SPORT: A THEORY OF ADJUDICATION

DISSERTATION

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ABSTRACT

The main issue discussed in this work is the nature and structure of the process of adjudication, that is, the process by which referees make decisions in sport that possess normative import and force. The current dominant theory of adjudication in sport philosophy is interpretivism, which argues that adjudication is not primarily a matter of mechanically applying the rules of the game, but rather of applying rational principles that put the game in its best light. Most interpretivists are also realists, which means that they hold that the normative standing of adjudicative principles is independent of the beliefs and/or arguments of individuals or communities. A closer look at certain examples of sports and referees decisions supports a different approach to adjudication, called conventionalism, which claims that besides the rules of the game, referees are bound to follow certain conventions established by the athletic community. This conclusion is supported, among other things, by considerations concerning the nature of sport, and especially considerations that take into account the mutual beliefs held by the participants in the game. By following Marmor’s argument that conventions are best seen not as solutions to coordination problems but as constitutive features of autonomous practices like sport, I argue that a conventionalist theory of adjudication in sport has more explanatory force than interpretivist theories.
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CHAPTER 1.
INTRODUCTION

The project I am presenting here focuses on adjudication in sport. It is meant to be an analysis of refereeing in all its forms. An initial problem with this project is that it cannot rely on a purely descriptive method. One cannot reduce a theory of adjudication to a sociological study of refereeing as some sort of induction that finds the common denominator of various kinds of behavior that are considered instances of refereeing. In other words, a theory of adjudication cannot just be reduced to a process of finding those types of activities that are generally referred to as refereeing and then to an effort to find those characteristics that are common to all these activities.

In “The Concept of Call in Baseball,” John Russell has made a somewhat exaggerated point that supports this contention. He presents a case for what he calls the “natural lawyer’s approach to the application of the rules of baseball,” according to which an unjust ruling is no ruling at all, just as a degree from a mail order university is no degree at all. Russell’s justification for this position is that “some concepts require certain functional moral or evaluative standards to be met in order for them to be applied paradigmatically or as genuine instances of the kind represented by the concept” (Russell, 1997, p.26). If adjudication is one of these concepts, then it is conceivable that one could
encounter cases of referee behavior that, although regularly described as instances of adjudication, are not in fact authentic instances of it. In fact, Russell’s account of baseball calls has a degree of plausibility, although I think it is exaggerated.

And there are some facts about games that make this position credible. It seems that referees are not just meant to apply a set of rules; they also have the responsibility to make games better. Referees have a responsibility to correct behavior that is contrary to the rules or the spirit of the game. As a result of this fact, it is clear that adjudication has a clearly normative dimension. If games were played in a perfect society, where athletes would not and could not break the rules of the game, refereeing would be most likely unnecessary. Referees, then, have a corrective function, trying to restore an adequate functioning of games when certain aberrations occur. These basic considerations seem to support Russell’s comparison between calls in baseball and university degrees. If it is true that adjudication is a normative concept that requires evaluative standards to be met in order to be properly applied, then Russell is right to say that some calls are not really, normatively speaking, calls at all. It follows that a theory of adjudication is right to exclude instances that satisfy certain conventional conditions for being a call (being a decision made by a legitimate referee) based on certain evaluative conditions that need to be met.

This approach to adjudication, however, makes it difficult to draw a clear line between those instances of adjudication that should be taken into account when a theory of adjudication is constructed and those that should not. The problem resides in the way the evaluative standards to which Russell refers are determined. Let me clarify this problem by looking at a simpler case, which does not involve the kind of evaluative
standards that Russell describes. When one tries to define the general characteristics of a chair, one needs to look at those objects that are called “chair” and then try to find a common denominator to all these instances. In order to find what the concept of “chair” refers to, one needs to know English and then find the common characteristics of the entities that are called “chairs”. However, if one needs more than knowledge of English in order to understand the concept of “baseball call,” then the situation becomes more complicated, and this is the case with refereeing. These evaluative standards cannot be obtained by looking at genuine calls and then identifying those evaluative standards that are followed in each case, because this would be circular (one would not be able to identify genuine calls without knowing in advance the standard for declaring calls genuine, which one was looking for in the first place). So the problem now becomes how to find these standards without relying on a descriptive account of what a genuine call is or is not. For the rest of this chapter I am going to try to construct a series of normative standards that are not obtained in a way that prompts this sort of worry about circularity. As I will show, the way to avoid this problem is to look for standards that are somehow external to the practice of adjudication and that can be defined independently of this practice.

So the problem now is to identify those cases that will be taken into consideration when constructing a theory of adjudication and critically justifying it. The starting point of this investigation will be the types of actions that are commonly considered “calls” in sport. Unlike the case of simple objects like chairs, knowledge of English is not enough to carve up the group of cases that can be considered instances of adjudication. Next I
will look at possible evaluative standards that would function as supplemental conditions for declaring something a genuine call.

1. Some requirements are basic and are connected with the definition of sport. Let me give an example that shows how these requirements are significant. In *Tales of a Dalai Lama*, P. Dellatre describes an imaginary conflict between the Western view of sports and the Buddhist view of human relations, thus constructing the possibility of a form of sport in which everybody wins or everybody loses at the same time (Easson, 1998). Although the story is fictional, it draws attention to the fact that certain cultures might redefine athletic competitions according to their religious or moral principles, which means that refereeing will be also redefined. However, in the example that Dellatre gives, this redefinition would be too radical to be considered as an instance of sport. Bernard Suits defines sport as a combination of four elements: rules, goals (which can be lusory or prelusory), means and lusory attitude. Although it is hard to believe that many of these characteristics of games can and will be radically altered, the fact still remains that in cases like the one presented by Dellatre the competitiveness required by sport is undermined and, for this reason, Dellattre’s example cannot be used to construct a theory of adjudication. These sorts of considerations will become particularly important when one looks at athletic communities that construct versions of games that are very different from what we now consider to be sport. Ultimately, in situations of this kind one has to accept one culture’s definition of sport and not the other. The reason is practical: if a certain culture calls sport a social practice that is radically different from an outside view of what sport is, then a theory of sport and adjudication that tries to find commonalities between these two social practices would be arbitrary or even impossible. In order for
such a theory of sport or adjudication to be made possible, one needs to accept a minimum basis of essential characteristics of sport and refereeing. In the case of sport, *Suits’ four elements of sport* will represent that basis.¹

2. The second limitation that needs to be placed on the instances of refereeing that can be taken into consideration by a theory of adjudication is that rules need to be respected. However, as recent research on this topic has shown, there is something uninteresting about this kind of requirement, as it is acceptable for both referees and players not to follow certain rules in certain circumstances. What rules can be broken and to what extent is a matter that is still disputed. Scott Kretchmar has proposed a criterion for identifying rules that can be ignored by players and referees, which focuses on the effects on the game that has been changed as a result of ignoring one or more rules to fulfill the basic aims that sports seek (e.g., testing skills). If changing a rule improves the ability of the game to fulfill these aims, then it is acceptable to ignore it, otherwise it is not (Kretchmar, 2003, p.166). However, proposals like this one are not very helpful practical guides in particular cases, as Kretchmar himself admits (Kretchmar, 2003, p.166).

It follows that the only requirement that would make sense in these conditions would ask *referees to be committed to rules in general*, which is, I admit, very vague. In order to put more bite into this requirement, one might add that any violation of a rule needs to be generally acceptable (which can be problematic) and needs to be argumentatively justified (in the sense that no gratuitous violation of rules will be

¹ It is important to understand that Suits’ account plays a central role in the philosophical literature on sport and that his definition of sport is widely accepted as a basis of any discourse in the field.
accepted). In other words, a referee cannot break a rule without identifying a benefit that this rule violation would bring for the game or athletic community. In many cases, these violations can be justified by the fact that they have been widely accepted by the community or that they are morally justified and needed. For the time being, I am going to be satisfied with a general requirement for the referees to follow the rules, with the additional condition that for any violation of a rule the referee needs to be able to provide a persuasive justification. Although violations of rules are accepted in a theory of adjudication, the burden of proof is placed on the athlete or referee who ignores a rule.

3. The third kind of restriction identifies the kinds of games in which adjudication is especially relevant. There are two ways in which a theory of adjudication can approach cases which are not in fact officiated, for instance, games played for recreational purposes with a very loose organizational structure. One way would be to eliminate them from the start, which means that the range of cases covered by a theory of adjudication would include only those games that have a solid institutional structure in place. The other way would be to allow a large number of cases, many with a loose organizational structure, and to imagine the way referees would have to act in this situation. The first option is too radical, because it eliminates a large number of cases, which have something significant to say about the nature of sport. In cases like these, which have a loose organizational structure and no referees, one could imagine what a referee would do by constructing hypothetical cases. The ability to use hypothetical cases is one of the important tools at the disposal of philosopher and I see no good reason to deny this possibility here.
However, there are certain limitations regarding the construction of hypothetical cases and these limitations are particularly relevant in a theory of adjudication that plans to expand a view of sports that has been constructed inside a Western paradigm. As recent research shows, ethical intuitions differ across cultural boundaries\(^2\), which means that the researcher who constructs a hypothetical case is likely to be biased and fail to fully understand hypothetical instances of sport that are different from the Western paradigmatic cases. That is, of course, because she will rely on her own intuitions to imagine what a referee would do in these hypothetical situations. Given this fact, one could wonder about the utility of such a method. I will stop short of accepting relativism and assume that a certain degree of overlap between cultures exists and that such worries should not be exaggerated.

I think that a more legitimate worry is that hypothetical judgments are hard to apply in cases where the existence of a referee contradicts the very idea of the game. Take for example friendly games (especially those games that are meant to be relaxing and to promote an amiable atmosphere among the players). This kind of example is interesting, because it provides a fresh, non-standard perspective on games and sports that obviously differ from the paradigm cases of refereed games (\textit{i.e.}, professional sports). At the same time, it is difficult to include them in the range of cases that a theory of adjudication should take into consideration, because this hypothetical situation in which a referee would officiate these kinds of games would be contradictory. It is contradictory to

think that referees would be called on in games of this nature to make decision which otherwise could be decided by friendly compromise. An answer to this dilemma can be given by looking at the function that referees play in games.

If referees are primarily meant to guarantee the application of rules in games, which I take to be their main function, then refereeing is compatible with the kind of friendly games I described here. However, if one looks at the way referees are meant to perform this function, the situation changes. In a game where referees impose the application of the rules by using their authority it is generally assumed that this authority is needed and that an amiable compromise in cases of disputes is not likely. The authority of referees, as that of judges, is justified only as long as this kind of amiable solution is not always available. Besides this aspect, there is also the fact that referees are not just required to solve disputes; they are also representatives of an institution that organizes the games and that makes significant decisions about how a certain sport will be played in a certain situation. Both these aspects of refereeing are clearly incompatible with the idea of amiable games. So, in light of the aspects of refereeing discussed here, what are the games that can be officiated?

One can assume that these games are played in an institutional context that regulates what rules define the game and other aspects regarding the way the game is to be played. This institutional characteristic should not be understood as a commitment to the kind of massive, profit-oriented and complex institutions that are at the heart of professional sport. One can imagine a bridge club in a small town, which would be an institution in its own right. In this club, referees might be appointed even if the participants in those games are motivated by a desire to relax and socialize. The
differentiating factor between this case and that of the friendly game I described before is that in the case of the bridge club the participants prefer to regulate this activity and, as a result, to create a compromise between the interest in relaxation and socialization, on one side, and the need for organization, on the other. In both cases the participants in the game make decisions about how the game is to be played; the only difference is that in the bridge club this decision is mediated by referees. In the bridge club, the participants can decide who the referees are and what rules or other regulations they need to follow, but they make this decision before the game and not during the game, as it typically happens with a friendly game. As I will show in a later chapter, this kind of mediated decision is an important element in the idea of adjudication. The conclusion of this discussion is that a game can be taken into account while constructing a theory of adjudication only as long as such an institutional construction exists. This does not exclude games played in a more relaxed fashion, with a particular interest placed on the relaxation and socializing, but requires a minimum willingness to implement an institutional structure that most of the time involves a more serious outlook on the game.

4. The last requirement revolves around moral concerns. The idea is that certain games and certain actions of referees are not defensible from a moral point of view and, for this reason, need to be excluded from a theory of adjudication. Nicholas Dixon presents the example of a decision made during the 2002 Winter Olympics in Salt Lake City, in which judges intentionally favored a pair in a skating competition (Dixon, 2003, p.103). Russell makes the same point, although in a more general fashion, adding to failures of impartiality (as results of bias or corruption) umpire incompetence as a reason to review a call or to consider it as “inauthentic.” I am hesitant to take this step at this
moment, although in Chapter 5 I am going to show why calls made by corrupt referees are not really instances of adjudication. At present, I think there is not enough information to determine that corrupt cases of adjudication should not count as instances of adjudication in a theory of adjudication, so this third requirement will have no impact at this level.

In conclusion, a theory of adjudication should be developed by looking first at those cases that are called instances of adjudication and then applying the three kinds of restrictions that I described before. In other words, from the set of practices that are called adjudicative a theory of adjudication will eliminate practices that take place in games that lack one or all of the four Suitsian elements of games (goals, rules, means and ludic attitude), in which referees unjustifiably ignore a significant number of rules of the game, and those that lack any form of institutional organization no matter how simple or small in scale. This is not going to be enough, however. Intuitions will do the rest of the work, eliminating other instances of refereeing that are aberrant. The main point of this project will be that a theory cannot begin with already accepted theories about what refereeing is meant to be. Among other things, I consider that a theory of adjudication cannot begin with a full set of assumptions regarding what the function of referees should be and how this function determines what qualifies as a genuine call or not. Rather this account should start from cases that satisfy the conditions I mentioned (Suitsian characteristics of games, respect for rules and institutional organization) and that can intuitively be called acts of refereeing. The evaluative principles should come later and only as a result of a descriptive-oriented process. It should not be considered as an embarrassment for this position the fact that I previously used a certain function of
refereeing, which was to guarantee that rules are followed, because this is a fundamental
and basic element of the notion of refereeing. One cannot question the idea that a central
responsibility of referees is to ensure that rules are respected without proposing a
radically different meaning of “refereeing.” However, when one wants to add something
more to this bare conceptual skeleton, facts need to be taken into consideration.

With this, I think I can present the most important steps I am going to take in this
investigation. In the second chapter I will introduce the literature that is relevant for the
topic of adjudication in sport. This chapter will look first at the formalist efforts to define
games and then at criticism directed at them from conventionalist and interpretivist
positions. And, finally, in this chapter I will present the interpretivist criticism directed at
conventionalism. Despite the fact that interpretivism is currently the dominant theory in
the philosophical literature on sport, the rest of chapters will be dedicated to arguing that
conventionalism should be the preferred theory.

The third chapter makes an argument in this direction by looking at the
connection between interpretivism and realism. The main point of the argument is that a
realist theory of sport cannot be successfully defended, and that the only way realism can
play a role in sport is when external moral principles apply in sport - creating obligations
for both referees and players. In this chapter I will show that this fact is perfectly
compatible with a new conventionalist paradigm, which I will present at the end of this
chapter, beginning with a redefinition of conventions and conventionalism.

Based on the conventionalist theory of sport I developed in the third chapter, in
the next two chapters I will present a conventionalist theory of adjudication in sport. In
the fourth chapter I will develop a theory of rationality in sport, focusing on the structure
of the act of adjudicating and supporting it with examples that favor a conventionalist theory of adjudication. The fifth chapter will be dedicated to a theory of legitimacy, showing how conventionalism can answer questions about the authority of referees and their decisions, as well as about the legitimacy of certain adjudicative principles.

The last chapter will present the general benefits of a conventionalist adjudicative theory and will draw some general conclusions.
CHAPTER 2
ADJUDICATION IN PHILOSOPHY OF SPORT

I will begin my analysis of adjudication by looking at the alternative theories of adjudication that were proposed in some of the main texts in philosophy of sport. My aim will be to try to make sense of their main assumptions and arguments. This chapter is not meant to take a critical stance with regard to any of these theories, and for this reason I will be content just to put the issue of sport adjudication in perspective. Some of the topics discussed here are not directly connected to adjudication, but in the end they are essential in order to understand how the subject is currently understood. This means that a certain part of this chapter will be dedicated to theories of sport, assuming that a theory of adjudication in sport cannot be constructed in the absence of a theory of sport.

The three main theories I will take into consideration here are formalism, conventionalism and interpretivism. Of these theories, only the last one is an actual theory of adjudication, the others are either theories of adjudication only marginally (like conventionalism) or do not mention anything at all about adjudication (the case of formalism). For this reason, analyzing them will be more like reconstructing a mosaic with pieces from various sources, trying to make the best guess when pieces are missing.
For example, formalism was originally conceived as a theory of sport, not of adjudication, which means that one can only conjecture what formalists claim about adjudication. In this case, the researcher who wants to construct a formalist theory of adjudication has at her disposal a formalist theory of sport and certain assumptions regarding the connections between a theory of sport and a theory of adjudication. Another possible source is represented by the interpretivist attacks directed at formalist views of adjudication in sport, which already make assumptions regarding what a formalist might say about the topic of adjudication. However, this source can only provide limited reliable information, as the danger of constructing a straw man in these conditions is very real, a fact recognized by John Russell (Russell, 1999, p.31). This happens because critics are less likely to interpret the theories they are criticizing as charitably as they should. With this fact in mind, I will go on and present the context in which the issue of adjudication was discussed in philosophy of sport in order to gather the information needed to present a balanced account of adjudication.

2.1. Formalism

The most important formalist philosopher of sport is Bernard Suits, although similar formalists views have been presented by James Keating. However, this label has been so far applied in two ways. First, Simon, Dixon and conventionalists apply it to accounts of sport like those of Bernard Suits and James Keating, or accounts of games outside of sport like those of Thomas Olshewsky, Joan Ganz and John Rawls (D’Agostino, 1988, p.63). Second, John Russell’s account of formalism is based on the parallel he draws between sport and legal systems, and on his application of certain
formalist claims from law into the context of sport (Russell, 1999, p.31). Since these authors do not make clear a connection between these two ways of understanding formalism, in this section I am going to take a closer look at a possible link between them.

I will begin my presentation with Bernard Suits’ formalist theory of sport. Suits is primarily interested in providing a definition of sport, which is one of the concerns of a theory of sport. His definition of sport begins with a definition of games to which he adds other restrictive characteristics specific to sport but not to other games.

Game playing is seen by Suits as “selections of inefficient means” (Suits, 1978, p.22), by which he means that unlike work, where efficiency is an essential requirement and where reaching a goal as easily as possible is desirable, in the case of games the means for achieving the goals are inefficient, placing unnecessary obstacles in the path of achieving the goal. For this reason, in racing sports athletes do not cut through the infield to reach the finish line (Suits, 1978, p.22).

According to Suits, games can be defined in terms of four elements: goals, means, rules and the lusory attitude, which I will analyze separately. The first element is the goal. Suits considers goals to be essential in order to understand sport. He points out that since “games are goal-oriented activities which involve choice, ends and means are two of the elements of games” (Suits, 1988, p.39). In other words, sport is different from non-purposive actions like the Achillian reflex or uncontrollable laughter, since playing a game involves choosing a goal and a set of means to achieve this goal.

Suits claims there are three basic goals of a game. The first goal is a “specific achievable state of affairs,” which may take a variety of forms, depending on the nature
of the sport. For example, in chess it consists of a certain arrangement of the pieces on the board in which the king of the opponent is immobilized, while in a marathon it consists of crossing the finish line before the opponents do. Suits calls this goal pre-lusory, because it can be achieved independently of the game (Suits, 1988, p.40). Unlike the pre-lusory goal, the lusory goal cannot be separated from the activity of playing the game, so that one cannot reach this goal unless one follows the rules and plays the game. The lusory goal of every game is winning. A person can achieve the pre-lusory goal of the game and fail to achieve the lusory goal of the game if and only if she fails to follow the rules of the game. The third goal of the game is to participate in the game. Suits calls this goal a lusory goal of life, since it cannot be divorced from the concept of a game and from the rules of a game, even if it is not, strictly speaking, a lusory goal of a game but rather a goal of life. In essence, it refers to the commonsense idea that in order for a person to play a game, she needs to view her participation in the game as a goal itself (Suits, 1988, p.40).

The second element of sport concerns the means. When he talks about “means,” Suits refers to those means that are either necessary to achieve the pre-lusory or necessary to achieve the lusory goal of the game. Means thus can be of two types: those permitted by the rules (which are called “lusory means”) and those which are not permitted by the rules of the game. The means permitted by the rules are, of course, those means necessary to achieve the lusory goal of the game (Suits, 1988, p.40).

The third element of games has to do with the rules of the game. The fact that they are an essential part of sport is apparent given the rule-oriented nature of games. Even if arguments can be made in favor of introducing other normative elements in the
definition of sport (conventions or other principles), it is clear from the way sports are
played that rules play the dominant role in the definition of games.

In light of the distinction between the pre-lusory and the lusory goal of games, rules can be divided into three categories. The rules that allow the player to achieve efficiently the pre-lusory goal are rules of skill. Failing to follow a rule of skill means, as Suits points out, failing to play the game well. The rules that have to be followed in order to achieve the lusory goal of the game, however, are the constitutive rules of games. These rules need to be followed in order for a person to play a game at all. Besides rules of skill and constitutive rules, Suits introduces a third kind of rules, which he calls “regulative rules”. He points out that for these rules there are penalties and that violating them does not trigger the effects of the logical incompatibility thesis\(^3\) (Suits, 1988, p.41).

The final element of sport is the lusory attitude. This element has received only minimal attention in the literature dealing with Suits’ account of games. However, this element plays in fact a central role in games, and is essential for the validity of the logical incompatibility thesis. Why is the lusory attitude essential for an account of games? For Suits, having this attitude separates games from other activities. The reason why the runner on second base does not cut across the infield directly to home plate is that there is a rule against it and that without such a rule there would be no game. For example, a general might avoid leading his army directly from point A to point B and instead take a winding road, but usually the reason for making this decision is practical in nature and refers to the reasons for which the army needs to be at point B. It might be the case that the direct road between A and B goes through hostile territory or that the terrain is too

\(^3\) According to this thesis, failing to follow a constitutive rule means not playing the game at all.
difficult that it would make the passage too costly or too slow, and that it would not be effective in terms of the campaign. In other words, the reason for avoiding the shortest way is bound up with the practical goal of the march, which is not the case in sport. As Suits puts it, “[i]n games I obey the rules just because such obedience is a necessary for my engaging in the activity such obedience makes possible” (Suits, 1978, p.31). Based on these four characteristics, Suits offers the following definition of game-playing:

…to play a game is to engage in an activity directed towards bringing about a specific state of affairs, using only means permitted by rules, where the rules prohibit more efficient in favour of less efficient means, and where such rules are accepted just because they make possible such activity. (Suits, 1978, p.34)

So far I have presented the main arguments for offering a formalist answer to the question “What is a game?” In order to define sport, Suits takes the characteristics of games and adds a number of conditions that he considers essential for sport. First, games need to be games of skill. Contrary to games like dice, for example, where luck plays an extremely important role, in sports this central role is played by skills (Suits, 1988, p.44). Second, in order to be sport, a game needs to test skills that are physical in character. Contrary to games like bridge, which is a game of skill but not of physical skill, sport has to test physical skills (Suits, 1988, p.45). Third, a sport requires a wide following, otherwise any individual could create a game that only she plays and declare it a sport. Suits argues that such a game is too private and personal to qualify as a form of sport. And finally, a sport requires institutional stability, meaning that it has to persist through time and that this persistence has to be supported by institutions that serve a number of
ancillary functions such as teaching, training, research, criticism or archivism (Suits, 1998, p.45).

With regard to the validity of this definition of games and sports, although one might be able to imagine certain forms of criticism directed at the idea that games are composed only of the four elements I listed here (goals, means, rules and lusory attitude), based on the possibility that other characteristics are essential for the game, to my knowledge there has been no serious challenge directed at formalism from this point of view. However, the most criticized formalist claim is the logical incompatibility thesis, which basically says that anyone who breaks a constitutive rule fails to play the game.

Suits argues for this claim by starting with a fact that he considers obvious, that ends in sport can be achieved only by following the rules of the game. The very definition of an end in games is connected with the rules, since the end in a game like golf is not just to put the ball into the hole, but to do this according to the rules of golf (Suits, 1978, p.24). As I have shown, this is an important element in his account of games. Games are created by establishing ends that are inseparable from rules, and breaking a rule means, as a result, not playing the game. Consequently, one cannot be said to play the game unless one actually follows the rules of the game, because one cannot achieve the ends of the game by breaking the rules (Suits, 1967, p.150).

A similar, but more complex argument was made by Kathleen Pearson, who points out that when a player decides to participate in a game, she automatically agrees to a contract with all the participants, in which they all consent to follow the rules with the goal of determining who the better competitor is. A person who breaks the rules
intentionally violates this contract and, as a result, fails to play the game (Pearson, 1973, p.117). The problem with this argument is that it introduces a normative perspective through the use of the contractarian metaphor in a situation that is clearly descriptive. The point here is to decide whether a person in a certain situation actually plays the game or not, not whether she plays it well. What the contractarian metaphor allows one to say is that the person who breaks the rules of the game acts in an immoral fashion or plays the game poorly. If one were to make the same kind of reasoning in connection with social contracts in the case of political institutions, then one would have to claim that a citizen who breaks the rules of the country is no citizen at all, when it would make more sense to say that she was just a citizen who acted improperly.

So far I have presented two central claims that Suits is committed to and the arguments that are presented as justification for them. The first thesis is represented by the definition of sport and by the inclusion in this definition of only the four elements I mentioned (goals, means, rules and lusory attitude). The second thesis is the logical incompatibility thesis. These two central theses, therefore, specify what counts as a formalist theory of sport.

It next needs to be asked how adjudication might be understood from a formalist point of view. This question is important for two reasons. First, critics of formalism from the interpretivist ranks attribute a certain account of adjudication to formalism and reject it. Second, there is the problem of the two meanings of formalism I presented at the beginning of this paper. As I showed, formalism as a theory of sport has been understood both along the lines of Suits’s theory of games and according to the principles of legal formalism. This latter rendering of formalism in sport is, in fact, a theory of adjudication,
even if only an implicit one, and it claims that when it comes to adjudication referees have only the rules of the game at their disposal to make decisions. Hence, on this account referees basically apply these rules mechanically or, as Russell puts it, “in a syllogistic fashion” (Russell, 1999, p.31).

The main question now is whether the two meanings of formalism are actually compatible and whether it is fair to attribute to Suits a faulty theory of adjudication that he never actually put forth, let alone defended. The only interpretivist attempt to bridge the gap between Suitsian formalism and the application of legal formalism in sport has been proposed by Robert Simon. He suggests that formalism is a theory that describes games only in terms of their constitutive rules (Simon, 2000, p.2). Once this general statement is made, then it can be applied to various aspects of sport such as rule changes and adjudication, so that formalists would be committed to the idea that when rules are changed or when referees make decisions, only the rules of the game need to be taken into consideration. This argument is not as persuasive as it seems. In the case of adjudication, even if Suits believes that sport is to be understood by reference to the idea of constitutive rules, this does not mean that adjudication can be reduced to a mechanical application of rules. That is because a formalist like Suits might claim that adjudication requires principles outside of sport (such as, for example, moral principles). I am not personally vouching for such an interpretation, but only expressing a concern about the way formalism has been understood by its critics. Further investigations might discover that formalism has more potential than its critics give it credit for.
2.2. Conventionalism

Conventionalism is represented by two main authors, namely Fred D’Agostino and Craig Lehman. In order to understand the force of conventionalism, it is important to keep in mind that both Lehman and D’Agostino are primarily interested in rejecting a formalist theory of sport and are only marginally concerned with creating a new account of sport or adjudication. As I will show later, this fact will create difficulties for the efforts to construct a conventionalist theory of adjudication.

Conventionalists focus their attacks of formalism on the logical incompatibility thesis, according to which a player who breaks the rules of the game does not play the game at all. There are various dimensions in this anti-formalist argument and I am going to focus on a few that I consider to be the most important. The first such concern is a linguistic one. Lehman gives the example of Gaylord Parry, a baseball player who is generally considered to have thrown spitballs most of his career, thus violating the rules of the game. However, Lehman thinks it is clearly off the mark to claim that Parry for this very reason never played baseball, that all the games he played in were in fact no games at all (Lehman, 1981, p.42). As Lehman points out, formalists could stipulate a sense of what is means to “really” win (and Suits does exactly that), but in this case claims like the logical incompatibility thesis become uninteresting and obscure. The logical incompatibility thesis is relevant only if it uses the same concepts people use in everyday speech.

A second linguistic problem with this thesis is, as D’Agostino points out, that if it is true that playing the game means respecting the rules, then the distinction in ordinary language between playing a game and playing a game fairly disappears (D’Agostino,
It makes more sense to say that Parry played unfairly than that he never played the game at all.

Lehman argues that another problem with the logical incompatibility thesis concerns the issue of intentionality. It is a charitable interpretation, according to Lehman, to add to the logical incompatibility thesis the qualification that it applies only in cases in which one breaks the rules intentionally. He justifies this claim by saying that certain minor accidental violations of the rules of the game can take place and no one would say that for this minor reason no game has taken place at all (Lehman, 1981, p.42). One could push the argument even further and argue that if the logical incompatibility thesis is interpreted as referring to unintentional violations of the rules, then no game would ever take place because human beings are imperfect and accidental violations are likely to occur in every game. However, if Lehman is right and the best interpretation of the logical incompatibility thesis is best applied to intentional violations of rules alone, then there is no reason to apply it to intentional violations alone. For if, as Suits shows, games are at bottom defined by their rules, then how is sport, say, different from intentional efforts to draw a square? In the latter case, failing to draw something that satisfies the definition of a square is not a square, regardless of the person’s intentions (Lehman, 1981, p.42). Making this claim in sport but not in geometry would thus seem arbitrary.

D’Agostino’s arguments bear some resemblance to the points presented above, but at the same time rely on a more complex analysis of sport and adjudication. Besides the linguistic point I presented previously, he makes the more general criticism that formalism is committed to a kind of Platonism about sport. This is how he puts it:
For them [formalists], games are ideal types; they are only imperfectly realized in their alleged instances. Certainly, any instance of G in which any rule of G is violated is not, on this account, really an instance of G.” (D’Agostino, 1988, p.65)

As he indicates, this kind of Platonism about sport can be criticized in two basic ways. First, it can be plausibly argued that a formalist account of games does not entail Platonism because perfect games, that is, games in which no rules are violated, are not a standard that Suits or any other formalist have ever claimed games must meet (D’Agostino, 1988, p.65). Second, he points out that Platonism is often applied to natural and social sciences, in the form of an “ideal type model of an actual physical or social system” (D’Agostino, 1988, p.65). In science, this model is justified “to the extent that the behavior of the real system approximates that of the ideal system more and more closely as certain limiting conditions are approximated” (D’Agostino, 1988, p.65). This situation cannot be duplicated in sport, D’Agostino argues, because as players become more skilful they tend to become better at rule-breaking rather than at following all rules, contrary to what one would expect if the ideal model were true. It appears that for D’Agostino the limiting condition that prevents the real game from moving closer to the theoretical model concerns the skills of the players. But I think he is wrong on this count, because it is more plausible that for formalists the instances of games that more closely approximate the ideal games are not games in which players are more skilful, as D’Agostino claims, but games in which players are more honest and inclined to follow the rules. Regardless of the validity of this argument, I agree with D’Agostino that Suits does not have in mind a description of an ideal model of sport, and I will present my
arguments for this position later. Suits talks about sport simpliciter and there is no indication that by “sport” he meant a special ideal form of sport.

These appear to be the most important arguments conventionalists have presented to reject the logical incompatibility thesis. In the philosophical literature on sport, the discussion of this thesis is more complex, but I think it would not be useful for the kind of point I am making here to move further down this path. The criticism of the logical incompatibility thesis is relevant here because of the solution it points to. If playing the game is not determined just by simple adherence to the rules of the game, then something else needs to be introduced in order to decide when a game is played or not. It is here the claim that the conventions of the game are that “something else,” the missing feature of a satisfactory definition of a game, comes into the picture.

