

It's not about the blood: Operacion Puerto and the end of modernity

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"This is the west, sir. When the legend becomes fact, print the legend."

The Man Who Shot Liberty Valance.

"If we want things to stay as they are, things will have to change."

Il Gatopardo or The Leopard.

"In the history of cycle sport, fabrications crowded out facts from the very outset."

Benjo Maso

The end of modernity?

Verner Møller has argued that contemporary anti-doping law and policy signals the end of the spirit of modernity in sports (Møller 2004). Møller's characterisation of such an event appears to be founded upon the view that the challenge manifested by the State's and the World Anti Doping Agency's (WADA) intrusions into sport's "long tradition of self-governance" signals a "growing lack of confidence in and an unease about the very project of modernity itself" (Møller 2004: 145). This unease, and the will to impose order that accompanies it, exert pressure upon fundamental bourgeois legal principles and ideals of freedom. One of the symptoms Møller immediately identifies with this rupturous passage is the growing incidence and acceptance of trial by media (see Beamish, *passim*). In this situation the ends are seen to justify the means and anecdotal evidence replaces evidential standards previously needed in modernist courtrooms. Møller correctly identifies this tendency towards trial by media and anecdotal evidence as gaining acceptance and support in so far as it is "in the service of the virtuous campaign against doping" (Møller 2004: 148). Møller's position, or fear, is that what we are currently witnessing within sport "may be a portent of a more general departure from the ideals on which the modern world is based" (Møller 2004: 149). Such a view should not seem farfetched especially when the Australian Minister for Sport announced at the 2009 Australian New Zealand Sports Law Association (ANZSLA) Conference that the whereabouts scheme was a model for dealing with the drug question within the rest of society.

Møller's assessment of anti doping policy as the end of modernity for sports immediately raises a number of issues that have ramifications that spread beyond the milieu of the world of sports law

and doping. Importantly what Møller puts on the table for discussion is the end of the modernist idea of the rule of law and the coming of the what has been termed the permanent state of exception (Agamben 1998; 2005); it includes the idea of law's rationality becoming law's functionality; and it includes the increasing playing out of these matters within a global society of the spectacle which adopts the tactics of a just war where "public pillorying (becomes) unmistakably punishment" (Møller 2004: 149). These three factors – exception, functionality and spectacle bundled together under the rubric of a "just war" come together when we look at the case of Operacion Puerto and its discontents, that is the various responses to it such as the media circus, the Rider's Commitment to a New Cycling, the Whereabouts system and the Biological Passport. They herald, as Møller has sensed, a change in the way we do (sports) law in a post modern age. The factors that Møller highlights are also consistent with many of the symptoms identified by writers such as Hardt and Negri as signaling the end of modernity and the coming of what they have dubbed "Empire" (Hardt and Negri 2000; 2004; 2009).

If the assumption that we have come to the end of modernity (as a period in history) is correct, the question that we need to consider is "whereabouts are we now?" *Operacion Puerto* assists us in coming to terms with the situation as it exemplifies the manner in which the media crisis and trial by media have taken over from the niceties of modernist law practice. One way of understanding this and of highlighting the points made by Møller is by reference to the ongoing saga of *Operacion Puerto*. One symptom of the passage that Møller has highlighted, I will argue, is that all things - law, politics, the economy, science and sport - tend to merge into a zone of indistinction (Agamben 1998; 2005). The boundaries between the old disciplines are no longer distinct and in such a situation it is unhelpful to try and isolate one from the other in a manner in which we may have in modernity. In the age of biopolitical production, or immaterial labour, (see Hardt and Negri 2009; Lazzarotto 2002) where what is produced are lifestyles, and where production increasingly becomes the production of affect, what we are able to see is a space where the 'economic' or 'Marxist' critique of the causes of doping can be mapped onto the more individualistic and affective understandings of the problem as put forward by Møller – sacrifice, the communication of intensities becomes what is produced, reproduced, bought and sold in a new economy. Subsequently, if what is produced and sold today are, at their most basic, lifestyles, an analysis of the doping problem which seeks to continue to treat sport as some pure isolated phenomena unconnected with the heady world of global business or politics is of little use to us. Even if we view professional sport with its emphasis on results, on *faster, higher, stronger*; Møller is close to the mark when he remarks that "there is no valid argument against doping that is not at the same time an argument against sport itself" (Møller 2004: 151; See also König 1995).

For many, to even accept the position that things cannot be neatly separated and discretely categorised brings about a form of existential crisis which sends them rummaging throughout their modernist toolbox with even greater zeal. Yet we cannot rewind the clock and return to the safety zone of pure modernity. And if we start by taking the attempts to characterise anti-doping as a form of 'sporting rule' the problems become immediately apparent. That sport is more than sport, that sport is business, and that sport and the politics of the nation state are interlinked, are all truisms within the field in which we work and play. Nevertheless, many still try to describe and justify the types of penalties and other measures meted out for anti-doping infractions as

being only sporting penalties with no ramifications outside of the ideal world of pure sport.

The clear point is that sporting rules have real ramifications outside sport and real impacts upon the lives of those subjected to them. As a textbook example, Marco Pantani transgressed, possibly by mistake, a technical rule that said a cyclist should not compete, on health grounds, with a level of haematocrit higher than 50%. As Waddington (2000) has pointed out, this may have been the most successful anti-doping rule that we have ever had, in part due to the role played by the riders (including Pantani) in instigating it. It was the closest thing we have seen in cycling since *Festina* to a doping penalty that was a pure sporting rule. Yet even the infraction of a rule which carried with it the lowest opprobrium of all doping penalties – the resting of a rider for 15 days on health grounds - still triggered a criminal investigation, trial and appeal, which was only finally concluded in the rider's favour after his death in tragic circumstances (Rendell 2006). Pantani is but one example – a whole list can be created of cyclists who fall in one way or another into situations as tragic as Pantani's; but the simple point to be made here is that in such circumstances it is increasingly naive, perhaps deceptive, to speak of mere or pure sporting rules (Hardie 2009).

