HOW YOU PLAY THE GAME

Papers from

The First International Conference on Sports and Human Rights

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PREFACE

… the importance of the relationship between human rights and sport in our modern world is not confined to the rather obvious proposition that human rights, and the principles and standards underlying them, should be observed and promoted in both international and national sport. Sport itself, both international and national, can – and has in the past – played an extraordinarily significant role in advancing human rights, particularly among some of the world's most disadvantaged and vulnerable people.

Sir William Deane, Governor-General of Australia

When the Human Rights Council of Australia first approached the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1998 for advice on the proposal to hold the first ever international conference on sport and human rights, it was already clear that the 2000 Sydney Olympics would be demonstrating that sport and politics do mix. For the year 2000 was also the year that reconciliation between Australia's indigenous people and its later arrivals should have been confirmed in a national movement of solidarity, when past and present injustices would be recognized and when a commitment to redress them would be given by the Australian people and by their elected representatives. Instead, at a time that the eyes of the international community will be on Australia and when thousands of media representatives will be seeking background to the Olympics, the continuing denial of the human rights of the first inhabitants will frame each and every story beamed back into television sets and internet sites around the world.

Those early discussions with ATSIC and with others also brought home to the Human Rights Council the range and complexity of issues thrown up by an exploration of the relationship between human rights and sport and the contribution that sport has made and can make to the welfare and wellbeing of millions world-wide.

This extraordinary range of issues is reflected in the proceedings of the conference. Topics of the presentations and panel discussions include the rights of athletes in the context of drug-testing and performance enhancement, the rights of fans to travel freely and to access sporting events, the rights of communities affected by the mega-events that impact on their habitat and their daily lives, the rights of women to equal access to sport and to equal recognition of their achievements, the rights of children to protection from exploitation, the right of those suffering discrimination in sport, and the responsibility of sporting manufacturers to protect the right of their workers.

One unique aspect of the conference was the inclusion in the proceedings of athletes who were not asked to necessarily present formal academic papers but to speak about their experiences in overcoming intolerance and disadvantage and the issues they had to confront in order to compete. To further underline the community focus of the conference, Aboriginal children from outback northern Australia were invited to meet their sporting heroes and to be presented to the Governor-General. Sadly, an invited team of young Liberian soccer players, rehabilitated through sport from the effects of years of civil strife, were not granted visas.

The *How You Play the Game Conference* has generated broad interest both in Australia and beyond. It has had an impact on the agenda of the United Nations Committee on Economic, Social and Cultural Rights and has received high praise from the United Nations Children's Fund. We hope that this collection of papers will lead to further exploration on the contribution of sport to the protection of human rights and become a resource for both those who study sport and those who enjoy it as participants or as spectators.

André Frankovits
The Human Rights Council of Australia

INTRODUCTION

The University of Technology, Sydney is pleased to support the publication of the papers presented at the *First International Conference on Sports and Human Rights*. The following collection of presentations includes all papers that were submitted to the conference organisers prior to the printing deadline. While a number of the conference presentations are not represented in this document the material published here is a good representation of the range of topics covered during the conference.

The papers are presented in the order they appeared on the official conference program. Style and length of papers varies as the presentation format was left to the discretion of the author(s). Therefore the responsibility for content rests with the individual contributors. At this point I would like to acknowledge the tireless work of Sue Harris in liasing with authors, sorting the papers and typing the document.

The diversity of topics tackled in the papers presented here is a testament to the wide-ranging impact of sport on human rights. A number of the authors have challenged current sporting practices and called for sport to be more cognizant of human rights issues, while other papers articulate how sport has assisted in promoting understanding of and respect for human rights.

The Human Rights Council of Australia is to be congratulated for launching this inaugural conference on Sport and Human Rights and hopefully this is just the beginning.

Tracy Taylor
UTS, School of Leisure, Sport and Tourism
Faculty of Business

A message from The Human Rights Council of Australia

Distinguished guests, ladies and gentlemen, colleagues and friends.

On behalf of the Human Rights Council of Australia let me extend to you a warm welcome to 'How you Play the Game: The Contribution of Sport to the protection of Human Rights'.

This is the first ever conference on sport and human rights and it takes place almost exactly one year away from the Sydney 2000 Olympics… the Millennium Games.

This first gathering of its kind, it will be looking at what the human right to play sport - and it is a right which is recognised in the Olympic Charter - what the human right to play sport means in practice and how we can learn from the experiences of the past to make sure that the Olympics fulfill their potential to benefit people's lives in the future.

The Olympic Games frame this conference but the issue of human rights in sport has far wider implications than the international sport festival that will take place in Sydney next September and that recurs every four years.

Through the ever-spreading reach of the media, through the globalisation of sport and of sporting events, and through the internationalisation of each and every sport, sport has become an intrinsic part of our lives. We cheer our sporting heroes, we hold them up as models for our children, we are passionate about our tribal allegiances.

It is precisely because of the pervasiveness of sport that it becomes so crucial to examine how the well being of those who play, those who watch, those who produce and those who aspire can best be protected.

We hear so often how sport and politics don't mix, how the two must be kept separate. This conference is designed to show that things are not that simple. That sportsmen and women may face discrimination and lack of access. That being a role model also comes with responsibilities. That exploitation can affect both players and fans.

During this conference we will hear of the role that sport has played in the past to overcome discrimination and racism, and in the overthrow of unjust regimes. We will be told of the challenges facing society and particularly athletes, in achieving equal access and equity. We will look at the way that children, women, workers and the disabled can be protected in and through sport. We will hear of the impact on people of mega-events such as the Olympics and the civil liberties implications of drug testing.

These are human rights issues. These are political issues. The victims of the Maccabiah Bridge disaster can testify to that. The sportsmen and women who will be with us during this conference will bear witness to the redemptive aspects of sport and to its potential impact in changing people's lives for the better.

Advocating human rights need not be confrontational, need not be threatening. Jesse Owens contesting Hitler's myth of white supremacy, the two flags carried by Cathy Freeman, the black power salutes at the Mexico Olympics all struck a blow for human rights. Human rights are empowering. They engender solidarity and reconciliation among people, just as sport is expected to do.

We are fortunate to have an especially distinguished and varied line up of speakers and participants at the conference, some of whom have come halfway round the world to be here with us today. During the next two and half days they will address the many themes that I have sketched briefly. We wanted this conference to be grounded in people's lives, so we have invited athletes as well to be with us, including some young friends from the Northern Territory.

I would like to take the opportunity now of expressing my thanks to the major sponsors of this conference, The Aboriginal and Torres

Strait Islander Commission, Australia's aid agency AusAID, the NSW Department of Sport and Recreation, the NSW Law Foundation, Waverley Council, Physico, the British Council, Sport Canada and the Australian Youth Foundation. We did not receive support from the sporting industry; it seems that here in Australia - unlike in many other countries - the corporate world has still to work out how to address a different bottom line from that of the economic one.

*The '**How You Play the Game**' Conference is meant to look to the future. To the twenty-first century when sport will play an ever-increasing role in our lives whether as participants or consumers. This human rights conference is designed to address the challenges that will be thrown up in the world of sport in the coming century. We appreciate your involvement, we look forward to your contribution and we hope that you will have an enjoyable and informative time.*

André Frankovits

A message from the International Olympic Committee*

Ladies and Gentlemen,

At the opening of your deliberations on the contribution of sport to the promotion of human rights, I would like to congratulate you on your personal investment in the essential struggle in which the IOC and the Olympic Movement are such determined participants.