Craig Lehman concludes from the anti-formalist arguments I presented previously that games cannot just be about rules, since rules in games are often ignored or modified. In order to explain such instances, he argues, we must have recourse, obviously, to something besides rules, and that something is the notion of a convention. In fact, Lehman offers two reasons why some rules are ignored or modified. The first reason is practical and refers to the fact that it is impossible for referees to see all the violations of rules. I assume here that Lehman wants to say that conventions that make it acceptable for referees to ignore certain rule violations (like, for example, offensive holding in football) are established to give referees a chance to look for major violations of rules, and at the same time to avoid producing an “ought” without a “can” (referees have the duty to apply all the rules, which is impossible to put in practice because of the physical limitations of the referees). At the same time, another practical reason for introducing
conventions that make it acceptable to ignore certain rule violations is that if all rule violations would be called, given the large number of these violations, the game would be interrupted so often that it would make it much less enjoyable to play or watch (Lehman, 1981, p.43).

This is a very simple and persuasive account of conventions, but one should not make the assumption, as John Russell later does, that this is the only reason why conventions play a pivotal role in sports. Sometimes it is not that a particular convention solves a particular problem in a game that accounts for its existence, but rather because of the values that the athletic community considers important in sporting practices (like political or religious values). In the fourth chapter, I will take up this point directly.

The second reason for ignoring certain rules is, according to Lehman, that some practices that condone rule violations have been historically accepted and thus have become an integral part of the traditions of these sports. For a very long period of time, especially in the nineteenth century, Americans have admired athletes who were adept at finding new ways to break the rules and to fool officials (Lehman, 1981, p.43). The underlying assumption here seems to be that a wide level of acceptance of practices that involve rule-breaking and/or that are ethically questionable provide some sort of justification.

Fred D’Agostino’s conventionalist view relies on the same historical argument as the one I presented in the previous paragraph, pointing out that the history of basketball shows that certain rules of the game were ignored by both the players and the referees. As a result, he introduces two differences that figure centrally in the ethos of the game and guide how the rules of the game are applied: a difference between impermissible and
permissible behavior and a difference between acceptable and unacceptable behavior
(D’Agostino, 1988, p.70). Based on these two distinctions, D’Agostino points out that
conventionalism is able to avoid the problems generated by the logical incompatibility
thesis. As D’Agostino argues:

…the ethos of the game distinguishes between behavior that is permissible,
behavior that is impermissible but acceptable, and behavior that is unacceptable.
Permissible behavior is, on this nonformalist account of games, either in
accordance with the formal rules of a game or violates those rules only in a way
which, according to the ethos of that game, does not require the invocation of
referees. Impermissible but acceptable behavior, on this account, violates the rules
of the game in a way which, according to the ethos of that game, does require the
invocation of penalties. And unacceptable behavior violates the rules of the game
in a way which, according to the ethos of the game, disqualifies its perpetrator as
a player of that game. (D’Agostino, 1988, p.70)

In conclusion, D’Agostino argues that every violation of the rules of the game has to be
interpreted according to the ethos of the game, because this is the only way the
consequences of breaking a rule can be understood. While a minor foul in basketball
might be ignored by the referees if the ethos of the game permits it, a more important foul
might require a penalty or, if the behavior is so completely opposed to the rules of the
game (e.g., attacking the opponents with a baseball bat) then it becomes unacceptable and
so warrants the disqualification of the offender.

A particularly important issue regarding conventionalism is the definition of the
ethos of games. D’Agostino defines it as the “unofficial, implicit, empirically
determinable conventions which govern official interpretations of the formal rules of basketball” (D’Agostino, 1988, p.69). He further mentions that these conventions are part of a system and that they can be observed by watching the game, not by reading the rules of the game (D’Agostino, 1988, p.69).

Now, after presenting the conventionalist theory of sport, I can go on and try to sketch the conventionalist theory of adjudication. As I mentioned before, conventionalism was mainly intended as a criticism of formalism and not as a theory of adjudication, although D’Agostino makes a series of observations about the role of the referee and of conventions in adjudication. He talks about the fact that the players and the referees have conspired to “ignore certain rules in certain situations” (D’Agostino, 1988, p.70). Also, he mentions the fact that game officials can ignore fouls if this fact promotes the good of the game. However, contrary to what interpretivists will say later, he believes that this kind of benefit for the game depends on the ethos of the game (D’Agostino, 1988, p.71). I will say more about the conventionalist theory of adjudication at the beginning of chapter four, when I will analyze D’Agostino’s position in greater depth. All I am going to say for the time being is that although not fully developed, his theory of adjudication contains a complex view of what kinds of conventions are relevant in adjudication and why they are relevant.

### 2.3. Interpretivism

As I mentioned before, interpretivism is currently the dominant theory of sport and adjudication. Its most important representatives are John Russell, Robert Simon, Nicholas Dixon and William Morgan, although, as I will argue later, Scott Kretchmar has
made arguments that warrant his inclusion in this camp. Although all these authors consider themselves as holding similar views, there are significant differences between them that distinguish their views regarding the nature of sport and adjudication. One difference is that while Russell is an externalist, Simon is an internalist. This difference means that while Simon argues there is an internal morality of sport, Russell rejects this contention, arguing that morality in sport is just the application of more general principles that also characterize other forms of human existence. The other significant difference between interpretivists concerns the realism-antirealism distinction. While Russell, Simon and Dixon are committed realists, Morgan is an anti-realist. This means that while realists believe that there are facts about sport that are independent of our views about them (Russell, 2004, p.142), anti-realists deny that individuals can have access to those real facts in a purely objective fashion (Morgan, 2004, p.166). I will explain these points later, but for the time being I am going to ignore these intramural disagreements among interpretivists and present their main arguments against the previously discussed theories of sport and adjudication of formalism and conventionalism.

**Criticism of formalism.** Simon presents a very powerful argument against formalism. As I pointed out before, Simon sees formalism as the theory according to which games are characterized primarily in terms of their formal structure, i.e., the constitutive rules of the game. One line of attack developed by Simon is that formalism cannot account for issues of sportsmanship that go beyond the rules of the game. Simon goes back to a case originally presented by Robert Butcher and Angela Schneider (Butcher and Schneider, 1998, p.6). This is the case of clubless Josie, a golf player whose clubs have been lost by the airline before the game. Should the opponent give Josie her spare set of clubs? Simon
argues that formalism has nothing to say about this issue, because it falls outside of the scope of the game rules (Simon, 2000, 3). Also, formalism cannot account for changes in the rules of the game. According to Simon, formalists would account for rule changes by invoking rules of change (by which he means Hart’s rules of recognition). For example, formalism would say that a rule is changed or introduced only when the organization in charge makes the decision (e.g., United States Golf Association in golf in the US). However, by taking this approach formalists would not be able to say anything about the quality of the new rule and whether this rule actually is better for the game than other alternatives (Simon, 2000, p.4).

Russell’s criticism of formalism is more complex. It will be recalled that he considers formalism in sport as similar to legal formalism, which means that it is committed to the idea that referees have at their disposal only rules to render their decisions. Adjudication, according to formalists, would be just a matter of applying in a syllogistic matter the rules of the game (Russell, 1999, p.31).

Russell’s response to this theory begins with a series of baseball cases that are problematic for a formalist account of adjudication in sport. One of these cases involves the application of a foreign substance called Pine Tar to a baseball bat. In this case, a player hits a game-winning home run, but the referee calls the player out for using a bat that was covered with pine tar, a sticky substance that is sometimes used to get a better grip on the bat and that was illegally covering the upper part of the bat. According to the rules of the game, this is a rule violation, even if the presence of the pine tar on the upper part of the bat did not give the player an actual advantage. The initial decision of the referee was later overturned and the home run reinstated, because the initial decision did
not comport with the so-called spirit of the game (Russell, 1999, p.30). Russell explains this case by pointing to the fact that the rules of sport, just like laws, are not always the perfect guides in adjudication, either because they do not offer any guidance to speak of or the guidance they offer creates unacceptable results. In light of this fact, Russell argues that referees need to have discretion, which means that in aberrant situations like the Pine Tar incident they should decide according to rational principles that reflect best the spirit of the game. In conclusion, adjudication cannot be reduced to just applying the rules of the game, which means that formalism in sport should be rejected.

**Criticism of conventionalism.** Conventionalism has been criticized from a number of points of view. However, these criticisms can be divided into two main categories. First, Dixon and Simon point out that conventionalism is insufficient because it misses certain important facts about the nature of sport and its morality. Second, Russell argues that conventionalism has much less explanatory power than a rival theory championed by Russell himself, namely, as noted, interpretivism. This does not so much count as a criticism of conventionalism, as it does of its limited explanatory utility. But it does give us, argues Russell, a powerful reason to eschew conventionalist theories of the nature of sport and of adjudication.

With regard to the first criticism, Robert Simon points out that conventionalism cannot account for important forms of behavior that are considered moral in sport. Going back to the case of clubless Josie, Simon argues that in most cases no convention that will guide athletes in these situations exists, thus showing the incompleteness of conventionalism as a moral account of games (Simon, 2000, p.4). Dixon makes a similar argument, showing that conventionalism cannot account for rule changes, just like
formalism. Conventionalists, Dixon argues, would agree with the most absurd rule changes as long as the community accepts it (Dixon, 2003, p.107). Simon sees this as a reason to compare conventionalism with moral relativism, because in both cases there is no room left for internal criticism. If all an individual has at her disposal to evaluate a change in conventions are conventions, it means that a community can do no wrong (Simon, 2000, p.5). But surely, Simon argues, such a view lacks normative credibility.

The second argument against conventionalism, presented by Russell, claims that instances in which referees ignore certain rules repeatedly and which conventionalists take as signs that players and referee conspire to change the way rules are applied are in fact instances of referee discretion. Russell uses the example of the strike zone, which is currently much smaller than the zone that is stated in the rulebook. He argues that this change in the strike zone is a response of the referees to the needs of the game and thus can be rationally defended (Russell, 1999, pp.39-40). Just as in the case of the Pine Tar incident, referees go beyond the rules of the game in order to make sure that their decision respects the spirit of the game. This point will be clearer when I present Russell’s full theory of adjudication, which I will do now.

**Russell’s theory of adjudication.** As I mentioned, Russell begins presenting his theory of adjudication by bringing into focus cases in which merely following the rules undermines the spirit of the game. The solution that Russell proposes is to go back to Ronald Dworkin’s theory of adjudication. In particular, Russell shows that a solution to the indeterminacies of the rules of the game (reflected in cases like the Pine Tar incident) can be solved by adding principles to the rules (Russell, 1999, p.33). The fact that principles of adjudication are part of sport means not just that referee would be able to
avoid the problems generated by the indeterminacies of rules by using these principles, but also that the referee would be obligated to follow these principles (Russell, 1999, p.35). Just as rules have authority over the referee, so do the principles of adjudication, because they are both integral parts of sport.

So far, the talk about principles of adjudication has been very abstract, so Russell offers a guide that would identify these principles. This guide is the notion of integrity. According to the notion of integrity, referees will “try to understand and interpret the rules of the game, say baseball, using these principles, to generate a coherent and principled account of the point and purposes that underlie the game, attempting to show the game in its best light” (Russell, 1999, p.35). From the idea of integrity, Russell is able to identify a first principle of adjudication: “Rules should be interpreted in such a manner that the excellences embodied in achieving the lusory goal of the game are not undermined but are maintained and fostered” (Russell, 1999, p.35). The argument is functionalist in nature, because games are defined as establishing certain obstacles in order to test how well athletes are able to overcome them by demonstrating certain skills and excellences. So, a referee would have an obligation to interpret the rules in such a way as to make the game fulfill its function in the best possible way, which in this context means that the referee has a duty to offer the participants a chance to test their skills (Russell, 1999, p.35).

From this principle, Russell derives the other three principles of adjudication, although he does not specify how he came up with them - presumably they are simply corollaries of the first principle of adjudication:

Rules should be interpreted to achieve an appropriate competitive balance.
Rules should be interpreted according to principles of fair play and sportsmanship.

Rules should be interpreted to preserve the good conduct of games. (Russell, 1999, pp.35-36)

In concrete terms, the second principle tells us that referees should not tip the scale at any point in favor of one of the competitors. The third principle essentially rejects the idea that referees should permit anything so long as the rules are not violated. Even when the rules are silent, Russell insists, referees need to apply the first principle of adjudication. The last principle is explained by Russell as preventing players from taking too long before putting the ball into play in baseball, as well as from acting in an uncivil manner (Russell, 1999, p.36).

After presenting the principles of adjudication, Russell is able to go back to the Pine Tar case and explain the need to overturn the initial decision. Instead of explaining this change by appealing to the spirit of the game, Russell justifies the overturn of the initial decision by pointing out that it was required by the first principle of adjudication. The game of baseball tests certain skills, like the ability to hit a ball with a baseball bat by overcoming a set of obstacles (the ball needs thrown by a pitcher from a certain distance, the bat needs to be of a certain size, etc). If the referee decides to apply the rule mechanically then the ability to hit the ball is being hindered by the referee. The sticky substance on the bat does not give the batter an unfair advantage, which makes the interference of the referee inopportune. Deciding the game based on the amount of pine tar on the bat, which Russell considers irrelevant in the context of the game, would fail to put the game in its best light.
Realism. As I mentioned at the beginning of this section, interpretivism is a complex set of views, which can differ in a number of respects. The most important point of contention is the role of realism in interpretivism. Dixon and Russell believe that the best way to understand interpretivism is to construe it along realist lines, while Morgan believes that although this might be desirable, it is not in fact possible.

Russell defines realism as “a thesis about the nature and status of what we claim to know about the world. It reflects the everyday view that there are facts about the world that are independent of the beliefs and evidence we have about them and that we can have some at least approximate knowledge of these facts (Russell, 2004, p.142). Russell continues by identifying some aspects of sport that might be real, like “facts about sporting games” and moral and athletic qualities. His argument for sport realism begins by arguing in favor of moral realism and then continues by extending the arguments to morality in sport and games. The kind of moral realism that Russell is defending is so called “Cornell realism” and it is committed to three important claims: first, moral assertions have truth value (can be true or false); second, moral terms like “good” or “just” refer to natural facts and, third, everyday reasoning is a reliable method for acquiring moral knowledge (Russell, 2004, p.144). As I will show later, this kind of realism differs from that of Simon and Dixon, which I will present later.

Russell presents a series of arguments that support moral realism in sport and outside of it. First, moral realism is supported by assumptions about the role of morality in everyday life. As Russell shows, moral discourse is itself thoroughly realist. Statements about morality are expressed as if they are facts, not as if they are opinions or attitudes. Also, in everyday discourse people debate whether a certain moral statement is
true or false. Another argument, similar to the first, supports the third assumption of moral realism mentioned above. Russell shows that moral statements can be supported with arguments, as in any empirical argument, since normally when people want to make a moral point they bring evidence to support their claims (Russell, 2004, p.150). Also, as in any other empirical argument, moral statements explain other facts about the world, moral or non-moral. Russell shows that the morality of players is seen as explaining their team’s performance and the moral character of those around them (Russell, 2004, p.151). In conclusion, Russell is able to show that moral realism is a valid theory or, at least, that this theory is more plausible than not and that the responsibility falls on the critics to prove the contrary.

If this is the case and moral realists are right, then how does this affect sport? Russell points out that certain claims about sport are clearly moral, like, for example, statements that boxing is immoral or that feigning injury is disgraceful. This fact is obvious, but Russell goes further than this and argues that morality in sport manifests itself in another way through two fundamental principles of sport: an internal and an external principle of sport. The internal principle is the first principle of adjudication (which supposedly covers players, administrators and coaches, besides referees). According to this principle, the participants in the game have a duty to act so that the excellences embodied in the lusory goal of the game are fostered. The question now becomes whether this is in fact a moral principle. Russell answers “yes” to this question and this is the justification that he offers:

There are obvious parallels to everyday morality in these moral principles. The internal principle appears to be connected to more general moral institutions that
have the promotion of human flourishing as their goal. Sporting games can clearly be seen as institutions that are designated to promote this goal by providing and protecting opportunities for play and, relatedly, for development and display of distinctive human physical excellences. The internal principle protects this goal by insisting that those opportunities are fostered and are not unduly undermined. (Russell, 2004, p.147)

So Russell’s solution is clearly externalist. Principles of sport like the first principle of adjudication are moral principles because they represent the application of an overarching moral principle according to which there is a moral duty for each individual to improve oneself and others.

The other moral principle that governs sport is called by Russell the external principle or the principle of consent. This principle regulates the conditions for entry and exit in the game, determining who is a participant and who is not. The determining factor here is the consent of the participant, so that if a player has not consented to playing the game, she is not playing. According to Russell, an application of this principle is the fact that in boxing, according to the rules of the game, if one of the fighters is on the ground unable to defend herself, then she is no longer playing the game and it is the duty of the referee to intervene and stop the fight (Russell, 2004, p.147). This principle has moral content because it requires respect for individuals as persons and confers moral dignity on them. So, Russell is able to defend the idea of realism about sport by appealing to realism about morality.

However, if it is true that certain elements of sport are real (are independent of the beliefs of individuals), then how can this be compatible with the fact that sport is a
human invention? Russell’s response is that even if something is a human creation, this does not mean that everything about it depends on individuals. Human inventions are all governed by laws of nature, which everyone would agree are factual (independent of our beliefs). Similarly, even if sports are human creations, they are governed by principles that are real (Russell, 2004, p.147).

So far I have shown how Russell is able to account for realism in sport. However, his brand of realism is different from that of Simon’s and Dixon’s. Whereas Russell claims that sports can be and should be talked about in naturalistic metaphysical terms, terms that define their realist standing, Dixon and Simon seem committed to a theory of sport that is, to use Russell’s word, constructivist in character. This approach to realism claims that moral facts are constructed from our beliefs and our efforts to justify them (Russell, 2004, p.144). Nicholas Dixon has presented such a theory, according to which judgments about sport should be based at least partially on “rationally grounded principles about the nature and purposes of sport” (Dixon, 2003, p.106). So far this does not seem to differ from Russell’s position; but if one looks deeper certain differences become obvious. Dixon connects realism with the idea of justification. This suggests that the opposition between realism and conventionalism amounts to a difference in the way beliefs about sports are justified, either through rational argumentation (interpretivism) or through the simple assent of the athletic community (conventionalism) (Dixon, 2003, p.110).

The kind of position that Dixon seems to defend is made clearer by Simon, who names it “justificatory realism”. While Russell’s account is an obvious form of realism, it
is not as clear why Dixon would link rational argumentation to realism. Simon makes very clear this connection.

On this view, intellectual merit itself is a function of intellectually warranted standards that have a rational basis independent of cultural, linguistic, or pragmatic considerations. Rational imperatives impose normative constraints on our cultural, linguistic, and pragmatic deliberations, which are defective when the imperatives are violated. (Simon, 2004, p.125)

Simon and Russell support their own positions and point out difficulties in the other view. Oddly enough, the best way to understand the debates between these two kinds of realism is to compare their attitudes toward the anti-realist position.

William Morgan supports interpretivism, which he defines as committed to the idea of an internal morality of sport that is able to offer standards with sufficient normative force to create obligations for all those involved (Morgan, 2004, p.164). However, Morgan challenges the idea that interpretivism is necessarily connected with realism and shows that the kind of justificatory realism proposed by Dixon is not a realistic account of morality or reasoning in general. The problem with Dixon’s account, according to Morgan, is that it conceives reasons and values beyond the understanding of human beings (Morgan, 2004, p.166). This happens because argumentation is understood by Dixon as the basis of realism, which means that argumentation is independent of the assent of individuals, that it can pull its own weight. Morgan shows that this thesis can be challenged from a position that belongs to Simon Blackburn and that he calls “the impossibility rejoinder”. Blackburn’s main claim is that it is impossible for a mind to
“step back” from its own Weltanschauung and evaluate itself objectively (Morgan, 2004, p.166).

Since realists are unable to provide impersonal standards of evaluating human actions and values, then it is necessary to historize and socialize reason. According to this new approach to sport, certain claims about sport that correlate success in sport with excellence in performance should not be seen as transcendent claims independent of the human context in which they were made, but rather socially contingent claims (Morgan, 2004, p.171).

I mentioned before that Morgan’s position (which he calls reflective ethnocentrism) is important in understanding this debate between the two kinds of realism. This is the case because Russell goes back to Morgan’s arguments against Dixon’s brand of justificatory realism and expresses his worry that Dixon’s position is closer to a “sophisticated type of irrealism” than to a genuine realist position. The root of this problem is that justificatory realism fails to see the difference between justified belief and fact or truth. Russell admits that the problem with his own brand of realism is that, unlike justificatory realism, it needs to make serious metaphysical statements about sport and the world, but claims that these claims are justified by the evidence (Russell, 2004, p.145). I assume that Russell refers here to the fact that such a theory needs to explain the metaphysical status of real entities that seem to resemble Platonic ideas. As I will show in the next chapter, this might be a more difficult task than Russell imagines.
CHAPTER 3
CONVENTIONALISM AND REALISM IN SPORT

The main goal of this chapter is to defend a conventionalist theory of sport. In order to make this argument, I am going to argue that conventionalism needs to be redefined, because the current understanding of conventionalism relies on a series of misrepresentations of the place that conventions have in sport. This argument will rely on two primary sources: first, the work of actual conventionalists like Fred D’Agostino and Craig Lehman, and second, conventionalist theories in philosophy of language and law.

It is important to understand that the issue of adjudication will be addressed here only in passing, while in the next chapter I will attend to this matter more thoroughly. The main assumption behind this strategy of talking first about a theory of sport and then later about a theory of adjudication is that a theory of adjudication depends on a theory of sport, especially when both these theories are analyzed from the point of view of the realist-conventionalist distinction. It certainly seems absurd to argue that the principles that guide referees in their decisions are independent of the nature of the game itself or that a theory of adjudication can be constructed without using any assumptions about the nature of sport. Even an externalist interpretivist like Russell, who considers adjudicative

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4 Again, I take a theory of sport to be primarily an answer to the question “What is sport?”, while a theory of adjudication is an answer to the question “How do and should referees make decisions in sport?”
principles as applications of external moral principles to sport, has to accept that these
guidelines of adjudication rely on assumptions about the nature of sport; such as, for
element, that sports are perfectionist practices dedicated to displays of bodily excellence.
In the fourth chapter I am going to say more about the connection between a theory of
sport and a theory of adjudication in sport.

There is a further important conceptual note regarding the use of the notion of
“conventionalism.” In the recent literature in philosophy of sport on this topic,
conventionalism has been understood as opposed to interpretivism. On the other hand, if
one looks at the way the term “conventionalism” is used in philosophy of language or
science, conventionalism is more likely to be understood as opposed to realism. In
philosophy of sport, this latter distinction has taken the form of a debate between realism
and anti-realism. As long as conventionalism is conceived as a theory according to which
games are conventional creations that can be modified freely by communities, then it is
clear that conventionalism is incompatible with realism in sport. In other words,
conventionalism in sport is clearly opposed at the same time to interpretivism and to
realism in sport. This, however, does not mean that the distinction between
conventionalism and realism, on one side, and that between conventionalism and
interpretivism, on the other, are one and the same. In fact, the possibility of an anti-realist
interpretivism has been defended by William Morgan (Morgan, 2004).

In this chapter I am going to rely on the fact that the distinction between
conventionalism and interpretivism is not very significant if it is taken out of the context
of the distinction between conventionalism and realism. Most of the conflict between
conventionalism and interpretivism, as I will argue later, comes as a result of a mistaken
conception of conventionalism. If this obstacle is eliminated and the notion of “conventionalism” is redefined, this distinction between conventionalism and interpretivism becomes less interesting, which means that in order to construct a significant account of conventionalism it would be more effective to focus on the distinction between realism and conventionalism. At the same time, since this chapter is meant to look at conventionalism as a theory of sport and since interpretivism does not offer a theory of sport as such, it makes better sense in this chapter to look at conventionalism in relation to realism rather than to interpretivism. I will have more to say about the distinction between conventionalism – interpretivism in the fourth chapter.

**Legitimacy issues.** In essence, this reconstruction of conventionalism follows a pattern I described before, which relies on theories in other philosophical disciplines and then draws parallels with sport. From the beginning, the innocuous atmosphere around this kind of project is dispelled by possible doubts about the need to redefine the concept of “conventionalism” and about the wisdom of defending a theory by redefinition. However, if the issue here is one of legitimacy, I do not see a problem with this attempt to redefine conventionalism, since the conception of conventionalism I am going to present is more legitimate than the one presented by critics. The conception of conventionalism as defined by interpretivists can be legitimate if it is either supported by conventionalists or if it is derived from conventionalist accounts in other areas outside of sport. So, is this the case?

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5 Interpretivism tells us many things about sport in general, but not about what is sport or what it means to play a sport, which are the two central interests of a theory of sport as I use the term here. Both formalists and conventionalism offer answers to the question “What does it mean to play a game?”, while interpretivists do not seem particularly interested in this issue.
First, a word about actual conventionalists. Dixon and Simon do not refer to the works of D’Agostino and Lehman in their consideration of conventionalist accounts of sport. Simon talks about ethnocentrism and Dixon about relativism of the Rortian kind and it is not clear what is the connection between these two views and conventionalism. M. Burke is mentioned as supporting relativism and W. Morgan as defending ethnocentrism⁶ (Dixon, 2003, p.106), but little attention is paid to actual conventionalist theories. The probable reason is, as I mentioned before, that actual conventionalists have presented an incomplete picture of adjudication, which needs to be supplemented. When faced with this obstacle to understanding conventionalism, Simon’s and Dixon’s solutions are to place conventionalism in sport in a broader context (a general relativist view, for example) and deduce from this general theory the shape of the missing pieces of the adjudicative puzzle. Take for example the case of Simon’s criticism of conventionalism according to which conventionalism is a problematic theory because by giving communities complete control of how sports are conceived and played it opens up the possibility that certain communities might well create morally dubious forms of sport (Simon, 2000, p.5). This view assumes that on a conventionalist account there are no constraints on the kinds of sporting practices that a community can create. In essence, as the previous example has shown, Simon and Dixon seem to believe that a conventionalist needs to be conventionalist about anything that can plausibly be considered a social construction (law, morality, sport and so on). My point is that no conventionalist has openly made this kind of all-or-nothing claim and, as a result, it is fair and wise to make appeal to a more local kind of conventionalism, one which sees sport as a conventional

⁶ In fact, Morgan does not describe his position as conventionalist.
construct, but one which makes no such claim about any other areas of human culture. In other words, my claim here is that a conventionalist account of sport need not be committed to a universal claim to the effect that all social constructions are at bottom subject to the absolute control of communities. Instead, in this chapter I am defending a view according to which conventionalists are committed to conventionalism about sport alone (the idea that sport is a social construction and that human beings have power to change it according to their interests save certain limited moral constraints), while at the same time leaving open the possibility of realism in other cultural practices (law, morality and so on).

The possibility of a moderate conventionalism is allowed by external conventionalist sources I am going to use in order to supplement the accounts of Lehman and D’Agostino. There is one important difference between my take on conventionalism and the one proposed by interpretivists like Simon and Dixon. As I have shown in the previous paragraph, Simon’s and Dixon’s arguments suggest that they take conventionalists to accept an account according to which sport and any external form of normative constraint (moral, political, legal, aesthetic and so on) are conventional in nature. Unlike these interpretivist views of conventionalism, I will confine my search for external sources needed to construct a comprehensive conventionalist view of sport to theories that have been actually called conventionalist and that are more local in scope. These theories are confined to two separate areas, the first is philosophy of language and science, while the second is philosophy of law.

The notion of conventionalism that I am going to amend is now widely accepted in the philosophy of sport literature, so my redefinition of conventionalism is likely to
produce resistance. All I can say for the moment is that, first, the new account of conventionalism that I will introduce here is relevant to a theory of adjudication and can produce a more balanced and complex view of refereeing and, second, this new account does not represent a radical change from the concept developed by interpretivists.

In the first section I will present the most important theses attributed to conventionalists by interpretivists. At the end of the chapter, these theses will be critically analyzed in order to see which ones are still viable and can be accepted in a new conventionalist account of sport. The basis for this critical analysis will be provided in the middle two sections (3.2 and 3.3), where I will be interested in finding out how bold a conventionalist theory of sport can be in claiming that sport is a human creation and that sport is fully dependent on human agency. This investigation will take the form of a tug of war between conventionalism and realism or, in other words, between a claim that sport is in its entirety a human creation that is fully dependent on human agency (or that there is nothing about sport that cannot be altered or eliminated if there is a general interest in the community in this direction) and the realist claim that certain elements in sport are independent of human agency. The second section begins with a bold claim, that sports are in their entirety conventional creations, which relies on the fact that no matter how sports are conceived (as social practices or as systems of rules), their existence depends on human minds. The rest of the second section and the third section are dedicated to realist replies to this bold claim. In the second section one reply is internalist and claims that there are elements in sport that are independent of human agency, supporting this claim with either conceptual naturalism or a naturalist theory of human...
nature, while the second realist reply is externalist and claims that certain elements in
sport are beyond community reach because they are applications of realist principles
outside of sport. The third section will be dedicated to refuting two other realist replies to
the bold claim, which rely on the idea of conceptual resistance and certain linguistic
considerations. In the end, the tug of war between the bold thesis and the four realist
replies will offer a more balanced and robust view of conventionalism and will preempt
other realist attacks directed at the new conventionalist view of adjudication I will present
in the next chapters. The fourth section of this chapter will be dedicated to the notion of
“convention” and to a concluding analysis of the interpretivist view of conventionalism.

3.1. Conventionalism according to interpretivists

Before I present my reevaluation of conventionalism, I am going to take a quick
look at the notion of conventionalism that is currently widely accepted. Here is a list of
its defining claims:

C'1. **Individuals or groups create sports and are free to change them.** This claim
does not seem very controversial at first sight, as it is clear that sports are human
creations and that humans have therefore the freedom to change them. The essential point
here is to understand exactly how far this freedom to change sports can go. The level of
freedom that individuals have to change sports without undermining their status as sports
depends on the level where the discussion takes place. An initial level is that of the
strategies that are employed in the game. As long as individuals respect the rules of the
game, individuals have the freedom to use any strategy without undermining in any way
the idea of sport. On the other hand, there is a second level, that of sport rules, where
one’s freedom is limited, at least according to the arguments presented by Simon and Dixon. A community might decide to change the rules of the game and, for example, increase the size of the soccer playing field by one yard but this does not mean that any change in rules would do. For example, making the soccer playing field 10 miles long would make the game impossible and would violate certain basic principles that, according to interpretivists, determine the fundamental structure of sport. These basic principles of sport constitute the third level of sport.

This third level of sport determines the freedom that individuals have to create new sports and to change the existing sports. To have control over sport at this level means that the relevant community can change the very meaning of “sport.” This third level represents the basic structure of sport, which furnishes the ultimate conceptual basis of our understanding and practice of sport. One such principle that belongs to this level is the idea that the purpose of sport is to evaluate the skills of the participants.

The passage from the first to the third level of freedom in sport can be understood as a progression. Hence, individuals have the freedom to play games as they please inside the confines determined by the rules of the game. If an individual wants more freedom without undermining the practice of sport, she needs to change the rules of the game without violating what Russell calls the “integrity of a game.” The debate between realists and conventionalists, at least the way it is presented by realists, can be restated as a debate over the question whether individuals and communities have the discretion to change the structure of sport at this third level.

