of Sport criterion or the risk to health criterion that dominates the thinking of the committee. Since it is populated by physicians, medical scientist and researchers, but *not* philosophers or social scientists, there is every reason to suspect it is the former, not the latter, which predominates. If this assumption is true, then what is happening appears to be an unjustifiable form of medicalising of doping. If it is not, then we might reasonably ask on what basis the judgements are being made as to the Spirit of Sport in the absence of those with any expertise in the ethics of sports and human enhancement more generally.

Two points of application arise from this very brief account of meaning and its application. First, the heterogeneity of ADRVs does not detract from our comprehension of the phenomena but merely illustrates how a prescriptive definition can serve clear policy purposes for actions that range broadly. Definitions serve many functions. It could be argued that in offering ten separable ways of committing an ADRV (and by defining doping exclusively in terms of defeasible criteria), they are allowing for a conceptual inflation that renders the "doping" more problematic. Yet no one has made this

complaint. Scholars and scientists, and anti-doping personnel themselves, have made precisely this complaint against the Spirit of Sport criterion, though. My point here, then, is that if the complaint of defeasibility is to be taken seriously, it should apply to the definition of doping itself and not merely to the Spirit of Sport criterion. But I do not think it should in either case. Insights into the philosophy of language already solve the problem of essentialism, there is no need to resurrect it: doping is a heterogeneous phenomenon; and the “spirit of sport” is an open concept.

Second, and more promising for critics of extant ADP, it is still a moot point whether there might be some necessary condition but no set of jointly sufficient conditions. In the following, I shall show how both these points apply. In the case of the former, the phenomena of doping are so varied that defeasibility is a proper manoeuvre and that the other criteria are open to the same objection, so simply ridding ADP of the Spirit of Sport will not solve the problem.

### III. Critics of the Spirit of Sport Criterion: Vagueness, Scope, Application

This is what WADA says about the Spirit of Sport:

The spirit of sport is the celebration of the human spirit, body and mind, and is *characterised* by the following values:

- Ethics, fair play and honesty
- Health
- Excellence in performance
- Character and education
- Fun and joy
- Teamwork
- Dedication and commitment
- Respect for rules and laws
- Respect for self and other Participants
- Courage
- Community and solidarity

WADA's list of values falls far short of a definition of the “Spirit of Sport”. Note that it does not claim to be one. It merely says that the aforementioned are features that “characterise” the Spirit of Sport. Nevertheless, Foddy and Savulescu (2010) argue vigorously that the Spirit of Sport criterion is inadequate. They assert that this is WADA's attempt to “define” the spirit of sport

(2010: 511) but that is not a fair criticism, as we have seen above. WADA does not offer a definition. Moreover, they write that “This may be a good list of features that embody the aspirational ‘spirit of sport’. But as a way to choose which drugs to ban, it is terrible”.

WADA’s list of values is inadequate *as a description* of how sport is practised universally, and this is often how critics understand it. Foddy and Savulescu are closer to a better understanding of the function of the list when they call it “aspirational”. Though WADA does not say this, I think it better to understand the Spirit of Sport *as an ideal*. Under this conception, the argument would run as follows: this is what sports look like ideally, and this is the standard we shall use partly to determine what may be considered on the Prohibited List, *not*, pace Foddy and Savulescu, what will count as doping. I shall elaborate on this point below.

For now, I merely summarise Foddy and Savulescu’s complaint that the list of values is ineffective in distinguishing licit from illicit means of performance enhancement. There is some substance to this view. Nevertheless, what can be said in a spirit of charity is this: WADA’s list of values is an incomplete, unsystematic and unstructured account of key values that are in association with ethical sport. It is incomplete since, if one were setting out an ideal, it would need to offer a fuller account of the range of personal and social virtues that would sustain an ethical conception of sport. Present in this list are both “respect” and “courage” and though these are important, no one would pretend they were exhaustive. The list is unsystematic. We are not offered a framework that is hierarchical or ordered in some way that might distinguish what is elemental from what is peripheral. The list is unstructured. Some values refer to individual virtues, e.g. respect, courage), others refer to social virtues (e.g. solidarity), and some others bridge technical and ethical aspects (excellence). The relation between health and sport is ambiguous. Elite sport has little to do with biostatistical understandings of health (e.g. Boorse 1977), but then elite sportspersons are not “normal” in a biostatistical sense. Teamwork neither promotes nor mitigates doping. It is not a truism that excellent performance is to be understood only in the absence of doping. And so on. The critique of the list could be extended considerably. What can be said in agreement with Foddy and Savulescu (2010) is at least this: what the Spirit of Sport criterion is taken to mean and how it is to be used is unclear.