Before developing further this line of enquiry, or contextualising it within the global processes occurring today, a question must be raised as to whether we are experiencing fundamental changes in the way we 'do' law. If this is the case, then we need also to think about the role and purpose of what might be called 'sport criticism'. König has criticised sports ethics as being a "bad idealism with an antiquated knowledge" (König 1995: 257) and in some ways this is the point I seek to open up for further investigation. If what we are witnessing is, as Møller has highlighted, the end of modernity, and if we are going to deal with this juncture and all that it portends, we need to go beyond viewing anti-doping policy as just a matter for sport and concerning mere sporting rules. To take König seriously we need to stop playing long enough - or really to play with it some more (Agamben 2005) - and to examine the totality of the situation facing us strategically (Shogan and Ford 2000). We need to locate sport both historically and within existing power relations. Sport and its rules can only be understood against the background of the development and changes occurring within global capital and not by reference to a set of values that arose in a different place and at a different time (Bryson 1990). By recognising that what is at stake is not the purity of sport but fundamentally the control of the athlete, as labor and as commodity, we are able to start to tackle the problem (Kreft 2009). From that point, it may be possible to begin the task of constructing a useful critique of sport and doping policy which seriously takes into account the new conditions sensed by Møller and which seeks to contribute to building a sustainable system as an alternative to the one within which athletes currently find themselves within.

Cycling Doping and the Media.

Cycling has, deservedly or not, a reputation as having an entrenched doping culture existing within a closed community where some bending of the rules has been seen as historically permissible, if not required, in order to cope with the exceptional nature of its events. Whether cycling is unique in this aspect is not entirely clear. The anecdotal position is that cycling is, in reality, no different to other sports in terms of the use of doping practices but that cycling has been subjected to a greater level of testing than have other sports in the last ten years. What is

certain is that during this period, as cycling has itself become embroiled in the processes of globalization, the sport has been subjected to a number of internal crises and increasing external scrutiny. Throughout this process the problem of doping and how effectively to deal with it remains an important and unresolved issue.

The increased scrutiny of professional cycling commenced in a large part due to the events of the 1998 *Tour de France* involving *Festina* and other teams. In fact this event is in part credited with the movement towards the formation of WADA (Møller 2004 146). More recently other than the ongoing *Operacion Puerto* enquiry in Spain, there have been the successive problems associated with the three contests of the Tour de France that were contested during the Armstrong interregnum (2006 – Landis; 2007 – Rasmussen, Vinokourov, Mayo; 2008 - Kohl, Schumacher, Ricco & Piepoli). All of these events have raised questions regarding the effectiveness of current anti-doping policy and its attempts at changing behaviour in relation to doping practices within cycling. They also raise, in one way or another, the manner in which matters are *not* dealt with by the strict application of the rule of law but are played out where the media construction of the problem seems to overdetermine the law.

Schneider (2006) makes the valid point that the history of the nature of the problem of doping in cycling is constructed in large part from the extensive media coverage of it. She correctly raises the question as to how far current anti-doping policy is a result not of research nor analysis but is rather a reaction to these successive media and related crises. The point made by Schneider is not that far removed from the concerns of Møller. Whilst my approach seeks to take a lead from the observations of both Møller and Schneider it differs from that offered by Carstairs in that I have not formed the view that the value to the “society of the spectacle” (Debord 1983: 147, Palmer 1996: 5, Best and Kellner 1999: 129, 139) and the media crisis surrounding doping in cycling has had a “bums on seats” or “ratings” effect (Carstairs 2003). I cannot agree with Carstairs that the playing out of the doping question in cycling has had a marketing value or spin off in the way that she seems to argue that it has.

People may be fascinated by doping scandals, and this may contribute to selling the sport’s media to fans, but rather than a marketing value what appears to me is that the crisis of doping in cycling plays a much more profound role as part of the contemporary system of governmentality, discipline and control in a global system. It is, moreover, a matter of discipline, control and biopower in a global system (Foucault 1978, 2003; Deleuze 1992). The crisis concerning doping is, thus, a significant sign of fundamental changes in the nature of global production and sport’s place in the global system than the media portrayal of the crisis ever lets on (Hardt and Negri 2000; 2004; 2009). It may be here that Bryson’s comments concerning how drugs have overtaken debates on amateurism in contemporary sport are most relevant (Bryson 1990).

Operacion Puerto – It’s Not About the Blood.