In reality, no actual conventionalist openly supports the idea that individuals have an almost unlimited discretion to change sport as they see fit, although there are
indications that such a thesis would be accepted by them. When conventionalists talk about conventions being established by a community, no mention of limitations on a community’s role in this regard are typically cited, nor is there anything in their views that would support such limitations. However, interpretivists like Dixon and Simon take this thesis of absolute community control over sport to be a basic commitment of conventionalism. For example, with regard to the rules of the game, Dixon openly accuses conventionalists of not being able to provide any criteria for rule evaluations that are independent of the judgment of athletic communities (Dixon, 2003, p.107). As for the third level, Dixon makes the more general point that it is conceivable that conventionalism would accept any kind of sporting construct, no matter how absurd it might seem, as long as it is accepted by the community (Dixon, 2003, p.107). In essence, interpretivists see conventionalists as believing sport to be some sort of free-floating activity that can be limited only by the agreement of a community at each of the three levels I mentioned here.

**C'2. Justification and acceptance are coextensive.** The fact that a certain aspect of sport is accepted by the community counts itself as justification of that aspect. In fact, it makes more sense from the interpretivist point of view to eliminate the idea of justification from the conventionalist discourse altogether. In a way, this conflation of justification and acceptance results in a loss of normative power or, as interpretivists put it, of internal criticism. Internal criticism means in this context the ability of a community to critically evaluate its own actions, which interpretivists consider incompatible with a basic tenet of conventionalism like C’1. Statements like “[i]t’s hard to see how a conventionalist, who regards the assent of the relevant athletic community as the ultimate
standard for resolving disputes about sport, could consistently criticize a practice that was widely accepted” (Dixon, 2003, p.107), seem to support the claim that interpretivists attribute C’2 to conventionalism.

C’3. **Communal agreement replaces rationality.** This is a very puzzling aspect of the conventionalist position as it is characterized by interpretivists. Dixon goes back to Rorty and to his thesis that “there is no deeper foundation to rationality than solidarity” (Dixon, 2003, p.106). This quotation in itself does not support C’3, but there are good reasons to believe that interpretivists take conventionalism to make this claim. If interpretivism is conceived as opposed to conventionalism and the defining characteristic of interpretivism is that “judgment about sports should be based in part on rationally grounded principles about the nature and purpose of sport” (Dixon, 2003, p.106), then it is safe to assume that conventionalism is perceived as somehow denying rationality a role in the process of adjudication and in any discourse on sports. Morgan makes a similar point talking about “uncritical dependence on dominant critical conventions” as a major shortcoming of conventionalism and about rational argument as a major linchpin in interpretivist theories (Morgan, 2004, p.162). Even the central point made in Morgan’s paper “Moral Antirealism, Internalism and Sport” supports C’3. Morgan argues against realism but decides not join to the conventionalist camp because of the presumed conventionalist inability to use rationality as a basis for internal criticism. His anti-realist brand of interpretivism follows Rorty’s advice and denies a Platonic basis to the kind of rationality employed in arguments about sport, and while his arguments offer support for

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7 I take justification and rationality to be different in this context. Not all kinds of justification are rational (using intuitions to justify a thesis is an example of non-rational justification), and rationality can be used for other purposes than to justify a thesis (rational explanation or clarification, for example)
conventionalism (see theses C’1 and C’2), he stops short of endorsing it. The reason for
this decision has to be some sort of support for C’3. It is also possible that Morgan’s
decision not to embrace conventionalism is dependent upon other commitments
associated with conventionalism, but there is nothing in his paper that would justify the
introduction of other factors for rejecting the conventionalist label that I think his position
would require.

C’4. Holism. I briefly mentioned this aspect in my discussion of the legitimacy of
redefinition. The basic idea here is that conventionalism in sport is a direct consequence
of a broader view of the world, according to which the human mind in its individual or
collective forms plays an important role in determining what reality is. This description is
not precise enough to differentiate conventionalism from Kantianism, so it might be
necessary to add that besides the active role of the mind, conventionalism so understood
is committed to the idea that human beings have volitional control of the way the world is
constructed and understood. The most notable application of this theory is in ethics where
it takes the form of moral relativism. Moral principles, according to this theory, are
human creations and, as a result, have validity either as personal preferences
(subjectivism) or collective choices (ethnocentric relativism). I mentioned before that
Dixon sees C’4 as associated with conventionalism when he connects Rorty’s relativism
with conventionalism. As long as interpretivists equate conventionalism with the kind of
relativism espoused by Rorty, this sort of connection holds and there are good reasons to
attribute C’4 to conventionalism, but there are no indications that someone like
D’Agostino would defend such a radical position, at least because he confines his theory
to sports and ignores any external considerations. C’4 becomes problematic when this
kind of general theory is abandoned for a more local conventionalism, by which I mean conventionalism about sport. In this case, the only way to maintain the validity of C’4 is to argue that it is impossible to be conventionalist about sport alone and that one needs to have general conventionalist position about the world in general, presumably relying on the connections between sport and the outside world. According to this argument, sport and the outside world are so strongly connected that one cannot just be conventionalist about sport without being conventionalist about everything else.

C'5. Conventionalism conceives sport in terms of conventions alone. This kind of thesis refers to a presumed claim made by conventionalists about the actual way in which communities can affect the structure of sport and the process of adjudication. Obviously, conventionalists rely on the idea of a convention, but it is not clear what this convention will look like. D’Agostino uses the example of basketball being redefined from a “noncontact” sport to one in which more aggressive types of plays are tolerated. Simon talks about strategic fouling in basketball as a convention (Simon, 2000, p.4). These two concepts of conventions are very different. D’Agostino seems to think conventions are defined by their general character, for example, similar to the kinds of principles Ronald Dworkin opposes to rules, while Simon’s example of convention is much more precise and rule-like. The problem that I am talking about goes back to a general issue with systems of rules which has been discussed at length by Ronald Dworkin in his criticism of HLA Hart, and by Russell in philosophy of sport as a critique of formalism. The problem with basing adjudicative decisions on a precise set of rules is that precision comes at a price, which in this case concerns its effectiveness. Since those who create the
rules cannot foresee all the future situations where these rules would apply, precise rules will not be able to fulfill the functions they were meant to fulfill.

Let me make this clearer by considering this problem from the standpoint of law. It is fair to assume that rules (or laws) are established with a specific goal in mind and that in order to make rules more effective it is necessary to make the rules more concrete and precise. For example, the goal a legislature has in mind while passing a law establishing a speed limit on public roads might be to limit car accidents, but a law that requires drivers to act in such a fashion that auto accidents are limited is too imprecise to have the desired effect. However, if rules are made very precise by providing a clear set of limiting conditions on behavior, this translation from the goal envisioned to the actual law will make rules either incomplete, as in certain cases the rules do not provide guidance, or inadequate, as in certain cases the strict application of the rule defeats the very purpose for which it was created. I will call this problem the problem of underdetermination/indetermination. Russell has made this problem the focus of his important paper, “Are Rules All an Umpire Has to Work With?” by presenting several cases where rules either do not offer guidance or the guidance they offer leads to unacceptable decisions (Russell, 1999, pp.28-31). The conclusion of this discussion suggests that adjudication in sport needs something more besides precise rules in order to be effective. The problem with formalism is that it fails to take into consideration this last point. Now, the question is whether conventionalism suffers from the same problem. As I am going to show, certain interpretivist types of criticism seem to claim as much.

At first blush, this seems an unfair accusation to make of conventionalism, since one of its essential contributions is to offer up conventions as means of avoiding just such
problems. The question is whether their solution is in fact effective. As I mentioned in the previous paragraph, in order to provide referees with guidance that covers cases that are not openly covered by the rules of the game, the element added to rules needs to be something more general rather than more precise. That is, while rules are precise and have a clear application, what needs to be added to them to guide their application are general standards or “principles” in Dworkin’s sense. The advantage of principles that makes them solutions to the problems of underdetermination and indetermination is that they are far-reaching and are not restricted by the kind of technical details that make a rule precise. Standards or principles are closer to the intentions of the legislators or those creating the rules. According to Dworkin, judges have to start by identifying those principles that are central to that political community and then decide hard cases with these principles in mind, since these principles are general and, as a result, it is unlikely that cases not covered by these principles can occur. Can conventionalists accommodate such principles in their account?

According to interpretivists, the answer is “no.” This is why they link conventionalism to point C’5 above. Interpretivists do not make this claim openly, but I assume that this is the case because of their view of conventionalism that I described in my comments on C’3, which, to reiterate, holds that rationality plays no role in adjudication. If conventionalists deny rationality a role in adjudication, then they also have to deny a role to these kinds of general principles of sport, because identifying and applying them requires a rational understanding of sport.

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8 By indetermination of a law I mean that characteristic that makes it unable to give any answer to a situation in which it is applied, while underdetermination means in this context that the law gives the wrong kind of answer in a situation in which it is applied.
There are good reasons to accept the idea that conventionalists consider conventions similar to rules, as both conventionalists like Lehman and D’Agostino offer examples of conventions that have the same precision as rules. Further, one of the most persuasive examples of criticism directed at conventionalism by interpretivists is that conventionalism does not offer a satisfactory solution to the problem of underdetermination/indetermination, because adding conventions to rules, although very helpful, is not likely to cover certain special cases like those of “clubless Josie” discussed by Simon. Josie is a golfer whose clubs have been lost through no fault of her own. In this case, unless her opponent, Anika, is willing to offer Josie her spare set of clubs, Josie will have to forfeit the game. According to this argument, the conventions built around the game are unable to provide the kind of guidance needed in this situation (Simon, 2000, p.4). I have certain doubts about the validity of this criticism, as it is not clear that a theory of adjudication or sport should be concerned with what happens outside of games, even if it affects directly what happens in them. Assuming that my worries are unfounded, this kind of argument seems to highlight a serious problem with conventionalism because it makes it vulnerable to the arguments I mentioned before in relation to formalism, such as relying in adjudication only on precise rules, which creates the underdetermination/indetermination problem. The problem here seems to be that conventions are seen as having rule-like precision. Let me make this point clear. Rules of the games are precise, but, as I argued before, their precision comes at a price, namely the previously mentioned problem of underdetermination/indetermination. And it is this problem that makes a case like that of clubless Josie problematic for conventionalism, at

9 I use here “rules” following Dworkin as a general term, not to rules of sport in particular.
least according to interpretivists. In order to avoid this problem, more general principles are needed, so the question is whether conventions can play the role that principles are meant to play. However, as I mentioned before, the examples of conventions that interpretivists use are too precise and, for this reason, are more like rules than like principles.

In novel situations like the ones mentioned by Russell (for example, the Pine Tar incident or the case of clubless Josie), the conventionalist account of sport and adjudication seems ineffective, as conventions seem no better than rules in anticipating such novel events, and, therefore, in providing adjudicative guidance as to how to dispose of them.

In the case of formalism, the problem of indetermination/underdetermination is generated by the fact that there is a certain legislative imperfection when it comes to rule changes, which means that it takes a relatively long time before new rules are introduced in order to deal with unforeseen situations. In the case of conventionalism, this legislative imperfection is probably even greater, as the kind of implicit agreement needed in order to establish a convention is complex and slow to take place. In conclusion, it seems that conventionalism is conceived as supporting a claim like C’5, where conventions in C’5 are conceived as having rule-like precision.

I have presented so far the most important commitments that are attributed to conventionalism by interpretivists. In the rest of this chapter I will show that most of these principles are incompatible with or exaggerations of the kind of conventionalism I want to present here. More specifically, I am going to argue that C’1 is a commitment
essential for any conventionalist account, but that a claim like C’2 is only partially necessary to define a conventionalist position. Furthermore, I am going to argue that statements like C’3 and C’4 are not necessary and that they can be rejected without undermining the essential commitments of conventionalism. As for C’5, I will argue that it is generated by a misunderstanding of the conventionalist literature, and that besides conventions other elements need to be added to help conventionalism solve the underdetermination/ interdetermination problem mentioned earlier. Again, I will argue that the radical modifications to the concept of conventionalist presented by interpretivists do not undermine the legitimacy of this new concept of conventionalism.

The next two sections will evaluate the validity of these claims, with a particular focus on C’1 and C’5.

3.2. Realist commitments in conventional institutions

The first two theses that interpretivists attribute to conventionalists are as follows:

C’1. Individuals or groups create sports and are free to change them.

C’2. Justification and acceptance are coextensive.

The question, of course, is whether these characterizations of conventionalism are persuasive. I have shown so far that interpretivists claim that conventionalists are committed to C’1 to 5, now I am going to see if these statements are in fact valid and if conventionalists need to be in fact committed to all of them. As I am going to show, after this section and the next, these statements are in principle valid, but certain restrictions need to be added. In order to make this investigation more effective, I am going to construct it in terms of a tug of war between conventionalism and realism. The
conventionalist camp defends C’1 without any conditions added to it, while the realist side challenges this thesis. My aim in this chapter is to develop a moderate conventionalist account of sport, one that is not susceptible to the kinds of criticisms made by interpretivists. The first part of this section will be dedicated to the conventionalist case for C’1, while the second and third parts of this section will present the realist replies.

So what does conventionalism mean? As I mentioned at the beginning of this chapter, conventionalism can be understood either as opposed to realism or interpretivism (these interpretations are not exclusive; they simply show two different dimensions of conventionalism). However, in the context of a theory of sport, it makes more sense to understand conventionalism in opposition to realism, for the reasons I mentioned at the beginning of the chapter. What is the essence of this conceptual opposition?

First, I am going to take a closer look at the realist position. As the name suggests, realists believe that there is something out there and that the existence of this “something” is independent of our mental activity. Even from this very preliminary definition, a realist view of sport seems to be a contradiction in terms. Unless one accepts a radical Platonic view of sports in which sports exist as essences in an ideal world, sport does not exist as an entity independent of human agents. Rather, sport is through and through a human construction and, therefore, in this sense not amenable to a realist interpretation. However, this argument is illusory, as one can be realist about chairs,

10 The reason is that interpretivism is essentially a theory of adjudication, while realism directly tells us something about what sport is (that certain parts of it are independent of our beliefs or actions).
which are created by humans but exist independently of them. This means that realism about sport is not problematic at least in this sense.

However, there is a deeper issue here that involves sports but does not affect chairs. I have not talked here about the ontological status of sports, but whether one thinks about sport as a system of rules or as a practice, sport seems to be directly dependent upon the human mind. When we think of rules, we cannot conceive of them the same way as we do natural laws, which are seen by realists as independent of our minds. As long as sport is understood as a social practice, it is an accepted fact that if a practice is not in fact practiced or at least accepted by the community then it is not a practice at all. So, the question is how can one be realist about sport given these facts?

The best attempt to bridge the gap between the status of chairs and sports comes from the realist position of John Searle and relies on the claim that sports are just as real as chairs are. Sports are institutional facts, according to Searle, which are existent, but are dependent on human actions, being systems of constitutive rules (Searle, 1969, pp.51-52). Chairs are brute facts, by which Searle means those facts that have a physical existence and can be known and studied through physical observation (Searle, 1969, p.50). Realism in this case has to deal with the methodological individualist challenge developed by Hayek and Popper, according to which even if we refer to collective entities like games or sports, they need to be described as results of the actions and interests of individuals. We can surely talk about games as real entities, but this needs to be understood as just a metaphor or as a way of describing a reality that is in fact composed of individual actions. As a result, one can wonder if institutional facts are in fact real, as it might make sense from a methodological individualist sense to think of these institutional facts as
descriptions of a reality rather than that reality itself. For the time being I do not think that a discussion of the impact that methodological individualism can have on our discussions of sport is very useful for the debate between realism and conventionalism, so I will stop here.  

Let us assume that the methodological individualist views about sport are not justified and that indeed sports can be conceived of as real entities. Does this mean that realism in the sense that I introduced at the beginning of the discussion, according to which there are entities that are independent of human mind and decisions, is justified? Regardless of the kind of theory of institutions one accepts, the fact remains that the existence of institutional facts is dependent upon human actions or mental facts. Eerik Lagerspetz connects social facts with mutual beliefs (Lagerspetz, 1995, pp.30-31) while Searle talks about the idea of collective intentions; so I think it is fair to assume that there is no acceptable way of conceiving sport apart from human attitudes and actions. Even if one accepts institutions like sports as real, this reality depends on individual and collective choices. So, how can the dominance of realism in the literature about sport be explained?

Realism in sport has been developed primarily as a normative theory. With a notable exception (Russell, 2004), the issue of the status of realism in a normative institution like sport has been for the most part ignored in the literature. Rather, what one finds in the literature are discussions of what principles should be promoted in sport. So, one explanation of the fact that realism in sport is the dominant view might be that

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11 However, as I will show later, this is a promising line of research, especially in the case of functionalism about sport.
descriptive theories about sport (which answer to questions like “What is sport?”) and normative theories about sport (which answer to questions like “How sport should be conducted?”) are in fact separable, and that while sports are conventional creations, questions about how sports should be conducted depends on principles that are real. The problem now is one of determining if there is a connection between normative and descriptive realism, and if it is possible to be a normative realist about sport while at the same time not being a descriptive realist about sport. In other words, the problem is whether one can consistently accept at one and the same time that sports are realities dependent upon collective agreements and that sports are characterized by normative principles that are independent of any kind of conventional construct. The answer to this question is important because if normative theories of sport are separable from descriptive theories of sport, then all the arguments for conventionalism (and for the idea that individuals have the power to create and change games as they see fit (C’1)) I presented before are unable to show that realism about sport needs to be discarded.

It certainly seems strange to claim that sport is a conventional fact and at the same time argue that what sport should be (how it should be played or refereed) is in fact independent of any conventional facts. I assume that this problem was ignored primarily because there is a persuasive example of a conventional construct that is based in a non-conventional principle, namely law. Law is a human product, but at the same time, at least according to natural law theorists, it contains principles that are independent of human judgments. So, it makes sense at least to entertain the idea that realism and sport

12 I take descriptive realism to be the idea that there are certain characteristics of sport that are independent of human control. Normative realism, on the other side, considers that the normative principles that apply to sport are independent of individual or collective decisions.
are compatible. How is this possible? Realism can provide various answers to this question, of which I have chosen three main answers. The first two are compatible with an internalist brand of realism, according to which those aspects of sport that are independent of human agency are internal to sport. The third answer argues that the aspects of sport that are independent of human agency are results of applications of external principles to sport and is thus compatible with an externalist position.

1. One solution would be to follow the classical natural law theories and make a strong metaphysical claim regarding the nature of concepts that would make this situation possible, accepting a conceptual naturalist position about sport. This solution accepts that sports are conventional institutions, but denies that this description is sufficient. According to this view, language is confusing because certain social practices are called “sport” even if they are not genuine forms of sport. In order for an instance of sport to be genuine, it has to satisfy certain normative principles whose existence is independent of us, according to realists. Therefore, even if genuine sports are conventional entities, they depend on principles that are not conventional. Thus, the concept of genuine sport bridges the gap between the conventional nature of sport and normative realism.

Take for example Thomas Aquinas’s approach to law. Even if it is true than legal systems are human creations, Aquinas points out that if human law deviates from natural law, then this law is just a perversion of law (Aquinas, 1988, ST I-II, Q.95, A.II). By natural law, Aquinas means the laws that govern the nature of human beings as rational beings (for example, one of the central natural laws is the moral imperative of doing good).
Applying the kind of naturalism defended by Aquinas to sport has some plausibility, as it follows the same path as Russell’s account of conceptual naturalism, developed especially in “The Concept of A Call in Baseball,” where he argues that a bad call is not really a call at all. In light of this brand of conceptual naturalism, the problem that I mentioned before, regarding the difficulty of defending descriptive conventionalism and normative realism at the same time, loses its bite. It might be the case that sport can be defined only in conventional terms, but if one wants to talk in terms of “genuine sport,” then it is necessary to appeal to certain normative standards, which can be moral or not (and, therefore, can be real). The solution is interesting and it gives evaluative principles a role in the definition of sports by creating a duality in the kinds of concepts we use when referring to sport. What “sport” is might be conventional, while what “genuine sport” might not be. Of course, this distinction relies on the idea that the evaluative principles that determine what “genuine sport” is cannot be described as conventions. I think that this is a complex topic and this is not the place to present a comprehensive analysis of it. For the time being, I am going to mention just one form of criticism that comes from philosophy of law and was proposed by Brian Bix.

Bix’s point is that a better interpretation of statements like “an unjust law is no law at all” is to think in terms of force, not of actual existence:

A more reasonable interpretation of statements like “an unjust law is no law at all” is that unjust laws are not laws “in the fullest sense.” As we might say of some professional, who had the necessary degrees and credentials, but seemed nonetheless to lack the necessary ability or judgment: “she’s no lawyer” or “he's no doctor.” This only indicates that we do not think that the title in this case
carries with it all the implications it usually does. Similarly, to say that an unjust law is “not really law” may only be to point out that it does not carry the same moral force or offer the same reasons for action as laws consistent with “higher law.” (Bix 1996, p.226)

The advantage of this explanation over the one proposed by Russell is that it fits so much better the case of bad calls. Bad calls are more like officials that have the credentials but lack the moral authority that is given by skills and abilities rather than like officials without credentials. This happens because bad calls are made by referees that have the credentials in an established and genuine institutional context.

Just as conceptual naturalism can be applied to calls, so it can be applied to sport. As I mentioned before, we can talk about bad sports as not being sports, but Bix’s argument seems to suggest that it makes more sense to think of sports that do not satisfy the kind of evaluative principles realists have in mind as actual sports, but with a different moral force or authority over the participants in the game. Participants might ignore some of the rules of the game because they violate the evaluative principles that are seen as relevant for that particular sport, but this does not mean that this is no sport at all. As a result, the first solution to the problem of the connection between descriptive and normative aspects of sport cannot be solved with this conceptual difference, since according to Bix’s new interpretation of the distinction between sports and genuine sports, this distinction does not draw ontological boundaries. One can focus a theoretical study of sports on “genuine sports” (those sports that satisfy the evaluative principles perceived by realists to characterize sports), but this decision will look arbitrary since the other non-genuine sports are sports too. Unless one makes a point of constructing a
theory of genuine sport instead of a theory of sport, bad sports should be taken into account in a theory of sport. Also, this account of genuine sport does not provide the necessary mediation between the conventional nature of sport and normative realism, thus making this solution inapplicable, because it fails to show that all sports are dependent on the kind of evaluative principles presupposed by conceptual naturalism. If conceptual naturalism does not make sport dependent upon certain non-conventional principles, then sport is again seen as a purely conventional entity, which makes normative realism difficult to conceive in the context of sport.

2. The second realist defense of the idea that normative realism is compatible with the conventional nature of sport is to make a significant metaphysical claim about human nature and to argue that there are regularities inherent in human nature that represent the foundation of basic principles about sport that need to be satisfied in order for something to qualify as sport. This solution provides a defense of normative realism in sport by denying that sports are pure conventional creations, since sports have a structure that is rooted in human nature. Thus, sports can have realist normative principles because sports depend in their definition on descriptive principles that are independent of any conventions as a generated by a universal human nature. According to John Finnis, there are certain goods that can be defined as universal and moral laws govern the acceptable means of achieving these fundamental universal goods (Finnis 1980, p.276). I will leave aside any other considerations in relation to philosophy of law and focus on the possible impact on theories of sport and adjudication.

In sport, the closest thing to such a theory was proposed by Scott Kretchmar. Kretchmar accepts Searle’s description of social facts and Searle’s claim that the reality
of games depends on constitutive rules. However, the original element in Kretchmar’s account is his interpretation of regulative rules. Kretchmar’s interest is to find a plausible interpretation of the distinction between regulative and constitutive rules, one that would satisfy both the formalist position and the criticism directed by conventionalism against the formalist use of the logical incompatibility thesis. In the formalist literature, constitutive rules are seen as establishing games, while regulative rules are construed as penalty-bearing rules that operate within the purview of the constitutive rules of games. Kretchmar finds equally unacceptable both the formalist attempt of expanding the number of constitutive rules to cover most rules in sport and the solution proposed by William Morgan of reducing the number of constitutive rules only to a group of central rules and making their violation less likely. According to Kretchmar, the formalist solution has as an unappealing consequence the increased likelihood that two competitors in the same competition will not play the same game because they will break different rules, while Morgan’s solution would undermine the basic requirement that the goals of the games be achieved through game means (Kretchmar, 2003, p.164).

By contrast, Kretchmar seeks a functionalist solution: all rules of the game, even those involving penalties, are constitutive, while the differentiating factor between minor violations of constitutive rules, which do not alter the nature of the game, and major violations of constitutive rules, which undermine the game, have to do with whether games realize their perfectionist aims. But what about regulative rules? Regulative rules are described by Searle as regulating “antecedently or independently existing forms of

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13 Kretchmar considers that the function of sport is to test a set of skills particular to each sport in particular (Kretchmar, 2003, p.166).
behavior" (Searle, 1969, p.33) and as regulating “a pre-existing activity, an activity whose existence is logically independent of the rules” (Searle, 1969, p.34). Drawing support from Searle’s descriptions of regulative rules, Kretchmar notes that regulative rules are described as operating “prior to and during the formation of conventions” (Kretchmar, 2003, p.163). Kretchmar places in this category rules of physics, chemistry, logic, aesthetics and effective strategies for catching fish. Hence, regulative rules exist before constitutive rules do, not the other way around, and thus limit the activity to which constitutive rules give rise to. In other words, the practices and actions that constitutive rules make possible are limited by previously existing regulative rules.

How is this view, which is remarkably similar to realism, relevant to sport? It is interesting to point out that, in authentic realist fashion, Kretchmar puts natural laws, principles of adjudication, and gamewrighting principles into the same category. Regulative rules in sport are, according to Kretchmar, a diverse group: they can contain Suits’ definitional principles of sport, cultural and aesthetic principles (all of which can be described as “gamewrighting rules”), as well as Russell’s principles of adjudication. This provides a solution to the prevalence of realism in discussions of sport. And that solution is that, although sports are conventional entities, they are framed by principles that derive from human nature itself.

Why does Kretchmar belong here to the same category as Finnis? An initial indication is given by the fact that Kretchmar’s principles of gamewrighting rely on certain assumptions regarding the human nature:

If you want the game problem to appeal to people with different experience, endowments, and skill, make sure that the lusory means-ends relationships can
be adjusted. (For example, provide different tee boxes in golf for folks with different degrees of strength and skill.)

If you want the game to be aesthetically pleasing, make a provision for increased varieties and depths of sensory experience. (For example, play baseball on variable, natural turf, rather than unchanging artificial grass.)

(Kretchmar, 2003, p.169)

These rules refer to natural abilities of individuals to enjoy a game, having, from this point of view, almost the same validity as psychological laws. As a matter of fact, they are quite plausible. If in the game of basketball the basket would be placed 20 feet from the ground, then scoring points would be so difficult that the game would become boring, and this kind of sport would clearly deserve to be labeled as a bad form of sport. The nature of our mental and physical makeup determines what things we consider enjoyable, and the same psychological and physical makeup determines how sport should be played so as to be appealing and of interest to human agents.

I have to admit that this argument is not sufficient to support the connection I made between Kretchmar and Finnis. Not all regulative rules that Kretchmar sees as existing in sport are grounded in human nature. However, there is something else in the general justification of the existence of regulative rules that makes the analogy between the positions of Finnis and Kretchmar apt. In referring to Searle’s work on games, Kretchmar describes it as realist not just about the physical world, but also about the world of ideas. As Kretchmar puts it, “[t]he internal world of ideas and meanings, while person-dependent, is real, largely specifiable, and more or less common across cultures and languages” (Kretchmar, 2003, p.168). On the other side, he claims that this statement
does not rely on a Platonic view. In conclusion, Kretchmar states that there are meanings and principles that are independent of individual decisions, although they are person-dependent. In other words, these are principles that are dependent upon human individuals, but not upon certain individuals, which means that the most plausible interpretation would be that these principles are features of human nature. And it is this point that makes his account similar to Finnis’ account.

So, is this solution satisfactory? I think that there is some truth in the fact that certain physiological or psychological universal traits limit from the start the range of sports one can create. Yet Kretchmar himself testifies to the problematic nature of this solution. Some of his principles, although necessary, as the case of Suits’s definitional principles, are not independent of human agency, as I will argue later. On the other side, certain principles, like the two I quoted above which two, exactly, are too vague to offer support for the realist thesis. This point is easier to see in Kretchmar’s third principle of gamewrighting, which requires sensitivity to the culture in which the game takes place (Kretchmar, 2003, p.169). This sort of principle can be very well accepted by both realism and conventionalism, and for this reason this kind of solution that relies on a thick notion of human nature is too weak to offer support to realism. Deducing principles of sport from psychological laws is an interesting and ambitious project, but much more needs to be said about the connection between psychological laws and principles of sport to make this a credible idea. This project would have to start with an analysis of what qualifies as common in human nature, and about the success of such a task we cannot be sure in advance.
So far I have looked at two attempts to defend realism from an internalist point of view. This view tries to find something in sport that is independent of human agency, even if sport is construed as a human creation. Besides the arguments I presented in this section, I think there are other reason for doubting the validity of the internalist realist position. Sports are primarily products of a certain cultural paradigm, usually a Western one. Even if now sports are quasi-universal, this does not mean that all non-Western societies have established sports independently or that the sport-like practices they established independently have the same structure as sports in Western societies. Sports seem to lack the universality of legal and moral systems, and for this reason it seems absurd to think that sports contain something so fundamentally human that is universally present in every instance of sport.

However, this is not the only problem that internalist realism has to deal with. As I mentioned before, realism has to accommodate realist normative principles like Russell’s principles of adjudication in a social practice that is essentially a conventional creation. I described this issue as a problem of compatibility between descriptive conventionalism (sport is a convention) and normative realism (at least certain normative principles in sport are real). This, however, is a tough sell because realists themselves argue that a normative theory of sport has to rely on a descriptive theory of sport. In fact, the most important realist positions, which are all normative, contain descriptive realist claims. Dixon is probably the most open about the interconnection between normative and descriptive realist claims, especially when he refers to the need for interpretivists to use “a coherent, consistent set of rationally defensible principles concerning the nature and purpose of sport” (Dixon, 2003, p.109) in order to solve certain issues about sport.
The issues to which Dixon refers are normative issues, regarding the value of rule changes. Simon is equally clear about this connection. For example, he talks about an “overall theory of the nature and function of sport” as a basis for adjudication principles (Simon, 2000, p.10).

Probably function is the most significant descriptive aspect of sport that is needed to identify and justify normative principles of sport. The basic argument is that if sport has a function, then what counts as “good” sport is what sport optimally fulfills this function. If normative principles are not conventional, then neither can the function be. This shows that realists are committed to at least a realist descriptive statement, i.e., a statement about the function of sport. This means that a discussion of descriptive realism needs to be taken into consideration if normative realism is analyzed and it is to be a coherent account as well. This leaves us with an externalist view of sport.

3. The third solution is to defend an externalist position. According to this solution, even if sports are conventional creations they are still dependent upon realist normative principles that are external to sports. In most cases, these principles are moral principles, but I think it is possible to include aesthetic and political principles here too. Russell is the most important defender of this position. In fact, he is the only one who has paid attention to the problem of the compatibility between the conventional nature of sport and normative realism. This is how Russell describes it:

First, because games, including sporting games, are human inventions, it is natural to ask what sort of factual status sport morality could have and whether this could be realist in the sense of there being something there to be discovered
rather than invented. Put more simply, if games are inventions, doesn’t it follow that sport morality will also be invented, not discovered? (Russell, 2004, p.145)

Russell’s solution follows the same path that realists seem to find very appealing and looks at moral principles as natural laws. According to Russell, the morality of sport is like riding a bicycle. A bicycle is a human invention, but at the same time it follows natural laws that are independent of human creativity and control. I am not sure that this comparison is totally justified, since one can create (or invent) immoral games, while at the same time one cannot invent a bicycle that does not follow natural laws; but this is less significant in Russell’s argument as he can easily deny (as I have shown when I discussed the first solution) that a morally questionable game is a genuine game.

