



# The construction of a policy: The World Anti-Doping Code's 'spirit of sport' clause



Ian Ritchie\*

Brock University, Department of Kinesiology, Niagara Region, 500 Glenridge Ave., St. Catharines, ON L2S 3A1, Canada

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## ABSTRACT

The 'spirit of sport' clause is the central justification for the World Anti-Doping Agency's (WADA) *Code*. While debates have arisen regarding the clause's legitimacy since its inclusion in the first 2003 *Code*, those debates have treated the clause in the abstract, divorced from the specific historical forces that shaped its creation. The aims of this paper are to highlight specific events that influenced the creation of the 'spirit of sport' clause and summarise the roles and motivations of those individuals who created it. Based on archival documents, secondary sources, and interviews with people who played important roles in the creation of the clause, specific historical events from 1988 to 2003 shaped the creation of the 'spirit of sport'. Events in Canada were crucial, including Ben Johnson's famous 1988 victory in the Summer Olympic Games and the ensuing 'Dubin Inquiry' into the state of Canadian sport. The Inquiry led to the creation of the Canadian Centre for Ethics in Sport (CCES) and the CCES's "spirit of sport" campaign. While the campaign itself lived a relatively short life, the language from it was transferred to WADA's *Code* as the organization's 'Code Project Team' prepared the *Code* between 2000 and 2003. Grappling with problems and inconsistencies in existing anti-doping policies, the 'spirit of sport' language provided a way of dealing with those issues while simultaneously promoting a 'values-based' image of sport. This paper presents this history and draws implications regarding the 'spirit of sport's' legitimacy as the foundation for anti-doping policy.

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## 1. Introduction

For those who follow events and consider issues carefully in the world of doping and anti-doping, it is well known that since the creation of the World Anti-Doping Agency (WADA) in 1999 and the first iteration of the World Anti-Doping Code (*Code*) in 2003, the 'spirit of sport' clause in the *Code* has been the cornerstone justification for anti-doping world-wide. The clause has been crucially important because it serves as the central ethical justification for anti-doping, it is used directly to warrant inclusion of substances or methods on the *Code's* list, and finally in recent years its inclusion in the *Code* has led to debates regarding its legitimacy as the ethical foundation for anti-doping and, in turn, as a defensible quasi-legal policy. The clause will continue to warrant debate as the latest 2015 version of the *Code* is ratified and takes effect on January 1, 2015. The 'spirit of sport' clause remains as the central pillar of anti-doping – the *Code's* "fundamental rationale" – as it was in the first version of the *Code* released in 2003 and the second in 2009 (World Anti-Doping Agency, 2003, 2009, 2013).

The lively debates that have emerged (e.g. Beamish & Ritchie, 2006; Dimeo, 2007; Henne, Koh, & McDermott, 2013; Loland & Hoppeler, 2012; McNamee, 2012, 2013; Moston, 2013; Mulhall, 2006; Waddington, Christiansen, Gleaves, Hoberman, & Møller, 2013) it should be pointed out are only relatively recent ones and represent the fact that the notion of the 'spirit of sport' is very new. The perspectives are far too multifaceted to summarise here but suffice it to say that, first, there are those who defend the spirit of sport either in its current or in a slightly altered form. McNamee (2013) for example defends the spirit of sport ideal as just that—an ideal that is somewhat open ended and one that can and should face the criticism that there are multiple perspectives on sport's *raison d'être* by reminding those who make such criticisms that the clause in the *Code* defends a characterisation of sport but does not make claims to an absolute definition. Loland and Hoppeler (2012) defend the clause but at the same time claim it needs to be improved with more precise accounts of what fair opportunity in sport means alongside recognition that sport involves a biological and evolutionary component.

On the other side of the debate, Henne et al. (2013) claim the spirit of sport clause should be abandoned altogether and in its place should be a more robust account of the health risks in sport.

\* Tel.: +1 905 688 5550x3966; fax: +1 905 688 8364.

The risks from doping, the authors claim, should be placed alongside other risky practices, including those that take place during the day-to-day training regimens of high-performance athletes when, it is well known, athletes frequently encounter hazards to their health and well-being. This perspective closely follows the one of Kayser, Mauron and Miah (2007) who propose a harm-reduction model of medically supervised drug use, in which the risks of training in high-performance sport are weighed alongside the interests of the health of athletes. From an historical perspective, Dimeo (2007), Beamish and Ritchie (2006), and Ritchie (2014) summarise different historical factors that led to the development of anti-doping policies, pointing out that because the first rules against certain substances and methods were not created for ethical reasons, the search for an ultimate justification for anti-doping rules will always be short-sighted because the ethical rationale never existed in the first place.

While debates will continue with respect to the ethical legitimacy, legal defensibility, and policy effectiveness of the spirit of sport, this study investigates another component of the clause that has not been addressed: the specific historical factors that led to the inclusion of the spirit of sport clause in the first iteration of the Code in 2003. Specifically, while the clause has become incredibly important for the world of anti-doping, remarkably enough there has not been any thorough discussion of the process, or the people and organisations involved in the process that led to the creation of the spirit of sport clause. Why was the clause created? Who created it? What were the motivations? What were the social, political, and historical contexts that led to the creation of the clause leading up to 2003? These seem like incredibly important questions but they remain unaddressed in the anti-doping literature.