Operacion Puerto (Operation Mountain Pass), is the name given to a criminal investigation conducted by the Spanish *Guardia Civil* and it encapsulates the manner in which the reality of the material processes occurring have become hidden and confused by the media crisis (for comment on *Operacion Puerto* see: Atkinson and Young, 2008; Hardie 2007; Lippi 2007; 2008; Møller 2008; Pottgiesser, 2007; Rebeggiani 2008; Strulik, 2008; Rosen, 2008). The manner in

which the *Puerto* drama has been dragged out and portrayed in the media and by many in positions of power within cycling brings into stark view the situation that Møller describes concerning trial by media. For administrators and policy makers, their aims - good administration and the making of good policy - appears at times to have taken second position behind a perceived need to engage in the sustaining of an ill-informed and self-interested slanging match that seeks to denigrate and override the niceties of the mechanisms of modernist justice. Rather than being a simple black and white question as it is generally portrayed, polarised around the binaries of 'clean' and dirty, or 'fair play' and 'cheating', what *Puerto* reveals is that the issue is one of critical complexity where the public stances and the media's portrayal of the situation belie the forces and movements at play as cycling's helmsmen seek to transform it into a global commodity in the society of the spectacle. *Puerto* reveals a space of critical opalescence, where rumour, suspicion, media, law and politics all converge into a media constructed zone of indistinction (Agamben 1998; 2005; Hardie 2007; Galison 2003). *Puerto* reveals a space where the global system in construction pushes forth, utilising the tools of the exception, functionality, spectacle and just war to over determine modernist values and law. It characterises as a hindrance, as tardy, as dysfunctional, as an outdated formality, the grand institution of modern Spanish justice.

In May 2006, the Spanish daily newspaper, *El Pais* published a series of stories concerning the *Guardia Civil* investigation of a network involved in the medical preparation of a number of professional cyclists and other athletes (Arribas 2006; Hardie 2009). At the centre of the storm was the Madrid based gynaecologist, Dr Eufemiano Fuentes. It is history now that the reporting of *El Pais* subsequently sent the cycling world into turmoil as the extent of Dr Fuentes' preparation programs were revealed and the affair quickly took on a life of its own. At first the focus was on the Spanish team, *Liberty Seguros*, whose title sponsor quickly withdrew their financial support. The riders of the team, directed by Manolo Saiz, were forced to cover up their sponsor's name with tape as they competed in the 2006 *Giro d'Italia* (Hood 2006; Tan 2006). Almost immediately other famous cycling names began to emerge, such as Ullrich and Basso, with the effect - not only calling into doubt their performances in that edition of the *Giro* - but also cutting list of favourites of that year's *Tour de France* to shreds (Cyclingnews 2006).

The media's focus since that time has been on the cyclists involved and how they should be punished. This has also been the main focus of the UCI – constantly calling for the riders to be disciplined in a manner that, deliberately or not, misunderstands what *Puerto*, as a criminal and judicial process, is all about. This line of attack is not only reserved for the media. Senior officials of both the UCI and WADA do nothing to shed light on the complexity of the situation (Cyclingnews 2009b; Hood 2009; Stokes 2009). But to begin to understand *Puerto* one needs to consider why in the first place the police had been engaged in the surveillance of Fuentes, Saiz and others.

By piecing together the documents it appears that this surveillance seems to have emerged out of the intersection of two seemingly unrelated concerns in Spain. The first was the ongoing investigation by the Spanish *Guardia Civil* into the importation of prohibited medicines such as Insulin Growth Factor 1 (IG-F1) from Australia in *Operacion Mamut* (Mammoth) (Guardia Civil 2004). *Mamut* had uncovered a network of importation and distribution of IG-F1 from an Australian company, Gropep. That company, which is based in Adelaide, South Australia, was

originally funded by an Australian governmental authority, the Commonwealth Scientific and Industrial Research Organisation (CSIRO), and the University of Adelaide. At the time of the investigation Gropep had in fact planned to licence the right to manufacture IG-F1 to the *Mamut* suspects (Cyclingnews 1998). When the *Guardia Civil* followed the trail of Gropep's IG-F1 to and throughout Spain its distribution eventually led them to the doors of Dr Fuentes and his cohorts. In the first instance it was this illegal importation and subsequent supply that the *Guardia Civil* were interested in cracking. Their interest was not Fuentes, Saiz nor their collaborators. Even more clearly it was not the cyclists involved. However the fact of the matter was that it was the trail of IG-F1 from Adelaide that led the *Guardia Civil* to Fuentes and his collaborators.

During the course of the *Mamut* investigation the *Guardia Civil* became aware of the declarations of the ex-Kelme cyclist, Jesus Manzano, which had been published in the Spanish sports daily, *AS* (AS 2004; Bose 2004). Manzano set out in great detail the system of rider preparation that existed within his former team, *Kelme – Comunidad Valenciana*. This system, Manzano claims, was driven not by the individual cyclists but those that managed and ran the team. Included amongst those were the team's various *Director Sportifs*, including the principal Director, Vicente Belda. Belda now stands charged alongside Fuentes and Saiz in the *Puerto* process.

In late 2005 the *Mamut* investigation intersected by chance with the disaster that arose for Spanish cycling after Roberto Heras's positive test for EPO in 2005 in the *Vuelta a España* (Spain's cycling Tour) (El Pais 2005a; El Pais 2005b; Cyclingnews.com 2006b). The repercussions for Unipublic, the race's organisers, sponsors, and the Spanish state were enormous. For a complex array of reasons, Spanish cycling was in crisis following Heras' positive test. The Grand Tours have always played a role in marking out and defining a territory, a nation and its people. In that respect, the Tours were as much a part of creating the Europe of the twentieth century as was the documentation and administration of life that Michele Foucault describes so very well in his lectures entitled '*Society Must be Defended*'. The people, customs, fetes, fairs and fiestas each day, complete with the local version of cheese, chorizo and champagne, are always a part of the backdrop of the Tours but they have been steadfastly created and maintained by an alliance of the state, industrial capital and the media. With its resumption after the Civil War in 1941, Spain's *La Vuelta* covered the longest route in its history demarcating the victor's territory across the country and particularly the former Republican strongholds. For some years it was restricted by Franco to only Spanish participants. In modernity these races all played their role in reinforcing the status of a unified territory, a people, a nation and its capital. It must be in this broad light, along with the years of American domination of the Tour de France, and the sale of Unipublic to the Tour de France owners ASO, that the positive test of Heras must be understood.