This solution is particularly persuasive because it relies on a fact that is undeniable, namely that athletes are first and foremost, before the establishment of any convention, subject to moral constraints. An athlete might decide to participate in a morally questionable game, but the obligations inherent in playing the game (e.g., the obligation to follow the rules of the game, the obligation to collaborate with the referees and teammates) will always be trumped by at least some (external) moral principles. As long as moral principles are seen from a realist perspective, this account seems perfectly justified and I am going to argue that conventionalism is perfectly compatible with it. The really problematic aspect of this theory becomes apparent when one tries to move from pure moral principles to principles of adjudication like the ones Russell talks about in his interpretivist account of adjudication. I will argue in a Chapter 5 that this deduction cannot take place without introducing elements that are conventional in nature. In conclusion, one can say that the realist is able to provide a realist account of sport that is
at the same time compatible with the fact that sport is a human institution, and so, is able
to account for the conventional nature of sports and for the existence at the same time of
realist normative principles about sports. However, as I am going to argue shortly, this
victory is a Pyrrhic one and, while trying to solve the compatibility problem between
normative realism and descriptive conventionalism, realism has made enough
compromises to be less of a threat to conventionalism.

In conclusion, the claim that individuals or groups create sports and are free to
change them (C’1) has strong plausibility, although this section has shown that its
validity is not absolute. Realism, as I have shown, provides conventionalism and its
central thesis C’1 with a lesson about the importance of principles external to sport,
making it aware of certain limitations the community must respect with regard to C’1.
According to this lesson, even if sport is a conventional entity, this does not mean that
everything about it can be modified by communities, because certain parts of sport are
influenced by external principles that might not be conventionalist in nature. Thus,
external principles limit the freedom of communities to introduce new games or to
change those already existent. The next sections will look at other possible limitations
that need to be imposed on C’1 in order to establish a balanced and credible concept of
conventionalism.

3.3. Conventionalism and necessity

So far I have focused on realism and on how it fares against the conventional
nature of sports in order to assess the validity of a claim like C’1. I have looked at realism
as a commitment to principles that are independent of and anterior to conventional
constructs. And I have shown that certain restrictions need to be placed on C’1. Next, I will direct my attention to another set of realist challenges to C’1, focusing on another dimension of the duality between realism and conventionalism, namely necessity. At the beginning of the previous section I mentioned that realism is committed to the idea that there are elements of sport that are independent of any kind of human influence. In the previous section, however, it became obvious that the realist position does not just claim that there are elements outside of our control in sport, but also that these elements have a certain degree of necessity.\footnote{By necessary I mean here something similar to “essential.” In other words, X is necessary in sport if regardless of how sport is constructed by a community, X is a characteristic of that construction.} Realists are not just saying that certain characteristics of sports are out there and are real, they\footnote{Take for example Scott Kretchmar’s characterization of Suits’ definitional principles: “These are fairly basic regulative rules and should not be particularly controversial. It is doubtful that any gamewrights worth their salt need any reminder of these structures” (Kretchmar, 2003, 169).} are saying that certain characteristics of games are necessary and real.

I will give two such examples. First, realists seem to assume that certain characteristics of sport such as its competitive or physical nature are necessary elements of sport. The second example is the idea of a sport function, according to which sport essentially has a function that can be specified independently of what participants in the game might think it is, or of the particular reasons people might have in playing them. Take for example Simon’s idea about how a game is best understood and interpreted. According to Simon, “sport is best understood as a practice within which opponents may perform at their best” and “the internal point of participation is to expose oneself to competitive opponents so that one can truly test one’s skills” (Simon, 2000, p.10). Simon talks about a theory of the nature and function of sport, and from his account it is clear
that he is analyzing the game in light of this theory. In order to see sports in their best light, therefore, sports should be organized in a way that makes them satisfy this perfectionist function. Simon makes this connection clearly:

More broadly, sports are arenas in which we test ourselves against others, where we attempt to learn and grow through our performances, and where we attempt to develop and exhibit excellences at overcoming the sport specific obstacles created by the rules.

This overall theory of the nature and function of sport, however roughly and sketchily characterized here, is not part of the constitutive rules but may be thought of as the best explanation of why the rules have such characteristics as the creation of artificial obstacles to achieving pre-lusory goals... (Simon, 2000, p.10)

After making this point, Simon connects Russell’s notion of integrity with function, pointing out that Russell’s first principle of adjudication, according to which rules need to be interpreted so that excellences needed to achieve the lusory goal are fostered, should be seen as requiring that referees (and athletes too) fulfill maximally the function of the rules of that particular sport. What makes this position important for realists is the fact that this function is treated as necessary. A statement like “The function of sport is to test one’s skills in a competition against others” is seen by realists as having a posteriori necessity, which means that this kind of necessity is independent of human agency. As long as the function of sport is seen as a justification for the idea that certain principles in sport are necessary, the function of sport needs to be considered a necessary element in
any plausible account of sport. Simply put, according to realists, sport without this function would be an aberrant practice or would not count as sport.

This idea of necessity provides realism with two possible challenges to C’1, one which relies on the idea of imaginative resistance, while the other relies on the linguistic dimension of necessity.

**Imaginative resistance.** The idea that there are certain kinds of principles in sport that are necessarily connected with sport has an undeniable intuitive appeal. Imagine that sports would no longer be about competitors testing their abilities against others. In this case, they would lose their essential purpose and become something else, something that hardly counts as sport. Neil Levy calls this phenomenon “imaginative resistance.” What he is pointing to here is the resistance individuals mount to the attempts by an authority to change the content (or the truth) of a statement. Levy uses as examples cases in which the author of a text changes generally accepted statements in it (making it acceptable, for example, to have more than one spouse or to use persons as slaves). Imaginative resistance takes place when the reader refuses to accept the authority of the author or, in a more general sense, when any individual refuses a certain imaginative product because she considers it illogical, immoral or otherwise normatively contradictory. Extending this concept to a broader area, we are resistant to certain changes proposed by authorities, for example, as when we resist attempts by the

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16 The concept of “necessity” that is used here is ambiguous; but I am not going to clarify exactly what kind of necessity I am referring here, primarily because that would mean making certain assumptions about the intentions of realists in this regard. For the purposes of the present discussion, it is enough to say that a characteristic is deemed necessary if it is essential, i.e., if the lack of this characteristic disqualifies a practice from being legitimately considered sport. Later in this discussion I am going to determine what kind of necessity is relevant here.
authorities to change what is morally permissible. In the case of sport, there is the attempt of authorities in various forms (the community, the institutions that organize and administer sporting competitions, etc.) to change the meaning of what sport is. These authoritative decrees might be able to change a number of things about sport (for example, the size of the field, the duration of the game or the designated hitter), but when certain fundamental aspects of the game are involved, imaginative resistance to this kind of change seems to show us that we have reached an essential aspect of the game. So, for example, when we imagine a game that is not competitive, if there is imaginative resistance to this proposal, then competitiveness is an essential element of sport.

This is what makes imaginative resistance useful for a realist who wants to reject the generality of C’1: when communities or individuals suggest certain changes in the structure of sport, there are certain limits that cannot be crossed without triggering imaginative resistance. Simply put, there are certain changes that are not acceptable and are felt that way by the participants themselves. For realists, this could be construed as a limit to the kind of unfettered authority exercised by communities in C’1. Does the idea of “imaginative resistance” ably supports this kind of argument?

Levy suggests that this kind of method cannot shed light on the distinction between what is moral and what is conventional. He points out that imaginative resistance “is provoked by both analytic and synthetic necessity, and its existence therefore cannot be used to argue that the concept concerned is one kind rather than the other” (Levy, 2005, p.237). As Levy adds, the fact that certain concepts are authority-independent and are resistant to authority-based changes does not mean that they are necessarily objective. To use Levy’s example, “we might say that an object is zonkish,
just in case it is malleable, makes a booming hollow sound when dropped from a great height, and emits fumes that cause people to cry as it is crushed” (Levy, 2005, p.238). According to Levy, if zonkish is used to refer to something that is blue, for example, it is likely that imaginative resistance will occur.17 This brings us to the crux of the distinction between realists’ and conventionalists’ views of necessity.

Alan Sidelle points out that conventionalists do not deny that there are true statements that begin with the word “necessarily” (Sidelle, 1989, p.6). In fact, conventionalists can accommodate a concept of necessity very similar to that endorsed by realists. Conventionalists can accept all the realist claims that certain characteristics of sport are necessary. The difference between these two positions concerns the source of necessity. While conventionalists argue that the source of necessity is analytic, realists believe that this source is an examination of the outside world, regardless of our conceptual commitments. In the case of sport, conventionalists will explain a statement like “Sports are competitive” as necessary, but this necessity comes from the fact that the concept of “sport” was defined as competitive. In this case, these statements about sport are necessary as a result of a human decision regarding the use of certain words. Realists, however, believe that competitiveness is a deeper fact about sport that does not depend on the way language is used.

If this is what the distinction between analytic and synthetic necessity comes to, does this mean that Levy is right to argue that imaginative resistance is irrelevant to making this distinction? Take for example the conventionalist position on imaginative resistance. However, it is fair to assume that it has to follow a process through which “zonkish” becomes somehow established and widely accepted.

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17 Levy does not give details about how this new concept will trigger imaginative resistance, but it is fair to assume that it has to follow a process through which “zonkish” becomes somehow established and widely accepted.
resistance. One can assume that the reason why conventionalists believe imaginative resistance occurs in certain cases is that there are certain conventions that define how certain words are used. In the case of “Sports are competitive,” there are conventions which determine the ways in which we use concepts like sports and we are resistant to authoritative attempts to change the truth-conditions of this statement. This explanation works in the kinds of cases on which Levy is focusing, where individuals react to stories in which the author uses her authority to change certain facts that are widely accepted.

Let us put the question in terms that are closer to the kinds of situations that are of particular interest to interpretivists. Interpretivists are concerned with situations in which communities construct types of games that are unacceptable from a moral or any other perspective. What would happen if the entire community decides to use its authority to impose a view of sports that claims, for example, that sports are noncompetitive? Would this generate imaginative resistance? It is difficult to give an exact answer to this question, since an actual survey would be needed. However, this kind of situation seems to undermine Levy’s thesis that imaginative resistance is irrelevant in the realism-conventionalism debate. If imaginative resistance occurs, this means that resistance can be directed at communal standards and, consequently, that in this particular case this resistance is not just resistance against changes in principles that are considered fundamental in sport. If this kind of resistance occurs, this means that even if a community approves of a certain meaning of “sport” and, as a result, creates an analytically necessary meaning of sport, certain aspects of sports like competitiveness are necessary in a deeper sense, which has to be synthetic.
This is a damaging reply and it gives legitimacy to interpretivist claims that there are certain essential elements that define “sport.” However, at best this claim is not supported by actual evidence. In order to justify this position, one needs to show in an empirical study that other cultures have the same kind of reaction to the idea of a non-competitive sport. Even in the case of morality, which is a more universal concept than sport, there are good reasons to believe, as Levy points out, that other cultures have a different view of morality than ours (Levy, 2005, pp.238-239), which makes it unlikely that in the case of sport the situation is much different.

Also, a conventionalist could just argue that this kind of resistance to a change of meaning shows that individuals are resistant to changes in our basic vocabulary, not that there are essential characteristics of sport that are “out there.” Simply put, people might be resistant to changes in the meaning of sport because of basic human inertia or because of respect for tradition, not because these principles are real. It is interesting to see that interpretivists like Simon and Dixon, who are worried about communities acting irrationally about sport, are unable to provide us with a case that provokes this kind of imaginative resistance to communal decisions. Interpretivism has to do more here to make this kind of argument work.

In conclusion, the idea of imaginative resistance is not convincing enough to show that further limitations should be added to the freedom conventionalists attribute to communities, which means that realists need to construct a new kind of argument to support the idea of synthetic necessity in sport. This brings us to the second realist challenge to C’1, which is based on the idea of linguistic necessity.
**Language use and definibility.** Despite the fact that an argument based on imaginary resistance does not seem applicable to sport, philosophy of language can still provide a further limitation to the freedom that conventionalists attribute to communities in C’1. The argument begins with the idea that we cannot just allow communities absolute freedom in choosing what sport is without undermining rational discourse about sport. Imagine an athletic community that decides to call “sport” any form of activity that involves more than one person clapping their hands. In this case, no meaningful discourse would be possible, as athletic communities would be able to use language as they see fit for the moment, that is, arbitrarily. What this seems to suggest is that there is something about sport that is beyond the control of any community and that certain modifications of C’1 are in order. Language, however, provides another limit to the freedom of communities to create and to change sporting practices. Language use in sport seems to suggest that there must be something necessary about sport since, otherwise, no definition of sport could be offered.

The only author who looks at the connection between the nature of sport and the linguistic usage in sport, and which analyzes the very idea of how a definition of sport connects with those social entities that can be called sport, is Bernard Suits. In an appendix to the second edition of the *Grasshopper*, he attempts a definition of sports that relies on similarities and empirical connections. The problem that Suits tries to solve refers to the paradox inherent in the effort to define sport that I described in the first chapter.

In a very famous passage, Ludwig Wittgenstein warns against the Platonic assumption that if something is called by the same name, then it has to have the same
kinds of characteristics (Wittgenstein, 2001, p.27). The fact that we have the same name “game” for various activities does not mean that they actually share a unique characteristic in common. Wittgenstein shows that a closer look at games seems to reveal that no such single unifying set of characteristics exist, but rather that certain characteristic are common to some, but not all entities, just like family resemblances. This kind of argument has been seen by some as a challenge to the idea that a definition of a kind like “games” is not even possible. So, Suits’ solution is to minimize the influence of language in the definitional context. As he puts it

For the question whether all things called games have something in common is very different from the question whether all things that are games have something in common. If, obviously, some of the things called games are called games metaphorically or carelessly or arbitrarily or stupidly, then there will predictably be nothing importantly common to all of them. (Suits, 2005, p.163)

This passage does not do perfect justice to Wittgenstein’s point, since in his analysis of games Wittgenstein is not referring to superficial or unacceptable uses of the term “game”. I do not think that anyone would consider card games as trivial or abusive examples of games. Regardless, Suits needs to answer to the kind of questions I asked in the first chapter, regarding the basis one has to construct this definition, assuming that one does not already knows what the definition is.

Suits’s attempt to solve this problem makes it relevant to our discussion of the distinction between analytic and synthetic necessity. Suits maintains that any definition needs to start somewhere, and that the best starting point is the “hard core games” or “the things everyone calls games”. It is important to point out that Suits refers here to
instances that are called “games” by an overwhelming majority, unlike Wittgenstein, who
does not ask for this criterion to be satisfied. Obviously, from the start this definition
relies on conventional elements, but this is not a major issue for the realist, because all
the realist wants to do is just claim that certain characteristics are essential and non-
conventional, not that all characteristics of sport are independent of human agency.

Suits goes forward by relying on the relationship between entities that fall and
those that do not fall into the category of hard core games. If something has more in
common to a hard core game than not, then it will be considered a game (Suits, 2005,
p.165). Now, the problem is whether this gives support to realism by connecting the
definition of sport with actual similarities, which are independent of human agency and
which will be the basis of the kind of synthetic necessity realists are interested in. The
problem with this project is that Suits’s method is not conventionalist just at its start
(when he defines what counts as a hard core cases by referring to what the majority takes
to be games), but even later the method has a conventionalist dimension. For Suits is not
committed to a method in which mere similarities are enough to define games, because
this would invite cases that obviously are not games (Suits talks about the race between a
robber and a police officer as such an example). It follows that certain similarities will be
more relevant than others and this means that we are either back to where we started from
or we accept that there are certain conventions that determine what is relevant and what is
not, and which define sport. The problem becomes even more acute when we go back to
cases in which athletes compete against themselves, and which are more similar to sport
than to anything else, even if they are not seen as instances of sport. So, for example,
when an athlete runs a marathon race by herself comparing her current performance to
her previous times, she is acting the same way as if she was in a real race with other competitors. However, she is not actually competing in a race despite the significant number of similarities her actions bear to such a race. This shows that it is not the number of similarities that counts, but the relevance of the similarities. In this case, the relevant similarity is the existence of an opponent.

The point that I am trying to make here is that similarities are indeed objective, but their ability to function as foundations for synthetic necessity is very limited for two reasons. First, as I pointed out, there are many similarities and dissimilarities between cases that are or are not hard core cases, and in order to make a selection, one needs to know which connections are relevant or not. Suits does not deny that there might be similarities between real entities, but this does not mean that these similarities automatically become essential and are capable of defining what is the essential or necessary feature of a specific entity. Second, even if this method is successful in identifying what similarities are relevant it is not clear that what will result is a unique set of characteristics that are common to all cases. It is possible that Wittgenstein’s model of family resemblances will be more relevant here and the resulting group of cases considered games according to Suits’s standards will lack a unique set of common characteristics for all instances of sport. In this case, realism cannot account for a definition of sport. Does conventionalism fare better?

So the issue becomes here how is conventionalism able to provide a definition of games and a basis for a rational discourse about sport. When looking at sport one needs to distinguish two issues. First, there is the linguistic usage of the term “sport”. I think that here realists and conventionalists are going to agree that language is conventional
and that, as Suits pointed out, language does not always follow a clear pattern. A linguistic community might use a different term or use the equivalent term in different ways (to cover different entities) or lack any equivalent term altogether. If language is used to divide real things into categories, this does not mean that every culture will use language to divide things the same way. Just as Native Americans have multiple words for snow or grass, it might be the case that a linguistic community will lack an equivalent word for “sport,” even if some practices very similar to sport exist in this language. For this reason I think that a discourse on sport needs to be restricted to a linguistic community or to linguistic communities that are very similar in order to provide the kind of rational basis on which a theory of sport could or should be constructed.18

Inside a linguistic community, however, usage is restricted and some forms of usage can be abusive when it is arbitrary or caused by ignorance, for example. Athletic communities that are part of the larger linguistic community can create new practices or call old instances sport and be wrong about it. So far, it is likely that the both realism and conventionalism are going to agree, but a more problematic situation occurs when one calls “sport” instances which lack a certain characteristic that is generally considered essential to the idea of sport. Take for example the case of athletic cooperative activities, in which players compete to win the game, but there is a high level of cooperation between players (examples of this sort, like korfball or netball, will be discussed in detail in the next chapter). These practices are competitive, but the practice is also cooperative, so that players help their opponents in an active fashion and are aware of their opponents’

18 Most languages use terms that are similar to “sport,” most likely because the Western paradigm of sport is hegemonic throughout the world.
feelings. Is this an abusive use of sport? I think not, as even Suits shows that usage does not follow a logical structure perfectly. Also, these cooperative athletic activities have similarities with what we call sports, so this is not just an irrational or mistaken use. For these reasons, I think that calling these activities “sports” is not abusive. As long as the reasons for a certain usage are made out of ignorance, abuse, or just for laughs, it is not likely that this usage can be ruled out of court in a discourse on sport. In conclusion, the limitations to freedom that language use brings are very few: a linguistic community defines an area of legitimate usage, but the usage can be expanded to other cases that are similar to those cases that are considered instances of legitimate use. Linguistic communities decide which uses are legitimate and which are not, but this cannot prevent a certain athletic community from using the term “sport” legitimately in other cases, if these new cases are sufficiently similar to the hard core cases.

The second issue that is relevant in this context is that of the definition of sport. As I mentioned, usage and definitions are different aspects altogether. Definitions follow strict logical structures, while usage does not. Definitions are supposed to identify the necessary or essential characteristics of the definiendum and constitute an important part of a theoretical discourse on sport. Conventionalism has two options now, as it can deny or accept that a definition of sport is necessary for a theory of sport or a theory of adjudication in sport. Realism does not have the same freedom, since realism requires a set of necessary instances of sport. For conventionalism, on the other hand, such a choice is not an important factor. Having a definition of sport is desirable, because a definition is likely to prevent linguistic abuse. Going back to Suits, it makes sense to worry about the possibility of a philosophical discourse on sport when a definition of sport is not
available, because the lack of a definition leaves room for doubt about the integrity of the discourse, more exactly about whether the term “sport” is used the same way throughout that discourse.

But if it is true that a definition is needed as a preliminary to a theory of adjudication, then how can a definition of sport be possible unless there are certain essential characteristics of sport? Does this fact support realism about sport? The answer is not positive because, as I pointed out before, it is not clear what kind of necessity is attached to these essential characteristics. Realism would argue for a synthetic necessity, which means that there are certain characteristics that are real and independent of human action. This, however, is very problematic because of the vicious circle that one risks in the process of definition, as I pointed out in the first chapter and as Suits has argued. Suits tries to bypass this problem through his definitional method, but, as I have shown, this does not support realism. Conventionalism can account for definitions by going back to the methodological point I made in the first chapter.

Conventionalists are aware of the vicious circle that is inherent in the definitional effort of sport and they are ready to address the problem directly. Conventionalism can, but does not have to, agree with the idea that there are necessary or essential characteristics of sport. Here I am going to assume that there are such characteristics. This, however, does not generate the kind of problems that a realist would have to deal with. Conventionalists argue that these necessary statements are analytic and, therefore, are based on the way a community decides to use words like “sport” or “game.” They are not afraid to accept a fact that seems quite probable for anyone who attempts to define a
term like sport, namely that every definitional process starts with a pre-existent knowledge of what sport means in a certain linguistic community.

The community does not just identify what the central cases are, but also defines their role in society and, consequently, those aspects of sports that are essential. Also, society decides what the categories that divide social facts are and makes them more intelligible. In other words, sports are not seen as just rocks or trees, but are understood as performing certain functions in society, which can vary from the testing of physical skills to establishing and fostering social cohesion. As I will show more extensively in the next chapter, some societies see sport as competitive while others look at cooperative aspects, some construct sport as connected with religious matters while others separate the two aspects. The fact that societies identify what is the function of sport has a double impact: on one side, it identifies what similarities are relevant while, on the other, it determines what categories need to be taken into consideration when deciding whether something is sport or not.

Let us take the example of a society in which religion and sport are deeply connected. In this case, religious aspects of sport will be seen as important in defining sport and in the process of identifying instances of sport. Also, this connection between religion and sport establishes what the connection with other categories that define social facts are. Remember the way Suits characterizes the method of defining sport. He looks at similarities between a practice whose status is to be defined and established categories of practices, like sport, religion and art. Based on these similarities, one can determine whether a certain practice is closer to a certain category rather than to another. In a society where the line between sport and religion is not clearly drawn, if a certain kind of
practice is similar to religion, this will raise considerably fewer questions about whether this is a sporting or a religious practice, as opposed to the dominant view of sport in the Western societies, where it is more likely that this practice will be defined as religious practice and, for this reason, denied the status of sport.

I mentioned before that this discussion goes back to the methodological point I made in the first chapter. We want here to define sports, but language is not always very helpful in this process. In fact, language rarely divides the world up into neat, clearly demarcated categories. This means that a definition will need to carve out certain elements that do not fall into the pristine confines of the logic of definitions. My point is that this is done in light of certain values that a community associates with sport.

Doesn’t this however result in a radical form of relativism about definition? Does this mean that anything goes and that any characteristic of sport can become essential if enough people consider it so? Is there a limit to how sport can be defined or does society have carte blanche authority here? The answer is that communities do not have carte blanche authority for the following reasons.

First, conventionalism does not deny that there are similarities between various instances and kinds of social practices. All an athletic community can do is give one characteristic more importance than another. This means that not everything can be called sports even if the athletic community decides so, at least not without undermining the meaning of the word sport and of the linguistic practices of that linguistic community in general. Second, not all kinds of characteristics will be relevant enough to play a role in definition construction. Remember that these characteristics are seen as connected with the role that this community assigns to sport, which means that not all trivial
characteristics will count. There are at least some biological or psychological limits to what would count as important.\(^{19}\)

So far I have shown that conventionalism is able to provide an account of language use and of the definability of the term “sport” that does not involve characteristics of sport that are independent of human agency. Hence, the argument for realism based on language use and definability lacks the necessary force to overturn conventionalism. Still, as realists point out, communities do not have absolute freedom in calling something “sport.” The reason why is that if these changes are so radical that the new practices bear little or no resemblance to what the linguistic community calls paradigm cases of sport, then these new practices cannot be called sport. In other words, this realist argument tells us that athletic communities are constrained by the way the linguistic community it is a part of uses the word “sport.” It shows that a human community cannot just call everything “sport” and that certain similarities with what a linguistic community considers to be core instances of sport need to exist in order to make rational discourse about sport possible.

This concludes my investigation of C’1. The result of that inquiry shows that C’1 is not satisfactory the way it was originally formulated because it grants too much freedom to athletic communities. In the next section, I will try to reformulate it into a more acceptable thesis.

\(^{19}\) I am referring here to the fact that our biological makeup determines at least some of our priorities at the social level.
IC1: Sport is a human creation and none of its aspects are independent of human agency.

The most obvious counterexample to the above thesis would be sport morality. Morality is relevant in sport and at the same time there are good reasons to accept realism about morality. Of course, conventionalists do not need to reject moral realism, since they can plausibly argue that morality is not part of sport. If so, then sport morality does not constitute a counterexample to C’1. I will make more comments on this topic in Chapters 4 and 5. The next chapter will focus primarily on the status of moral principles in sport in which the solution that I present here will be assessed more thoroughly.

Besides morality there are limitations of language use, which means that C1 needs to be qualified in the following ways:

a. **However, sport is dependent upon external moral principles that are independent of human agency.**

For this reason, my account of conventionalism can be considered a form of externalism. Although sports seem to be autonomous practices, separate from the rest of the world, in fact they are strongly dependent on external factors. Some factors are independent of human agency, such as moral and perhaps aesthetic principles. Athletes are moral subjects and this means that they will be subject to moral obligations regardless of whether the community accepts them or not. At the same time, some factors are dependent upon decisions of communities. For example, certain political or religious factors play an important role in certain games. In the next chapter I offer as an example

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20 I am referring here to the reasons presented by John Russell in “Moral Realism about Sport.”
radical feminist constructs of sport in which political principles determine how the game is played or refereed.

**b. The ability of athletic communities to establish a certain practice as sport is limited by the linguistic communities of which they are a part.**

IC2: If there are necessary statements about sports, then these statements are analytic.

I am not going to say anything further about these principles, since I have already provided a justification for them in my analysis of C’1 and 2. The two principles of conventionalism that I am accepting (IC 1 and 2) are not sufficient for establishing a coherent and comprehensive view of conventionalism, but in the second part of this chapter I am going to supplement them with another principle regarding the nature of conventions. I will end this chapter by taking a closer look at the idea of conventions and complete the notion of conventionalism that I am defending here.

### 3.4. Conventions and conventionalism

So far I have shown how C’1 needs to be modified. The first part of this section will be dedicated to a critical analysis of C’3 (Communal agreement replaces rationality) and C’5 (Conventionalism conceives sport in terms of conventions alone). More exactly, I am going to look at the notion of convention and see how the notion of convention needs to be constructed. In the last part of this section I will evaluate the validity of the main interpretivist theses I presented in the first section in light of the points I made so far.
One of the most authoritative accounts of convention has been offered by David Lewis, who is particularly interested in linguistic aspects. Lewis is trying to answer a challenge to the idea that language is conventional. W.V. Quine and Morton White argue that language cannot be conventional, since the conventionalism of language cannot be explained. According to them, conventions are agreements and it is hardly the case that language can be described as an agreement, since no one has actually agreed to use a certain language. Languages already exist before any possible agreement about their use could exist. It thus follows that language cannot be conventional (Lewis, 2002, p.2).

Lewis’s solution is to define conventions in Humean terms. Hume sees conventions as generated by a common interest among the members of the community to act in similar if not the same ways. Lewis’s definition of conventions is an elaboration of this line of thought:

A regularity $R$ in the behavior of members of a population $P$ when they are agents in a recurring situation $S$ is a convention if and only if, in any instance of $S$ among members of $P$,

1. everyone conforms to $R$;
2. everyone expects everyone else to conform to $R$;
3. everyone prefers to conform to $R$ on condition that the others do, since $S$ is a coordination problem and uniform conformity to $R$ is a proper coordination equilibrium in $S$. (Lewis, 2002, p.42)

As noted, a coordination problem is generated by situations in which there is an interest on the part of individuals to act the same way. For example, drivers on public roads have a direct interest not to collide. For this reason they follow the same rule that specifies
what side of the road to drive on. When a simple agreement is not enough to insure the coordination of people’s actions and this problem becomes recurrent (usually because of the large number of individuals involved), then it is likely that a social rule will emerge to solve this problem. The problem now becomes whether this account of conventions is useful in the case of sport. According to Andrei Marmor, the answer to this question is “no.”

Marmor agrees that there are certain aspects of Lewis’s account of conventions that are appealing, for example, the connection between conventions and the fact that others are following the same rules at the same time. In the case of sport, presumably one of the reasons for which there are well defined and precisely written rules is that every participant in the game can act in concert with one another, which would make the game possible.

Marmor next considers Lewis’s point that conventions are arbitrary constructions. This means that a coordination problem can be solved in various ways and that all of these ways are equally valid. For example, drivers can decide in order to avoid crashes to drive on the right side of the road, but at the same time they could have chosen the left side of the road and the coordination problem would have been solved equally well (Marmor, 2001, p.201).

Marmor argues that this account of conventions is unable to explain certain characteristics of law and other autonomous practices like sport.\footnote{This is how Marmor describes an autonomous practice: “the point of engaging in them (autonomous practices, n.b.) is not fully determined by any particular purpose or value that is external to the conventions constituting the practice” (Marmor, 2001, p.206).} First, it does not make sense to argue that conventions are arbitrary. Marmor claims this is especially obvious in
the case of laws, which can hardly be considered to be arbitrary because laws are created
to satisfy precise social functions such as safety or economic prosperity. Further, in a
sport like football one would hardly argue that the offside rule is an arbitrary rule,
because it plays an important role in the game itself by insuring that the game is played in
a certain way. Similarly, if in hockey any physical contact between players would be
strictly penalized, this would change the entire character of the game. On the other hand,
changing the conventions regarding the side of the road on which drivers should be
allowed to travel does not seem to make such an important difference for the participants.

The second problem that Marmor identifies with the application of coordination
conventions to autonomous practices is that laws and rules do not seem to be solutions to
coordination problems. Marmor looks at the US Constitution and argues that it was meant
to solve a much more complex issue than a simple coordination problem. In the case of
games like chess, the situation is similar, since before the game of chess was established
there was no problem to be solved (Marmor, 2001, p.205). Furthermore, even if games
were meant to be coordination solutions, this is not the reason why people engage in
games like chess, which means that even in this case games do not function as
coordinating conventions (Marmor, 2001, p.206).

In light of these difficulties with construing conventions strictly as solutions to
coordination problems, Marmor offers a different characterization of the conventions
relevant to legal systems and games. First, the notion of arbitrariness is not the same as
indifference. Even if a convention would solve the problem equally well as a second
convention, this does not mean that in certain situation there are no reasons for choosing
one over the other. Rules of etiquette regarding who should greet who first are meant to
solve coordination problems, but this does not mean that there are no reasons for choosing this etiquette rule, but not others (reasons that can involve attitudes regarding gender differences and age) (Marmor, 2001, p.204).

Another modification refers to the role of conventions in coordination problems. Although it is true that coordination problems are solved by conventions, not all conventions are coordination conventions. As I have shown before, this is the case with games. In these cases, Marmor stresses the need for a new understanding of conventions as they apply to autonomous practices. According to this new approach, conventions are not solutions to recurring coordination problems, but rather constitutive elements of autonomous practices. As Marmor puts it:

It is a typical feature of conventions constituting such practices as the game of chess that they partly constitute the point or value of the activity itself, and it is in this sense that we can talk about autonomous practices: namely that the point of engaging in them is not fully determined by any particular purpose or value that is external to the conventions constituting the practice (Marmor, 2001, p.206).

To this, Marmor adds two other characteristics. It is interesting to see that these fit perfectly the kind of discourse that D’Agostino presents in “The Ethos of Games”. The first characteristic is that conventions work in systems, which, to reiterate, D’Agostino stresses as an important factor. The systemic nature of conventions comes from their ability to establish a practice. A single rule cannot establish a practice (especially one that is as complex as sport). This means that all rules, be they rules of the game or

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22 The word “systems” is italicized in the text of “The Ethos of Games,” so is likely that D’Agostino considered this to be an important element, although he does not elaborate what he means here.
conventions built around the game conjointly define a certain practice as a system. This means that it is impossible to look at a convention like that involving referees tolerating certain fouls in basketball alone, without an understanding of its connection with rules of the game (for instance, those rules that define fouls) or other conventions built around the game (for example, the convention that a certain level of aggressiveness is desirable in certain contexts in sport).