The Olympic Games are the largest gathering of athletes in the world, the product of many years of training and sacrifice. They are the manifestation of the dreams of thousands of young people throughout the world which kindle renewed desire for acts of dedication, selflessness and generosity.

The goals of Olympism are to place sport at the service of the harmonious development of humankind in order to establish a peaceful society dedicated to the preservation of human dignity. This is one of the foundations of the Olympic Charter that guides the IOC.

To promote and respect human rights is to respect each and every human being. It is to provide the opportunity for each and everyone to reach their full potential.

To promote and respect human rights is to fight unrelentingly against all forms of discrimination and in this effort the IOC gave its all to abolish apartheid in sport. This struggle was a lengthy one but it resulted in 1992 in the participation of a multiracial South African team in the Barcelona Olympics which witnessed the return of that country on the Olympic stage.

To promote and respect human rights is also to provide ways for those who have the ability but not the means to have the possibility of stepping onto the winner's podium at the Olympics. Currently Olympic Solidarity has 480 bursars from 109 countries. This programme of bursaries made it possible for 7 athletes to become world champions at the Atlanta Olympics in 1996 and for a further dozen to gain a medal.

To promote and respect human rights is to seek to prevent political conflicts from reducing to zero the future of hundreds of young people. Thus in 1992, in the midst of the conflict in Bosnia-Herzegovina, the IOC provided a plane so that Yugoslavian athletes could compete in Barcelona.

To promote and respect human rights is to assist women to achieve the same rights as those of men and the IOC helps to integrate women on the sporting stage as well as in sports administration.

To promote and respect human rights is to struggle for peace by respecting the Olympic Truce and to collaborate with the major international humanitarian organizations in establishing programmes to assist children displaced by wars and civil conflicts, and to focus on the rehabilitation of children whoa re victims of violence or extreme poverty. Currently the IOC funds dozens of such programmes in Burundi, in Nepal, in Ghana, in Guatemala, in the Balkans, in Tanzania, in Colombia and in many other countries.

Our goals and our duty is to respect the basic universal ethical principles that preserve human dignity and that contribute to peace in the world through sport at both the elite and at the local level.

On behalf of the IOC and of the entire Olympic Movement I would like to send you my best wishes for the success of your conference whose outcome will be a further step on the path to universal respect for human rights.

Juan Antonia Samaranch
Marquis of Samaranch
President, International Olympic Committee
12 September 1999

*[unofficial translation]

A message from SOCOG and SPOC

On behalf of the Sydney Organising Committee for the Olympic Games, and the Sydney Paralympic Organising Committee, we send best wishes to the international conference How You Play the Game - the contribution of sport to the protection of human rights.

In 1956, the manager of the Olympic Village at the Melbourne Olympic Games, Philip Miskin, described his role in the following words:

> *'We are to be hosts to the young men and women of about 70 nations, without distinction of race, colour, politics or creed. We have to provide their accommodation and training facilities and their performance will depend on the quality of what we provide. Their food, living conditions and leisure opportunities must be the best that we can offer. Moreover, we must make no distinction between any of them. We want them to give the best performances they are capable of. We want to be agents of good will to everyone of them, and when they leave us, we want them all to be good ambassadors for Australia.'*

Philip Miskin's words are still a valid and powerful expression of the Olympic spirit. Since 1956, the Olympic movement has grown and been strengthened, as more and more countries have achieved independence. In turn, the Olympic movement has given them the opportunity to assist their identity on a great sporting stage and we have seen marvellous performances by their athletes. As well, the Paralympic movement has greatly expanded the human rights of millions of disable people around the world.

There is no greater expression of universality, inclusiveness and respect for diversity than the Olympic and the Paralympic Games. In Sydney in 2000, 200 international teams will participate in the Olympics and over 125 in the Paralympics. Some are very wealthy and strong, others poor and weak. But in the eyes of the Olympic and Paralympic movements, and of ourselves as organisers, all are equal. All the athletes are entitled to the best conditions we can provide for them, so that they can perform to their potential and achieve the inspiring, uplifting performances which make these Games such wonderful events.

It would be unthinkable that Australia could host the Games of the new millennium without the fullest recognition and participation of our own indigenous people. We intend to carry out this responsibility in full. Our first Olympic Arts Festival, the Festival of the Dreaming, was the greatest celebration of indigenous culture ever held in Australia. In the same spirit, after it visits the Oceania countries, the Olympic Torch Relay will begin its Australian journey at the symbolically important site of Uluru, with the first runner on Australian soil the outstanding Aboriginal Olympic athlete, Nova Peris-Kneebone.

It is our aim that the 60 day sporting festival which the Olympic and Paralympic Games will represent in September and October next year will reaffirm the true sporting values of dedication, courage, tough but fair competition, good sportsmanship, grace under pressure, celebrating the achievement of the other person and respecting the individual human worth of men and women everywhere.

We are sure your conference will make an important contribution to the strengthening of human rights and wish your deliberations every success.

Sandy Hollway
Chief Executive Office of Sydney Organising Committee for the Olympic Games (SOCOG)

Lois Appleby
Chief Executive Officer of Sydney Paralympic Organising Committee (SPOC)

A message from the Millenium Stars

Dear Friends,

A few months ago we were invited to make a trip to Australia as a football team who have been involved in the fighting in our country and been able to recover through football.

Father Joe assured us that in sharing our stories it would help others understand how football can help in the resolution of conflict and help other young people to understand the extent of the violence we were subjected to.

When we heard we had been refused visas we could only think it was because we had been so open in sharing our stories that the Australian Government saw us a perpetrators rather than victims and were not interested in our story of recovery and rehabilitation later.

Despite the fine words it seems the world will always see us as the 'child killers'.

After seven years of pain and suffering we feel our trust has been betrayed again - this time by the 'good' people.

Please tell the world we are just young people who want a second chance.

The Millenium Stars

A message from the South African High Commission

Distinguished guests
Ladies and Gentlemen

Many of you will be familiar with cliches such as levelling the playing fields, shifting the goal posts and raising the hurdle which are commonplace in political debates. While these have literal meanings in the sports activity, they have acquired strong connotation for public policy initiatives which have far-reaching implications for human rights.

This demonstrates that sport and human rights are inextricably interlinked aspects. Incidence of poverty, political instability and economic underdevelopment tilt the playing field against sports people of countries that experience these phenomena. This explains why the Olympic games have not been held in Africa in the hundred years of their existence. It also explains why certain sport codes are the preserve of the elite and privileged social groups in some countries.

It is in the context of addressing these disparities that the idea of African Renaissance was born. African Renaissance asserts the right of Africans to peace, security and comfort, which are necessary conditions for successfully hosting international sport events.

In 1995, South Africa took the campaign of African Renaissance to greater heights when it hosted and won the World Cup Rugby Tournament. South Africans viewed this development as an endorsement by the international community of the restoration of human rights and dignity for the majority of South Africans.

That was however only the beginning of a long march towards the restoration of dignity for the majority of South Africans and our compatriots in the African continent. We have recently submitted a proposal to FIFA to host the 2006 World Cup Soccer Tournament in keeping with our resolve to advance African Renaissance. If we succeed in our bid for the 2006 World Cup Soccer Tournament we hope to share our victory with the rest of the African continent in the new millennium. Those of you who are charged with deciding which country will host the 2006 World Soccer tournament amongst South Africa, Morocco, Britain, Brazil and Germany, we count on your support in this endeavour.