At the end of the 2005 *Vuelta* Heras was the only real Spanish possibility to conquer the Grand Tours (Giro d'Italia, Vuelta Espana, and the Tour de France) in a post-Armstrong World. But he was in disgrace. The loss to Unipublic as a result of Heras' positive test drew into focus the perceived problem of doping in Spain and the alleged attitude of impunity that existed there (Cyclingnews, 2006). It may be possible to speculate that it was also this loss of credibility, both

in the public eye and in terms of possible future sponsorship and television coverage, which drew the hunt of the *Guardia* closer to Fuentes.

The evidence given by *Liberty Seguros' Director Sportif*, Manolo Saiz, when he was detained by the *Guardia Civil* provides some insight into both how the *Vuelta* disaster came to be and how the *Liberty* team became entangled in the ongoing investigation into illegal importation. Saiz had been under video surveillance by the *Guardia Civil* and was arrested with a bag of cash to allegedly pay his team's outstanding account with Fuentes. The cash was in the mixed denominations of Euros, Swiss Francs and Australian Dollars. The Dollars supposedly being money left over from the team's *per diem* payments by the organisers of the Tour Down Under in Adelaide earlier that year. Saiz has had a long history in professional cycling but unlike most other team directors he was never a professional cyclist. Nevertheless his contacts extended far and wide throughout the cycling world and he has been for many years one of the most successful and complete *Director Sportifs*. Saiz was the mentor (or, at least, inspiration) for Lance Armstrong's *Director Sportif*, Johan Bruyneel, who rode and served his cycling apprenticeship with Saiz during the 1990s. Saiz also has close connections with ex-Australian professionals and cycling powerbrokers such as Neil Stephens and Stephen Hodge. In Spain his followers and contacts are known collectively as the 'Manolo-istas' and they are anecdotally regarded as being closely linked to those that brokered the power behind the UCI. It is of no surprise then that Saiz was also significantly a prime mover, along with former International Cycling Union (UCI) President Hein Verbruggen and his protégé Alain Rumpf, in the creation of the Pro Tour model adopted by the UCI.

When he was interviewed in detention, Saiz said that he had known Fuentes since his stint with the Spanish cycling team *ONCE* in the early 1990s, a time when his team was populated by a number of high profile riders many of whom are still involved in the sport as administrators or *Directors Sportif*. Saiz said that after Fuentes left the team they had occasional personal contact but that it was, in 2004, with his signing of Roberto Heras, that the relationship recommenced on a more than friendly level. Saiz said that, on his arrival at *Liberty* from the *US Postal Service* team (*USPS*), Heras had asked that he be able to have Fuentes, as his personal doctor. According to Saiz, Heras wanted to deal directly with Fuentes. At first Saiz had refused the request, as it did not seem to him to be the best way to manage the team. After much insistence on the part of Heras, Saiz gave in, but it seems that he decided to try and manage the relationship as best he could. Saiz was insistent in his evidence that it was Heras and other riders in his team, some of whom had also previously been in *Kelme* that pushed for the Fuentes connection. There of course was no love lost between Saiz and *Kelme's Director Sportif* Vicente Belda. During the previous years Saiz had been instrumental for pushing through the Pro Tour and *Kelme's* exclusion from it. This exclusion had in part been brought about by Saiz and others insistence that *Kelme* was still engaged in cycling's old ways (Bike Radar 2004; Hardie 2004).

After Heras's positive test the *Guardia Civil* appear to have thought it worthwhile to see if there was any link between the substances being used by cyclists and their investigation of importation and distribution in *Operacion Mamut*. This of course was not the only event that had led them to the consulting rooms of Fuentes. The year before the *Vuelta* had been hit by two positive doping tests for blood transfusions. The first to break was that of Tyler Hamilton, another ex *USPS* rider,

who tested positive following his September 11 time trial victory, over his (soon to be again) teammate, Floyd Landis, in Valencia (Hardie 2004a; Hardie 2004b; Jones 2004). The second involved the post-race revelations concerning Hamilton's teammate Santi Perez (Abt 2004). On the road the *Phonak* team was managed by ex-Kelme *Director Sportif*, Alvaro Pino (Maloney 2006). The files also suggest another link from Hamilton to his friend "Nick" and "Nick's friend". This little mystery has not received the attention that the reference to "*Valv Piti*" has received by the cycling world. And of course, seemingly outside of the Fuentes affair, the next doping incident to really rock cycling was that of another ex-USPS rider, Floyd Landis (Ballester and Walsh 2006; Cyclingnews.com 2006c; Canadian Broadcasting Corporation 2006; Velocity Nation 2009b; Walsh 2007). These events involving Heras, Hamilton and Perez drew the *Guardia Civil* closer and closer to their stakeout of Fuentes.

Puertas Abiertas

In May 2006 *Operacion Puerto* broke when *El Pais* published details from the leaked *Guardia Civil* files. Not only were *Liberty Seguros* embroiled but so was Hamilton, Perez, a host of *Kelme* riders and two of the main challengers for that year's *Tour de France* – Jan Ullrich and Ivan Basso. All of this is old news. Most that follow cycling are now all too familiar with the stories of the blood bags, the nicknames and the speculation that still continues over them. Bags of the evidence have come to light regarding Fuentes and the methods he practiced. The riders both implicated and suspected and the subsequent disciplinary and criminal proceedings against many of them have all been in the news (Cyclingnews.com 2009).