Secondly, conventions alone do not determine autonomous practices. Besides conventions, games are determined by what Wittgenstein calls the grammar of the practice, which makes games an activity of a certain type. In Marmor’s example, it makes sense to question a theater play for its dramatic qualities, but not for its failure to demonstrate physical strength, because the grammar of these practices does not include issues of physicality (Marmor, 2001, p.207). D’Agostino refers to basketball as a “noncontact” sport, which determines the attitudes we have about this sport. In Marmor’s terms, if basketball is a “noncontact” sport, then certain questions need to be asked, which would not be asked in a contact sport. For example, in a noncontact sport it makes sense to question a game for being violent, which would not make sense in a contact sport. In conclusion, the ethos of the game and the grammar of a sporting practice work the same way: the both determine what kind of a game it is (for example, contact, friendly or educational) and both determine what kinds of questions are relevant in a certain kind of practice.

Sports as sets of rules are abstract entities. However, when they are played, they become concrete. In other words, in a concrete context they become particular. The game of baseball can be played in various contexts: it can be played by amateurs or by
professionals, for financial gain or for relaxing, with religious meanings in mind or to make a political point. In each case, the sport has a different grammar, which means that certain questions make sense in a certain practical context while others do not. For example, a question like “Is the game providing the participants with a moral lesson?” makes sense in a game for five year olds at school, but not in the context of a professional game. According to D’Agostino, the grammar of the games shifts from a “noncontact” to a more aggressive perspective of basketball. This changes the nature of the questions that make sense in this context (for example, certain questions about the appropriateness of certain strategies).

So far I have talked about two aspects of conventionalism: human control and necessity. In light of Marmor’s contributions, a third conventionalist thesis becomes apparent:

IC3: In sport, conventions work in systems and their constitutive activity depends on the grammar of a sport.

The point of the first part of IC3 is that even isolated conventions like the one Simon mentions regarding strategic fouling, cannot be understood in isolation. Strategic fouling would not make any sense in golf because of the rules of the game. In fact, strategic fouling should be placed in a larger context of the game (what the grammar of the sport is in this case is subject to a different kind of analysis, but one can assume that it has to do with competitiveness and the enjoyable character of the sport for the audience, among other things).

It is important to point out here that in Marmor’s account of games, conventions do not have the same meaning as I have attached to the term so far in this chapter. When
Marmor refers to as conventions, he refers to rules that determine a practice, which include the rules of the game. In this chapter, I considered conventions as different from the rules of the game and this is how the term is used in IC3. The way I am using conventions here are as a subclass of what Marmor calls constitutive conventions as opposed to coordinating conventions, because they are all rules that determine practices. Professional sports are not just determined by the rules of the game, but also by the conventions built around these rules, which determine how the game is played and refereed. For the rest of this chapter and in the next chapter, I am going to use “convention” in the limited sense, as it is accepted in the philosophy of sport literature.

So this is the account of conventions in games and, as things presently stand, it is the best available. According to this account, conventions are not seen as solutions to coordination problems, but rather as constitutive elements of an autonomous practice. Sports are autonomous practices since, according to Marmor, engaging in sports is not determined by any particular goal external to the conventions which establish the practice. Conventions are also seen in this account as working in systems and construct games only together with a grammar of the practice (which determines the basic character of the practice and what kinds of questions are relevant to this practice).

From the argument I presented so far in this section, it becomes clear that C’3 is false, because rationality and argumentation are essential in the conventionalist model I proposed Also, C’5 is invalid, because conventionalism cannot rely just on conventions in its account of games, given again the importance of the grammar of games.
My revised account of conventionalism is thus based on the following points.

**C’1. Individuals or groups are the source of sports and are free to change them.**
I have already shown that this thesis is in essence correct, but that certain limitations need to be added, which I have done by proposing IC1.

**C’2. Justification and acceptance are coextensive.** During the partial response to the accusation of relativism in definition, I showed that there is a limit to what a community can do with regard to the understanding and treatment of sport. For example, in the case of the definition of sport a community cannot decide to exclude a practice as not sport if there are strong similarities with instances that are called sport. If one adds here the importance of moral standards, it follows that that justification cannot be equated with acceptance, by which I mean that the fact that a certain aspect of sports has been accepted by the community as a whole does not itself count as a justification of that aspect.

Conventionalism can make it possible for members of a community to criticize their community. For example, a practice can be criticized if it is immoral or if it violates the linguistic practices of the community (in this case, one could legitimately say that this is not even an instance of sport). There are also issues of compatibility between the views of the athletic community and a particular practice. For example, if a feminist athletic community embraces the ideals of cooperation in their sporting practices and, at the same time, accepts strategic fouls, then one of its members could criticize this community for being inconsistent. This shows that internal criticism is possible without the need to accept realism.

**C’3. Communal agreement replaces rationality.** The argument here is similar to the one I made in the case of C’2. As I have shown in Section 3.1, it seems that interpretivists...
treat conventionalism as similar to formalism: just as formalists were seen as applying rules without asking any questions, conventionalists are seen as applying conventions without asking any questions. The best indication of this line of thinking is offered by Dixon’s accusation that internal criticism is not possible on a conventionalist account. He accuses conventionalists of not being able to provide reasons to choose a certain change in the rules of the game over another alternative (Dixon, 2003, p.107). The underlying theme seems to be that conventionalists will accept any changes in rules if the entire community accepts it. In other words, there is no rational argument involved here.

As I have shown above, however, a conventionalist does not have to be committed to this point. According to conventionalists, games are played in concrete contexts which determine how the game will be played. As a result of this fact, games are played not just according to the rules of the game, but also according to conventions. But it would be too simplistic to believe that once accepted, a convention becomes absolutely legitimate. As I pointed in the case C’2, certain alternatives are legitimate while others are not, depending on moral and linguistic standards, as well as on the internal consistency of the conventions accepted by that community. In light of this concept of conventionalism, C’3 is rejected.

C’4. Holism. There is no need for conventionalists to be holists. It is simply sufficient to be realist about morality and even about aesthetics, in order to avoid morally reprehensible sports or games. In order to reject holism, one needs to show, however, that sport is significantly different from morality to justify treating it differently. I think that the difference that undermines C’4 is given by the importance of choice in morality and sport. In sports, there is a clear choice for one to participate in sport and to submit oneself
to the obligation inherent in the idea of sport. As for the case of morality, it is possible to argue that morality is a human creation, but there is also evidence proving otherwise, for instance, moral behavior in animals or the work done by Elliot Turiel on moral intuitions in children in different cultures. In the case of sport, the importance of choice is not controversial. We think of moral rules as if they are independent of our choices, but we do not think about sport rules in this way. Furthermore, morality is a universal phenomenon, while sport is not. These arguments offer a reason for treating sport and morality differently when realism is concerned and provide a justification for rejecting C’4.

C’5. Conventionalism construes sport in terms of conventions alone. My response to C’3 covers this statement, as it shows that conventionalists actually work with other concepts when dealing with sports. As I shown, D’Agostino does not just talk about rule-like conventions, but also about systems of conventions, which revolve around concepts like “noncontact,” which I characterized as similar to the idea of grammar of a game. The grammar of a game is determined by athletic communities who participate in these games. It defines how the game is played, so that if the grammar of basketball is changed from a less aggressive to a more physical grammar, the way referees have to decide the game is changed as well.
In this chapter I am going to continue the investigation I began in the previous chapter by deducing the central principles of a conventional theory of adjudication from the main theses of the conventionalist account of sport I presented there. I use the word “deduce” here rather loosely, as I do not claim that the principles of adjudication I am going to introduce are logical consequences of these three principles (IC1: Sport is a human creation and none of its aspects are independent of human agency, IC2: If there are necessary statements about sports, then these statements are analytic. IC3: In sport, conventions work in systems and their constitutive activity depends on the grammar of a sport.) which represented the results of the previous investigation into the nature of sport. Rather, in this chapter I am going to follow the same general lines I presented in the previous chapter and add to the general conventionalist points elements specific to a theory of adjudication.

After presenting the basics of a central theory of adjudication, I will look in the first section at the ways in which conventionalism solves the underdetermination/indetermination problem and show that this solution is different from
the solution given by interpretivists. In the second section I am going to present a series of examples of sporting practices which support the conventionalist solution. In the last section, I am going to answer a possible interpretivist criticism, which claims that conventionalists are wrong to accuse interpretivists of not being able to account for the fact that games are played differently in different contexts.

**Actual conventionalism about adjudication.** It is important to understand that actual conventionalists (Fred D’Agostino and Craig Lehman) do not contribute significantly to a conventionalist theory of adjudication. As I mentioned before, their efforts were primarily critical, directed at formalist accounts of sport. This means that I will have to rely once again on supplemental sources in order to construct a positive account of adjudication in conventionalist terms.

One important focus of both accounts of conventionalism presented by the above mentioned authors is the logical incompatibility thesis, according to which if a player breaks the rules of the game then she is no longer playing the game. Normally, this should be an important source of information regarding what D’Agostino and Lehman think about refereeing, but the logical incompatibility thesis is an ontological statement, rather than a normative point. In other words, it tells us whether a player plays the game or not, it does not tell us what the referee needs to do.

It might be argued that when a player violates the constitutive rules in an egregious manner, she should be removed from the game and that, as a result, the logical incompatibility thesis is in fact a principle of adjudication. However, once the player violates the rule of the game she does not play the game, according to this thesis. As a result, the referee automatically loses authority to throw the player out of the game,
because the player is no longer playing the game. In general, the function of referees is connected with situations in which the rules of the game are broken. If it is true that individuals do not play the game unless they respect the rules, then referees would have to make decisions about individuals who do not play the game. In other words, it would be like a referee penalizing a player for driving without a license to the ballpark or penalizing a player for not playing the game, both of which are absurd consequences. The referee might need to physically remove the player who broke the rules from the field, but this would be like removing a fan who decided to run from the stands on the field.

D’Agostino sketches a positive account of conventionalism by talking about the fact that players and referees “conspired” to ignore certain rules and that this fact created conventions that are organized in systems, so that this practice of ignoring rules would not degenerate into anarchy and destroy the fabric of sports (D’Agostino, 1988, p.69). It is important to understand that for D’Agostino referees do not need to intervene if rules are broken, but rather if rules are broken in a way that is considered unacceptable according to the ethos of the game. D’Agostino goes on to say that the only way to determine what the conventions in a game are is to analyze the actual practice and deduce from it empirically the conventions at play.\footnote{It is likely that this process involves identifying those violations of rules that the referees ignore repeatedly and the players consider to be acceptable. Identifying these regularities will bring to light the conventions active in the game.} As I am going to show later in more detail this is an inaccurate approach to conventions, at least because in certain cases conventions are easily identifiable and regulated, so that no deduction is needed. I am referring here to the case of conventions that are not rules of the game, but are adopted as recommendations for referees by institutions that control the way central games are
played (like MLB or NBA). In the last part of this chapter I am going to bring more detail to this argument. In conclusion, my account of adjudication follows with some minor exceptions the lines developed by actual conventionalists.

So, what is this positive inclusive conventionalist account of adjudication I am defending here? A theory of adjudication in sport will be developed along two directions, one that was presented in the previous chapter as a conventionalist theory of sport. The second direction is a theory of adjudication that goes back to a theory of legal adjudication, focusing on the similarities between adjudication in sport and law. I will begin my account of adjudication with the latter dimension, which means with the general principles of adjudication and then see how they apply in the context of sport.

**A general theory of adjudication.** The general theory of adjudication that I am going to rely on is largely derived from the work of William Lucy, who has a very interesting take on the responsibilities that are central to the practice of adjudication. When Lucy is faced with the simple question regarding those characteristics that one expects or should expect from judges, he offers a basic set of answers that, it seems, cover equally well adjudication in law and sport: impartiality, consistency, predictability, fairness, justice, rationality, and legitimacy (Lucy, 2002, p.206). I will consider this set of characteristics as the basis of my account of adjudication in sport.

It is important to understand that this theory, no matter how general it might look, is in fact culturally dependent. The very idea of connecting adjudication in law and sport makes a certain claim about the nature of refereeing that is not universally valid. It might be possible in other cultural contexts to see referees not as similar to judges, but rather as mediators who are meant to help the participants reach a consensus. This kind of concept
is more likely to be meaningful in sporting practices where cooperative and caring relationships are considered essential to the game. Later in this chapter I am going to present a number of examples that suggest a different understanding of the process of adjudication.

However, even if the idea of adjudication might vary across cultures, the different instances of adjudication to which I alluded in the previous paragraph share a number of similarities with instances of legal adjudication. In fact, I can safely assume that these characteristics are universal traits of adjudication, regardless of the cultural context in which they exist. As I mentioned in the previous chapter, when someone claims that a newly created practice is an instance of adjudication, in order to make sure that this claim is not an abusive usage of language, one needs to make sure that this instance is significantly similar to traditionally accepted instances of adjudication. The similarities that I am referring to here are, from the list presented by William Lucy, rationality and legitimacy. My point is that these similarities provide a needed linguistic protective barrier against abusive linguistic uses of sport.

This does not mean that other elements on the list are not important, but rather that it seems more likely that altering each of the other characteristics on the list (impartiality, consistency, predictability, fairness, justice) will not remove the “adjudication” label from a practice, while rejecting rationality and legitimacy is highly unlikely to produce something that could be recognized as an adjudicative practice in the Western paradigm or any other cultural context. Denying that rationality is a part of adjudication would make any random act, no matter how absurd, an adjudicative practice, which undermines the linguistic use of concepts like “adjudication” and “referee”, as well
as any kind of discourse that makes sense. As for legitimacy, the argument is slightly more complicated. The main point is that not anything can count as adjudication. Imagine that I am sitting in front of my TV watching a game and making comments about the game, expressing my belief that a certain pitch was a strike. This does not mean that my actions are adjudicative simply because there is no reason for players or referees to take my decisions into consideration. If the legitimacy requirement is eliminated, then the decision of the referee who adjudicates a game would be random, as the referee would be able to adjudicate according to any principle that exists out there. In conclusion, while the rationality requirement makes sure that adjudication is a rational process, the legitimacy requirement makes sure that decisions are not random and are made for the right reasons.

What about the other characteristics of adjudication? Are they not essential for any kind of adjudicative practice? Could we legitimately call a practice that does not have these characteristics adjudicative? Although this is probably not the case in law, I am not sure that this is the case in sport. Imagine a situation in which a referee needs to decide a game that is construed as a cooperative practice. If this practice requires that the referee be a mediator who helps the participants reach the best possible conclusion when a disagreement exists and that also requires the referee make decisions based on this agreement, then why should predictability play such an important role? As long as the referee is not the one directly imposing a decision on the participants, predictability loses its imperative character (although this does not exclude the fact that predictability could

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24 Even in the case of law, this might not be the case, given the positivist argument that even abusive legal systems are still law. Leon Fuller, who argues that similar requirements are a necessary basis of law, has been criticized by both Hart and Dworkin.
be considered a desirable characteristic, since it might be better if the referees use the same strategy to mediate). The same argument can be made in the case of **consistency**.

The characteristics of **fairness** and **justice** are ambiguous, because it is not clear if they are understood as being procedural or distributive. In other words, it is not clear if the referee is meant to decide a controversial situation having in mind just the rules of the game or if this decision needs to take into account other factors like the natural abilities of the players. For example, in a game in which the two participants have widely different skills and the goal of the game is the mutual enjoyment of the players, the referee might simply have to make decisions that are fair in light of the different physical abilities of the two players, which involves favoring the less endowed player so that the pleasurable role of the game is not undermined. This is a legitimate sense of fairness and justice, and it is possible to imagine situations like the one I just described in which the distributive sense is accepted, just as the procedural sense dominates the current Western concept of adjudication. This ambiguity of justice and fairness makes me wary about their essential role in the idea of adjudication. And since **impartiality** is less relevant in a distributive approach to justice and fairness, then it does not seem to be an essential characteristic of adjudication. If I am right about this, then it is possible that in certain situations referees are not required to be impartial, i.e., to take into consideration the physiological status of the players and to treat them differently in order to compensate for the handicap of certain players.

In conclusion, characteristics like impartiality, consistency, predictability, fairness, justice are less likely than rationality and legitimacy to be crucial to adjudication in or outside of sport. Rationality and legitimacy, on the other hand, are fundamental
because otherwise the idea of a rational discourse about sport is undermined, which, as I mentioned in the first chapter, is one of the essential factors that a theory of sport and adjudication needs to take into consideration.

Lucy offers another reason why rationality and legitimacy are indispensable features of a theory of adjudication: namely, that these two characteristics are fundamental to the other desirable traits of adjudication cited above. For without rationality many of these adjudicative features would lose their force, since, as Lucy points out, “[w]hat often makes the difference between virtue and vice is the rationality of the belief or conduct in question” (Lucy, 2002, p.207). In the case of consistency, without rationality consistency can transform into stubbornness. As for predictability, one could be predictable because one is biased toward people of a certain race or gender. In this case, it is predictable that this judge will discriminate against women, but there is no virtue in this fact. Impartiality, on the other hand, can be achieved by flipping a coin, but this can hardly be considered a desirable adjudicative practice.

Legitimacy must also be considered a fundamental characteristic of adjudication, because, like rationality, any decision that lacks legitimacy hardly qualifies as an adjudicative decision. As Lucy points out, the fact that my neighbor’s recommendations regarding the best way to raise my children are the most rational possible does not give her the authority to require me to adopt a certain strategy for child-rearing (Lucy, 2002, p.207).

In conclusion, rationality and legitimacy are two central requirements for a theory of adjudication in our linguistic paradigm, which will determine the path I am going to take in constructing a conventionalist account of adjudication. In other words, in order to
make clear how conventionalism defines adjudication, I will answer two sets of questions.

1. How does conventionalism envision the rational process that is involved in adjudication? What qualifies as a good instance of adjudication?

2. How does conventionalism account for legitimacy in adjudication? What principles legitimately bind referees in adjudicative decisions? What makes referees legitimate sources of authority, unlike the players or other individuals?

The rest of this chapter will be dedicated to a theory of rationality, while the next will be dedicated to a theory of legitimacy.

**4.1. Rationality and adjudication**

This section is meant to provide an explanation of the ways in which conventionalism understands the process by which referees make adjudicative decisions, and, therefore, of what counts as a good adjudicative decision.

As I mentioned, D’Agostino and Lehman are not very helpful in this respect, since the only remark that is somehow relevant to this point was made by D’Agostino and refers to the fact that referees conspire with players to ignore certain rules and regulations of the game (D’Agostino, 1988, p.69). He does not however say more about the way this process of “conspiring” takes place or of what might justify calling it an adjudicative process in the first place.

On the other hand, it is probably more useful to compare conventionalist accounts of adjudication with other views of adjudication in sport, most notably formalism and interpretivism. If it is true that formalism sees adjudication as a process in which rules are
applied mechanically by referees, then conventionalism is different from formalism. Conventionalists claim that adjudicative practices cannot be reduced to a mechanical application of rules. The introduction of conventions in the mix is important because it avoids exactly this pitfall of formalism. However, it is essential to understand that the very introduction of conventions does not by itself overcome this defect of formalism. As I mentioned in the previous chapter in my discussion of C’5, if conventions are understood as rule-like (having the same precision as the rules of the game), then introducing conventions will have no effect whatsoever, since referees are still called to apply rules mechanically, be they rules of the game or conventions.

Probably the most damaging kinds of counterexamples to the formalist account have been offered by John Russell and, in essence, are cases in which the mechanical application of the rules of the game is either unable to provide any answer or provides answers that are clearly unacceptable (this is what I have called the underdetermination/indetermination problem in the previous chapter).

Conventionalism has various alternatives at its disposal in order to deal with this difficulty. One of them is to go back to the “conspiring” procedure to which D’Agostino refers and define it as some sort of dynamic process in which when a problem arises, referees and players together make certain decisions about what is accepted in that particular situation. The advantage of this solution is that it gives referees a legitimate reason for making a decision that is not covered by the rules, since in this case the official reaches an agreement with the participants about the solutions that would fit best that specific situation. This is clearly better than letting the referee make decisions alone, relying on her private views of the sport. Russell has made clear what the disadvantages
of giving referees a very significant degree of freedom are, so I am not going to insist here on this position (Russell, 1999, pp.41-3). But even if the kind of “conspiring” that I mentioned before is made possible, this cannot make this solution more acceptable. In the end, even if the referee does not make decision alone, the underdetermination/indetermination problem still exists. The most significant issues are fairness and predictability, and these are sufficient reasons to make this solution unacceptable in our sporting paradigm. If the players and the referee make decisions ad hoc, this means that players in other games might be treated differently in similar situations, as there is nothing preventing this collaborative effort in yielding different results. Of course, this can be very problematic especially in situations where the performance of a team in one game is compared to the results of another team in other games and the results are relevant for the result of competitions.\footnote{For example, in soccer the number of goals that a team scores in a game is relevant especially in the context of league games, because at the end this is the factor in determining the winner of the competition. If a referee treats a situation differently, which results in allowing a higher number of goals being scored that in other games, then the teams playing in this game are automatically disfavored.} In conclusion, the kind of “conspiring” that D’Agostino talks about is not the same as the procedure I presented here. More likely, the procedure he envisions involves an implicit agreement that takes shape over time.

It follows that there must be some kind of factor that makes these decisions according to conventions predictable and homogenous. In order to insure an acceptable level of predictability, conventions need to be established before the game actually takes place. As I have mentioned in the previous chapter, the way the underdetermination/indetermination problem is more likely to be solved is by introducing into the process of
adjudication principles that are essentially different in nature from rules in the broad sense (not just rules of the game), because they are more general and abstract. So this means that there are two possible ways in which conventionalism can solve this problem.

One solution would be to maintain the same interpretation of conventions as similar to rules and at the same time include in the process of adjudication principles that are non-conventional. In this account, communities would create only conventions that are as precise like rules (for example, “Tactical fouls are acceptable” or “A referee should penalize a pitcher for having illegal substances on his hands only when the manager of the opposing teams asks for it”). When the rules of the game and these conventions would fail to offer adequate guidance in adjudication, referees would use moral or aesthetic principles that are real in order to adjudicate.

The other solution would be to change the meaning of conventions and conceive them not just as rule-like, but also as principle-like. By introducing principles in the process of adjudication, both these solutions can deal with situations like those described by Russell. In the previous paragraph I defended both solutions as valid with certain limitations. I argued in favor of the first solution when I described conventionalism as a form of externalism. In this argument, the main idea was that referees take into consideration principles that are not conventional, like moral and perhaps aesthetic principles, and for this reason I called this version of conventionalism inclusive. However, it is important to realize that, unlike the case of interpretivism, these principles are not sport principles. Simply put, they are not valid just in the context of sport. In conclusion, according to the inclusive conventionalism I am defending here, referees use
principles of adjudication, but these principles are either conventional or, if they are real, are in fact external to sport.

As for the second solution, which involved constructing conventions not just as similar to rules, but also as similar to principles, I also mentioned that it is supported by actual conventionalists like D’Agostino. First, there is nothing in the works of actual conventionalists that dismisses this possibility. As I mentioned in the previous chapter, it is rather the interpretivists who have claimed conventions possess the precision of rules. Second, conventionalists are in fact using conventions that look more like principles.

Take for example D’Agostino’s treatment of basketball:

According to the formalist rules of basketball, basketball is a “noncontact” sport: in general physical contact between players is prohibited by the rules of basketball. But any game of American professional basketball is filled with (one might almost say consists of) incidents in which players (accidentally or deliberately) make contact with one another…Why is this so? This is so because the players and game officials have, in effect, conspired in effect to ignore certain of the rules of the rules of basketball, at least in certain situations, in order to promote certain interests… (D’Agostino, 1988, p.69)

This gives an insight into the way conventionalists most likely conceived adjudication.

From this passage I can only assume that the conventional change in the game of professional basketball that results from the officials and players colluding in ignoring such rule violations is a general change in the meaning of the game. If the game is,

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26 An example of such a convention would be “Decisions about the way game is played should be made in a spirit of cooperation and mutual understanding” or “Basketball is a noncontact sport.”
least according to the rules of the game, a noncontact sport, as a result of the conventional change, the game has become if not a contact sport, at very least a contact-tolerant sport. Why is this similar to a principle? Because changing the meaning of sport offers the referee a general guide in a variety of situations, rather than a rule-like precise guide for adjudication in a particular situation. I think that this is a good enough reason to reject the claim that the underdetermination/indetermination problem affects conventionalist theories of adjudication.

But if conventionalists bring principles into adjudication, then is it legitimate to say that inclusive conventionalism and interpretivism are different theories? There are certain aspects of inclusive conventionalism that separate it from interpretivism. These aspects can be divided into two main categories. First, there are differences between conventionalism and interpretivism in regards to the way the process of adjudication is conceived. While interpretivists, I will argue in detail later, believe that adjudication involves a specific set of principles of adjudication that are the same for all games, conventionalist believe that adjudication can involve a variety of principles that can (but need not be) similar to the principles accepted by realists. Second, there are differences between conventionalism and realism, which, as I have shown, is one of the central premises of interpretivism. 27 These differences refer to the fact that while for realists such adjudicative principles are independent of our beliefs or actions, for conventionalists they are social creations. I want to explore both of these differences in what follows, beginning with this last one.

27 Although I acknowledge the possibility of an anti-realist interpretivism, I think that this version of interpretivism fits perfectly into my account of conventionalism and, for this reason, it can best be considered a case of conventionalism.
**Realism.** This second kind of difference is particularly relevant to the nature of the principles that are significant in the process of adjudication. Realists seem to claim, naturally enough, that these principles are real (Dixon, 2003, p.110; Simon, 2000, p.7).

So, if it is true that realism is a basic premise of any interpretivist theory of adjudication, then it follows that referees are obligated to follow the principles of adjudication in addition to the rules of the game. Inclusive conventionalists, who are necessarily anti-realists about sport, accept principles of adjudication, but claim that these principles of adjudication are conventional - at least as long as these principles are internal principles of sport (i.e., apply to sport alone). Besides these conventional principles of adjudication, realist external principles also play a role here, but a more limited one. Sometimes, the line between conventional principles and realist external principles is quite unclear. For example, if a referee uses a principle like “A victory should be decided on the field, not through technicalities,” then it is not always clear whether this principle is an external (moral) one that has a broader application (law, social promotion, etc.) or a conventional principle that applies to sport alone. This ambiguity notwithstanding, however, as I will argue in the next chapter, this boundary between realist external and conventional principles can be drawn and a general strategy for doing so can be provided. The nature of the basic internal principles is the only difference between realists and conventionalists at this level. Otherwise, conventionalists are able to accommodate the same level of argumentation that interpretivists consider to be essential in the process of adjudication. More differences appear, however, when the way these principles are employed in the process of adjudication is analyzed.
**Interpretivism.** The other set of differences between interpretivism and inclusive conventionalism come from the way principles are used in the process of adjudication. Let me begin by mentioning that conventionalism is similar to interpretivism in a number of respects. For example, conventionalism agrees with interpretivism that referees need to take into consideration the purposes of the game, although it denies that these purposes are established once and for all by the very idea of a sporting practice. Also, conventionalism does not grant strong discretion to referees. Russell, following Dworkin’s arguments, sees referees as bound by principles of adjudication, which are therefore considered part of sport, in roughly the same manner as moral principles are incorporated into legal systems (Russell, 1999, p.34). This means that when the problem of underdetermination/indetermination occurs in a certain game, the referee does not have the power to create new rules, just as the judge does not have legislative power to create new laws. However, if one leaves these similarities behind, inclusive conventionalism and interpretivism are different, and here are the two important ways in which they differ.

1. The first difference between interpretivism and inclusive conventionalism comes from their solution to the underdetermination/indetermination problem. In the previous section and in this chapter I have shown that conventionalism needs to view conventions in a more general sense, but this does not mean that the problem has been completely solved. By agreeing with interpretivism about referee discretion in sport adjudication, is conventionalism able to provide guidance on adjudicative matters when game rules are not able to provide such guidance, as in the baseball cases presented by Russell? This question is legitimate since it makes sense to claim that communities are hardly able to provide guidance in every possible situation, for, just as in the case of legal
system, it is inevitable that situations will occur that have never been foreseen by those who have created the rules in the first place. Going back to the case of clubless Josie, my comments regarding C’5 cannot guarantee that in certain situations like Josie’s case the combination of game rules and conventions will not leave referees in the lurch about what to do (and thus leaving the referee to change the rules by herself). All that my comments on C’5 have shown is that conventions can take forms that are more similar to principles than to rules. This does not show that the conventions are so general as to cover all situations that a community might encounter.

Conventionalists might try to use *a tu quoque* argument and reject the above accusation arguing that interpretivism cannot provide the same guarantee either. This line of attack is not very effective. Interpretivists can rely on the fact that moral principles have a universal character, supported by the real nature of moral principles, which means that if the rules of a game will leave some gaps, moral principles will always be able to offer guidance. Conventionalists have two alternative arguments to deal with this problem.

First, they can argue that even in conventionalism, according to IC1a, referees are bound by moral principles, which means that conventionalism can solve the underdetermination/indetermination problem just as well as interpretivists. Although this is a valid argument, I hesitate to take this path. As I am going to show in the next chapter, moral principles in a conventionalist account of adjudication are not meant to actively provide adjudicative guides to referees, but rather to prevent situations in which referees following game conventions are forced to violate certain moral principles. In other words, moral principles are more like guard dogs protecting the game in those infrequent
occasions in which referees are constrained by communities to act in abusive fashion. On the other hand, moral principles are not meant to help referees decide cases like those described by Russell in “Are Rules All Umpires Have to Work With?” As I will show in the next chapter, the examples mentioned by Russell are cases in which the fuzzy boundary between moral principles and conventions obscures the issue, so that conventions are mistakenly taken to be moral principles. I will address the larger issue of the place of morality in adjudication in the next chapter, so all I can say for now is that IC1a is not likely to help conventionalism solve the underdetermination/indetermination problem.

The second solution to the indetermination/underdetermination problem relies on conventions alone. Fortunately, there are good reasons to believe that conventions are able to provide guidance in almost every situation in which the rules of the game fall short in this regard. Every game is played in a concrete context, which means that it has a certain place in relation to the other social practices and values accepted in that community. Of course, a game can be played for the first time in a society that previously did not have any such games, but these situations are very rare and even in this case the status of the sport is connected with the status of those introducing the sport. Anyway, it is important to understand that sport already has meanings attached to it. Besides being a game, which already carries a certain baggage of meaning in every cultural context, games are already described according to a taxonomy that provides a way to understand the nature of the game. In Western societies, the fact that a game is described as “professional” usually means that a certain level of competitiveness is accepted or even desired, so that who wins is particularly important, and that referees are called to make
sure that the rules are respected and that no participant wins or gains an undeserved advantage that has the potential to help one of the two sides win. On the other hand, if the game is declared as educational and it is played between children, then winning is not as important and referees have other responsibilities than just applying the rules of the game. Sometimes the situation is not as simple as that, because even games between children can take a variety of forms, but even in this case there are social clues that guide the referee in the right direction. In essence, the role that the game is conceived as having in society determines the principles that the referee are bound to follow. In conclusion, it is likely that a referee will have available, besides the rules of the game, a set of conventions that can be particular or general. The reasoned use of these principles is a valuable tool that referees can use to good effect.