South Africa has launched initiatives to transform sport and make it a truly national activity, with teams reflecting the demographic composition of the population and sports facilities accessible to all South Africans. Our resolve to forge ahead in achieving transformation of sport stems from our recognition that reconciliation and nation building will be exercises in rhetoric if they do not translate to provision of sporting facilities to all communities and participation of all talented people in the sporting activity regardless of their race, colour or religion.

Contrary to the fears expressed by some, merit and competence will not be sacrificed at the altar of achieving representatity in sport. This point was unequivocally articulated by our Sports Minister Ngconde Balfour recently.

It is evident from the conference agenda therefore that sport and human rights issues confronting us in South Africa also affect other nations in varying degrees. We therefore commend the Human Rights Council of Australia for taking this initiative of hosting this conference to deliberate these issues in depth. We trust that the experiences and insights which many participants bring with them will enrich the deliberations and stimulate a lively debate on issues before us. On behalf of the South African High Commissioner, Dr Ranchod, I wish you successful deliberations in the next three days of the Conference.

Malusi Mahlulo
1 September 1999

Distinguished Public Address by Sir William Deane
Governor-General of Australia

At the outset I acknowledge the indigenous custodians upon whose ancestral land we are gathered for this conference. Mr Sidoti, Mr Frankovits, distinguished guests, ladies and gentlemen. This is the right time and the right place for this first international conference on sport and human rights. I congratulate the Human Rights Council of Australia, its Chair, its Executive Director, its members and its staff for their foresight and hard work in organising the conference. I also thank all those other people who have directly or indirectly contributed, or who will contribute, to what I am sure will be its success.

It's the right time for the conference for a variety of reasons. I mention but three of them:

Firstly, we are in the opening year of the second half century after the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly on the 10 December 1948. At the same time we are approaching the mid-point of the international decade designated by the United Nations as a decade for human rights education. A central objective of the international decade is increased knowledge and understanding of the nature and the content of fundamental human rights and of their impact upon, and relationship with, the various areas of human endeavor and activity.

Secondly, I venture to suggest that at no time in the history of our world has the role and nature of sport in international relations, in national aspirations, and in the lives and interests of ordinary people been of greater significance or under greater stress or challenge by reason of a variety of different circumstances; including of course ever increasing professionalism and commercial-isation.

Thirdly, and this is a matter to which I will briefly return, the importance of the relationship between human rights and sport in our modern world is not confined to the rather obvious proposition, but human rights and the principles and standards underlying them should be observed and promoted in both international and national sport. Sport itself both international and national can, and has, in the past played an extraordinarily significant role in advancing human rights particularly among some of the world's most disadvantaged and vulnerable people. And as I said this is also the right place for this international conference on sport and human rights.

As you all know, Sydney, which is our country's largest and oldest city, is the host city for the millenium Olympic games next year. Also the conference is taking place on the eve of child protection week in Australia. The impact of sport upon the human rights of children is obviously an important aspect of the relationship between sport and human rights. This is also the right place for the reason that we in this country have a deep national commitment to the observance and advancement of human rights while sport probably plays as great a role in our national life as it does in the national life of any other country. That is not of course to suggest that our record as regards human rights is a perfect one. No one could examine the past history and the present plight of indigenous Australians and intelligently deny that our record is not perfect. But neither I believe is the record of any other country in the world. What it does suggest is that the fundamental importance of human rights and human dignity and their observance and advancement which will I am sure be largely common ground at this conference is also generally accepted in this country.

Also the importance of the subject matter of this conference's deliberations would I think be obvious to the overwhelming majority of Australians. It is not my intention to attempt to resolve any of the questions and issues which are involved in any deep consideration of the relationship between sport and human rights.

My function is to open the conference rather than to seek to pre-empt its work. In discharging that function however it would seem appropriate that I offer a few thoughts, however superficial they may be, on the overall context of the subjects upon which you will be focusing over the next few days.

While I see myself these days as very much an ex-lawyer, my approach to any examination of the relationship between sport and human rights is no doubt greatly influenced by views formed over 40 years of my former existence as a lawyer of one kind or another. The first thought which I offer is perhaps no more than a reminder of the obvious. It is that the same words can sometimes convey different, indeed even diametrically opposed meanings, to different people. Let me give an example from a field completely unrelated to either sport or human rights. It is an example which I recently heard the chairman of one of our leading publishers give of the difficulties which publishers are occasionally required to meet. It would seem that an American publisher was employed to have prepared and to publish a history of a very wealthy American family. The instructions were that the history was to be truthful but was to show the family in the best possible light consistent with truth. The problem or the skeleton in the closet was Uncle Charles who had been sentenced to death and executed some decades before for a particularly nasty crime. After much thought the authors and the publisher resolved the problem. Charles, it was written, had at the time of his death occupied a chair of applied electricity in a well-known national institution. The account went on to say the ties that bound him to his position were strong indeed and his death came as a great shock.

As I say that example is completely unrelated to anything you are likely to be discussing at this conference unless you somehow stray into the area of human rights and capital punishment. It is however important to remind ourselves that words will only adequately convey ideas and principles if there is a shared understanding about their meaning. The very subject sport and human rights itself invites some degree of greater definition. For example an examination of four dictionaries has failed to locate what seems to me to be a completely acceptable inclusive and exclusive definition of sport. Certainly the primary definition in the Macquarie Dictionary, and I quote:

> *'an activity pursued for exercise or pleasure usually requiring some degree of physical prowess'*

would seem to be with its emphasis on a purpose of pleasure or exercise unduly confined in the context of the rush to commercialisation and professionalism at the elite level of almost all sports. I refrain from commenting upon the insistence upon physical prowess beyond saying that in the context of my sporting ability I find it to border on insulting. The difficulties involved in formulating a precise definition of sport are however of comparative insignificance compared to the difficulties involved in assigning a precise meaning to some of the phraseology commonly used in identifying human rights and their content and in formulating the principles and standards which inspire them.

I am not suggesting that in a gathering such as this those difficulties will constitute a significant obstacle to understanding or even consensus. They need however to be borne in mind when formulating propositions which are intended for more general publication since it is important to minimise the possibility of misunderstanding or even misrepresentation by those who are unconvinced or even opposed to acceptance of the absolutely fundamental importance of the observance and promotion of human rights both domestically and internationally in our modern world.

In particular, statements of rights in an unqualified form need to be understood in the context that some regulation and adjustment of individual rights are necessary and acceptable as the price of escape from the anarchy which is antithetical to the existence of any rights at all. At least two distinct points would seem to emerge from this question of language. The first is that both in framing and in interpreting human rights there will frequently be room for legitimate differences of opinion about the choice or meaning of words. Even among people who are genuinely committed to the protection and promotion of human rights. The second is that it is not always the case that

the wider and less qualified the words used the greater the protection. To the contrary over-wide and unwisely unqualified words can lead to the implication of excessive qualifications or to what was intended to a right being treated as no more than an aspiration.

There are many aspects to the relationship between sport and human rights. I refer to but some of them. Most obvious is the direct impact of human rights upon sport. Upon government or other public supervision or regulation of sport. Upon the way it is organised, upon who may play it, upon the way it is played. At all those levels human rights and human rights standards and principles have an important role to play. And at all those levels difficulties may arise in relation to what is and what is not permissible or appropriate in particular circumstances such as cases where positive discrimination is seen as necessary to overcome entrenched disadvantage or where exclusion is imposed or maintained particularly in the case of young people by reason for example of what is considered to be unacceptable modes of conduct or standards of behaviour, dress or hygiene; either on or off the field.