Given that the WADC is currently in the middle of a two-year review, we can ask whether the 2015 proposed version (at the time of writing) has made good on any of argumentative, philosophical or procedural deficiencies.

#### IV. WADA's Redefinition of the Criteria for Inclusion on the Prohibited List (PL)

“Mission creep” is a political term of art that has gained currency lately. Is this true of WADA? Part of the criticism of WADA is that its extension into matters of public health extends its scope into matters concerning civil society that are beyond its remit. The issue that most clearly begs the description “mission creep” in anti-doping is the inclusion of Cannabinoids on the PL. How they merit inclusion on the list is thought to be a function of the vagueness of the concept of the Spirit of Sport, the failure of WADA to remain true to its core activities and sport-focus, and the politicisation of sport's ADP.

A group of international scholars and scientists, partly in response to the medicalisation and scientisation of doping and anti-doping, recently formed to establish the International Network of Humanistic Doping Research.<sup>7</sup> In a recent publication, members of the network led by Prof. Ivan Waddington, a medical and sports sociologist, appealed to WADA to remove the Spirit of Sport criterion, and retain the focus on cheating in sport *qua* doping.

They wrote:

We hold that it is nonsensical that an athlete can be banned under WADA rules for consuming a drug which has no performance-enhancing effects, for *it is precisely the performance-enhancing nature of a substance which is the central defining characteristic of doping*; in effect, this regulation means that athletes can be punished under the anti-doping code for a form of behaviour — the use of recreational drugs which are not performance-enhancing — which is not cheating and which does not constitute ‘doping’ in any meaningful sense of the term.<sup>8</sup>

There is of course an element of rhetoric in this claim. Contrary to the assertion, it is perfectly “meaningful” that if one prescriptively defines a concept (doping) in relation to three defeasible criteria, which includes the spirit of sport (which itself is partly characterised by “health”), then recreational drug use may be thought of as doping. But there is a point, however insufficiently precise it has been made in the above quotation. I shall return to this point. Second, they offer no strategy to support their essentialist claim that performance enhancement is the “defining characteristic of doping”. And I have indicated above how a defeasible approach is to be preferred. Indeed, it is too minimalistic a conception of doping. One might wish to add criteria like “deception”, “unfairness”, to the list of potential criteria such as one might wish to argue that certain modes of enhanced recovery were to be thought of

as doping too. To reiterate: doping is itself a heterogeneous phenomenon that underscores a defeasibilist approach.

Nevertheless, WADA (whether in response to the call or not) has modified their stance with respect to the criteria in line with the call above. In the current proposed version of the Code review (the second of three phases), they have amended the WADC to as follows:

- 4.3.1 WADA shall consider a substance or method for inclusion on the *Prohibited List* if it determines in its sole discretion that the substance or method alone or in combination with other substances or methods has the potential to enhance or enhances sport performance and the substance or method meets, *in addition*, one of the following two criteria:
  - 4.3.1.1 Medical or other scientific evidence, pharmacological effect or experience that the *Use* of the substance or method represents an actual or potential health risk to the *Athlete*;
  - 4.3.1.2 WADA's determination that the *Use* of the substance or method violates the spirit of sport described in the Introduction to the *Code*.<sup>9</sup> (bold, emphasis added)

What this reformulation entails, in philosophical terms, is a twofold strategy. First, it establishes performance enhancement (PE) as a necessary condition or inclusion criteria for the PL: it leaves defeasible the health and Spirit of Sport criteria. The critics from the INHDR might now cheer since it seems foreseeable that recreational drugs may readily fall under 4.3.1.1 and 4.3.1.2, but not under 4.3.1 (the PE condition), and therefore be ineligible as doping. It would appear that this objection, to expanding doping into public health and private morality, has been altered by WADA.