There are two issues here that can become problematic for this kind of account. One refers to a desirable characteristic of conventional principles, namely coherence. In order for the process of adjudication to be coherent, the set of conventions available to the referee also need to be coherent (i.e., they must not be contradictory). Inconsistencies can occur in many situations, as when society assigns contradictory roles to a form of sport. The best example is that of children’s sport, where the conflict between the educational view and the competitive view makes it unclear whether winning should be considered an important element in the game or not. In these situations, the most likely indication of what role winning should play in the sport comes from the particular institutional context in which it is played. For example, if the game is played in school setting, than the educational role is more likely to be the one the referee needs to take into
account. On the other hand, if the game is played in a Little League setting, then the competitive approach is more likely to prevail.

A more complex situation occurs when the general meanings associated with a game comes in conflict with more concrete meanings. In the example I previously presented, a community that defines the game as a friendly cooperative practice might accept at the same time a more aggressive kind of play at the end of tight games. The referee in this case is asked to navigate the narrow channels between these two conflicting views, trying at the same time to satisfy the general principles associated with the game (in this case the noncompetitive role assigned to sport) and the particular convention associated with it (the convention that allows for aggressive playing at the end of tight games). The best way to solve this problem might be to follow Ronald Dworkin’s metaphor of the chain novel. According to Dworkin, a judge is called to preserve the integrity of the law, which means that besides her duty to follow the rule of the game and certain adjudicative political and moral principles, she has a duty to respect a requirement of fit, meaning that she has to make sure that her decisions are in line with previous decisions (Dworkin, 1986, p.401). In our case, the referee needs to take into consideration the decisions of the participants in the game to play more aggressively at the end of close games. The referee needs to adapt this general principle of integrity with the particular conventions around the game, and in this way maintain the coherence of the system of conventions around the game.

Given the importance of IC3 (In sport, conventions work in systems and their constitutive activity depends on the grammar of a sport), this discussion of coherence becomes particularly significant. There are various ways in which coherence can be
described. In the previous chapter I presented the idea of a grammar of the game, which determines what questions are relevant in a certain game. Also, the idea of an ethos of games, as a consistent set of conventions described in IC3 is another possibility. Regardless of the concepts used, the idea of coherence needs to be respected as a desirable requirement in every conventional account of sport and adjudication.

2. The second important difference between conventionalism and interpretivism resides in the fact that conventionalism is a more comprehensive and wide-ranging theory. Interpretivism relies on two essential sources of guidance for referees, namely the rules of the game and the principles of adjudication. Conventionalism, on the other hand, claims that besides the rules of the game there are a number of diverse principles, which can either be sport principles (which are necessarily conventional) or external principles (which can be real or conventional). Those conventionalist principles of an externalist kind can also take a variety of forms, to include moral, political, aesthetic, and religious values, to mention just a few). So, principles of adjudication like “Referees should decide games by maximizing their spectacular aspect” are internal principles, while principles like “Referees should maintain the aesthetic aspect of the game” are external, because these values exist, of course, outside of the game itself. But conventionalism is more than a way of bringing together internalism and externalism. In fact, conventionalism is more comprehensive than Russell’s externalism, because it claims that moral principles are not the only principles that need to or should be considered when making adjudicative decisions in sport.

Besides such universal, real, moral principles, then, communities can decide to make certain other moral or non-moral principles relevant to sport and, consequently, to
the process of adjudication. For example, in Western societies, religion, although playing an important role in the life of certain individuals, is not inexorably connected to the life of athletic communities, which would make it incumbent on referees to follow them. This fact creates at times conflicting and awkward situations. For example, an athletic official from Afghanistan under the now defunct Taliban regime required his wrestlers in international competitions to wear beards, which directly conflicts with the international rule that requires athletes to be clean-shaven.  

Similarly, in a case much more publicized, certain Islamic groups criticized Hassiba Boulmerka, the winner of a gold medal in the 1992 Olympic Games for not wearing the traditional dress worn by Muslim women (Morgan, 2004, p.178). There is no reason to believe that there is something abusive or wrong about this idea of introducing religious meanings into sports. Just because Western sports lack these strong religious principles, there is no reason to impose the idea of the separation between sport and religion on other cultures.

I am sure that interpretivists like Russell, who argue that adjudication should be keyed to the “best interpretation” of the game, would argue that these religious values do not place the game in the “best light.” The problem with this reply is that it glosses over the fact that the current practice of sport in the West itself relies, and can’t help relying, on principles that are independent of the skills that are displayed in the game. For example, a group of nudists might criticize the current practice of athletes wearing clothing, arguing that it relies on prejudices about nudity, an argument that is strikingly similar to that used by a Westerner to combat the Islamic practice I described above.

Their argument makes more sense since in many cases clothing does not enhance performance and even hinders it in certain sports. So, in conclusion, interpretivists are not justified in accusing religious groups of imposing extraneous religious standards on sport that hinder athletic performance, because external principles of all kinds that similarly hinder athletic performance can be found in just about every sporting culture - a fact that would not be lost on interpretivists if they bothered to look for themselves.

Let me go back to an important point I made in the previous paragraphs. Simon and Dixon argued that conventionalism is hard to accept because it allows communities to create abusive forms of sport. For this reason, they introduce principles of adjudication that, according to their arguments, are independent of any community. These principles of adjudication supposedly prevent abusive situations from occurring. This view betrays a pessimistic view of communities, prompted, I can only assume, by similar experiences in political and legal areas. In sports, however, these alleged community-based abusive practices that are feared by interpretivists have largely failed to materialize, or at least I have yet to see an example that an interpretivist could cite to support of their argument.

As I will show in the next section, conventions are in most situations reflections of values that dominate the society in which sporting practices take place. They can be moral, aesthetic, religious, political or educational. Although I do not deny that abuses can happen, I believe the negative view of conventions interpretivists push is unwarranted.

Conventions are cultural acts in which a community, among other things, expresses its identity, a point that should not be taken lightly by interpretivist critics. A theory of rationality in adjudication like the one I am presenting here needs to look at the reasons why certain conventions are adopted. This effort of looking for reasons why a society
establishes a certain convention is likely to be effective in identifying practices that are abusive, although no guarantees can be given here. In the next section, I will attempt such an investigation, and argue that the principles of adjudication identified by Russell are just some of the factors that a community might deem necessary in the process of adjudication.

But before I take a closer look at cases in which other principles than those mentioned by internalists are relevant in the process of adjudication, I will summarize the conventionalist adjudication account by presenting its most important theses. While IC 1-3 are principles of a theory of sport, the following principles are confined to a theory of adjudication.

**IC 4. In the process of adjudication, referees are bound by the rules of the game, conventions, and only negatively by moral principles.**

**IC5. Referees have only a weak sense of discretion when adjudicating.**

As I mentioned, I agree here with Dworkin’s claim that judges (and referees in this case) have only a weak kind of discretion, meaning that they have only the freedom to decide when the principles of adjudication apply to a concrete situation or not (Dworkin, 1977, p.32). The referees are bound by these principles, but since the application of these principles is not mechanical, the referees have some freedom in deciding how they apply to concrete cases. Also, I reject the claim that referees have strong discretion, *i.e.*, that referees are free to ignore these principles altogether and to create new principles of adjudication or rules.

**IC6. Conventions can reflect external values as long as the community around the game accepts them.**
The only exception to these principles is certain moral principles that protect important human rights. With the risk of trivializing sports more than they deserve to be, it just seems absurd for referees to follow abusive rules of games just because of their duty to the game.

4.2. Rationality and diversity in sport and adjudication

This section applies a conventionalist theory of rationality to adjudication in sport. Further, it tries to show that the theory of rationality provided by conventionalists does a better job than interpretivism in accounting for cases of valid adjudicative practices. In other words, I am going to argue that conventionalism can account for valid cases of adjudication that cannot be adequately accounted for by an interpretivist theory of rationality.

Put in simple terms, conventionalists need to argue that there is a variety of sporting practices that do not follow either the kinds of realist principles of sport or adjudication that certain interpretivists appeal to, or the model of adjudication proposed by interpretivists. Let me make this distinction clearer. One obvious counterargument to interpretivism is to find legitimate cases of sport that violate one of its principles of adjudication and that are morally acceptable at the same time. Another way to reject interpretivism is to find cases in which adjudication has a different adjudicative structure than interpretivists construct in their account. What is, then, the interpretivist structure of adjudication?

Interpretivists argue that referees decide games based solely on internal structures and values of games, except for moral considerations (fairness considerations, more
exactly). According to them, a referee might take into consideration the local particularities of a game in the interpretivist model, but, as I will show later, they play only a minor role in such deliberations. In order to understand the interpretivist account of adjudication, one need only look at Russell’s principles of adjudication. These principles obligate the referee to put the skills tested in sports in the best light, but they do not leave a place for other values that the community might consider to be essential in this process, thus contradicting IC6.

By looking for sporting experiences that do not fall under the traditional categories and principles of sport, while at the same time making sure that they can still legitimately be called “sport,” I will be able to show how external values like religious ones figure prominently in certain cultures’ conceptions of sport. As long as these cases are relevantly similar to paradigm cases of sport, they should be legitimately called instances of sport.

There is one important point that needs to be made here. Although the point of this chapter is to look for actual instances of sport, this does not mean that thought experiments will be abandoned. These imaginary practices will rather work as supplements to real practices rather than as autonomous examples.

A. Kendo and prelusory goals

One interesting aspect of the Japanese martial arts and particularly of kendo is the role that values play in the context of sport. This is how Stephen G. Voss describes the scoring system in kendo:
It has been stated that the scoring of a point in fencing requires only to touch or “cut” the opponent. In kendo, evidence of the mental decisiveness of the attack is also required. This decisiveness is illustrated by *kiai* (a verbalization, indicating *mushin*). (Voss, 1998, p.31)

If this is the case, what kind of consequences does this view have for the concept of sport? It is clear that the idea of a prelusory goal in martial sports like kendo is significantly different from the prelusory goal of fencing or of any other Western sport. The important fact here is that the goal of kendo cannot be identified just in terms of physical characteristics that can be more or less precisely specified. Voss mentions that in kendo the physical goal (striking the opponent) is important and generates a point only so long as it is accompanied by what is called *kiai* (a high pitched noise made by the player to show his decisiveness when he attacks), a fact that is evaluated and must be certified by a group of three referees (Voss, 1998, p.29). It is important here to draw a distinction between kendo and certain Western sports that do not possess clear prelusory goals. In figure skating, for example, judges are evaluating the grace and precision of the movement, i.e., external forms of behavior, while in kendo what is evaluated are physical actions and mental states. Voss makes this point clear when he compares kendo and fencing, showing that while in fencing the focus is placed squarely on the physical skills, in kendo it is placed squarely as well on mental discipline. An important part of training

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29 A term that refers to the state in which martial experts are when entering a fight, involving mental emptiness and exclusive concentration on the fight.

30 In fact, *kiai* is a verbal formula that signifies the integration of body and mind and, as Voss indicates, is derived from the Vedic concept of “mantra.”
in kendo involves meditation (Mokusō) and one’s abilities in meditative techniques are obviously important in the actual fight.

In light of these points, it becomes clear that kendo is essentially different from sports like figure skating, in which judges are called to evaluate characteristics that go beyond physical actions. For example, in the case of skating judges evaluate, besides the technical aspects, the artistic aspects of the movement. Nonetheless, there is a major difference in the kinds of characteristics that are evaluated in the two sports. In skating, the artistic characteristics evaluated are physical actions, i.e., are entirely reflected in the behavior of athletes. In kendo, on the other hand, what happens in the mind of the athlete is important, even if the only way to find out if athletes possess the kind of meditative skills required is to observe their behavior. Hence, the physical actions alone cannot determine how kendo is practiced and how referees make their decisions. In the case of ice skating, mental states are not essential, although it is likely that a skater who is emotionally involved in the performance will be artistically superior. What makes skating different from kendo is that in the case of skating it is irrelevant whether the skater is in a certain state of mind or is a very good actor, as long as the behavioral manifestations are the same. A mind-reading device available to the judges would make a difference in kendo, but not in skating.

It is first important to point out that kendo is a sport. I think that only a radical definitional theory would be able to challenge this statement. Kendo is similar to the Western paradigm of sport in multiple respects, beginning with the fact that it is a competition, it has an established character, and it requires physical skills (although it might not be the only or the main focus). The most important consequence of this kind of
example for a theory of sport and adjudication is that it undermines the idea that
prelusory and lusory goals are sufficient to understand sport.

What is the prelusory goal of kendo? The definition used by Suits tells us that the
prelusory goal is “the end which consists, in a certain state of affairs: a juxtaposition of
pieces on a board, saving a friend’s life, crossing a finish line” (Suits, 1967, p.148). This
definition of sport does not cover the kinds of skills that are seen as essential in kendo. As
I mentioned before, kendo is particularly influenced by religious ideas, in this case of
Buddhist origin, which emphasize meditation and inner peace. The mental element plays
an important role and the goal of the game involves this dimension, which means that the
idea of a prelusory goal needs to be extended to include mental states.

It is important to make the initial point that this cultural meaning associated with
kendo does not affect just the prelusory goal. Also, there is the situation of the lusory
goal, which is, according to Suits, winning. From the description provided by Voss, it
seems absurd to argue that the reason why athletes engage in meditation is to win the
game. Making such a claim of meditative skills would be trivializing. It is clear that
meditation plays an important role and that role is not an ancillary role in the structure of
kendo. The safest way is to look at both goals (lusory and religious) as equally important.
For this reason, looking at kendo from the strict Suitsian paradigm is misleading. Kendo
is not a sport in the traditional Suitsian sense of the word, because it is also a meditative
practice, and while separating the two might simplify the practice it would also
undermine its deeper significance. This defines a pattern that will take a variety of forms
and will ultimately undermine the kind of view of sport that is characteristic of
interpretivist accounts. This is just another practical example of how IC6 applies in the case of actual games.

In conclusion, what the case of kendo shows is that because religious and military values are seen by the traditional Japanese society as significant in athletic practices, the structure of kendo is different from that of most games. At the same time, this example shows that conventionalists are right to claim that referees are bound by conventions that reflect the values of society. In the case of kendo, these conventional obligations are reflected in the requirement that the referee observe the mental decisiveness of the players.

B. Youth sports and the image of the child in sport

A different set of examples comes from youth sport, which is another area of sport that has received less attention than professional sports. There is a fairly voluminous literature regarding the status of children’s sports in relation to adult sports. However, there is little information about the place of referees in these kinds of games. For this reason, I want to take a closer look at youth sports in considering the adjudicative responsibilities of referees.

The principles of youth sport vary according to the age of the children and according to certain ideals and views of the development of the child. History tells us that for a long period of time children sports were informal and, as a result, not much different from simple children’s games. A major shift in this attitude took place in the first three decades of the 20th century, when physical educators subsumed youth sports under an educational model. The immediate impact of this decision was the refusal to accept...
competitive athletics for children. However, after the 1930s, the responsibility for organizing youth sport went to national voluntary associations. This change is important because as a result of it, the educational limitations placed on sport by physical educators were lifted, reflecting a difference in philosophy regarding youth sports.

The argument that I will present here has the same structure as the case of kendo. I will thus argue that certain views of youth sports challenge the prevailing conceptions of the point and value of elite adult sports. This challenge suggests that treating youth sports as if they are simply another form of elite adult sports (with certain limitations regarding the specific physical differences between children and adults) is not justifiable. In other words, sport for children is not just sport adapted to biological features characteristic of children, but also contains references to values that are external to the game itself such as recreational and/or educational values.

I will argue that just considering children games in terms of internal, moral and aesthetic values provides only an incomplete view of youth sport. If only these values are taken into consideration when sports are adapted for children, then these sports would be like adult sports simplified to make the game more appealing and with certain limitations in order to prevent injuries given the biological characteristics of children. As I will argue here, in fact sports adapted for children follow other values besides internal, moral and aesthetic values.

Let us take first the case of mini-rugby. This sport is a version of rugby for adults and, although there might be doubts about whether this is really rugby or not, I think that the modifications of the game do not really support such doubts. Ray Williams describes it as “a nine-a-side game which has been devised and adapted to suit the abilities of
young players” (Williams, 1986, p.81). The idea of adapting sport to children is defined
in educational terms:

The fifteen-a-side game is too complicated for beginners; the range of skills
required for the full game, together with the laws involved make too many
demands on those who are new to the game. The result is nearly always
depressing to watch. Thirty players chasing the ball and little involvement
because so few players touch the ball; consequently there are few opportunities
for players to acquire and develop the fundamentals of the game. (Williams, 1986,
p.81)

As a result of these kinds of considerations, the game is changed to accommodate
children. The game of mini-rugby can be played competitively and certain competitive
considerations play an important role in determining the nature of the modifications. For
example, the fact that children are unable to understand or to follow the entire set of rules
plays an important role in determining the modifications. As I mentioned, these
considerations are compatible with interpretivists accounts of sport, since this
simplification of the sport can be explained (and Williams seems to take this path) in
internal and aesthetic terms (how fair or aesthetically pleasing the game of rugby is when
children are playing it).

At the same time, it would be mistaken to assume that this is all that is relevant in
understanding the modified game. Another important aspect is the educational dimension,
which Williams offers as a justification for the reduction in the number of participants,
alongside competitive considerations. For Williams, one of the important goals for
playing this kind of game is that children have an opportunity to learn the basic elements
of the game of rugby. In this case, the educational and competitive considerations coincide, because both justify a simplification of the game, but this does not always have to be the case. My point here is that the way mini-rugby games are constructed is not determined just by competitive considerations and the nature of the participants. To make this fact more obvious let us look at the role of educational values in professional games, or, more precisely, the case of moral education.

A good game requires a display of character, but this does not mean that it is always the responsibility of the referee to teach it. In a professional game, it would be preferable to have players display perfect technique and character, but this does not mean that the interpretivist view of sport would allow major interventions by the referee in the way the game is played in order to teach the players the rules or moral values. Russell is very clear about this and makes a concerted effort to argue that the level of discretion he is giving referees would not justify a massive interference in the game of the kind I mentioned here (Russell, 1999, pp.41-45). He argues that a referee is not allowed to take these kinds of measures because this would undermine tradition and would create conflict on the field (which would undermine the fourth principle of adjudication, regarding the “good conduct of games”).

If a referee would stop a game to educate the players in moral matters or game skills, then this would be allowed or rejected depending on the kind of “grammar” that the game is seen as having. Professional games are understood along the lines of a competitive “grammar.” Even if there is a situation in which the educational function of the referee would be justified, a massive intervention of the referee with this intention would be rejected as inappropriate. Simply put, this is not the right place or context to
provide lessons, be they moral or of any other kind. However, youth sports at certain
levels can accommodate such a practice of referees. This does not mean that certain
games for children cannot be competitive, which would make these interventions equally
unsuitable. Nonetheless, there are games for children in which referees could play an
educational role and this educational role would be justified by the fact that the game is
constructed around an educational “grammar.” There is nothing in the idea of sport that
exists in our paradigm that prevents this kind of construct. It makes sense that this kind of
game would be more appropriate for younger children, who are just beginning to
participate in athletic competitions. These games can still be competitive, as the
educational function does not have to conflict sharply with the internal values of the
game.

However, educational values are not the only external factors that can influence
the ways in which games are played and officiated. James H. Humphrey lists a series of
objectives of children’s sports, divided in four main categories: physical, social,
emotional and intellectual. In themselves, these categories have an educational
dimension, but there are also extra-educational features, such as “fun and emotional
release.” According to Humphrey, “one of the most important objectives of children’s
sports should be wholesome fun” (Humphrey, 1993, p.32). This means that in certain
sports for children, which are not “highly competitive,” the emotional state of the
participants will play an important role. If games are constructed with this goal in mind,
then it only makes sense that referees would have to take into consideration the emotional
state of children when making decisions. I imagine that this statement can be construed to
mean many things, some of which would undermine the competitive nature of the game.
This form of criticism can be bypassed by developing a process of negotiating between the two kinds of objectives I mentioned here. In this process, those who referee the games will try to find a way to keep games at the same time competitive and enjoyable. This does not have to be a hopeless or even difficult task, since the idea of competition in itself generates satisfaction and fun. Most likely, what those who referee these games will have to do is make decisions regarding certain competitive excesses that tend to undermine the enjoyable character of sport that is sought. In light of the decisions made in this process of negotiation, referees will be bound to follow these objective associated with the game. I am not yet making the claim that referees are automatically obligated to apply these objectives in their practice as referees, but rather I am making the weaker claim that a referee has the obligation to apply this objective if the community built around this game makes this objective relevant for sport, which is exactly what IC6 claims.

C. Feminist constructs of sport and competitiveness

The most complex examples that support a conventionalist account are provided by radical feminist conceptions of sport. What makes this feminist case more interesting is that it is established inside the Western paradigm of sport, which makes it easier to compare to the traditional instances of sport. At the same time, as I am going to show, these cases are less likely to be challenged as not real cases of sport, due to their wide recognition. Just as in the cases I discussed so far, they cannot be understood outside of a cultural context, and for this reason I am going to present the reasons that have brought about this change in the traditional meanings of sport.
In a very general sense, the background of this redefinition is the push for the rights of women to participate in sport with the same status and privileges as men. More precisely, this change reflects a movement that shifts the discourse on human rights from equality to equity. As Ann Hall describes it, this shift means that instead of being interested in free access of women to a system of sport that has traditionally been dominated by men; radical feminists are interested in changing sport according to “feminine” values. In essence, if equality means women starting from the same line as men, equity means women being in the same position as men at the finish line (Hall, 1996, p.90). According to this view, if women are to have the same status as men, this cannot happen as long as they play on a field that is built on masculine values. It is also important to mention that this argument relies on the assumption that a difference in gender corresponds to a difference in values, or, in other words, that there are “masculine” and “feminine” values. It is safe to assume that this reasoning accepts the kind of feminism developed by Carol Gilligan, who argues that women’s moral thinking is based in values like caring and closeness to others, in which emotional dimensions play a central role. In conclusion, the same pattern as the cases presented before applies: modifications in the way the game is played are not trivial or arbitrary. In fact, it relies on a view of justice interpreted as equity and, as I mentioned, on certain assumptions regarding the nature of women and men.

The most important challenge to the idea of traditional sport posed by this kind of sporting practice is directly connected to the idea of competitiveness. Jennifer Hargreaves gives the example of korfball, a game that is meant to “challenge without competition,” encouraging the cooperation between participants and discouraging aggression.
Another radical approach to sport, which targets not just competitiveness, but the larger structure of the sport, changes the meaning of more established mainstream sports like netball. Hargreaves describes the case of such a netball club that has a “politicized” agenda, called Queens of the Castle Club. This is how Hargreaves presents the new approach the members of this club take in regard to this club:

It is in contrast to traditional netball philosophy which their founder sees as a way of submerging individual identities into the concept of a team through the inculcation of highly disciplined, unquestioning and ‘girl-like’ responses. All the members of the Queens’ club are involved in the construction of its values and practices, which are openly discussed and negotiated. (Hargreaves, 1996, p.251)

I am calling this approach more radical because the communal decision can change other aspects of the sport, not just its competitive aspect. It is interesting to see that this redefinition can be understood in terms of a “grammar” of netball, which replaces the rigid and well-organized nature of the traditional sport with a more relaxed and fluid game. Hargreaves does not elaborate further on the limits of this kind of freedom of decision, but one can speculate that it is more likely to affect the competitive nature of games or even the role of the referee in the game. If these games have such a democratic structure, it is fair to assume that referees do not make decisions in the same way that referees make them in professional games. At times, it might become obvious that referees will have to collaborate with players if players feel that certain decisions reflect a masculine ethos.
I am not going to go any further with this kind of speculation, but I think it is fair to say that these games alter the status of referees and in certain instances the decisions of the players in ways that pose problems for Russell’s interpretivist account. It might be argued that such a collaborative approach to sport is in fact incompatible with the role of the referee and that these games are irrelevant for a theory of adjudication, but this is mere conjecture. A collaborative approach to sports might redefine the role of the referee as a mediator between conflicting parties, so that the referee would still have a kind of authority that is similar to that of referees in paradigm cases of sport, but that role would now include trying to forge an agreement between players to resolve such conflicts.

D. Soccer: institutions and customs

One intriguing example that supports conventionalism is provided by the case of soccer and the role that institutions play with regard to referees. I am using the example of soccer here simply because I am more familiar with this sport, not because the phenomenon I am describing here is confined to soccer, as it is very probable that the same situation exists in other organized sports. The issue in itself is complex, and involves the status of the referee. It seems obvious that referees are called to officiate in games of soccer (or any other kind of sport) only when a certain organizational structure exists. This does not mean that referees cannot decide games that are not organized. I remember playing soccer many years ago and in certain situations (especially when the number of players was odd) one of us was designated as a referee. Unfortunately, in none of these situations was the “referee” able to do the work that officials regularly perform in professional games, because no actual authority was assigned to this person. It was
enough for a player to challenge this “referee,” and, since no penalty could be enforced, the refereeing process would cease abruptly.

This discussion shows that referees are in most cases dependent upon a human institution in order to carry out their work. In fact, adjudication is heavily dependent upon the actions of this institution from several points of view. First, the rules of the game are established at the institutional level. In the case of soccer, the rules are established by IFAB (The International Football Association Board). This board is composed of eight representatives, four from the original four members (England, Scotland, Wales and Northern Ireland), and four from FIFA. FIFA (in English, The Federation of International Football Associations) is the most important governing body of soccer. Any change in the rules of the game requires the votes of at least six of the eight members of IFAB. The rules of the game are introduced and changed by this institution, but it is possible to have situations in which individuals play soccer according to rules that differ from those accepted by IFAB.

Second, institutions like FIFA can also influence the adjudicative process in a different fashion, for example, by issuing internal recommendations and regulations that the referee must enforce. One such example is a publication of FIFA called “Regulations FIFA World Youth Championship Netherlands 2005. 10 June – 2 July 2005.”31 The regulations mentioned in this publication are not really laws of the game. Take for example the Article 15.1. “The footballs chosen for the preliminary and final competitions shall conform to the provisions of the Laws of the Game and bear one of the

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following three designations: the official ‘FIFA APPROVED’ logo, the official ‘FIFA INSPECTED’ logo, or the reference ‘INTERNATIONAL MATCH BALL STANDARD’.” The inscriptions on the ball are not, as noted, part of the laws of the game, and I am pretty sure that the principles of adjudication presented by Russell have little guidance to offer in this situation. This seems to suggest that we are dealing with conventions here. Along the lines of IC 5, conventionalists are committed to the idea that the referee has no freedom to ignore such prescriptions. A referee that ignores them would lose her position, just as surely as she would if she ignored the laws of the game. In practical terms, I see nothing that would differentiate from the point of view of the referee the rules of the game and regulations such as these, as the referee has an obligation to follow both. To me, this fact offers the most obvious support for the idea that referees are bound not just by rules and moral principles, but also by conventions (IC4). In conclusion, what this examples shows is that the adjudicative process comprises, besides rules, certain regulations that are unmistakably conventional in nature.

One possible critical reply would be to extend the meaning of “rule of the game” and include here the kinds of regulations institutions use to guide referees, which would effectively nullify my claim that the latter are best understood and treated as conventions. In this case, the kinds of recommendations and regulations institutions like FIFA or MLB create would be in fact rules of the game. However, this attempt to break the continuum between rules of games and conventions seems to succeed only by introducing an arbitrary element. Imagine the following situation: a group of friends playing a game of soccer decide to hire a person to be a referee. As part of her contract, the referee has to follow the rules of the games as set by IFAB and also some special regulations the
members of this group have introduced. Are these latter regulations conventions or rules of the game? According to the definition of rules of games presented at the beginning of this paragraph, since the group of friends is not an institution, then the regulations they introduce are not rules of the game. But why would the fact that the group does not have the legal status required by an institution matter so much that the regulations of the group of friends are not rules, while the regulations of institutions are rules? There is nothing in the concept of “rule of game” that requires rules to be institutional. This means that drawing the line between rules and conventions by requiring that a rule be established by institutions is arbitrary.

Of course, interpretivists can extend the idea of rules even more and include these conventions and regulations imposed by contract in this new case. But, in the end, this is a slippery slope and if one follows this path eventually all conventions will become on this new account the rules of games, as long as these conventions are established by some form of social organization. In making this move, if they are so inclined, interpretivists are in fact slowly transforming interpretivism into a form of conventionalism.

In conclusion, it follows that the authority of conventions and rules of games differ only in degree. Some conventions are very similar to rules and have similar authority, while others have little authority, and are established in informal situations. This shows that the interpretivist picture of adjudication that assigns rules a central role in adjudication, and grants conventions at most a peripheral role, is mistaken. A referee in a game organized under the auspices of FIFA would be obligated to follow conventional regulations, supporting directly IC4.
Let me briefly summarize the points I made in this section. In the case of kendo, I have shown that the cultural context in which the game is played changes the way the concept of sport is defined and, consequently, the way it is refereed. This means that in kendo referees look for mental and moral qualities that in all other sports are not relevant. This example directly supports IC6, because it shows that referees are bound not just to the rules, but also to the values of the Japanese traditional society, which appreciates meditative skills that in other context would be irrelevant.

Similarly, I have shown that other values are relevant in the ways referees make decisions. In the case of youth sports the educative and recreational functions of sport determine whether the referee should interrupt the game to educate. Also, in the case of feminist sport constructs, the traditional image of the referee as imposing the decisions they have made by themselves is contradicted by the cooperative principles that are central to games like netball or korfball. And finally, I have shown that in the case of organized games, referees have an obligation to apply regulations that are not rules of the game or principles of adjudication and, therefore, are best described as conventions. Together these cases support the most important tenets of conventionalism: referees are bound to apply the rules of the game, as well as principles that reflect the values of the community in which it decides, which are conventional in nature. This conventional nature of the principles of adjudication separates them from the Russellian and Dworkinian principles of adjudication.
4.3. An interpretivist reply and conclusions

In this section, I am going to briefly look at the most important ways in which interpretivists, aside from the objections already dealt with above, answer the conventionalist arguments I have made to this point. In the previous section I presented a number of cases that challenge the interpretivist claim that in the process of adjudication only rules and principles of adjudication are relevant. If Russell is right and adjudication takes into account only these two factors, given the fact that principles of adjudication are independent of any conventional decisions, games of soccer would be refereed the same way in any context. It follows that if soccer is played in different cultural contexts, referees would make the same decisions if the same rule is violated the same way in these two games.

However, the situations I presented before tell a different story; they show that different values associated with the game compel referees to make adjudicative decisions in different ways. For example, it is a well-established convention that soccer played in England is more athletic and aggressive than soccer played in Continental countries,\textsuperscript{32} which means that certain fouls that are normally called in the Continent are not called in England. This example goes to show that the style of refereeing is directly influenced by local conventions. Also, soccer can be played noncompetitively (like netball) or with educational goals in mind. In these three cases, as I have shown in the previous section, referees will not decide the same way when the same rules are broken.

\textsuperscript{32}A fact reflected by the Premier League's chief executive Richard Scudamore: “Our games are shown in more countries, watched by more people and make up more hours of TV coverage than either Spanish or Italian football. It might not be the world's most technically perfect league but people overseas say the Premier League is the best because it's more exciting, more interesting, noisier and more physical - and thus more attractive - than the others.” \textit{Guardian Unlimited}, Sunday January 6, 2002.
Interpretivists need to find a way to account for these local variations in adjudicative practices. One possible solution that interpretivists could use relies on natural law theory. Thomas Aquinas solves the incompatibility problem between the divine nature of law and the local variations of legal systems through a compromise.\textsuperscript{33} Aquinas lays down three conditions that human laws need to satisfy:

- For it is called virtuous because it fosters religion. And when he [Isidore] goes on to say that it should be "just, possible to nature, according to the customs of the country, adapted to place and time," he implies that it should be helpful to discipline. For human discipline depends first on the order of reason, to which he refers by saying "just": secondly, it depends on the ability of the agent; because discipline should be adapted to each one according to his ability, taking also into account the ability of nature (for the same burdens should be not laid on children as adults); and should be according to human customs; since man cannot live alone in society, paying no heed to others: thirdly, it depends on certain circumstances, in respect of which he says, "adapted to place and time." (Aquinas, 1988, ST I-II, Q.95, A.III)

In essence, the argument here is that human law should be adapted to local conditions, be they biological or cultural ones. The point is that laws have certain goals and sometimes these laws need to be altered in order to make those goal attainable. Aquinas mentions that one of the goals of laws is discipline, which cannot be attained by ignoring people’s

\textsuperscript{33} I am presenting this argument as if it were a hypothetical argument, since I do not have textual evidence that Russell accepts this kind of reasoning. In fact in a private conversation John Russell made a similar argument, which makes me believe that he would agree with the position I am presenting here.
customs. If judges were to ignore these customs, then the resistance to these legal
decisions would undermine the order and effectiveness of the legal system.