Particularly in the area of ensuring observance of human rights and human rights standards by those engaged in an actual sporting contest there is again room for legitimate differences of opinion about the most effective means of dealing with unacceptable conduct on the part of one player towards another such as racial abuse. In this country there is considerable support for the view that conciliation or mediation leading to an apology is commonly preferable to the appearance of harsh punishment which may in a sporting context where a popular sporting figure is involved sometime seem even counterproductive. On the other hand there is obviously something to be said for the view that harsh punitive action is in the long term likely to be the most effective. Another difficulty in respect of which legitimate differences of opinion may exist as to appropriate conduct is where human rights standards are not being observed at the organisational level. Perhaps the question may be whether to participate or to boycott. In some cases the choice between the two may seem clear. For example in the case of sport in South Africa under apartheid I personally have never doubted that boycott was the correct approach. On the other hand if I had been advising Jessie Owens faced with the unique racist circumstances surrounding the 1936 Berlin Olympics I think I would have been equally confident that the preferable decision was to decline to participate but with the benefit of hindsight I would not dispute that history demonstrates how wrong I would have been. In view of constraints of time I shall confine myself to making brief reference to but one other aspect of the relationship between sport and human rights. That is the path that sport can legitimately play in positively advancing the human rights of people in ways that reach far beyond the sporting arena. Currently we in Australia are engaged in a critically important search for true and lasting reconciliation between the Aboriginal and Torres Strait Islander people and the nation of which they form such an important part. The Council for Aboriginal Reconciliation has identified sport as one of its key areas of concern, and in that it is clearly correct.

The great successes of our indigenous sports men and women on the athletic track, on the tennis court, on the football fields and in other sporting areas, and the resulting standing that they enjoy in the general community have been among the most important positive influences in the long process towards reconciliation. The same can be said of the contact in sporting teams and on sporting fields between indigenous and non-indigenous Australians. Equally importantly those successes and that contact have been of immeasurable significance in helping raise the levels of confidence, self esteem, motivation and achievement of indigenous Australians, particularly the young. And here of course one enters the area of human rights since it is surely clear beyond reasonable argument that the present plight of our indigenous people with their average life expectancy of up to 20 years less than that of non indigenous Australians and their incomparably disadvantaged standards of living and education and rates of employment take us into the very heartland of human rights concern. See for example Articles 23, 25 and 26 of the Universal Declaration.

Let me conclude these opening comments by extending a special welcome to all the overseas visitors who are attending the conference. I

sincerely hope your visit to our country is a very happy one and that when the time comes for you to return to your own homes you carry with you fond memories of Australia and Australians. And to all attending the conference I express a sincere hope that the conference itself is outstandingly successful in every way.

And now with great pleasure I declare this ***First International Conference on Sport and Human Rights*** *to be officially opened.*

Sporting Symbolism on an International Stage: The Right to Appeal to Humanity

Darren Godwell, Northern Territory University

Abstract

For many years, sports administrators and event managers fostered and maintained the myth that sport is apolitical. The presence of nationalist symbols such as flags and national anthems perpetually rebut this position. This paper will examine the power and influence of symbols in international sport. The Black Power salute of the 1968 Olympic Games is most frequently cited but what of the gesture by Alwyn Morris at the 1982 Olympic Games, or the public display of pride by Cathy Freeman at the 1994 Commonwealth Games. Are these moments of political subversion or personal expressions for hope and progress? Whilst major sporting events solicit and promote corporate symbols, what embargo do they make on alternative or emergent expressions? The structural sanctions created and enforced by the International and National Olympic Committees challenge the very values that these organisations purport to champion. Is the opportunity to make an appeal for better human relations worth the risk of inevitable personal penalty? Are such punishments open to moral, and even legal, challenge based upon the human right to freedom of expression? At a time when major sporting organisations are increasingly unwilling to check the insidious influence of drugs in sport, why are they dogmatically opposed to individual expressions of principle?

In today's speech, I'll offer some background to my current work in sport.

Second, I'll talk of race relations and sport in Australia.

Third, this paper will link de Coubertin's aspirations for the modern Olympic Games with the objective of improving human rights.

Fourth, we'll consider the capacity of international sporting events to promote these progressive ideals.

Last, I'll turn to the possibilities for next year's Summer Olympic Games in Sydney.

Sport as an X-ray Machine

Over the last ten years, I've maintained some association with Indigenous sport in Australia. This has included playing, administering, studying, researching or coaching but most often – watching.

Sport has provided some of my most significant positive life experiences.

Aside from the intellectualising and analysis that sport has undergone, the magic that sport can generate remains relatively unexplained. What's more the precise source of this magic remains allusive.

Originally, I started my academic studies with the idea that sport triggered something within the individual psyche. Accordingly, I spent my undergraduate years majoring in sport psychology. Through these years, I spent much time considering how, and where, psychological constructs were created and interacted.

The venture failed. I couldn't even answer the questions I started with. In fact, the examination merely produced more questions.

Not one to be easily discouraged, I then turned to sociology.

I spent another couple of years in postgraduate studies further considering the issues concerning Indigenous peoples' engagement in

sport. At the end of this process I was left with some observations –

- For Australia's Indigenous peoples sport presented one of the few avenues for positive life experiences;
- Indigenous peoples excelled in sports at levels disproportionate to their population; and
- Sport provided Indigenous peoples with an occasion to affirm social relationships between families, communities and Indigenous societies.

Unfortunately, these points were pretty much what I'd started with six years before.

However, in all seriousness, I had encountered some exciting new ideas. I'd also had the opportunity to explore some other possibilities. I had the chance to refine what were just hunches and to consider how the bigger picture of both sport and race relations were connected in this sports crazy country.

Some of the leads that I pursued were presented by Raymond Williams. In a treatise on cultural studies, Williams offered a study into how the bones of society's power relationships were laid bare in selected fields.

Williams proposed that these social relationships were most easily observed in entertainment, art and sport.

For it was in these places, that society took the least care to conceal the true nature of its interactions.

In this conception, the institution of sport was analogous to an x-ray machine. Sport could see through the hype to the bare bones.

Closer examination of sport provided an opportunity to consider the working power relations that society held between different sectors within that society. My interest turned toward the relations between Indigenous peoples and mainstream Australia.

Mainstream Australian sport can provide some insight into the dominant race relations with Indigenous peoples. Obviously, this isn't stretched out of shape to blatant generalisation but its does afford some important insights.

Australian Race Relations and Sport

Through the research efforts of Australian historians such as Colin Tatz and Max Howell, the early picture of Indigenous peoples participation in sport began to emerge.

In earlier colonial days, sport was explicitly applied by the church and mainstream society as a tool of socialisation. This largely remains so today.

While the continent was being invaded by aspiring farmers and pastoralists through the nineteenth century, some effort went towards assuaging the treatment of Australia's Indigenous peoples. The dominant attitude of these early days remained that Indigenous peoples were savages and incapable of adapting to European conceptions of civilisation.

However, as unfounded racist belief gave way to experience and personal contact views were altered somewhat. What was always a marginalised minority view gained currency. If the Aborigines had the right training, they could make small steps towards the civilisation being created by the European colonisers.

The first approach to Indigenous relations was one of denial and extermination. That is to deny any Indigenous rights, even their existence if it's possible, and then to pursue a policy of dispersal.

The second official government approach became known as assimilation. The intent being to assimilate the Indigenous peoples into the lowest rungs of mainstream Australian society.

It is within this official policy of assimilation that English sport was introduced and encouraged amongst Aboriginal people. As in England, sport was considered a fine tool to train young men into the ways of the Empire and to inculcate the values of the British ruling class.