Many seem to believe that there is something else that Spanish justice needs to resolve, other than the prosecution of Fuentes and Co., which will assist cycling's renewal. This is the continual line pushed by the media, the UCI and WADA. But the point that is often forgotten in the fog is that as far as the *Guardia Civil* investigation and the Spanish courts are concerned the cyclists have never been suspects. Sure there were bags of evidence implicating various riders in the Fuentes' scheme, bringing to light for the first time the details of planning and administration that went on to help produce some 'great' rides (for examples see Hardie 2004b; 2004c) but never was any cyclist charged, or likely to be charged, with a criminal offence in Spain as a result of *Operacion Puerto*.

In this context the consistent media reports of riders being cleared of any involvement by the Spanish judiciary are meaningless. The cyclists were always witnesses and in some ways possibly the victims of the network focused around Fuentes. The approach of the Spanish courts is abundantly clear even from the reports in the cycling media. For example one report has even sets out in detail the questions that Investigating Judge Serrano intended to ask cyclists when giving evidence (Cyclingews.com 2006d). The questions point to the status of the cyclists as victims rather than perpetrators. The questions were:

1. Is the witness still a professional cyclist?
2. For which teams has he ridden since 2002?
3. As a professional cyclist, does he know the doctors Eufemiano Fuentes, Yolanda Fuentes, or Alfredo Córdova? Has he received blood transfusions? If so, in what laboratory and with whose authority?

4. During his career as professional cyclist, has he ever been sent by his doctor, manager, or other person to the laboratory of Dr. Merino Batres in Madrid?
5. Has he ever ridden for a team for which Manolo Saiz was technical director or manager? Did he receive blood transfusions during that time?
6. Assuming that he had suffered health disadvantages as consequence of the treatment by the doctors Fuentes and/or Córdoba and/or the actions of Saiz, has he suffered any damage that he could claim in this process?

Their status as such is further illuminated by the comments made by one of the accused Merino Batres who told the police:

Poor Mancebo, I believe that we swindled him a bit. He didn't need the transfusions for anything. He had such a high natural Haemotocrit that we couldn't do half as much for him that we did for the others (Author's translation).

Batres recounts how Mancebo was swindled by Fuentes and himself to the tune of 50.000 Euros in 2005 alone. As a result of being caught up in Puerto, Mancebo's income fell from 1.000.000 euros in 2006 with the French team Ag2r to a low of 10.000 Euros when he was riding in Portugal during 2008 (Arribas 2009).

In these circumstances instead of pursuing the riders what Spain has sought to do is to deal with the public health issues arising from doping in sports and to deal with the supply of doping substances flowing into that country from what is regarded as a part of the new (and by implication 'clean') cycling world. The interest of the *Guardia Civil* was, and has always remained, the importation of potential doping products and their distribution and administration throughout Spain. The *Guardia Civil* believed that Fuentes was probably in collaboration with other sports doctors implicated in doping practices and that these doctors and groups that they formed constituted independent but interrelated criminal groups – acting independently but related through their shared objective of providing medical assistance to cyclists. These groups were interlinked with those seeking to import, manufacture and distribute the substances. Simply put, Spain has gone after the dealers and the pushers and not the end users or the victims.

The conclusion reached by the *Guardia Civil* was that Fuentes and his gang developed and were involved in the practice of doping, which they described as the integral preparation of the riders based on illicit methods using medicines in a manner contrary to Spanish health laws. The illicit preparation methods of Fuentes used products which were imported into Spain without passing the normal controls applied to the importation of medicines, they were using the medicines for purposes other than those that they were designed, and that many of the products used were beyond their use by date. The January 2009 appeal decision in *Puerto* has highlighted the grounds upon which the case against Fuentes and his cohort will proceed (Audiencia Provincial de Madrid, 2009a). These include that the practice endangered public health in:

- that they did not extract blood and conduct transfusions in adequate premises;
- that they did not transport blood in adequate recipients;
- that the identity of the donors were not adequately recorded;

- that there did not exist a system to guarantee that the blood was stored at the correct temperatures or that the fridges and freezers had adequate back up electricity in the case of black out; and
- that the operation of extracting and transfusing blood was conducted in a clandestine manner.

As the story of Pantani's relationship with Fuentes suggests these practices of preparing cyclists raise other important public health concerns. It is on this basis that the *Guardia Civil* and Spanish justice continue to pursue the charge of endangering public health.

“We Don't Want to Know.”

The Spanish judicial process, like any other judicial process, has not been a linear affair - with interlocutory steps and appeals by various parties including the UCI and WADA all having their effect on the course of the proceedings. For example, in 2007 the Investigating Judge Serrano shelved the inquiry (Juzgado de Instruccion 2007). His finding was that he did not have enough evidence to obtain a prosecution against anyone involved as doping was not then a crime in Spain. As well as that, in the Investigating Judge's view, the facts as presented did not fit within the concept of a charge of endangering public health. At that point it seemed that, to all intents and purposes, in Spain *Operacion Puerto* was finished. Nevertheless, the damage rolled on as the riders who had been implicated, some of whom who had been ‘cleared’ by their national cycling federations or national anti-doping agencies, found it difficult to obtain a ride in a top tier team. Some were sanctioned, with Basso being the highest profile rider involved. Others ended up either retiring, racing in lower level teams or racing as refugees in places such as Portugal and the United States until things blew over.