The academic signatories to the call have further ethical and political objections that merit careful consideration in support of their cause. They write:

It is clear that WADA's third criterion for inclusion — that the use of drugs is against the vague concept of the 'spirit of sport' — performs a 'catchall function'; it provides an argument for the banning of recreational drugs whose use cannot be banned on sporting grounds, that is on grounds of performance-enhancement. It is important that we, and WADA, are clear about the implications of this rule: since WADA may suspend an athlete for the use of recreational drugs which are not performance-enhancing WADA is, in effect, using anti-doping regulations in order to police personal lifestyles and social activities which are unrelated to sporting activities.

In terms of their argument, what is claimed is that the idea of the Spirit of Sport criterion cannot be used to impose a(n) (apparent) public morality on

athletes who may or may not choose to use cannabinoids in their non-sport time. They are not alone in this view.

Consider a perspective from an Athlete Trade Union in Europe offered to the author in interview for a European empirical ethics study:

Regarding cannabis, our position is that it is not a performance enhancing substance and should not be included on the list. Athletes using marijuana hurt their teammates more than their competitors. Marijuana use is not cheating or sport fraud. WADA has enough to handle with real doping. It is important to note that collectively bargained anti-doping systems in the U.S. distinguish between substances of abuse and performance enhancing substances. A rehabilitative approach would make more sense rather than a punitive one. Politics and punishment, unfortunately, go together on this one. (Code: AT1)

Here there is recognition of (potential) harm to participants but it is held that doping ought to be conceptually restricted to performance enhancements that create sporting injustices. Moreover, it suggests a public health approach to substances of abuse, and a punitive approach to (its restricted conception of) doping. The move has much to recommend it in terms of apportioning different policy responses to differently motivated acts.

A principle can be established from both quotations: recreational substance (ab)use does not threaten the Spirit of Sport. That their use is a health risk has been disputed for many decades though some recent research is fairly clear on the relationship (see Meier *et al.* 2012; Gonzalez and Swanson 2012). Under the 2009 tri-partite defeasible system, Cannabinoid use if detected would constitute an ADRV. Since ADOs do not actually catch so many doping cheats this is not unimportant. Moreover, according to WADA's 2011 figures, there were 445 positive tests for Cannabinoid use<sup>10</sup> including famously the multi-Gold-medal-winning figure Michael Phelps. This datum represents the third highest category of doping (prohibited substance) for which athletes were tested for. Might its exclusion lead to a diminution of WADA's legitimation? After all, there appears to be some relationship between the credibility of a system which places a burden on athletes and the positive effects of those burdens. If athletes come to believe that so few doping competitors are caught doping, then the whole system will come under pressure. On the other hand, it might be argued that their legitimacy was enhanced by a focus only on illicit performance enhancement.

Who wants Cannabinoid use on the PL then? One can assume that since most nation-states making sale and trafficking of Cannabinoids (though not possession) illegal, then they would have a vested interest in its being made illicit to sportspersons. Hitherto NADOs are all but certain to come under

pressure by state parties to symbolically outlaw recreational substance abuse. Therefore, one might suspect a fair-play/cheating narrative from IFs and Trades Unions, and a public health perspective from NADOs.

## **V. On Whether Cannabinoids Should be Retained on the Prohibited List: The Voices of Key Actors in Anti-Doping Policy**

I turn now to a study in empirical ethics of physical enhancement from the European (EPOCH) project noted above. In that study, only a minority of 12 European NADO heads were strongly in favour of retaining Cannabinoids on the PL. One stated:

I have huge problems with WADA's definition of doping. It isn't a definition as far as I'm concerned. [...] if I'm trying to apply it and I'm trying to write my strategy based on what we're trying to achieve, I don't know what we're trying to achieve. I have a real problem, I don't know what we're trying to achieve and I don't know what this ... I think that their definition is so broad that it could cover anything and everything and I don't think it's appropriate. I actually have a real problem with the definition. (Code NADO 5)

They continued:

And even now in response to that, the EU thing that came through a week, a few weeks ago there about the gyms and that side of it, you know and they referred to doping substances. But what does doping mean? You look up try and find the definitions and doping is linked to people taking sports people and then you look up the definition of sportsperson. And you know they don't include these guys and doping is a definition that's taken within the context of competitive sport.