Early research on the engagement of Indigenous peoples and sport in Australia, indicated that whilst socialisation was the intent the reality was something more.

Contrary to popular belief of the time, sport as an institution was neither separate nor isolated from the whole of society. It is surprising that this earlier unfounded belief persists in some circles even today.

So just as nineteenth century Australian society was an ignorant, Eurocentric and racist society, so too did nineteenth century Australian sport assume the same traits. It is from this start that Australian sport developed into the behemoth that preoccupies much of Australian society today.

So, just as there is racism in Australian society so too is there racism within Australian sport.

Just as there is racial discrimination within Australian society, so too there remains discrimination because of race within Australian sport.

Just as there are stereotypes that reinforce racist conceptions of peoples in Australian society, so too there exist stereotypes that reinforce racist conceptions in sport.

As a qualification, I'd like to add that today we are talking about English sport and, thereafter, mainstream Australian sport. Indigenous games and pastimes continued in some capacity throughout the earlier years of colonisation. The values and motives of Indigenous' societies were also assumed in the constructing and play of Indigenous games. In more recent developments, Indigenous participation in mainstream Australian sporting pastimes and sport has provided a vehicle for challenging the dominant social values presented by non-Indigenous Australian society.

This is another conference altogether though, so I will not pursue this topic in today's paper.

de Coubertin's Games

In 1896, the first modern Olympics were held in Athens, Greece. de Coubertin's public campaign to reconstitute the Olympic Games of ancient Greece began some four years earlier in 1892. In his first public address on the concept of a revitalised Olympic Games de Coubertin talked of 'a halo of grandeur and glory, that is the patronage of classical antiquity' (Gordon, 1994: 18).

This is rhetoric promoting a vision of the highest order. de Coubertin wasn't making a pitch for corporate sponsorship of a golf tournament.

His vision was bigger and sought values of the highest order.

Australian Olympic historian, Harry Gordon, in his acclaimed book *Australia and the Olympics Games*, also writes of de Coubertin's vision for the modern Olympic Games. Gordon notes that:

> [de Coubertin] saw the Olympic movement as being much more than a vehicle for four-yearly carnivals of sport; to him it embodied a philosophy, moulding a wholeness of character, intellect and body. (Gordon, 1994: 18).

Quite clearly, de Coubertin envisioned the modern Olympic Games as an occasion to promote higher human ideals.

To some, these ideals were an ambition for peace between nations. Other researchers have instead expounded that de Coubertin was more interested in education. Either way, de Coubertin was not satisfied with the persistent tribalism of nineteenth century Europe and on the cusp of a new century believed that there should be a vehicle to promote and encourage better human ideals and values. It just so happened that the Frenchman saw the ancient Olympics of Greece as having this potential.

de Coubertin considered the classical Greek qualities of equality, aesthetics, argument and reason, scholarship, citizenship and democratic process as aspirational qualities that should be emulated.

Whilst many historians and researchers have alerted us to the partisan application of these classical values, de Coubertin nonetheless saw a revitalised Olympics as a means to promulgate such values internationally.

I'm not too sure if de Coubertin would have considered issues such as television ratings,

market share, capitalisation, brand recognition or media profiles as important features of the prospective modern Olympics.

So at the end of the twentieth century, just over one hundred years since the hosting of the first modern Olympic Games, we have the chance to reflect upon de Coubertin's vision. What's more, we have the chance to reflect upon de Coubertin's ambition and assess whether the modern Olympic Games sustain the aspiration for higher human ideals.

The Potential of Sport to Promote Human Rights

One of the biggest and most enduring myths surrounding sport is the notion that sport is, and should remain, free of politics.

Sport was never free of politics. Of course, the politics was not necessarily of the more familiar partisan politics of established political parties. Instead, the politics within sport took the form of the more subtle politics that permeates society.

The politics of everyday society is the vehicle of protected power and influence.

This same power proclaimed men better than women.

The same power determined that whites were more human than blacks.

The same power conceived and constructed the 'chain of humanity' to rationalise and encourage European colonisation and imperialism.

This wasn't the power of some omnipresent being.

This is the power of self-interest.

This is the power of privilege.

This is the power of perceived influence.
At some level, everybody understands this agent of power.

Some call it a sense of instinct. Others characterise it simply as human nature. Others know it as selfishness and greed.

No matter its nomenclature, or modus operandi, it delivers the same results.

Above all else, this power seeks to install the needs and wants of one sector of society above all others.

The same politics inhabits every corner of modern societies. So too, does this politics inhabit sport.

Herein lies a paradox of hope – if left unchecked, sport merely reflects the broader politics and dominant values of society, but at some level sport can become a vehicle to propagate and represent alternatives.

Sport has the capacity to produce magic.

A special magic that goes to the spirit of humanity.

A magic that refreshes.

A magic that revitalises and furnishes hope.

A magic that belongs to our souls.

Sure sport is not the only life experience that can generate magic but it is by far the most accessible occasion to experience it.

Nor does this magic occur every week but it does happen regularly.

Nor does it happen in the same place or the same time for everyone but it does materialise.

Moreover, for oppressed peoples who are denied many other avenues for positive life experiences, sport has been a critical outlet and source for this soul affirming magic.

As Indigenous cultures and spirituality have been revitalised, this movement has reopened and renewed wells of humanity for Indigenous peoples.

However, for many years, mainstream sport provided an accessible instance where Indigenous peoples could experience magic. Maybe with the continued revitalisation of Indigenous cultures this interest will wane but until this time arrives sport maintains a significant role within Indigenous communities around Australia.

This magic isn't confined to Indigenous peoples.

The mainstream preoccupation with sport, in large part, can be linked to this magical quality.

For everyday people, existence is dominated by activities that detract from life affirming the mundane of work, cleaning, car payments and television news.

Although, every now and again, the soul is revitalised – it might come from family, loving partners, art, friends, religion, nature, or a football game.

Obviously, these examples are arbitrary and the boundaries are not rigid or natural.

Whilst the precise locus of the experience is personal and particular, however the point remains the same - sport can and does generate magic.

So the task now becomes how does the politics of everyday life connect with the magical moments of sport?

In de Coubertin's mind, the connection was through the revitalisation of the Olympic Games.

The modern Olympic Games were a deliberate attempt to foster and promote the magic of sport. Sporting activities were deliberately engaged to promote shared values and further knowledge and understanding through shared experiences and increased personal contact between athletes.

In this venture, competition was downplayed for the sake of fellowship.

For the modern Olympic Games, the joy would be found not in the winning but in the participating.

Rewards came not from finishing first but from attending.

To some extent, this logic challenged the dominant cultural and therefore political positions of the day. But just as ancient Greece would restrict its ideals of citizenship and democracy, so too would the social mores confine the conception of a French aristocrat – initially at least.

As the popularity of the modern Olympic Games has increased, there have been parallel changes in societies around the world.

The last century has provided some significant changes no matter how you choose to assess it. To some extent and in some fields, this change has been quite unexpected.

The confluence of these international trends often breaks the surface in the most public of occasions. The intense glare of international attention is no longer restricted to military engagements. The social movements of the twentieth century have successfully promoted an objective, shared a message and motivated individuals to act. A significant feature of these alliances has been their capacity to draw support from across historical divides. And so it is with the modern Olympic Games.

The modern Olympic Games promoted its internationalist values and philosophy of Olympism. The present International Olympic Committee President once described Olympism as the pathway to peace and understanding for all peoples.

The Games allegorical and literal challenge to the physical, spiritual and intellectual efforts of individuals is further represented by its motto – citius, altius, fortius (faster, higher and stronger).