In the end the sanction imposed on most of them has not been that meted out by the courts, nor their federations. It has, however, been dealt to them by the management and sponsors of the Pro Tour teams and the race organisers. This is evidenced by Mancebo’s case referred to above and as many of the other cases show retribution for involvement in *Puerto* is not legal in the way we used to think about such things. Whatever the legal outcome might be retribution manifests itself in one form as an inability to obtain a contract with a decent team. Both the Australian Sports Anti-Doping Agency (ASADA) and the Royal Spanish Cycling Federation (RFEC) respectively, found that those involved had no case to answer. The comparison between Spain and Australia is telling, as all the rhetoric one is painted as being ‘out of step’ and the home of the old ways of cycling, whilst the other is ‘in step’ and a home of the new ways of cycling, but both decisions were made on identical grounds.

The issue is complex and defies the simple explanations concerning the old and new cycling worlds. On one hand there is the position that Judge Serrano had refused to formally release evidence to the relevant sporting bodies until the criminal process against Fuentes and his collaborators had been completed. This order of the Court has itself been highlighted in the media wars as further evidence of Spain not being in step with the new cycling culture. There is no great conspiracy here. It is the simple application of ordinary principles of justice in which disciplinary proceedings are suspended pending the outcome of criminal hearings. This approach was confirmed by the Provincial Court of Madrid in December 2009 (Audiencia Provincial de

Madrid 2009b) and is consistent with fundamental principles of law and natural justice and to not be bound by them would place the integrity of the criminal trial at stake. There is ample judicial authority, not only in Spain but also in Australia, to support such a conclusion (High Court, 1982).

On the other hand, the UCI received a bundle of 56 files encompassing the bulk of the then *Operacion Puerto* documents of the *Guardia Civil*. The UCI retained a consultant to deal with the *Puerto* files and in early 2006 subsequently passed these on to the respective national cycling federations. It was on this basis that for example CONI disciplined Ivan Basso. In the Australian case, of the 56 bundles of documents sent to the federations, it appears that only one page actually made it to the independent anti-doping body ASADA. Without more than this one page consisting of a calendar accompanied by some handwritten and coded annotations, it is of no surprise ASADA found that there was no case to answer. The question that must be asked is where the chain of custody for these documents broke down. How did Cycling Australia, if that is indeed where the chain broke, fail to pass on all of the relevant documents? Nevertheless the UCI continue to hold out Australia as one of the representatives of the new cycling culture who have dealt with the *Puerto* problem in a comprehensive way, whilst Spain is characterised as an example of the old ways.

In February 2008 the Provincial Court of Madrid reopened the case for the first time (Audiencia Provincial de Madrid 2008). The three Magistrates of the Court found on appeal that there was sufficient evidence for the charge of ‘endangering public health’ to be pursued and they directed Judge Serrano to reopen his investigation into that charge. However, it may be that an equally important finding of the Provincial Court was that the cyclists had never engaged in fraud in respect of their employers or sponsors. This decision is important for the not only the riders in so far as they continue to suffer at the hands of administrators and sponsors who fear the sully of their good names, but also the continuing schizophrenic and paranoid manner in which *Puerto* and, more broadly, doping policy is dealt with in cycling. The Provincial Court finding suggests in fact that these very same sponsors and administrators have been all too well aware of the practices within their respective teams for too long – and thus are not in a position to have either their name sullied or to have been defrauded.

The 2008 Provincial Court decision rejected the argument of fraud as being openly artificial and stated that it was not realistic to try to fit acts such as those in question in *Puerto* within the Spanish law of fraud. Fraud in Spain, as with most jurisdictions, requires that either those contracting the cyclists (the teams) or those running publicity campaigns in concert with the cyclists (the sponsors), to be deceived, and to be deceived seriously, hence the concept and the offence of “serious fraud”. The court stated that:

when it is notorious that for many years there has been talk of irregular practices, when there have been cyclists who have died from the consumption of drugs, frequent disqualifications and sanctions, when cycling is the mirror into which other sports look with fear, when it is known that the caravans and logistic premises of cycling teams have been searched for stimulants, when random controls are necessary after each race or stage,

and the cycling teams have their own specialist doctors, to affirm that the cyclists have defrauded those who have contracted them is to close one's eyes to reality. ... there is at least an "I don't want to know" attitude, and that is incompatible with the idea of serious fraud.

The implication of this finding is clear. The Provincial Court felt that the sponsors, and the sport's administrators, had knowledge of the fact that there had been a number of doping cases in cycling in recent years and that doping existed within cycling. The further and more important implication is that both groups had been happy to turn a blind eye whilst it was in their interests. This finding undermines somewhat the simplistic rhetoric of cheating and fair play, often repeated by members of both these groups, that pervades the discussion around doping in cycling in contemporary times and the arguable hypocritical situation whereby it is only the cyclists who are taking the blame for the problem. For all the talk of cultural change in cycling, there is still little acknowledgment from the various levels of the sport's administration and sponsors that whilst many of them whom continue to build their own careers, they too were a part of cycling's old ways.