And so therefore the word doping doesn't mean anything in those contexts. It's not, I mean I think you used a different term for it which I think is right but this EU thing was referring to it as doping and I don't think it is. And strictly speaking if you're using the definitions we have in place at the moment but I think the WADA definition is so broad. (NADO5)

What we have here are powerful voices in ADP who all privately agree that catching recreational doping athletes is not at the core of anti-doping. Their conclusions chime with the critics from the INHDR. On the face of it, it would appear that the WADA are listening to stakeholders. This view is certainly underwritten by many NADO heads in Europe who formed part

of the sample. One NADO head understood the desire of a politicisation of ADP but, were they given the choice, would not burden ADP with it:

What they've proposed at the moment and bearing in mind this is first red line draft and it's probably going to look vastly different come November next year. Is I think a good compromise and certainly something we suggested which is: give performance enhancement a greater weighting in your determination of whether you're going to consider it on the list or not. So, basically it has to tick performance enhancing. Now, if you can then wed it to Spirit of Sport as well, that's fine with me. Because I think one of the things that is often forgotten particularly by those not working within government is government's ambition is that, government's objective is that this is contributing to the Public Health Agenda. (Code: NADO 1)

Here it seems the NADO participant has realigned the Spirit of Sport argument with the health argument. But the relationship is a tenuous one. Governments have both an interest in sports being vehicles for positive social and ethical values and for the health of their population. Yet the relation between health and sport is at best unclear. While on the one hand there is certainly a symbolic value (people who take physical exercise might appear to be less unhealthy than those who do not), it is unclear whether competitive sports — and especially elite competitive sport which is WADA's primary concern — has anything much to do with health at all. Just as there are competing conceptions of health, so there are multiple ways to realise it — and it is not a given that sport is chief among them.

A final complication must be noted. Even if WADA goes on to ratify the bipartite system, there is a further mechanism by which Cannabinoids might be outlawed. As a preface to the PL, which the bipartite mechanism is used to construct that list, they write the following:

**S0. NON-APPROVED SUBSTANCES**

Any pharmacological substance which is not addressed by any of the subsequent sections of the List and with no current approval by any governmental regulatory health authority for human therapeutic use (e.g. drugs under pre-clinical or clinical development or discontinued, designer drugs, veterinary medicines) is prohibited at all times.<sup>11</sup>

While it might be possible then to remove Cannabinoids with this catch all, what seems clear to me, is that it is *not* the Spirit of Sport that is the problematic “catch all” rule. It does seem, however, that no guidance is set out for the employment of this rule. But then there appears to be a lack of transparency about how any mechanism is employed in the construction the PL.

It is most likely that the Olympic Movement, and IFs too, have a considerable interest in associating sports with health. In terms of sponsorship and marketing, being positively associated with health is a(n) (economically) good thing. So each of the parties, with the exception of ATU and a minority of athletes, has reason to align the Spirit of Sport with health for sporting, public health, and economic reasons.

## **VI. Anti-Doping between Medicalisation, Conceptual Vagueness and Political Interference**

What would be the conceptual gain of rendering doping under two necessary and now sufficient conditions? Doping is performance enhancement that is (potentially) harmful to health. Well, on the one hand, there will be greater specificity since the constituents of the list are reduced in number. On the other hand, there is a medicalisation of doping since after the performance-enhancing credential are satisfied, it is seemingly a medical matter whether the methods or substances are harmful or potentially harmful to health. I call this a medicalisation in a pejorative way. As Parens (2010) notes, the term originally noted by sociologists is merely descriptive of a process (see Conrad *et al.* 2010). And there seems to be a minor, but contested, view that it is health in individual terms that counts most, not a public health perspective. While this may make it easier for those with a desire to maintain exceptionalism or isolationism in sport policy, it may not be obvious to philosophers of health that this is desirable.