A more detailed account of this process of compromise has been developed by
Ronald Dworkin in relation to judicial activity. As I pointed out before, judges have a
duty not just to act according to the rule and to moral and political principles, but also
have a duty to fit their decisions into the context of previous decisions (Dworkin, 1986,
p.401). Similarly, a writer called to work on a chain novel needs to express her views and
at the same time make sure that the integrity of the novel is maintained and that her
contribution fits the previous parts of the novel (Dworkin, 1986, pp.229-230).

This idea has circulated in philosophy of sport. Kretchmar, for example, argues
that one of the important gamewriting principles is to take into consideration the
cultural context (Kretchmar, 2003, p.169). Dixon makes a similar argument, pointing out
that interpretivism is sensitive to local variations: “moral realists can quite consistently
condone the same action in some circumstances while condemning it in others, because
the same general moral principles can require different actions in different
circumstances” (Dixon, 2003, p.113).

There are two ways in which interpretivists can respond to the examples I
presented in the second section. One follows from the argument of Thomas Aquinas and
argues that even if the conventions might contradict the principles of adjudication, the
referee needs to take into consideration the precedents or, in the case of sport, the
conventions built around the game. The other argument follows Dixon and assumes that
these local differences are just direct results of variations in the conditions to which moral
principles apply.
This latter solution is very superficial for at least two reasons. First, Dixon’s solution fails to see the necessity of following the voice of the community, which Russell recognizes here, although for the wrong reasons (*i.e.*, a similarity to the doctrine of precedent). Second, Dixon assumes that principles of adjudication are in fact trivially general principles, which undermines the importance of interpretivism. As I showed before, Dixon thinks that principles of adjudication are applicable to various situations, which can presumably be as diverse as the situations I described in the previous section. In order for this to happen, these principles of adjudication need to be very general and abstract.

However, if this principle is to be an actual guide in adjudication, it cannot be too general and abstract. So Dixon is caught in a dilemma that he cannot evade: if principles of adjudication apply to all kinds of diverse cases where the excellences embodied in the game differ, then this principle needs to be very general. On the other hand, if this principle needs to be an effective guide for referees, it needs to pinpoint more precise excellences to be encouraged by the referees. For this reason, I will turn now to the solution based on the natural law position defended by Thomas Aquinas and which follows Dworkin’s chain novel metaphor.

This solution claims that referees have to take into account local variations because otherwise it would undermine the good conduct of these games. If players are used to ignoring certain fouls that violate the rules of the game and if referees ignore the local conventions calling all these fouls, then the game will be fragmented and it is likely that this refereeing strategy will antagonize the players, eventually undermining the authority of the referee. The referee will have to take into account local variations,
applying the rules of the game and the principles of adjudication and making sure that
certain local customs are respected. In other words, sometimes referees might
compromise, but only so far as this maximizes the efficiency of the principle of
adjudication. Seen this way, principles of adjudication possess a higher authority than
conventional principles, so that referees are called to follow these principles primarily,
and only when the effectiveness of the principles is threatened must the local principles
be taken into consideration. This account misrepresents the role conventions play in
adjudication. Let me give an example that will clarify my point.

Let us imagine that a certain community decides to play soccer in a cooperative
fashion. They get together and decide on a number of conventions that determine how the
cooperative values are to be applied in the game and, in the end, manage to find a golden
mean between competitive and collaborative values. Why would one say in this case that
the referee needs to make a compromise between the principles of adjudication and the
local conventions, since this compromise has already been made? The community has
already taken into consideration the principles of adjudication that a referee would be
bound by in a traditional game of soccer, where winning plays a central role, and by
creating this new game it has found a way to alter it to reflect the collaborative principles
of this community. By divorcing the referee from the community, interpretivists put the
referee in the awkward position of having to rediscover this perfect compromise between
competitiveness and collaboration, making sure that the compromise the referee reaches
is the same that the community has already reached. This solution is just complicated and
unrealistic, because it assumes that referees are just isolated from the players and the

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community. Assuming that the referee ignores or is ignorant of the conventions of the community, therefore, is simply unrealistic.

This fact is even clearer in institutional contexts like the one I described at the end of the previous section. The referee does not make a compromise between the rules of the game and the recommendations of FIFA. The referee is equally bound to follow them and the rules of the game. For this reason, this reply to the cases I presented in the second section of this chapter fails.

In conclusion, I have presented an account of adjudication that begins with the general theory presented by William Lucy and continues by adding elements of the conventionalist theory of sport I developed in the previous chapter and, to a lesser extent, elements from actual conventionalists. I argued, following Lucy, that a theory of adjudication has two essential parts, one which is a theory of rationality, the other a theory of legitimacy. This chapter is dedicated exclusively to a theory of rationality, while the next chapter will focus on legitimacy. In the first section, while constructing a theory of rationality in adjudication, I showed that the best way to do this is to conceive conventions as similar to principles of adjudication, i.e., abstract and general. In order to avoid making conventionalism just a version of interpretivism by linking conventions to principles of adjudication, I pointed out that conventionalism differs from interpretivism because interpretivism claims that these principles are real and because conventionalism introduces external values into the process of adjudication, arguing that these values can become relevant for referees if the community so decides. The second section presents cases that prove two important conventionalist points: first conventions play a role in
adjudication, and second, other values are relevant in adjudication if the community is so inclined. In the last section I presented a way in which interpretivists have tried to account for the local variations I described in the second section and I argued that their argument was not persuasive, because it sees the referees as separated from the community in a way that is unrealistic.
CHAPTER 5

LEGITIMACY AND MORALITY IN ADJUDICATION

In the previous chapter I presented a theory of rationality in adjudication. The main point was to show the rational structure of the process of adjudication. However, Lucy indicates that rationality is not the only condition of adjudication and argues that legitimacy plays an important role in adjudicative practices as well. I mentioned in the previous chapter that a person can make excellent decisions about games, much better than the actual referees, but this does not mean that the decisions of this person are adjudicative. What this person lacks is legitimacy. It follows that a theory of adjudication requires an account of legitimacy and, as a result, conventionalism needs to be able to provide one as a sign of its validity. In this chapter I am going to present the interpretivist account of legitimacy and argue that the conventionalist theory of legitimacy in adjudication fares better. In fact, I am going to argue that conventionalism is by definition better suited in providing a theory of legitimacy, while interpretivism inherits from Dworkin difficulties in providing a strong account of legitimacy.

The issue of legitimacy is very complex one and there are various aspects of sport that can be investigated from this perspective. In this chapter, I am going to focus on a select number of legitimacy issues because they are particularly important for a theory of
adjudication. In the first section I am going to talk about the legitimacy of referees and their decisions, arguing that this kind of legitimacy is a function of communal decisions, while at the same time rejecting the interpretivist claim that legitimacy is based in the moral standing of the referees’ decisions. In the second section, I will focus on the legitimacy of the principles of adjudication that referees have a duty to apply. I will argue that (with one kind of exception) it is wrong to believe that a principle of adjudication has legitimacy because it is moral in nature, and I will further argue that the conventionalist thesis that a principle of adjudication is legitimate as long as the athletic community accepts it is the best possible solution. The final section is meant to find a deeper justification of the conventionalist account of legitimacy. If legitimacy is ultimately moral, this section will look at the moral reasons for giving communities the power to confer legitimacy to referees’ decisions and their adjudicative principles.

Ultimately, this chapter will defend a conventionalist theory of legitimacy. According to this theory, legitimacy is established by the community built around the game. This athletic community decides the rules of the game and at the same time the conventions that determine how the game is to be played. The fact that sport is a voluntary activity and that, even more than in the case of political obligations, it can be assumed that the player who decides to play the game agrees with its rules and conventions, make this solution plausible. In other words, it can be assumed that the conventions of a game are agreed upon by the participants and, for this reason, are legitimate.
Before I proceed, I want to make a quick note regarding the premise of this whole discourse. As I previously noted, using Lucy’s theory of adjudication to understand adjudication in sport requires some caution since adjudicative issues in sport differ in certain respects from adjudicative issues in law. It is clear that legitimacy is particularly important in organized sports, where the referees, just like judges, are appointed according to clear procedures. In these games, a person needs to have this kind of legitimacy granted by the institution under whose tutelage the game takes place (e.g., MLB in professional American basketball). However, this is not the case in games that are played in informal conditions, where no such legitimacy-granting institutions exist. In those cases, referees are decided upon by the players themselves, but referees can still be selected by the players themselves.\(^\text{34}\) This needs to be kept in mind constantly, so that legitimacy is not exclusively viewed as an institutional matter.

**5.1. Russell on the legitimacy of referees and their calls**

In general, interpretivists have stayed away from the issue of legitimacy, although this fact does not need to be interpreted as a criticism. That is because the issue of legitimacy has been scarcely discussed in the philosophy of sport literature at all. Still, such a theory of legitimacy is particularly necessary for interpretivists, because their accounts of adjudication are focused on organized sports. There is something strange in the interpretivist discussion of adjudication in sports, since they discuss the activity of

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\(^{34}\) Indeed, in most informal situations players themselves make the decisions. However, as I mentioned in the first chapter, I will consider legitimate instances of adjudication only those cases in which a referee actually makes the decisions. Cases in which players make the calls are too different from paradigm cases of adjudication in sport to be considered legitimate instances of adjudication.
umpires without seeming to acknowledge that the status of referees is tightly connected to institutions that organize and regulate this activity. This is especially the case with Simon and Dixon, who seem to be more interested in the rationality part of adjudication, ignoring almost completely the institutionally conferred status of referees in games. As I noted in the previous chapter, Russell does at least mention the issue of legitimacy and its importance in athletic adjudicative decisions, although, as I will argue, only conventionalism is able to provide a complete theory of legitimacy in adjudication.

In fact, Russell makes a number of observations about adjudicative legitimacy in “The Concept of A Call in Baseball.” Russell begins by attacking the identification that is sometimes made between baseball calls and what he labels, following J.L. Austin, “performative utterances.” A performative utterance is an utterance that does not just describe a certain fact, but “is, or is a part of, the doing of an action, which again would not normally be described as, or as ‘just,’ saying something” (Austin, 1962, pp.5-6). Russell gives as an example promises, where the utterance of the words “I promise that X” means that the person making this statement has made a promise. Russell is particularly worried about views of sport according to which when the referee utters the words “You are out,” she is actually creating a new fact. Such an interpretation suggests that calls are reports of something that happens independently of the decision of the referees (Russell, 1997, p.24).

Russell goes back to Austin’s account of illocutionary acts. According to Austin, statements have different kinds of force, one of which is illocutionary force. The illocutionary force of an utterance is the action constituted by that utterance, so that the illocutionary force of “I promise X” is promising. In the case of judges or referees, their
decisions have **verdictive force**, which means that referees or judges are called to find the truth of a certain statement (whether a certain person has broken the rules of the game or the law). Besides verdictive force, however, referees’ and judges’ decisions have, according to Austin, **exercitive force**, which means that they have the right in virtue of their position to make a person an accused or convicted criminal or to make a certain play a foul (Russell, 1997, p.23). Following the lines developed by J.L. Austin and John Searle, Mary Kate McGowan argues that exercitive power has three important characteristics: first, “exercitive speech acts fix a certain sort of institutional fact,” second, this kind of speech act has to be made by someone who has the necessary authority over the domain in question, and, third, not all cases of exercitive power require an established organizational structure\(^{35}\) (McGowan, 2003, p.158).

Russell’s complaint is that the idea of an exercitive force undermines the verdictive force of the umpire, and that referees are meant to discover and report what happened, not to decide what these facts are, as if facts would ultimately depend on them. It is interesting to see that Russell is more interested in the fact that an Austinian perspective on adjudication in sport undermines the verdictive power of calls in sport, while at the same time ignoring the reasons why referees have exercitive power. One has the feeling while reading Russell’s paper that the verdictive dimension becomes essential in adjudication and that Russell ignores the possibility that his account of adjudication

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\(^{35}\) I need to make an important clarification here, regarding the compatibility of the first and third characteristics. In regard to the third aspect of exercitive power, McGowan tells us that even in the case of a family, which is an institution only loosely, parents have exercitive power over their children. This seems to contradict the first characteristic, which requires an institutional structure for exercitive power to exist. However, I think that this opposition is only apparent, as the source of the first characteristic is Searle, who uses a broader sense of institution, which has to do with a community accepting a set of constitutive rules, as I explained at the beginning of Chapter 3.
needs to satisfy both dimensions of adjudication. In other words, Russell does not seem to understand that a theory of adjudication needs to explain at the same time the exercitive power and the verdictive power of the refereeing calls. As I will show later, this happens because Russell understands the legitimacy of referees and their calls as given by the ability of referees to exert effectively their verdictive power.

From this position, Russell goes a step further and directs his attack against legal positivism, more precisely against the old positivist adage that the legal ruling is one thing, its merit and demerit another. Russell contrasts this position with the natural law approach to law, according to which a bad call is no call at all (Russell, 1997, p.25). Russell explains this last position as a belief that a bad call is not a genuine call, because it fails to satisfy certain evaluative requirements. In order to justify this position, Russell uses a comparison that takes us back to the heart of the legitimacy issue. Russell sees bad calls as fake bills or female impersonators, which are not bills or females “in any essential nonevaluative aspect.”

The point is that a token of a kind that combines evaluative and nonevaluative inclusion conditions may satisfy the nonevaluative conditions, and so be a “technically certifiable” token of an x, but lack the relevant evaluative inclusion conditions for the token to be a true or genuine.” (Russell, 1997, p.26)

This fact has a direct relevance in the case of corrupt referees:

…it does not make sense to say that they are genuine or true judicial judgments. We know this because a corrupt judge fails to perform a function that is essential to his role, that of being an impartial arbiter. He is, in fact, not fulfilling his role as a judge, and so his judgments are not genuine examples of judicial judgments, and
it is apt to describe then as perversions of the very idea of a judicial judgment… A corrupt judge is not, finally, a true or genuine token of their kind.” (Russell, 1997, p.26)

It follows that according to Russell there are two kinds of standards for calls in sport. First, there are technical standards, which have a certain institutional dimension. A “technically certifiable” call is made by a person who satisfies the institutional requirements for being a referee in that particular game. The second requirement, however, involves certain evaluative standards, like impartiality and a general ability to see and understand what is happening on the field (which reflects the verdictive power of the referee). This distinction is relevant in the context of this chapter because it tells us that in Russell’s view legitimacy is ultimately defined in moral terms. Of course, a call can be considered technically certifiable in the sense that the referee has the institutional authority to make it, but for Russell this is only the beginning of the story. This kind of technical legitimacy is just a precondition that is totally dependent upon the validity of the decisions this referee is actually making. So, ultimately, the legitimacy of a call and of the referee making the calls depends on the validity of her decisions. In a new fashion, Russell is challenging the claim that legitimacy in sport adjudication is independent of the rationality requirement. Russell argues that the nature of the reasons that represent the basis of adjudication in the end determines legitimacy and ultimately claims that the morality of calls is the foundation of legitimacy of referees and their decisions.

It might be tempting to treat this argument the same way I treated in the previous chapter a similar argument about the distinction between “sport” and “genuine sport.” According to this argument, “genuine sports” satisfy certain evaluative principles (like
Russell’s principles of adjudication), while those instances of sport that do not satisfy them are not really instances of sport. However, using the same strategy to reject this argument here would be a mistake. In the previous chapter I used Brian Bix’s interpretation of Aquinas to show that it makes more sense to interpret a thesis like “a bad law is no law at all” as a statement about the moral force of the law rather than as an ontological point about what is law or not. Bix’s thesis that a bad law lacks the moral force to affect those it is supposed to affect is perfectly compatible with Russell’s claim that these bad calls have no legitimacy. The moral force Bix talks about is equivalent to legitimacy and if this translation is made, then Bix and Russell make the same claim here.

However, there is another, more promising line of criticism that can be made of Russell’s account that involves the difference between technical certifiability and genuineness. Let us see how Russell applies it to the case of corrupt judges. Russell tells us that a corrupt judge fails to do something that is essential to her role. Although she is technically certifiable (she has a law degree, she was appointed or elected, depending on what kind of judge she is), she is not really a judge. Her legitimacy, in other words, depends on the kinds of decision she is making (whether they are honest and impartial or not).

However, there are good reasons to believe that conditions like honesty are either actually parts of what it means to be technically certifiable, or the difference between technically certifiable and genuineness is empty. In the end, all judges sign a contract that connects their status as employees to the satisfaction of certain conditions, some of which are evaluative in nature. Breaking one or more of the conditions in this contract will result in the employee losing her status as a judge. These conditions can be non-
evaluative (like having a law degree) or evaluative (being honest). But in the end, they have exactly the same status. They are all established by an institution and breaking either of them will have the same impact. In light of these facts, I do not see why this difference between evaluative and non-evaluative professional standards would be relevant in the discussion regarding the legitimacy of calls in sport.

Let me make this clear by turning to the difference between positivists and natural law theorists. As Russell mentions, positivists believe that the legal ruling is one thing, its merit and demerit another, but this thesis should not be misunderstood. Positivists believe that the identification problem should be separated from the evaluation problem. They believe that whether something is a law or not depends on the way it was established (whether all the procedures were satisfied when the law was passed), not whether the law is just or effective. Doesn’t this mean that, similarly, if a corrupt judge is no longer a referee, then positivists are wrong, because in this case the judge’s non-status is based on an evaluative claim (honesty), rather than on an institutional source? I think positivism can account very well for this situation. A corrupt judge is no longer a judge because by being corrupt she breaks certain conditions that are part of her contract or that are conditions for being a legal professional. Russell, in running the non-evaluative – evaluative distinction together with the distinction between positivism and natural law theory seems to suggest that the positivist claim that “legal ruling is one thing, its merit and demerit another,” implies that positivists are committed to the idea that a judge is identified by non-evaluative standards, and in order to identify a judge or a referee one does not have to take into consideration issues about her honesty or ability to perform the job. This is a mistaken view of positivism.
Positivism begins with the source thesis, according to which laws are to be identified by their social sources. Want to know if a certain statement is a law or not? All you have to do is check if it was passed as a law by the institutions that, according to the Constitution or other legislative acts, are empowered to make these kinds of decisions. In the case of judges or referees, in order to understand if they are legitimate judges or whether their decisions are legitimate, one needs to see if these persons that claim to be judges or referees satisfy the conditions that are established by law as necessary in order to be a judge. It is important to understand, however, that these requirements are in almost all, if not all, cases also evaluative in nature. As I mentioned before, a judge is bound by a professional code that is established by institutions or professional communities, and the same happens with referees. A judge or referee who breaks this code is not making a valid decision, because the decision did not follow the procedure established by these institutions, which require that this decision be made impartially and honestly. There is, therefore, no reason to believe that positivists would deny that evaluative factors are relevant in identifying legitimate referees or calls.

In conclusion, Russell is trying to connect legitimacy in adjudication to rationality. In his view, legitimacy would be dependent upon rationality, because a decision that is made in the wrong way is no decision at all. A bad call in sport is, according to Russell, like a professor with a mail order PhD diploma or a fake bill. I argued that although it might be true that legitimacy depends on evaluative standards, this does not mean that legitimacy is now ancillary to rationality. The reason for this is that these evaluative standards grant legitimacy not in virtue of some abstract role that a referee or judge needs to play, but rather in terms of concrete institutional standards that
identify what counts as a legitimate referee or call. So, the positivist is able to protect the independent role legitimacy plays in adjudication by defining it in terms of social regulations, not in terms of evaluative standards that can be moral or not and that are independent of the way society defines and regulates the role of the judge or referee. Finally, it is important to understand that I am not claiming here that a corrupt judge is no judge at all. All the above mentioned argument showed was that even if corrupt judges are indeed no judges at all, this is not a sufficient reason to accept a theory of adjudication that assigns legitimacy to referees and referee calls based on the merits of the decisions of the referee.

5.2. The legitimacy of the principles of adjudication and morality

So far my argument focused on the legitimacy of corrupt decisions and referees, but the issue of legitimacy is much broader than this. I am going to leave the discussion on the status of referees and their calls aside, because it plays a less important role in Russell’s work, and concentrate instead on the legitimacy of principles of adjudication. In simple terms, the problem is to determine what principles are referees bound to take into consideration while adjudicating and who or what gives them this kind of legitimacy.

I will focus on a possible interpretivist argument in favor of the idea that legitimacy depends on evaluative standards. This argument claims that legitimacy of adjudication depends on the moral nature of the principles of adjudication involved, which directly challenges the conventionalist account that sees the legitimacy of these principles as being given by athletic communities. This is what the interpretivist argument would look like:
H1: Moral principles are legitimate sources of adjudication.

H2: Principles of adjudication are moral principles applied to sport.

C: Principles of adjudication are legitimate sources in adjudication.

Let me make clear a few points. The fact that X is a “legitimate source in adjudication” means that the referee is obligated to take X into consideration in the process of adjudication. A statement like H1 can be defended by pointing out that moral principles have authority in themselves, because all individuals, referees included, are moral subjects. This argument, regardless of certain complications regarding the ability to identify what moral principles are obligatory for referees, still has force. Remember the Pine Tar case which Russell brings in favor of his account of adjudication, when the referee concluded that the home run scored with the pine-tar covered bat should be disallowed. I argued that a clear injustice had been done in this case and, therefore, that the baseball player’s rights had been violated. Moral principles, in other words, have built into them all the legitimacy they need.

Further, there is a supplemental factor that supports H1, namely that, following Dworkin, moral principles are themselves integral parts of sport. That means that using moral principles of adjudication as a normative guide is as legitimate as using the rules of the game as a normative guide. Although I doubt the validity of H1, I will not challenge it, but instead focus on H2, which is more significant in the context of Russell’s account.

In the case of H2, Russell makes clear his commitment to this thesis when he writes as follows:

…I take the realist view that these principles [the principles of adjudication developed in “Are Rules All that Umpire Has to Work With?”] were also
fundamental features of games and so were fundamental to the adjudication of disputes within games. That is, I take the realist view that these principles incorporate approximately true descriptions of facts about games… What I described here as “the first principle of adjudication” helps us understand part of the nature of morality as it applies to sport. (Russell, 2004, p.146)

Immediately, Russell makes this connection between principles of adjudication and morality more explicit, stating that “games create opportunities for developing certain human excellences by presenting obstacles that must be mastered and overcome in order to achieve the goal set by the game” (Russell, 2004, p.146). In conclusion, H2 is supported by the fact that it is an application of the idea of enhancing human excellences, which is itself a moral idea, and, therefore, as argued above, self-legitimating. I think it is fair to say that logically the argument is solid and that C follows from H1 and H2. As a result, my analysis of this argument will look at the validity of the premises.

Before I take up this issue, it is important to mention that the brand of inclusive conventionalism I am presenting here includes morality in the process of adjudication, although the extent is much more reduced than in the case of interpretivism. According to inclusive conventionalism, when an athletic community creates reprehensible conventions that cannot be applied without violating central rights of individuals, then moral principles have legitimacy in themselves and a referee needs to take them into consideration. However, in the other possible cases communities decide what kind of moral questions make sense in a certain game. For example, the range of morally acceptable actions differ between a professional golf game and a professional baseball game, since in baseball tolerance for gamesmanship is much higher that in the case of
golf. In conclusion, conventionalism claims that the legitimacy of using certain moral
principles in adjudication is determined by the community.

While interpretivists believe that moral principles play a positive role in
adjudication, guiding the referee in situations that are not covered by rules or where
following the rules creates unacceptable consequences, inclusive conventionalism argues
that, with the exception of extraordinary cases in which the immorality of conventions
require moral evaluation and possible sanction, the rules of the game and the conventions
around the game are sufficient adjudicative guides for referees. This is so because both
rules and conventions are established by the community.

My response to the attempt to deduce C from H1 and H2 is that most of Russell’s
principles of adjudication are in fact conventional in nature and that the relation between
morality and adjudication is different from the way Russell takes it to be.

As I showed in the second chapter, Russell develops a number of principles of
adjudication that, as he argues, represent the basis of adjudicative practices. Here is the
list of principles he proposes:

1. Rules should be interpreted in such a manner that the excellences embodied in
   achieving the lusory goal of the game are not undermined but are maintained and
   fostered.
2. Rules should be interpreted to achieve an appropriate competitive balance.
3. Rules should be interpreted according to principles of fair play and
   sportsmanship.
4. Rules should be interpreted to preserve the good conduct of games. (Russell,
   1999, pp.35-36)
Russell points out that this list of principles is not exhaustive, but indicates that principles 2, 3 and 4 derive mainly from the first principle, so it is fair to assume that if there are other principles of adjudication, they can also be understood as corollaries of the first principle. As a result, my investigation will focus primarily on it.

I will begin by considering the connection between this first principle of adjudication and moral principles. It is important to understand that in order for something to be a moral principle it is not enough that it possesses a moral content. Besides the content of a certain principle, the context in which the principle does its work matters as well. While accepting the fact that laws have a moral content, positivists like H.L.A. Hart and Neil MacCormick identify certain characteristics of laws that differentiates them from moral principles. Hart shows that moral and legal rules are different from the standpoint of importance (moral rules play a central role in society and are, for this reason, hard to change, while legal rules do not possess the same degree of importance, and as a result are easier to change), immunity from deliberate change (laws can be changed by a group of persons, whereas moral rules cannot be changed by moral fiat), voluntary character of moral offences (excusability is more qualified in moral systems than in legal systems) and the form of moral principle (legal systems employ punitive measures, moral systems do not) (Hart, 1961, pp.169-175). In a similar vein, Neil MacCormick argues that laws should be separated from morality because laws have two precise functions: to limit harm and to maximize wealth. Although these two functions have moral content, they differ significantly from a moral point of view. Whereas, then, a moral rule prohibits harm, a legal rule does not morally condemn acts of
wrongdoing for their own sake, and similarly laws protect wealth rather than applying principles of justice to its accumulation (MacCormick, 1985, p.218).

What these arguments tell us is that it is not enough for a principle of adjudication to have the same form as a moral principle to conclude that this principle of adjudication is a moral principle. As Leslie Green has shown in the case of a moral concept like “harm,” the fact that it appears in a legal text does not mean that a moral test has been introduced, because the term “harm” is used there in a different way, than, for instance, the way John Stuart Mill’s Harm Principle is often used - legal harm is a very precise notion and one established by legislation.36 (Green, 2003). This is not just an idle academic argument, because it shows that if a principle of adjudication possesses moral content that does not mean that it can’t be a convention. In order to show that the principles of adjudication are moral principles and that by virtue of this fact they are legitimate, the interpretivist needs to show that the words that have moral connotations in these principles are used the same way as moral principles are. In fact, words like “excellence” in the first principle of adjudication and “good” in the fourth, although they have clear moral connotations, are not used in a moral sense, which undermines the supposed moral basis of their legitimacy.

For the rest of the chapter, I am going to call Russell’s first principle of adjudication the Flourishing Principle (or FP). When analyzing its structure, Russell needs to make clear to what kind of excellences he is referring to here. A description like “embodied in achieving the lusory goal of the game” is not especially clear. I think it is

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36 For example, from a moral point of view being rude to someone qualifies as harmful, but from a legal point of view this is not the case.
fair to assume that he is not referring here to ways of winning the game that violate the rules of the game, since it is likely that Russell is using “winning” here in the same formal sense as Suits does. However, there are ways to win a game by respecting the rules of the game that are morally dubious. For example, one can win a game by, among other things, heckling opponents, in soccer by feigning injury, and in baseball by being very good at stealing signals (I will call these skills “gamesmanship skills”). Also, there are skills that are important for winning but have very little to do with the game. I am referring here to managerial skills or the ability of the players to maintain a positive attitude. All these skills are important in winning and it is not clear that Russell had them in mind when formulating his principle of flourishing. Indeed, I think it is fair to assume that he did not have these last set of characteristics in mind, because they are only indirectly relevant to winning, and for this reason cannot be really considered as “embodied in achieving the lusory goal of the game.”

But these gamesmanship skills are actually directly relevant to winning, so there are good reasons to believe that they are indeed “embodied in achieving the lusory goal of the game.” As a result, we need another criterion that will eliminate them from the set of skills to which the first principle of adjudication refers. I can safely assume that Russell does not want these skills to count as worthy of being protected or supported by referees on moral grounds. In the end, if he claims that these principles lack a moral content, then he cannot allow referees to make use of them. Conventionalism might accept such a principle of adjudication, but not in the context of the current professional sports, where these skills are tolerated and, perhaps even admired, by many. The fact that
they might be widely tolerated and/or admired here is not, then, a reason for referees to champion them.

There are two ways, according to interpretivism, in which gamesmanship skills can be taken off the list of skills that the referees have a duty to develop and encourage. The first way is to introduce a very restricted list of skills for each sport that referees should tolerate or encourage, while the other way is to introduce a morality clause that limits the skills referees should take into adjudicative account. The goal of these two solutions is to make sure that the skills that the referee is called on to encourage are just those skills that are at the same time essential for winning and do not involve poor sportsmanship. In the case of baseball, for example, FP should normally refer to skills like running, hitting or throwing the ball with speed and precision, and so on.

The first solution tries to do this without introducing moral conditions, while the second would use moral constraints by introducing what I call above a “morality clause.” Such a morality clause would have the following form: “where the skills recognized and encouraged do not involve gamesmanship or any other kind of immoral behavior.” While the second solution is easy to put in practice, the first one is difficult. Frankly, after multiple attempts to find a solution that is neutral from a moral point of view, I think that it is very unlikely that such a solution can be found. However, I cannot prove without a doubt that this is the case, so I am going to assume that such a solution exists. As a result, here are the two possible interpretations of FP, where FP2 corresponds to the first solution, while FP1 corresponds to the second solution:

**FP1:** Rules should be interpreted in such a manner that the excellences embodied in achieving the lusory goal of the game are not undermined but are maintained and
fostered, where the skills mentioned do not involve gamesmanship or any kind of immoral behavior.

**FP2:** Rules should be interpreted in such a manner that the excellences embodied in achieving the lusory goal of the game (like running, hitting, and so on) are not undermined but are maintained and fostered.

**FP1.** This interpretation of FP needs to be dismissed because it basically says that a referee is required to foster skills that are not immoral. This means that in certain cases referees will be called on to foster certain skills that are neither immoral nor moral, but morally neutral, which is hard to prove as a moral duty. As I will show next when I analyze FP2, FP1 is not a moral principle because there is no clear moral duty to ensure the flourishing of these physical skills precisely because they are morally neutral. I will make this point clearer next when I analyze FP2.

**FP2.** FP2 is not obviously a moral principle like FP1, so it is not altogether clear why referees would be morally bound to take it into consideration in the adjudicative process. A problem with seeing FP2 as a moral principle is that it is hard to consider it a moral principle in games that are morally reprehensible. In *Oliver Twist*, for example, Charles Dickens described a game that was meant to train young thieves and that consisted of having the children pickpocket a moving mannequin without ringing the bells attached to the clothes on the mannequin. In this case, it is likely that FP2 would require the referee to decide in such a manner as to foster the development of skills like speed, ability to conceal, ability to anticipate the movements of the “target” and so on. However, it is questionable that the referee has a moral duty to foster excellences like these in the
context I specified here, since one may very well accuse such a referee as supporting the morally repugnant activity for which the game was created (pick pocketing).