Whether you agree with these aspirations or not is immaterial to my argument here today.

The point remains that de Coubertin's philosophy of Olympism and the modern Olympic Games are intended to encourage and, to some extent, embody the struggle of humans to greater deeds and ideals.

The Olympics are about being motivated to contribute and foster human communion.

In this regard, the Olympic Games are expected to depart from the ordinary and the mundane. The modern Olympic Games therefore becomes the vehicle to inspire these higher human qualities. In this sense, sport becomes merely the medium.

And as far as stages and spotlights go sport is wonderful. Aside from the potential to spark those magical personal moments, sport has developed its spectacle through technological and industrial developments. At the most extreme this means made for television events but at it simplest it means improved bats and balls for sporting codes. All in all this has contributed to sport's broader exposure.

Consistent with a proposition made earlier in my speech, sport was not isolated from society. So just as there are radical shifts occurring within nation-states and societies around the world so too are these influences occurring within sport. Sport is not impervious to the modernisation of societies around the world. The globalisation of cultures and societies represents another dominant trend. The Olympic Games has been influenced by this modernisation process.

Although, through marketing, packaging, branding and promotion the modern Olympic Games has sought to create an image and conception that is seen to be above these global shifts. Most significantly, the Olympic movement has moulded its media and public image around the event's tenuous links to the Greek Olympic Festivals. In fabricating a sense of continuity and history, the modern Olympics have exploited de Coubertin's vision.

In more recent experience, this exploitation has been through more commercial and media related avenues. In this application the popular support and exposure of sport, especially the Olympic Games, has been package as a unique marketing opportunity for willing interests – whether they be marketing, media, corporate or commercial, or government. It is argued that the credibility and esteem of the sporting event can in some way be subsumed by marketing and advertising strategies that seek to link the sporting event with a message and/or product being promoted. These products are not confined to commercial possibilities. Governments and nation-states have frequently engaged the same media and advertising apparatus to promote official messages and themes.

For the modern Olympic Games, these issues have always been present. Initially it was de Coubertin's deliberate promotion of the values of the European aristocracy. Supplementing this ambition, de Coubertin sought to further the English conception of an educational process whereby sport offered a vehicle for socialisation. Again, the intent was to inculcate upper class values and mores.

In the thirties, the German government headed by Adolf Hitler, sought to use the 1936 Olympic Games to promote the dominance of the Aryan race. These Olympics have since been characterised as the 'Nazi Olympics' because of their close association to the promotion of the Nazi political agenda of the decade.

Subsequently, the Olympic Games of the 1960s and 1970s were often discussed with reference to the 'cold war' politics of the era. The contentious politics of the day were frequently painted as a backdrop to the hosting and participation within the Games.

Then into the 1980s the public standoff between the 'super-powers' of the USA and the USSR provided a similar backgrounding for the Games. The boycotts of 1980 and 1984 caused much consternation and debate about the continued presence of ideological politics on the international stage.

And whilst the official Olympic movement and the organisations of its superstructure made appeals to free the Olympics of politics the argument defied any logic. The modern Olympics were founded within politics. de Coubertin sought to promote a political ideology. The entire Olympic organisational structure and culture promoted the politics of class and the wealthy. And these characteristics remain. Therefore, in reality the only way this request for the Olympic movement to abandon politics could be effected is by abandoning the entire conception of the modern Olympic Games.

At this stage, this possibility is not likely. There has been too much money invested for the option to be plausible. While the money itself is not the root cause of the Olympic movement's problems, the current politics of opportunism is insidious. Undisclosed, rampant self-interest and greed is akin to a cancer.

An alternative to the option of abolishing the Olympics is for the movement to adopt principles of openness and honesty in all its dealings. Let there be no misinterpretation or underestimation - this project will require nothing less than an organisational transformation.

The Possibilities for Sydney and the New Millenium

The Olympic movement could consciously consider and examine the philosophy, political positions and values it does reinforce and promote.

This should include examining whether the Olympic movement wants to continue paying lip service to de Coubertin's vision of ancient Greek ideals. Furthermore, the Olympic organisation must consider moving into the next millenium with a more inclusive and refined sense of social justice, international standards and the advocacy of indivisible human rights.

With this reappraisal, the Olympic movement will turn to the truly heroic campaigns to defend human ideals. The Olympic Games will also begin to approach and advance the vision of their founder.

Today, the Olympic movement carries the burden of a grotesque hypocrisy.

On the one hand, the overt, explicit commercial exploitation of the Olympic Games seeks to fabricate by association values rarely generated within business.

Since the posting of a profit in the 1984 Olympic Games in Los Angeles, the relationship with commercial interests has predominated as never before. This association has seen the Olympic movement wholeheartedly embrace commercialisation and capitalism as welcome political ideologies that can be fostered through its network. It is a disgrace that these ideologies are exalted above the classical human ideals that de Coubertin aspired to and hoped the modern Olympic Games would promote.

Corporatism should never supercede the right to free speech.

The practice of media manipulation for commercial gain should never defer social justice.

Commercialism must never supercede the right to freedom of expression.

Sponsorship must never supercede freedom of association.

Superficial political correctness should never supercede principled leadership.

Yet, the modern Olympic movement continues to pursue these very corporate values at the expense of its commitment to individual human ideals.

For as long as the modern Olympics Games solicits the support of 'TOP' sponsors rather than pursuing an agenda that aspires to improving human rights around the world then it holds itself up for ridicule.

The modern Olympics can not claim to respect any heritage with the ancient Greek games whilst it places injunctions upon individual freedom of expression.

Nor can the modern Olympics retain any sense of self-respect if it continues to forbid individuals from identifying with social and political causes of their own choice.

What's more, the modern Olympic movement will never extricate itself from ethical considerations by sustaining injunctions, codes of conduct, of individual contracts which prescribe who and what athletes are allowed to discuss with members of the media.

The prohibition of such personal and individual expression fails de Coubertin's intent that the modern Olympic Games provide a source of inspiration to strive for the highest

manifestations of human endeavour – physical, cultural and intellectual.

There is no better embodiment of this very striving than in the international struggle to improve the enjoyment of human rights. And the personification of this struggle is found in the every day lives of oppressed peoples.

The capacity for ordinary people to lend moral support to such struggles should be solely a personal prerogative.

This choice should never be unduly influenced by the fear of being disqualified from the Olympic Games, by being afraid of being confined to quarters within the Athletes' Village, or by the threat of financial fine.

The right of individual athletes to express personal opinions, for example, to lend moral support to the struggle of Australia's Indigenous peoples for recognition of their very existence within their own country, should never be threatened by a fabricated Athletes Code of Conduct.

How is it possible that de Coubertin's ambition for higher human ideals was so easily dismissed in favour for a media fabricated, dehumanised, corporate sponsored event for the elite?

It would be unlikely that such blatant coercion would be sustained by any defender of the ideals of human rights.

With the Sydney 2000 Olympic Games just one year away the pressure is building.

The Australian Government must undertake a sincere and frank process of reconciliation and recognition of Indigenous peoples rights.

In doing so the Australian Federal Government must respond to the United Nations Committee on the Elimination of Racial Discrimination and explain why the racially discriminatory amendments to the Native Title legislation remain.

Additionally, the Federal Government must explain to the World Heritage Commission how the development of a Uranium mine within the Kakadu World Heritage Area will not detrimentally affect the 'social and cultural values' of the Park.

Furthermore, the Federal Government of Australia must prepare an appropriate response to the victims of the Federal Government policy of assimilation. The Federal Government must move beyond statements of belated compromise fashioned from political opportunism.