Under a biomedical or biostatistical theory of health as normal functioning (e.g. Boorse 1977), we might be able to ban the kinds of methods and substances currently thought harmful, such as blood-boosting, endogenous testosterone ingestion, recombinant human growth hormone use, synthetic erythropoietin supplementation, anabolic steroid use, and so on. Here doping policy is a kind of paternalistic protection; health promotion with teeth, so to speak. But as philosophers of health are keen to remind us, there are more conceptions of health than the biomedical or biostatistical account.

In contrast, though, on a social account of health where the securing of one's vital goals is definitive of health (Nordenfeldt 1995), the doping athlete might be seen to be using methods and substances that do not harm him.<sup>12</sup> To the contrary, he might be seen to be flourishing.<sup>13</sup> Note that this is not a matter of conceptual vagueness; the competing of conceptions of health might be thought to be equally precise or imprecise. It does not matter for the argument. The key premise is this: all concepts in a natural language may be rendered contestable by the contexts in which they are used. "Health" is

as open to contestation as is “Sport” and the “Spirit of Sport”. The perceived precision of the former is likely to be a function of the paradigm (or perhaps biomedical theory-ladenness) of the preconceptions of the sports medical and scientific communities and ADP agencies.

Moreover, a significant complication in this shift would be the loss of an ethical discourse in anti-doping policy. The source of ethical unease now shifts from cheating — loosely understood as deceptive unfair play — to imprudence. The doping athlete is to be understood as deceiving others by utilising imprudent health-risking substances or methods that are licit under the new rule. This is not to my mind a conceptual gain. Moreover, given that much of the discourse surrounding cheating is moralised (perhaps too highly moralised), the intuition that doping is an ethical failure will come to be seen as misplaced. The moral discourse of anti-doping predicated is on the idea that sports are ethical enterprises. And this is rarely seriously accounted for outside sports philosophy. Nevertheless, the idea that doping athletes display deficiencies of character (McNamee 2008) and violate the fair opportunity principle (Loland 2009) may be thought to underpin an ethical vision of sports. And if this criterion is removed, we are left with little ethical substance to criticise doping athletes. Under the bipartite scheme, ADP makers merely act in a strong paternalistic way to prevent athletes from particular harms (while ignoring others that may even be inherent in the activity, e.g. boxing, horse racing, Formula 1 car racing, and so on). It is far from clear to me why this is an ethical or a policy gain. Nor is it obviously a conceptual one.

Regarding the Spirit of Sport criterion, it is worth rehearsing a point made by Wittgenstein that how we use language is crucial to meaning:

‘But is a blurred concept a concept at all?’ — Is an indistinct photograph a picture of a person at all? Is it even always an advantage to replace an indistinct picture by a sharp one? Isn’t the indistinct one often exactly what we need? (§ 71)

It strikes me that the Spirit of Sport criterion is exactly what ADP needs. From a purely philosophical point of view, I have shown that the objection against the spirit of sport *qua* vagueness is largely an impotent one. The world of natural languages is not really split into two categories: the neat and the vague. Granted, some concepts are clearer than others. It is true that WADA’s list is neither a definition nor an analysis. I noted above that they do not claim that it is. It is simply a list of values widely referred to in relation to an ideal of sports and participation therein. But we handle conceptual vagueness every day without remarking upon it. When does yellow shade into ochre, or orange; or when does pink become cerise? Even colour predicate is

conceptually vague, but we do not hear of the abandonment of colour-words. How could we?