One possible solution, all too familiar, is to add a morality clause which refers to the moral character of the game in which FP2 is applied. This clause would exclude games like the pick pocketing example from the set of games to which FP is applicable. The problem with this solution is that it undermines all the advantages that FP2 had over FP1. Just as in the case of FP1, FP2 seems to need a moral clause that would make a statement like “FP2 is a moral statement” a banal (and for this reason uninteresting) statement, which means that this solution will encounter the same problems as FP1. Also, this solution would not work in the case of baseball, where, even if the sport is not morally reprehensible, players can win games by employing gamesmanship skills.

The fact that each of the two interpretations of FP seem to require a morality clause in order to pick up moral content suggests that the kinds of skills that a referee is meant to foster are morally neutral. Of course, in order to win it is useful to have skills that are decidedly moral, for example, courage, self-control and dedication, but these moral features are not central or necessary in order to win a game. Players like Babe Ruth or Randy Moss clearly show how individuals with outstanding physical characteristics can win games despite the lack of some if not all of these moral qualities. On the other hand, qualities like physical endurance or dexterity are morally neutral because they can be used for a variety of purposes. The same ability to run faster can be used to steal a base and steal a purse.

One possible reply to this point would be to say that these principles of adjudication are relevant inside the game, regardless of the social goals for which the
game is played. If a person is a referee, then she has a duty to put the game in the best possible light, regardless of whether the game itself has a further function (e.g., in the pick pocketing game, preparing good thieves). Thus, the game would have an inner morality and this principle would be internally moral, even if the skills in the game could be used later for nefarious purposes. Similarly, a judge in the Nazi legal system would still have a duty to follow the laws with impartiality, even if the rules themselves are morally wrong. Principles of adjudication in this case would still be moral even if the context in which adjudication takes place is wicked.

I think that there are two reasons to believe that Russell would not be very eager to go down this path. First, a principle of adjudication in the pick pocketing game I described is moral only in a weak sense. Second, Russell is an externalist who believes, as I pointed out before, that principles of adjudication are real and embody the general morality of larger society. The solution I just presented relies on the idea of an inner morality of sport, since according to it referees have certain moral obligations that are valid only in the context of sport, and this obviously contradicts externalism. In conclusion, FP’s morality has an external source and the idea of an internal morality of sport does not fit very well with Russell’s account.

I think much of the confusion about the meaning of FP comes from the use of an ambiguous expression like “excellences.” In general, something is an excellence if it is considered as desirable by a society. Some excellences are clearly moral (like courage), while others are morally neutral (like physical skills). Some excellences are culturally dependent, so that what is considered an excellence in one culture will not be considered an excellence in the other. For example, the ability of a person in show business to attract
attention can be considered an excellence, while the same ability would not count as an
excellence in a monastery. In this discussion, the question is whether physical skills are
excellences in the cultural dependent sense or if they are moral excellences that,
therefore, transcend cultural differences. Physical skills are hardly universally considered
excellences in all cultures. Eastern Christian traditions rely on the idea that in order for
one to achieve the perfect contemplation of God, one needs to forgo the passions of the
body, which made neglect or even abuse of the body a moral imperative. In this religious
context, physical skills are not excellences; while the ability to thwart their flourishing is
considered an excellence. What this discussion shows is that a possible externalist
argument that FP is a moral statement because it is a particular application in sport of a
more general principle inclusive of physical skills as desirable is invalid.

Another possible externalist argument for H2 would take the following slightly
modified form:

Individuals have a moral duty to develop human excellences.

Running, hitting the ball…are excellences in the context of sport.

Therefore, individuals have a moral duty to develop excellences like running,
hitting the ball and so on.

This syllogism is invalid, because the major premise is true only if the “human
excellences” mentioned here are moral and not physical excellences, since there is no
clear moral reason to develop physical skills, as I showed above. But if this is the case,
then this syllogism has no middle term, as “excellences” in the major premise refers to
universal excellences (usually, moral excellences), while in the minor premise
“excellence” refers to physical excellences, which is an excellence in sport but not in all other contexts.

I will stop my analysis of FP2 here. I have shown so far that this principle does not constitute a moral obligation, because physical skills are morally neutral, which means that they can be developed for immoral reasons. I also indicated that a solution to this problem would be to argue that FP2 is moral in a weak sense, as an internal moral principle that normatively regulates a practice, regardless of the moral status of the practice itself. I have shown that even if this solution is satisfactory, it is not available to Russell, because of his realist and externalist commitments. Also, an externalist attempt to deduce the morality of FP2 from a more general moral obligation to encourage the development of excellences was rejected because it does not take into consideration the distinction between local and universal excellences.

In conclusion, I have shown that neither of the two possible interpretations of FP is in fact capable of functioning as a moral principle. The possible interpretations of FP that have been offered here have been either morally neutral or possessed moral content only because they received it during the process of interpretation. Hence, this argument shows that the second premise (H2) in the interpretivist argument for the legitimacy of FP is false.

Based on the above discussion then, I think there are sufficient reasons to believe that deducing the legitimacy of the first principle of adjudication from its moral nature is invalid since FP is not a moral principle. I have shown that declaring that FP is a moral principle creates problems because the excellences that referees are supposed to base
their adjudicative judgments on are in fact morally neutral or, in certain cases, morally unacceptable. Attempts to interpret FP so that these problems would disappear requires the addition of moral clauses, which would not be needed if FP were a moral principle in the first place.

**Legitimacy and function.** A look at Russell’s arguments in “Are Rules All An Umpire Has to Work With?” provides a different solution that interpretivists can use to escape these difficulties.

This new way to justify legitimacy comes from the way Russell understands the requirement that referees interpret the game “in its best light.” One way to interpret this requirement is to construe “best” as a moral term. The other interpretation, on the other hand, does not make the kinds of moral claims I rejected in this section. Instead, it says that it is legitimate for referees to follow these principles of adjudication because the function of sport is well determined, and seeing the game in its best light would mean making sure that sport fulfills this function in the best possible way. The same perspective has been developed by Scott Kretchmar in his account of sport which follows Searle’s analysis of language. Is this a valid interpretation?

I see no reason to deny this interpretation, but my reason for thinking so is that it supports rather than undermines the conventionalist account of legitimacy in adjudication I am defending here. According to the functionalist account of legitimacy, since the function of sport is to test certain skills, then it is legitimate to ask referees to follow the principles of adjudication mentioned here because they maximize that function. But is this the only function sports have? Do games have the same function regardless of the context in which they are played? In the previous two chapters I argued that issues about
the function of sport are conventional in character. There is no reason to believe that a conventional creation like sport has a function that is independent of the decisions of the community.

The cases I presented in the previous chapter show that the functions interpretivists consider essential for games (testing skills or winning) can in fact commingle with educational factors (in sports for children), political (in the case of netball or korfball) or religious (in the case of Kendo). What I have also shown in the previous chapter is that these functions actively influence the way games are played and refereed. Furthermore, the fact that the function of the game is educational or political means that the referee is bound to act in order to maximize these functions, just as she is bound to maximize the ability of games to test skills. When the feminist community decides that the goal of the game is to promote cooperation, the referee cannot ignore this function.

In these conditions, the question “Why is the referee obligated to accept testing of physical skills as a function of sports, instead of a religious/political/educational function?” cannot be answered outside of a certain cultural context in which the game is played. The answer to this question is simply that the players or the larger community have created this game with certain cultural/religious goals in mind, and, therefore, that these goals can no more be ignored by referees than the goal of testing physical excellence can be ignored by referees. The legitimacy is given, just as the conventionalists argue, by the agreement of the participants in the game and those of the larger community.
**Raz and the nature of authority.** Another problem with the idea of deriving the legitimacy of a principle of adjudication from morality (deriving C from H1 and H2) can be identified by turning to Joseph Raz’s theory of authority. The essence of Raz’s argument is that the law has authority not in virtue of its merits, but because it preempts individuals from acting according to reasons connected to its content. In the context of sport, that would be the same as saying that the rules of the game have authority because they are rules of the game, not because they are fair or moral.

Raz distinguishes between two reasons for following a rule: content-dependent and content-independent reasons. Content-dependent reasons are reasons that relate to what the rule is asking one to do. For example, someone might follow the rule which requires motorists to drive only on the right side of the road because she believes that this rule will make her safer, given that the other motorists are likely to do the same, thus reducing the chance of a head-on collision. On the other hand, the same person can follow the same rule for a content-independent reason, namely that failing to follow this rule will increase the chance of her getting fined or even imprisoned by the police. Raz argues that a reason is content-independent if “there is no direct connection between the reason and the action for which it is a reason” (Raz, 1989, p.35). Fear of imprisonment in this case is the reason for following the law, but it has nothing to do with the content of the law or to any moral characteristics of the law.

Raz, following a line of reasoning developed by H.L.A. Hart, argued that the authority of law comes from its ability to replace the content-dependent reasons for following it with content-independent reasons, in other words to mediate between persons and reasons (Raz, 1985, p.299). Raz points out that the very fact that laws were
introduced is a result of the need to replace deliberations about the content-dependent reasons one has for obeying a law with content-independent reasons. This is the very nature of law and if this replacement did not take place, then laws would lose their authority (Raz, 1985, pp.299-300, 303-5; Coleman, 2001, p.124). In the case of sport, if the content-dependent reasons for following a rule (manifest in the ability of this rule to foster excellences) were not replaced by the content-independent reasons for following the same rule (manifested in the commitment to play that sport and the realization that this rule is essential for the game or that it is widely accepted by the community), then there would be no reason to just ask players to act based on the a limited number of rules so that the excellences essential to the game would be maximized. I will make this point clearer in the next two paragraphs.

This point can be seen from a different perspective, suggested by Stuart Shapiro, which I will adapt here to the case of sport. Shapiro starts from the assumption that laws make a practical difference, that is, they can have a practical impact in the life of the people who follow them. If this condition is not satisfied, Shapiro argues, these laws are not really laws. In the case of sport, this is also the case with rules. If they no longer make a difference in the game, they are not really rules of the game. Let us assume that referees interpret rules based on the impact they have on the excellences that are supposed to be fostered, according to Russell’s principle of adjudication. But if a rule R is supposed to be followed because of the excellences it fosters, then the reasons for following R are the same reasons for following the principle according to which certain excellences are desirable and need to be fostered. R can simply be eliminated because it makes no difference as such in the process of adjudication (Shapiro, 1998, pp.494-496). Let me
give an example to clarify this point: imagine that a Herculean referee has discovered that
the rule defining the position of offside fosters certain excellences that are essential to the
game of soccer. The idea here is that if this rule were to be eliminated, then it would
become too easy to score and the game would not be shown in its best light. But if this is
the case, then the offside rule has no authority for the referee, which means that it doesn’t
make any adjudicative difference for her. That is because even if this rule were to
disappear, it would not make any difference in the process of adjudication, since the
referee would continue to penalize players in offside positions based on Russell’s first
principle of adjudication. And if the same kind of reasoning is applied in the case of all
the rules of the game, it is very probable that only a handful of rules will be maintained
(rules that cannot be explained as maximizing certain excellences), while the rest can be
eliminated and replaced with the first principle of adjudication. This kind of image of
sport is unrealistic and undermines the point and function of rules, as well as the image of
sport as a rule-based activity.

In conclusion, there is a clear reason for rejecting the idea that referees have
authority because of the validity of their decisions, and, therefore, for rejecting the thesis
that the principles of adjudication have authority over referees because they generate the
best possible view of what sports at their best are all about. For Raz, authorities can be
legitimate without being necessarily right: “[a]n authority is justified …if it is more likely
than its subjects to act correctly for right decisions” (Raz, 1986, p.61). In other words,
referees have legitimacy because they are more likely to be right rather than because they
are always right. Or, to put it in conventionalist terms, a community is likely to choose a
referee because she is more likely than the players to make the right calls, which means
that the legitimacy of the referee and of her decisions comes from this collective decision of the community rather than from the content of her decisions.

It follows from this that the legitimacy of the referees and their decisions, as well as the legitimacy of the principles of adjudication, comes from a certain content-independent reasons, which, in this case, are the reasons that emanate from the athletic community and from their collective contention that certain designated persons (referees) are more likely to make the correct calls in a game.

But the argument so far only shows that the legitimacy of principles of adjudication cannot be based on content-dependent reasons (the validity of adjudicative principles or the morality of principles of adjudication), not that content-independent reasons are the basis of the community’s conferral of legitimacy on referees. This means that a central question remains: Why are communities the source of legitimacy in sports rather than some other content-independent source?

5.3. The conventionalist theory of legitimacy and its foundation

If my above arguments are on the mark, then it follows that conventionalism is the only plausible way to understand the adjudicative principles that referees in sport are bound to follow. In this section, therefore, I am going to present the main claims of a conventionalist theory of adjudication in terms of the principle of legitimacy. A conventionalist theory of legitimacy needs to identify those principles that referees have an obligation to take into account in the process of adjudication and, at the same time, needs to show why these principles have authority in adjudicative practices. With regard to the first issue, conventionalists argue that referees are bound to apply rules, certain
moral principles and conventional principles in the process of adjudication. With regard to the latter issue, I argue that there are certain moral principles that have authority in themselves and that even a referee who has certain professional duties to discharge has to comply with these moral standards. Communities thus have no special standing that would allow them to override the authority of these moral principles. When the life of individuals is in imminent danger or the freedom of human beings is abused, then moral principles simply trump sport principles.

Outside of these special moral cases, conventions play the central role in determining what kinds of principles referees are bound to follow. More specifically, athletic communities determine what conventions are followed, what their role is in the adjudicative process, and how rules are to be interpreted and applied in specific instances. Indeed, in certain cases rules can even be ignored if communities so decide.

So far so good. But things get more complicated when the issue of justifying the obligation to follow conventions is brought up. Although the issue of legitimacy in legal adjudication is very complicated, it is even more complicated in sport adjudication. At least in legal systems adjudication is clearly delimited, so that adjudication is understood to apply to judges and certain institutional structures. Further, legal adjudication presupposes that judges can make decisions that limit the freedom of individuals through the use of force. This is not the case in sport. First, the authority of referees is limited. In fact, if authority is defined as the possibility of imposing a certain action on an individual against her will, then no aspect of sport has any authority at all. While the kinds of obligations inherent in legal and political systems cannot be escaped, those inherent in sport can be avoided. One cannot decide that she is not bound by a certain law or a
certain decision of the government, but she can decide that she is not bound by sport obligations by simply not playing the game or playing the game under terms that she consents to (different rules or different organizational structure). The authority that referees have is thus conditional.

For this reason, it is hard to draw a very clear line between what is and what is not an instance of adjudication. The paradigm cases are those of referees making decisions in professional organized games. In my argument so far I have avoided informal instances in which players make their own decisions, because this case is too different from the paradigm cases to count as adjudication. On the other hand, I considered cases of adjudication decisions made by referees in informal situations where the participants in the game select a person as a referee and agree to let this person make the necessary calls. In the end, these cases are not so different from adjudication in professional games as far as legitimacy is concerned. The authority of the referees is similar in both cases, as they both can impose calls on players who do not accept them, while the players have the freedom to reject these decisions by refusing to play the game. However, in professional games the obligations of the referees are admittedly more complicated, including contractual obligations, while in informal cases the obligations of the referee will most likely be moral in nature (friendship, promises, etc.). In conclusion, legitimacy in sport adjudication is dependent upon community buy-in, regardless of whether the process of adjudication is formal or informal. The community decides what principles should be taken into consideration by referees, as well as who is a referee and what level of authority she possesses. So, the questions remain: “why are communities justified in deciding who is the legitimate referee?” “what counts as a legitimate call?” and “what
are the principles of adjudication referees are bound to follow?” The rest of this chapter will answer these questions.

**Dworkin’s account of legitimacy.** One possible answer to these three questions was presented by Ronald Dworkin. Dworkin’s account of legitimacy follows similar conventionalist themes. This is how he describes it:

> We are at least able to consider our hypothesis directly: that the best defense of political legitimacy – the right of a political community to treat its members as having obligations in virtue of collective community decisions – is to be found not in the hard terrain of contracts of duties of justice or obligations of fair play that might hold among strangers, where philosophers have hoped to find it, but in the more fertile ground of fraternity, community and their attendant obligations. (Dworkin, 1986, p.206)

Dworkin goes further and puts political obligations in the same category with family and friendship obligations. However, because legitimacy for Dworkin is at bottom a moral matter, his account of adjudication differs from the conventionalist one I am defending. For Dworkin sees the authority of communities as deriving from the fraternity which defines these communities. Such a community, which he calls “community of principle,” accepts the fact that its members have rights which go beyond what political institutions can accept, and it is based on the concern and responsibility that each individual should have for one another (Dworkin, 1986, p.213). As Dworkin puts it, communities of principle have at their base a promise that law will be chosen and changed in a principled way.

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A community of principle, faithful to that promise, can claim the authority of a genuine associative community and can therefore claim moral legitimacy – that its collective decisions are matters of obligations and not bare power – in the name of fraternity. (Dworkin, 1986, p.214)

There are various reasons to reject this model of legitimacy in sport. The most immediate is that this model denies that choice creates obligations (Dworkin, 1986, p.207). But in sport it is the case that the rules of the game and the decisions of officials have authority only so long as the athlete chooses to play the game. This does not necessarily mean that Dworkin is wrong in refusing to accept the role that choice plays in adjudication, but rather that his account has in mind political obligations that are more similar to familial obligations. So while political and familial obligations hold even if no one voluntarily consents to them, in sport obligations are clearly dependent on the voluntary consent of the participants.

The second reason for rejecting Dworkin’s model has to do with the moral conditions communities need to satisfy in order for them to possess legitimacy. If principles of adjudication are legitimate because they are established by a community of principle, in which true concern for the other exists, then one needs to establish that athletic communities are fraternal in the same sense as political communities. This is not an implausible argument, but the problem is that many principles of adjudication in sport do not have moral content. Indeed, in sport certain decisions reflect a concern for others (for example, rules that concern safety), but most of them, as even interpretivists concede, concern non-moral issues (for example, competitive balance, the kinds of skills that are tested). It might be argued that even these latter rules reflect a concern for others,
as, for example, the decision to increase the size of the strike zone reflects a concern for
the pitcher when the quality of the batters is overwhelming (Russell, 1999, p.39). But such decisions are better explained by concern for maintaining the appropriate
competitive balance between pitchers and batters.

**Positivist criticisms.** William Lucy argues that Dworkin’s fraternity-based account of
legitimacy is problematic in the case of legal systems. The first reason is that legal
obligations carry a level of coercive power that fraternal obligations do not. It might be
the case that breaking fraternal obligations triggers some form of sanction from the
community, but this kind of sanction is rarely if ever associated with the level of harsh
punishment that laws can impose (Lucy, 2002, p.249). The second reason for dismissing
Dworkin’s account is that one can more easily change her family than avoid the coercive

In the case of sport, the choices participants have are different, as I have already
shown, from those people have in familial and political matters. For this reason, I will not
discuss Lucy’s second argument. As for his first argument, breaking the rules of sport
does not even seem to prompt the same kinds of sanctions that violating fraternal
obligations can trigger. If a player thinks that the penalty is less than the advantage she
gains by breaking the rule of the game, then she is likely to break the rule and the
community is likely to accept this decision with moral impunity.

Even if Lucy’s arguments against Dworkin’s account of legitimacy are not
applicable in the case of sport, the fact that fraternity does not necessarily characterize all
athletic communities means that legitimacy of adjudication principles in sport cannot be
justified this way. Instead of using “fraternity” as a basis for legitimacy, I will turn to the
work of Michael Bratman and Kenneth Himma, and use their notion of “expectations” as
the central concept to answer this question.

**Bratman, Himma and justified expectations.** The relevance of Michael Bratman’s
work here has to do with his notion of collective intentionality, more precisely his idea of
“shared cooperative activities” (SCA). Bratman argues that SCAs have three fundamental
characteristics: mutual responsiveness, commitment to the joint activity, and commitment
to mutual support (Bratman, 1992, p.328). In essence, it involves the idea of a communal
effort directed to a certain goal, in which the individual is not just an isolated agent
whose own intentions just happen to coincide with those of others, but a collective agent
whose “we” intentions ensure that all members of the group are acting in concert with
one another (Bratman, 1992, p.329ff). Kenneth Himma shows how this communal
structure can create obligations, pointing out that this normative source is represented by
the idea of commitment, since commitments “induce reliance and a justified set of

In sport, this fact is quite clear and easy to see. Sport is a SCA because it displays
all of its telltale characteristics. There is mutual responsiveness because athletes respond
or at least attempt to respond to one another’s intentions at a variety of levels (athletes
respond to the intentions of others as teammates or as opponents, and referees respond to
the intentions of the players when they break the rules or when certain conventions of the
players are accepted by both sides). The commitment to a joint activity comes from a
decision to play that particular sport, with the clear understanding that this would
necessarily involve other players and that cooperation needs to exist among all the
participants to make the game possible. And, finally, there is mutual support among the
participants at various levels. At the level of the team, the teammates make a commitment to support each other, and this support is apparent even between opponents given there mutual commitment to respect the rules of the game, and given their further commitment to safety conventions that protect injured players (as in the case of soccer, when an injured player is on the ground, the player of the same or even the opposing team who has the ball according to a widely and rigorously held convention, is supposed to kick the ball out of bounds so that the medical team can attend to the fallen player).

Let’s make the difference between SCAs and communities of principle even clearer. While communities of principle are characterized by a sense of fraternity, SCAs are morally neutral. In order for a SCA to exist, the participants need to cooperate, which may involve supporting one another, but this is not the same as saying that they are interested in the well being of the other. Furthermore, unlike a community of principle, the participants in a SCA do not necessarily need to show genuine concern for one another. This happens especially when individuals cooperate because there is a unity of interests between them, not because they care for the other’s well being. The mutual support that a SCA requires to exist does not have to be morally motivated. It might be the case that persons support each other because this support is necessary to achieve a goal they both want.

As for the sources of normativity, Himma’s model is relevant here, since the commitment to play the game generates the obligation to follow the rules, while the commitment to mutual support creates an obligation to follow the conventions built around the game. By playing the game together with others, the athlete is bound to follow
the conventions set by the community because the others expect her to follow these conventions.

This solution makes sense in the case of sport. When players gather to play a professional game of football, their participation is marked by certain justified expectations that if broken would be akin to breaking a promise. When a referee is appointed, certain expectations also accompany and define her adjudicative role, some of which are spelled out in contracts and have juridical power, while others, like the nature of the principles of adjudication which have to be taken into consideration when the game is played, are tacit and yet generate clear expectations. These expectations apply to the members of the community and to that community alone, and for this reason referees in football are not bound to apply the rule of golf or any other sport.

In conclusion, if sport is a SCA and, as a result, the participants are bound to certain obligations resulting from the fact that games presuppose certain expectations about how participants should act, then the community has normative force. Simply put, a player who decides to play the game becomes committed to it and, as a result, creates in the other participants certain expectations. As a result of their commitment to the game then, agents in sport are expected to meet the expectations of the relevant community. If this agent is a referee, then one can understand why referees have an obligation to follow the collective decisions of the community, and why those collective decisions (and the expectations they put in play) determine what principle of adjudication is relevant in specific instances.
Even if the argument I made in the previous chapters is valid and indeed conventionalism does a better job in explaining the phenomenon of adjudication than interpretivism, this does not meant that it has to be accepted. There is merit in arguments that are valid, but there is also something vacuous about equating value with logical validity. It is not enough to be right about a social practice, if this position does not make a positive difference in the existence of that practice. For this reason, I think it is necessary to conclude this discussion on adjudication I presented in the previous chapters by showing the significance of a conventionalist position like the one I defended for the overall value of sport and those who play and watch it.

I do not claim that conventionalism offers solutions to all the problems in sport or even in adjudication. I think there are elements in interpretivism that make the positions of Russell, Simon and Dixon very appealing from an axiological point of view and for this reason I borrowed some of their points to reinforce the conventionalism of D’Agostino and Lehman. Dixon, for example, argues that the correct decisions are the most morally defensible, regardless of whether communities actually support them (Dixon, 2003, p.115). In other words, by having courage to maintain their convictions in
face of the pressure exerted by the community around them, realists and interpretivists protect the moral integrity of sports. Leaving the community the freedom to mold sports the way they want, would, Dixon contends, place sports in danger of losing their moral integrity. Even if communities have a number of ways to avoid negative moral consequences and real moral criticism exists inside communities, as I have shown in Chapters 3 and 4, conventionalism cannot provide the kinds of guarantees realism can offer that immoral practices will not occur.

Conventionalism encounters problems at this level not just because it gives communities freedom to construct sports according to their interests and values, but also because it makes anything that communities construct legitimate. In Chapter 5 I have shown that according to conventionalists legitimacy is at bottom a matter of communal agreement, thus granting athletic communities ultimate discretion in adjudicative matters. Therefore, according to conventionalism, if a community decides to accept an immoral practice of games, this practice would not be just acceptable, but also legitimate regardless of what actual participants think.

However, the fact that a player is bound by rules or conventions only as a result of her decision undermines the interpretivist argument directed at conventionalism. No matter how morally reprehensible a sporting practice might be, in the end it can affect the players only as long as they want to be affected, since they have the freedom to quit playing the game. Unlike political institutions, the moral dangers that sport can create are less menacing, which is not to say that they pose no real moral dangers.

Despite the challenge that conventionalism can potentially pose to the issue of moral integrity, there are good moral and political reasons to prefer conventionalism to
interpretivism. The most significant reason to make this choice is that conventionalism does a better job of protecting communities and individuals from abusive interventions in the name of rational principles. My point is that interpretivism imposes on athletic communities obligations that are morally unjustified.

Let us take for example a particular application of the interpretivist principle that Russell considers real and, for this reason, independent of any conventional intervention. Imagine that a group of friends decide to play a game of soccer, but due to the lack of resources they are obligated to make certain changes to the rules. For example, they decide to use as goalposts two sets of pillars that, unfortunately, are very close to one another, which means that the area between goalposts will be much reduced making it that much more difficult to score a goal. This situation undermines the internal principle of sport defended by John Russell, since it fails to put the game in its best light. In fact, Russell’s analysis of the modifications in the strike zone makes a similar point. Just as in the case of the strike zone, where maintaining the regular strike zone when batters are significantly superior to pitchers would undermine the spirit of the game (Russell, 1999, pp.39-40), so in the case I just described making the zone between the goalposts too small would have the same effect. The game would not be seen in its best light, because the game will fail to be sensitive enough to the differences in abilities between the two teams. Since it is so hard to score, even if a team is significantly superior to the other, this will not be reflected properly by the score board. In means that the organizers and players in this game have acted against the moral integrity of sport. So, should the organizers be morally reprimanded?
If Russell’s internal principle (“The practice of any game should be undertaken in such a manner that the excellences embodied in achieving the lusory goal of games are not undermined but are maintained and fostered”) is truly a moral principle, then a moral reprimand in this special game of soccer is required. However, if this were the case then the very idea of moral responsibility would be undermined and trivialized. It is hard to grasp what was done wrong in this case. No one was injured, no fundamental rights were trampled upon and no injustice was done.

Another way to put Russell’s point that a moral principle has been violated in such instances is to say that the duty to improve oneself has been violated. But to say that would ignore what James S. Fishkin calls “the robust zone of indifference,” which he defines as “a substantial proportion of any individual’s actions” that “falls appropriately within the zone of indifference or permissibly free personal choice” (Fishkin, 1982, p.23). Deciding the distance between the goal posts or even what kind of game one plays would seem to fall squarely into this zone of indifference. Acting according to the two principles elaborated by Russell might be desirable, but it is not for this reason morally obligatory. By deciding not to work out today and instead to watch TV might be interpreted as a violation of the principle requiring me to improve myself, but this does not mean that I am morally obligated to work out. By allowing communities the freedom to build their own type of games and to organize them according to principles which are not exclusively moral, conventionalism allows individuals a level of freedom that we normally allow individuals in everyday life, sport included.

In Chapter 4 I have shown that certain communities might decide to construct games according to values that are important to their particular culture. Deciding to
ignore or reject such values because they contradict a moral principle deemed universal to any sporting enterprise would represent an unjustified interference with individual and collective freedom. As I mentioned, one justification that interpretivists use to justify such interference is to present it as a matter of moral principle, but, as I have shown before, even if the internal principle developed by Russell is a moral principle, it does not create the kinds of obligations that would justify this kind of intervention. If acting according to Russell’s internal principle is supererogatory, then this principle cannot create obligations by itself, be they moral or political.

Another way to justify the imposition of a certain sporting principle would be to say that this is what the practice of sport itself requires. The problem with this kind of argument is that any community to which the internal principle is applied does not have to accept the same notion of sport specified by that principle, and it can be justified in not doing so. A community should be able to accept a form of sport that contradicts Russell’s internal principle as long as this form of sport is sufficiently similar to paradigm cases of sport linguistically considered that I discussed in Chapter 3.

In conclusion, given the open nature of sport and especially the fact that participants in sport can decide whether sport obligations apply to them or not, I argue that a high bar for any intrusion in sporting practices needs to be set. By this I mean that when someone wants to regulate a certain practice from outside of the community that set up this practice, she needs a very good moral or non-moral reason for doing so. Of course, a good reason for intervening is if the practice threatens to an unreasonable degree the freedom or well-being of individuals, but not because it fails to put the game in its best light. As long as the individuals playing the game agree to the way the game is
played, then I see no reason to morally reprimand the participants for violating Russell’s internal principle.

The ideas of freedom and autonomy of individuals and communities have been central to the points I made in the previous chapters. In the first chapter I have shown that a study of adjudicative practices cannot start with a thick conception of what sport should be and that this study has to be at first descriptive. Beyond the methodological correctness that justifies this stance, this position is justified by the ethical imperative of tolerance for sporting practices in other communities. In other words, an account of adjudication should be as open as possible to present and future adjudicative practices.

After presenting the most important positions in the philosophy of sport literature, in Chapter 3 I challenged the realist views on sport. In ethical terms, the meaning of this argument is that communities are autonomous entities able to control their own sporting practices. The nature of sport, as I have shown, makes it very unlikely that elements of sport are realist in the sense that certain interpretivists require. After explaining that sport is a human creation (I used Searle’s account of constitutive rules), I made it clear that attempts to find real elements inside sport fail with one exception, namely those features of sport that qualify as applications of moral principles. By reshaping the notion of convention to broaden its scope beyond that of coordination problems, I showed that conventionalism is capable of functioning as a theory of sport.

In Chapter 4 I used the conclusions from the previous chapter and Lucy’s theory of adjudication to construct a theory of adjudication in sport. I showed that a theory of adjudication has two essential dimensions: rationality and legitimacy. In Chapter 4 I developed a theory of rationality, showing that conventionalism differs from
interpretivism not just because it allows conventions to work as principles of adjudication, but also because it allows for diversity in the kinds of values that are relevant to adjudication. Interpretivism focuses on moral and what I have called internal values (e.g., competitive balance); while conventionalism claims that other values can play an important role if the athletic community decides that they are worthy to be pursued through sport. Conventionalism understood this way is valuable because it encourages tolerance and promotes diversity. Although diversity is not a moral value, it is an important cultural value nonetheless.

Finally, in Chapter 5 I presented an account of legitimacy in adjudication and I showed that an attempt to characterize it cannot rely on the morality of those elements of sport whose legitimacy is in question (referees, their calls or principles of adjudication). Instead, legitimacy is offered by communal agreement, which in itself has legitimacy conferring power because of the normative force of reasonable expectations it generates that ensures participants and referees alike will act in concert with that agreement. Although moral principles offer legitimacy, moral principles in sport play only a limited role. While morality plays a role in sport and legitimates certain decisions that referees or players are obligated to make, in most cases sport is morally neutral, especially with regard to sport’s perfectionist character, its skill-testing aim. Following a line developed by Neil MacCormick in “A Moralistic Case for A-Moralistic Law?”, it is morally justified to separate principles of adjudication and moral principles, because if principles of adjudication are understood as having the power to create moral obligations, then actions that normally are indifferent from a moral point of view would become morally relevant, trivializing morality as a result. In the end, even if sports are serious enterprises,
especially when they are played professionally, they are still connected to the idea of play and, as a result, enjoy autonomy from some moral obligations.