Lastly, Australia's Federal Government must assist and facilitate in the process to generate an honourable agreement of co-existence between our First Nations peoples and those who have arrived here over the last two hundred years.

Now the Sydney 2000 Olympic Games can both support and advocate the resolution of these outstanding human rights issues or it can perpetuate the very same abuses of the past two centuries of colonisation by simply ignoring its responsibilities.

The Sydney 2000 Games cannot fabricate some happy native sideshow in a vain attempt to market the 2000 Summer Olympics as some jolly attraction of light and fun in the southern hemisphere.

Individual athletes must never subvert their personal political beliefs in a state of fear for the duration of their stay within the 2000 Olympic Games. These individuals must be free to express their opinions.

These athletes must be free to associate with whomever they please during the duration of the Games.

These individual Australians must never fear official repercussions for expressing their support for the pursuit and observance of the very ideals that the founder of the modern Olympic Games would have urged them towards.

The Olympic Experience: An Aboriginal Perspective

Alwyn Morris

Wa'tkwanonhwera:ton:

My language is Mohawk - I have asked for peace for the traditional people and thanked them for their welcome and the ability to be here with them. I am also humbled and honored to be invited to this first ever *International Conference on Sport and Human Rights.*

When I was asked if I was interested to participate in this conference I pondered whether I should present a paper or a document that would find its place within the discussion and archives of academia. Or should I provide a personal perspective - an Aboriginal perspective of what it meant to experience the Olympic games and ultimately succeed in reaching the pinnacle of amateur sport.

But before I can do that I have to provide you a brief history or a snapshot of where I am from because without that context your ability to draw to conclusions is very difficult. So before I go I would like to introduce you to my community. The name of my community is Kahnawake as I mentioned earlier. It is part of the Mohawk nation and it is a community of about 7,500 people and is situated approximately 10 km from the second largest metropolitan area in Canada, namely Montreal. Kahnawake is one of the five Mohawk communities that make up the Mohawk nation and of course for those of you who have studied native North American History the Mohawk nation forms only one part of the Confederacy the others being the Cayuga, Seneca, Onondaga, Oneida and Tuscarora. These are my traditional and cultural roots but added to that is where I grew up. I grew up with my grandparents. Having my grandparents as important role models for the shaping of my life both spiritually, emotionally, physically and intellectually provided me the basis which I hope I am here and able to express to you today.

You see I grew up in an Indian community where sport was not necessarily an activity - but was really part of life. Traditionally sport, or an activity, was directly related to our cultural experience as a whole, an example, was the game of lacrosse. The game of lacrosse is a traditional sport. It was used not only for the ending of disputes between communities, it was a place for spiritual recognition, it was a place of spiritual gathering, it was a place of emotional celebration. But lacrosse found a strange place in my life. Not only was I able to play it but it was also a game that disappeared from our community. Why?

Well that was a question asked in my community, because the sport of lacrosse was an indigenous traditional sport and this created problems for amateur sport backers. The perspective was that since the Indigenous People originated the sport then they would be considered as professional and thus were unable to be considered as amateur participants. The fundamental question is why did this occur? When I was growing up it became difficult at times sitting with my grandfather having the appreciation for when he was involved in sport to try to figure out why he stopped - why did he not go on. I wasn't sure. I had heard about athletes who were not allowed to play professional sport. I heard about the athletics who ran spiritual runs on behalf of Canada and were never allowed into the stadium. Where was I going to go?

I started off competing in canoeing and having been blessed with certain qualities I had the ability to go through the system very quickly, which in itself was not the norm. For those of you who have had an experience of getting on a national team sometimes you may have had to go through the pecking order, and if you broke the pecking order that was taboo, you were not allowed to do that. You were supposed to wait in grace until it was time for you to take the stage but those were not the

elements that my grandfather bestowed on me. Rather what my grandfather said to me was: 'Do your best, make sure when you come off the playing field that you did your best, and if you did your best then be satisfied with the outcome'. So it was with that feeling and that spiritual and emotional support that I was able to get through the national team program relatively quickly but on the way unfortunately I lost my grandfather. He passed away in 1980. It was also unfortunately the same year that Canada boycotted the Olympics of which I was a team member.

Boycotts in my view of the world at the time did nothing to support the athlete. It did nothing to ensure that the quality and the things that people trained for were assured. I remember very distinctly being in Poland watching the Polish national team leave to go to the Olympics in Moscow. At the same time convoys of Russian troops were on their way to Afghanistan. I stood there in a bit of a dilemma. As an athlete I wanted to go to the Olympic games. As someone who appreciated what it must be to be put into a situation of oppression I had a difficult decision to make for myself. For whatever the reason I stood there and watched the Polish national team leave to go on its way to the Olympic Games and I waved a happy goodbye. Some days later I got the unfortunate call that my grandfather had passed away.

My Olympic experience - where was it? A decision had to be made; do I still strive and look for that Olympic glory and that Olympic experience that I shared with my grandfather watching TV? Or was I going to become dismissive and fall into line like many other people who didn't get a chance to go to the Olympics. I decided to commit four more years of my life, of sacrifice, of courage and to train. Having done that I got my chance to go to the Olympic Games in Los Angeles.

A year out from the games I knew I wanted to do something. I knew I wanted to do something to celebrate life, I knew I wanted to do something to honor my grandfather who provided words of wisdom throughout his life and throughout mine. And in doing so I decided that I wanted to pay tribute to him, to Mohawk people and to indigenous people as a whole. Why? Well it's a celebration, the Olympic Games, as I understood they were a celebration. So I had to decide what I was going to do to provide the basis for the celebration. It wasn't necessarily crossing the finish line first because that was something that I got a chance to do that one single day - that single moment was better than anything else. It wasn't a pre-requisite that I was going to be the Olympic champion the next day as well. But for that one fleeting moment I was able to become the Olympic champion and on my road I decided that I was going to pay tribute by raising an eagle feather on the podium. The whole situation, the entire movement, for me to do that took plenty of courage not from me but from my team mates. My team mates, the organising committee for canoeing and the COA.

Why? Well, if you sit there and you think of what is happening here today, was I taking something away from them and their Olympic experience? And, as I answered the questions about the fact that I was going to do something, I had to qualify the reasons why I was going to do it. In the end my teammates were in full support. The Federation for Canoeing in Canada was in full support. The International Federation for Canoeing was in support. It was not a shock for anybody and it was well advertised by the media that something was going to happen that was very special. In this day and age of political correctness I felt that if I was going to be exploited politically then what I was about to do or did would be taken completely in the wrong context. Maybe it was because I grew up with my grandparents; maybe it was because of my political convictions and my feelings towards what I was as an individual and what I wanted to share as an individual but also being proud of being a Mohawk. Proud about being an indigenous person. It took nothing away from the fact that I was representing Canada.

That experience is something I live with every day; the experience of going to the Olympics, talking about it, providing a little bit of wisdom for athletes who are coming behind me. I had come to realise that it was okay that the system as a whole could take you to a point where you can actually thrive and participate without reproach. It was great to see people like Angela Chambers come though the system. It is great that there is another Mohawk who is

going to come to Sydney and her name is Waneek Horn Miller. Just as an aside Waneek Horn Miller at the tender age of 16 years was one of the faces of grief during the 1990 Oka crisis. How can an individual who is at the point of the crisis in Canada now feel good about coming to the Olympic Games and representing Canada and still be a Mohawk. That is a point of her dilemma. And her questions are how do we go about solving that dilemma. To me, and in my discussions with her, she is there certainly and identifiable as a Mohawk person and she takes pride in that. And that's what helps get her through the next day. But also her teammates know where she has come from. Her teammates realise what she went through as a young person. Her teammates appreciate the fact that she has come through a system that did not necessarily allow things to happen. Here is someone who got through a system not because of the system but in spite of it.