Likewise, if we want to argue that there are some ways of preparing for and competing in sports that threaten the (contested) ideals that it stands for, we must have some mechanism by which this is done. A spirit of sport criterion is thus essential to the task of determining which substances and methods are thought of as acceptable or not. This is not a case of line-drawing as Murray (2007) suggests. He is clear on the problem of hard cases, but it is not helpful to see these as arbitrary lines that may or may not be justified. All sports rules are arbitrary, as he notes. But none are, or at least none ought to be, random.<sup>14</sup> There is no good reason why we could not extend a soccer pitch by one metre, nor add to the pressure of a rugby ball by a further 0.5oz per square centimetre, or play hockey for 93.5 minutes, and so on. The rules preserve the challenge in an arbitrary way. If ADP makers advance the case that the symbolic relations between health and the spirit of sport are such that we do not wish to have excessive technological augmentation, they should erect an argument to that effect. If they wish to make licit recreational drug use because it is dangerous to health and inimical to sports, so be it. What is needed then, is not an objection on the grounds of vagueness, or line-drawing, but a proper account of the goods and virtues that sports ideally instantiate and then an account of why some will fall under the heading “doping” while others will not. Match-fixing and corruption are a larger threat to the spirit of sport; they are clearly *not* doping.

It is important to register the confluence of two problems here for ADP. It is first a political problem. Critics of current policy from within and without point to the idea of the mission creep into public health. The unstated but reasonable inference is that nation-states pay for half of all anti-doping operations by NADOs and WADA, and they wish to register their opprobrium towards users of Cannabinoids. The extent to which this political fiat will depend on the arguments supplied and contested. The second objection is that the criteria for inclusion on the PL incorporate a criterion, the Spirit of Sport, which is conceptually vague in such a way that it paves the way for politicisation of anti-doping into public health.

## VII. Conclusion

I have argued that certain bioethical and social scientific criticisms about the Spirit or Sport are mostly untenable under a conception of meaning that is very widely shared in the philosophy of language. I have not rejected their claims outright. It is clear that issues concerning the operationalisation of that

concept remain. The critics' suggestion, along with that of other key voices in ADP, that the criterion is removed from ADP is mistaken if the thought is that the employment of the health/harm criterion is somehow precise, is open to the selfsame criticism of vagueness, or at least theory-contestedness. Moreover, the move away from a three-part defeasible conception to a bipartite definition of doping merely medicalises it and undermines the widespread view that doping is an unethical act or practice, corruptive of the integrity of sports.

This leaves two questions. Is it unreasonable that states parties who have an interest in the order of civil society, its health, and its values, seek to influence attitudes and behaviour to modes of enhancement? Can the concept of the Spirit of Sport be made more precise, and can its use by the PL subgroup make more transparent their use of it as a criterion? Both questions will require the kind of ethical expertise that is currently underemployed, and often unemployed, in AD discourses beyond the academy.

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## Notes

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2. The whereabouts policy is itself hotly contested. Essentially, all athletes in a Registered Testing Pool, which itself is a narrowly defined population of elite athletes must submit whereabouts information for one hour per day between the hours of 7am and 10pm when they will be available for unannounced testing controls. The intrusive nature of such policy is widely discussed (Møller 2011, 2012) as is the fact that there are no international standards for the inclusion criteria of the registered testing pool (Dikic *et al.* 2011).
3. [http://www.wada-ama.org/rtecontent/document/code\\_v2009\\_en.pdf](http://www.wada-ama.org/rtecontent/document/code_v2009_en.pdf).
4. Ibid.
5. See McNamee, M.J. (2012) Epoch Final Report: Work Package 7 (Physical Enhancement), unpublished technical report.
6. [http://www.wada-ama.org/Documents/World\\_Anti-Doping\\_Program/WADP-The-Code/WADA\\_Anti-Doping\\_CODE\\_2009\\_EN.pdf](http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/WADA_Anti-Doping_CODE_2009_EN.pdf) p.14 [accessed 25 October 2012].
7. <http://ph.au.dk/en/om-instituttet/sektioner/sektion-for-idraet/forskning/forskningsenhedens-sport-og-kropskultur/international-network-of-humanistic-doping-research/> [accessed 25 October 2012]. On a point of intellectual honesty, I happily declare that I am a