The *Puerto* files refers to various media reports, that of Roux, Manzano, Heras, Hamilton and Perez in particular. All of this suggests that the widespread use of performance enhancing substances in cycling was common knowledge. Drugs in cycling have a long history. As we know, it was Simpson's death (Fotheringham 2003) that brought the health and safety of the cyclists into focus as anti-doping controls developed during the 1960s (Houlihan 1999). It was also with Simpson's death – the Englishman who helped start the process of globalising the Tours; that doping first becomes a political matter but it still it remained an internal issue, something for the sport to deal with. The late 1990's mark the point at which it becomes a matter for the State and it was with the '*Festina Tour*', with borders being crossed that we see doping first becoming criminalised. Even at the time of the *Festina* affair the ethos behind anti doping measures was health and safety. Only recently, as the pressures of a global market demanded, has that focus shifted to the risk management backed by the rhetoric of fair play and cheating to be monitored by a bio-political passport regime.

Puerto also reveals a new post-*Festina* 'post-modern' approach to the organisation of doping. *Festina* became criminalised because of the seizure of various illegal substances in Willy Voet's team car (Voet 2001). The riders, including Australian Neil Stephens, were held in police detention for days, with the almost blind Swiss rider, Alex Zuelle even being deprived of his glasses. The *Festina* affair exposed the old team- based practices of preparation, where team doctors themselves were responsible for the team's doping program. In the aftermath of *Festina* that system began to break down and it seems that it was replaced by a more networked and outsourced preparation system. *Operacion Puerto* exposes the outsourced network model that came into existence in cycling in great detail. It also suggest that *Liberty* returned to a more team-based approach as Saiz was aware of the dangers to his rider's health, not to say the team's reputation, if they were left alone and allowed to do their own thing. Journalist and ex-professional Paul Kimmage has recently argued that rather than dealing with its history and the problem of doping, in a post-*Festina* world these practices only became further perfected (Velocity Nation 2009b).

Fuentes, Pantani and Chaba

The effect of Fuentes' practices on the health of the riders is one of the issues raised by the continuing post-appeal *Guardia Civil* investigation. Although there have been suggestions that the *Guardia Civil* may have investigated the links between Fuentes and Marco Pantani and Jose Maria Jimenez, the references to these two riders in the *Puerto* files have not been widely speculated about in the media. What the files do call into question is the assumption by Matt Rendell in his book, *The Death of Marco Pantani* (Rendell 2006), that in his final year *Il Pirata* (as Pantani is referred to) was not doping.

Rendell documents Pantani's life during his last year in some detail: the plastic surgery, the outcome of the criminal and disciplinary trials and appeals, the visits to the psychiatrist and his doctors in Italy, the hospitalisations, the crack and cocaine binges, on to his retirement and final death on 14 February 2004. During this time it was thought that Pantani was, for racing purposes, clean, although he was using crack and cocaine after his retirement. Rendell recounts how doctors in Italy had warned him that racing itself might not be the best thing for his mental or physical health but that racing doped was far more dangerous.

Nevertheless, it was in this same period, painstakingly documented by Rendell, that the *Puerto* investigation tells us Pantani was also visiting Madrid and Dr Fuentes. During Pantani's last season on the bike, the one immediately before his death, commencing late January 2003, Fuentes equally painstakingly records an intense calendar of preparation including EPO (almost daily for over a month), IGF 1, T3 Levothroid (a hormone used in the treatment of menopause) and Insulin. The program lasted from late January until Pantani's retirement in June 2003.

The coincidence between this program and Pantani's documented incidents of mental instability during his final year raises significant causes for concern as to the health implications of doping. In the context of the investigation into the charge that Fuentes endangered public health, it will be interesting to see if this coincidence or mis-incident of events in Pantani's last year of life comes to light. And it should not be forgotten that another Fuentes patient who also suffered from depression and instability, Jose Maria Jimenez, died a little over 2 months before Pantani.

Functionality, Spectacle and Exception.

Spain and Australia, in the guise of Valverde and Davis, were the unfortunate focus of another *Operacion Puerto* sideshow that was played out in advance of the 2007 World Cycling Championships in Stuttgart (Cyclingnews.com 2007a; 2007b; 2007c). Although at that point there was only speculation and rumour as to Valverde's involvement in *Puerto*, the Stuttgart Organising Committee decided that they did not want Valverde to compete in the 2007 World Championships to be held in that city due to this rumoured involvement with Dr Fuentes. This involvement, they said, was sufficient to exclude Valverde as his presence was not consistent with the city's plans to give cycling a new start. The UCI quickly fell into line with their hosts and announced that not only were they prohibiting Valverde from riding but also that they would commence disciplinary proceedings against him. The problem for the UCI and Stuttgart was that they had opened a can of worms in that other riders who had been listed to start at the World

Championships were in a similar or even worse position than Valverde in relation to their documented *Puerto* involvement.

The UCI quickly realised this apparent inconsistency and decided that the cases of Davis and Valverde were the same and that both, along with the Czech, Rene Andrle, would also be excluded from the race (McQuaid 2007). It did not matter that the Court in Spain had restricted the use of the *Puerto* evidence until that case was concluded, nor that the Royal Spanish Cycling Federation (RFEC) and ASADA had found no case to answer. The law was now being simultaneously made, interpreted and applied by the UCI, the Stuttgart Race Organising Committee and sponsors of the World Championship. Eventually the UCI agreed to the RFEC suggestion that they mediate the dispute in the Court of Arbitration for Sport (CAS) rather than seeking an injunction in a civil court. Davis also commenced proceedings in CAS and the matters were effectively resolved with the CAS Arbitrator considering:

...that a ban imposed on a cyclist, not yet recognised as guilty of doping, from participating in the World Championships constituted a form of advance sanction. ... the UCI was prevented from implementing the type of procedure which would allow it to pronounce such a severe sanction whilst maintaining in an adequate manner the rights of the cyclist (Cyclingnews.com 2007d).