These also seem like incredibly important questions given that, as is the case with all policies that influence social, political, cultural, and economic life, active agents – real people – create and enforce policies with specific interests and motivations, and acknowledging those interests and motivations helps us to understand and evaluate in turn the legitimacy of policies and their rationale. Furthermore, understanding policies' histories is an important part of the accountability process, as it allows for an analysis that moves beyond debating the legitimacy and accountability of the policy 'in the abstract'. However, looking at the literature on the Code and the spirit of sport clause, one is given the impression that it emerged without any context whatsoever. While there has been discussion of the creation of WADA itself (Hanstad, Smith, & Waddington, 2008), most other accounts of the spirit of sport clause have been in the abstract – without specific historical context. Indeed, interestingly enough the language of the clause itself can be misleading, because the clause naturalises the relationship between doping practices and sport when it states in its very first sentence that "[a]nti-doping programmes seek to preserve what is intrinsically valuable about sport" (WADA, 2013, p. 2). The clause, in other words, is in-and-of-itself ahistorical.

This study, then, addresses two interrelated questions. First, who were the people that create the spirit of sport clause and what was the specific context in which they formulated it? Second, what were the more general historical factors that led to the creation of the spirit of sport clause? The study proceeds first by outlining a general historical background of anti-doping, leading up to the creation of WADA in 1999. Obviously a full account of the history of anti-doping is impossible; however, those major events that are of greatest relevance are summarised in order to evaluate the context of the creation of the spirit of sport clause in turn. The next section – the most important – turns to the specific events and people's actions that led to the eventual writing of the spirit of sport clause into the first Code in 2003. As will become apparent, two general themes emerge: specific historical events leading up to 1999 (the creation of WADA) and 2003 (the publication of the first

Code) played significant roles, with, interestingly, events unfolding in the aftermath of the Ben Johnson scandal in Canada being centre stage. Second, the specific process that WADA undertook and the people involved played a reciprocal role. The final section of the paper makes some comments and provides an evaluation of the spirit of sport clause given the history presented.

## 2. Historical background to international anti-doping

A complete history of anti-doping policies is clearly not possible, nor warranted, here. However certain elements of that history are directly pertinent to the development of the spirit of sport clause.

First, while it is well known that the first formal policies in Olympic circles with any real sanctioning power were created by the International Olympic Committee (IOC) in the 1960s, anti-doping policies in general alongside statements of principle against doping practices predate World War Two (Gleaves, 2011; Gleaves & Llewellyn, 2014; Ritchie, 2014). The period from the late 1800s up to WWII was an interesting one for nascent anti-doping attitudes. Dimeo (2007) has shown that there was a mix of discontent alongside general acceptance and curiosity with respect to the potential impact various substances might have on athletes' bodies. While substances such as alcohol, strychnine, kola, 'purified' oxygen, and others were used within certain athletic circles, their use was greeted with a mix of support, especially when it came to pushing athletes through the extremes of events such as long distance marathon running, pedestrian races, and cycling races, alongside attempts to curb behaviour based, at least in part, on religious temperance (pp. 17–50).

Within the ranks of high-level sport administration, the International Amateur Athletic Federation's 1928 *Handbook* wrote that athletes found to have doped could face up to a lifetime ban (Gleaves, 2011, p. 243). Within Olympic circles, it has recently been discovered that the IOC made its first statement against doping in 1938 in its *Bulletin*, reflecting the work of a committee struck the previous year headed, interestingly, by Avery Brundage (Gleaves & Llewellyn, 2014). Importantly, Gleaves (2011) and Gleaves and Llewellyn (2014) have shown that the defense of amateurism lay at the heart of the attack on doping in the early years, with the divide – very much a class based one – between 'clean' amateurs and 'doped' professionals framing the issue as the years of the early twentieth century progressed. This framework would in fact continue after WWII, with amateurism playing an important role in the buildup to the creation of the first IOC policies that went beyond 'statements in principle' to bans with sanctioning power (Beamish & Ritchie, 2004, 2006). So, while the death of Danish cyclist Knud Jensen during competition in the 1960 Rome Summer Games certainly played a role in terms of IOC concerns, the general foundation for anti-doping was created "long before Jensen ever climbed on a bicycle" (Gleaves, 2011, p. 250). The IOC updated its statement of principle against doping in its *Bulletin* in 1963 based on the report of a subcommittee struck in 1962. Subsequently, the IOC more formally defined doping in its Tehran meetings in May, 1967 and performed the first limited tests on athletes in the 1968 Winter and Summer Games (Hunt, 2011, pp. 6–37).

The period between the end of WWII and the creation of the IOC's policies in the 1960s witnessed what Dimeo (2007) refers to as a radical shift towards a "new ethics." Led voraciously by Avery Brundage, who formed the IOC's 1962 committee in part because he was upset that Jensen has been granted a gold medal posthumously, the new ethical stance shifted concerns from those of health of athletes to attacks on the morality of athletes' behaviours. Perhaps most notoriously, Sir Arthur Porritt, head of the IOC's Medical Committee told readers in *Olympic Review* in 1965 that doping was an "evil" and that the user is a "morally dulled individual" (Porritt,

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