- Member of this network. I could not add my signature to the call for reasons that will become apparent.
8. <http://ph.au.dk/en/om-instituttet/sektioner/sektion-for-idraet/forskning/forskningsenhedens-sport-og-kropskultur/international-network-of-humanistic-doping-research/newsletters/june-2012/call-for-wada/> [accessed 25 October 2012].
  9. [http://www.wada-ama.org/Documents/World\\_Anti-Doping\\_Program/WADP-The-Code/Code\\_Review/Code%20Review%202015/Code-Draft-1.0/WADA-Code-2015-Draft-1.0-redlined-to%202009-Code-EN.pdf](http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/Code_Review/Code%20Review%202015/Code-Draft-1.0/WADA-Code-2015-Draft-1.0-redlined-to%202009-Code-EN.pdf) [accessed 25 October 2012]. Note that the version on WADAs website shows what has been removed and altered by coloured fonts and ~~struckthrough~~ fonts. These have been deleted in the quotation above, which reads as if the proposed changes will come into force.
  10. See WADA's own data at <http://www.wada-ama.org/Documents/Resources/Testing-Figures/WADA-2011-Laboratory-Testing-Figures.pdf> [accessed 23 October 2012].
  11. <http://list.wada-ama.org/prohibited-in-competition/prohibited-substances/> [accessed 27 October 2012].
  12. I use the male gender advisedly: doping is a predominantly male phenomenon.
  13. The contemporary case of Lance Armstrong comes readily to mind.
  14. I am not suggesting that Murray does not agree with this. I am sure he does.

## References

- Ashcroft, R.E., A. Dawson, H. Draper *et al.*, B. Foddy, and J. Savulescu (2010) Ethics of Performance Enhancement in Sport: Drugs and Gene Doping, *Principles of Health Care Ethics*, 3rd edn., ed. R.E. Ashcroft, A. Dawson, and H. Draper *et al.*, John Wiley and Sons, Ltd., London.
- Boorse, C. (1977) Health as a Theoretical Concept, *Philosophy of Science*, 44, 542–73.
- Conrad, P., T. Mackie, and A. Mehrotra (2010) Estimating the Costs of Medicalization, *Social Science and Medicine*, 70, 1943–7.
- Dikic, N., S.S. Markowicz, and M.J. McNamee (2011) On the Efficacy of WADA's Whereabouts Policy: Between Filing Failures and Missed Tests, *Deutsche Zeitschrift für Sportsmedizin*, 62 (10), 4–9.
- Dubin, C. (1990) *Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Enhance Athletic Performance*, Canadian Government Publishers, Ottawa.
- Gonzalez, R., and J.M. Swanson (2012) Long-Term Effects of Adolescent-Onset and Persistent Use of Cannabis, *Proceedings of the National Academy of the Sciences of the USA*, 109 (40), 15970–1.
- Hanstad, D.V., A. Smith, and I. Waddington (2008) The Establishment of the World Anti-Doping Agency: A Study of the Management of Organizational Change and Unplanned Outcomes, *International Review for the Sociology of Sport*, 43 (3), 227–49.
- McNamee, M.J., and V. Møller, eds. (2011) *Doping and Anti Doping Policy: Legal, Ethical and Policy Perspectives*, Routledge, London.

Meier, M.H., A. Caspi, A. Ambler, H. Harrington, R. Houts, R.S.E. Keefe, K. McDonald, A. Ward, R. Poulton, and T.E. Moffitt (2012) From the Cover: PNAS Plus: Persistent Cannabis Users Show Neuropsychological Decline from Childhood to Midlife, *Proceedings of the National Academy of the Sciences of the USA*, **109** (40), E2657–E2664.

Møller, V., M.J. McNamee, and P. Dimeo, eds. (2009) *Elite Sports, Doping and Public Health*, University of Southern Denmark Press, Odense.

Murray, T. (2007) In Search of the Spirit of Sport, *PLAY TRUE* (World Anti-Doping Agency, Montreal, Canada), **Issue 3**, 24–6.

Nordenfeldt, L. (1995) *On the Nature of Health*, Springer, Dordrecht.

Parens, E. (2011) On Good and Bad Forms of Medicalization, *Bioethics*, doi: 10.1111/j.1467-8519.2011.01885.x.

Waissman, F. (1965) *Principles of Linguistic Philosophy*, Macmillan, London.

Wittgenstein, L. (1953) *Philosophical Investigations*, Blackwell, Oxford.