In short, the Organising Committee and the UCI had sought to deny the riders natural justice. Unimpressed by this, the German Interior Minister froze the government's subsidy to the organisers of the race (Bike Radar 2007). Functionality, spectacle and exception again overdetermined modernist law.

Why us?

Despite the outraged claims to the contrary (Audiencia Provincial de Madrid 2009b; Cyclingnews 2009b; 2009c) *Puerto* is now proceeding towards a trial of those involved in the network of supply and administration, including Dr Fuentes and his team, along with team directors Saiz and Belda. Beyond media discussion, however, every conversation about *Operacion Puerto* raises the question – “Why cycling?” ... “Why us and not all those other sports that dope?” Equally universal is the protest: “cyclists are the most tested athletes” and so on. Whether details of other athletes were ever found by the *Guardia Civil* we may never know (Arribas & Hardie 2009; Bike Radar 2006; Cyclingnews.com 2006e; Le Monde 2006). On this matter one can only speculate. Nevertheless, what can be said is that those other sports are far more established on a global scale than cycling is. And they have a different institutional sporting tradition to that of cycling. Unlike other sports, cycling now finds itself in the midst of a crisis of its globalisation: the shift from a relatively small European based trade into a global international media spectacle.

In reality cycling was always professional. The Tour grew out of the media's need to sell newspapers and doping quickly became the way that the "convicts of the route" (Londres 2009; Mignon 2003) managed to perform the impossible task set for them. Not only was cycling always linked to selling something else, it was also tied intimately to the new science of physiology and hormone research from the very beginning (Hoberman 1992). Doping became a part of cycling culture as it operated outside the ethos of the amateur sporting world. Drugs

became, as one old Aussie pro put it to me once, the "tools of the trade". Like truck drivers on amphetamines it was simply a way of getting the job done.

Additionally, cycling has always been run at a grass roots level, itinerant small groups, riders, managers, directors, like nomadic bands of gypsies. It was never big business – only recently did that occur. The Armstrong years saw cycling develop into a global media product and with it a new level of scrutiny grew as the struggle to control the emerging global commodity intensified. Cultural change in cycling is being driven by the fight over global cycling TV rights and who will control this new commodity. This is what is at the heart of the battle between the Grand Tours and the UCI – a potential multimillion dollar TV product in which the Tours wish to retain their control over their race and the UCI seemingly wish to integrate them into one grand package under their control. In this situation rumour and suspicion serve as the cipher with which the battle is played out as points are scored against the other side. Caught in the middle of this power struggle between the sport's 'owners' are the riders who become isolated scapegoats.

In this context of 'cultural change' it is only the riders being subjected to scrutiny and not those who have managed the sport for many years and who it seem have known what was happening the whole time. Still it is only the cyclists who are risking losing their livelihood. The exceptions being Fuentes or the odd director, but even they might come back in one way or another. True cultural change within cycling depends upon it being accepted that it was not just the cyclists involved in doping. It involves recognition that the practice was widely known about and accepted, even in some cases promoted by those in the know – administrators, sponsors and the media. Presently riders are criminalised while others involved in the sport mouthing the mantras of 'zero tolerance' and 'cultural change'. Against a backdrop where policy is developed upon the basis of a media crisis, genuine reform is impossible.

Puerto exists within the framework of the abandonment of old notions of law and the construction of a new functional global system. Anti doping as it has been played out so far in relation to *Operacion Puerto* and its discontents, exemplify Møller's fear – this is the end of modernity and law is made in the media as much as it is made in the courts. *Operacion Puerto* is a perfect example of the distance that exists between the rhetoric of the media crisis surrounding doping and pro cycling and the actual reality of the material processes that are occurring as cycling goes through the process of global structural readjustment. If one is serious about developing a sustainable anti-doping policy, there is a need for a genuine evidential basis rather than improvised reactions to a media crisis. In the case of *Puerto* it is the media crisis that has driven sports policy: it is this media crisis that has defined what *Puerto* is about for the purpose of reactive policy making. It is a circular operation fraught with pitfalls for a sober policy framework where currently the rigours of the law and justice seem to have no place.

Those engaged in the rhetoric surrounding *Operacion Puerto* have painted a picture of Spanish justice being slow and out of step with the cultural change, which the purported "new cycling world" is trying to embrace. For example the UCI President Pat McQuaid has often criticised the Spanish authorities for being "too lenient in their approach to doping" (Renee 2008). This rhetoric is not only simplistic it is misleading. One focus of this rhetoric has been the 'fact' that the Spanish cycling federation itself has not properly dealt with the riders involved. As noted

above the same criticism could also be alleged against those countries, such as Australia, that are said to represent the new cultural change within cycling.

Fixation on the allocation of blame is not the answer. It is more important to register the complexity of the processes occurring and to highlight that in a world of policy congestion, where driven by media crises, it is difficult to develop coherent responses (Green and Houlihan 2005; Houlihan 2005). Rather than creating scapegoats or engaging in witch hunts, a policy of engagement on all sides based upon a thorough and sober assessment of the relevant issues should be pursued. But all of this seems to have become lost in the current evangelising character of anti-doping, which only results in a moral condemnation worthy of a medieval inquisition, rather than the mores of modernity. One can get rid of the feeling that more than anti-doping, more than fair play and cries for justice, what is being played out here is the construction of the new global cycling cartography where legitimacy is made through the management of crisis and events – exception, functionality and spectacle; under the guise of the just war against the evil of doping.

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