But we go on and as someone who went through the games the question is often asked how come there are so few? How come there are so few indigenous people involved in the Olympic program? Is it because of potential? The research shows that this is not the case. The real reference point becomes one of quality access. Or is it actually just called meaningful participation? Unfortunately, the question next becomes is it full integration or is it separation? There are questions that the organisation of which I am chair of, The Aboriginal Sports Circle, tends to ponder. In trying to provide the basis for athletic development right from the grass roots level and onward. And that organisation has mandated representation from all the regions across the country, that's what helps it move and that's how it helps to answer some of those important questions that we often ponder. I hope I provided you a perspective, as small as it may have been, that the Olympic program and the Olympic experience is a great one. It is a great one because it allows you to express your art form. It lets you go and do things that people dream of and many people dream of going to the Olympic Games. And if you have a shot at winning an Olympic medal then you have truly come to the pinnacle of that dream and of your art form.

People ask me would I have ever changed anything and the answer is 'No'. I think and I believe that the things I learnt as I went through my career helped to build a bigger foundation on the ideals that my grandfather gave me as a young man. There are many questions that are going to be asked of this conference. Some of them that we already know about and I hope that the messages that come from this event are such that nobody loses when one expresses something personally. Nobody loses. Not a country, not a team, but in fact it provides even a broader recognition of who that person is, the place they came from and why they are competing for their team.

Thank you very much and I wish you the very best in the deliberations.

Rules Beyond The Game

Chris Sidoti

Introduction

How often have you heard it said, 'It doesn't matter whether you win or lose, it's how you play the game'? Children are told it at school and in clubs and indeed every time they lose a game at sport. The media trot it out regularly. Even politicians speak regularly in those terms. Now, of course we know very well that it does matter whether you win or lose. That too is the case every weekend for every child who plays sport. Nonetheless, how you play the game is equally important. The means are important, not only the end.

There are many meanings in 'how you play the game'. Certainly it means playing by the rules of the game. But playing the game properly, with justice and integrity, also requires playing by rules beyond the game. We must conform to community ideas or ideals of 'sportsmanship'. It is important in all societies to be the good sport, to be seen as acting fairly and accepting whatever life throws our way. Sporting heroes are required to be good models to children and others of how we are meant to behave.

This afternoon I will discuss one aspect of the rules beyond the game, human rights. This has two quite different dimensions, human rights in sport and sport in human rights, that is, as a promoter of human rights protection or a promoter of human rights violation.

Human Rights in Sport

The treaties

Sports men, women and children have human rights. They are entitled to enjoy the full range of human rights recognised by international law. In fact, there are some provisions that specifically recognise a right to sport and others that have direct relevance to participation in sport:

International Covenant on Economic, Social and Cultural Rights

article 15	the right to take part in cultural life
article 12	the right to the enjoyment of the highest attainable standard of physical and mental health
article 7	the right to work, to gain a living 'by work which he freely chooses or accepts'

Convention on the Rights of the Child

article 31	the right to rest and leisure, to engage in play and recreational activities appropriate to the age of the child
article 24	the right to enjoyment of the highest attainable standard of health
article 29	the right to education that is directed to 'the development of the child's physical abilities to their fullest potential'.

People also have the right not to be discriminated against, found in the two foundational human rights treaties, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* and in the *Convention on the Rights of the Child*. Particular anti-discrimination treaties deal more directly with this issue. The *Convention on the Elimination of all Forms of Discrimination against Women* provides that states parties must 'ensure, on the basis of equality of men and women, the same opportunities to participate actively in sports'. The *Convention on the Elimination of all Forms of Racial Discrimination* prohibits discrimination based on race or ethnicity, an area with particular issues in sport, many of which will be addressed in workshops.

Racial discrimination

Racial discrimination in sport is most obvious in decisions to select or not select based on race. There have been many examples of this over the years, most apparent in systems like those of Nazi Germany and *apartheid* South Africa but also in the most democratic of societies.

But racial discrimination can also occur further back in the sporting process, in the denial of opportunities to learn, train for and participate in sport or lack of facilities for particular racial or ethnic communities. It can be indirect as well as direct. Both kinds of practices are discriminatory and result in inequality in sport.

Racism is also present in sport through the practice of racial vilification, in Australia called 'slagging', as a tactic to disadvantage an opponent through insult or distraction. This kind of practice has received quite a deal of publicity in Australia in recent years, with Aboriginal players in particular being abused but then asserting their rights. Perhaps one of the most memorable and enduring images of Australian sport in recent years was that of Nicky Winmar, an Aboriginal Australian Rules Football player, responding courageously to racists taunts from other players and spectators by lifting his shirt and pointing proudly to his black skin. Many sport administrators have also responded to this kind of slagging by developing and adopting codes of conduct to penalise those who vilify on the basis of race and to eliminate the practice from their sports. The Race Discrimination Commissioner at the Human Rights and Equal Opportunity Commission has assisted this process on many occasions.

Sex discrimination

There are also quite obvious examples of sex discrimination in sport. Fewer facilities and opportunities, such as sponsorships, are provided for women and girls. Prize money and pay for professional women competitors are less than for men competitors. Women's sport receives much less attention from the media, with less live coverage of actual competitions in the electronic media and less reporting generally.

Children in sport

Children have the right to participate in sport, as in all other areas of life. For them sport is especially important for health, growth and development. Yet many children are denied the opportunity of participation because of the poverty of their families and communities. They can be denied because of race or sex or simply because their families live in rural and remote areas or in the outer areas of large cities or in some countries in large urban slums. Yet they share the same entitlement to participate in sport no matter what their background or where they happen to live.

Children who participate in sport, particularly the highest achievers, can be at risk of exploitation or abuse. The *Convention on the Rights of the Child* in article 36 prohibits 'all … forms of exploitation prejudicial to any aspects of the child's welfare'. In article 32 the Convention requires that children be protected from economic exploitation and from harmful work or work that interferes with education or physical, mental, spiritual, moral or social development. This requirement has three elements:

- a minimum working age;
- the regulation of hours and conditions of work; and
- penalties and sanctions for enforcement.

I do not know of any government or sporting association that has met these requirements for the protection of young sports people. Maybe we should focus on these issues too in the preparations for the Sydney Olympics.

The community delights in child sporting heroes, especially in gymnastics and swimming, but no one seems interested in the rights of these young stars. Nadia Comaneci, the Romanian gymnast, was universally admired during her time in the sun in the 1980s but her accounts in more recent years of what she endured as a young teenager should warn us all that behind the glamour there is often an abused, exploited and suffering child. I sometimes wonder what Australia's dazzling young swimming and tennis stars might say about their childhood in a few years time.

Disability and sport

People with disability have the right to enjoy a full and decent life with active participation in community. That includes a right to participate in sport. For that they require facilities, resources, training and attention but sports people with disability have access to less of everything. Simply compare the Olympics and the Paralympics.

The right to enjoy a full and decent life also includes the right to attend sporting events. That in turn requires access to grounds and facilities. Our performance in providing physical access is improving. The new Olympic facilities in Sydney are an example of that. But often the related needs of people with disabilities are overlooked or ignored, through ignorance or callousness or spite. Accessibility for people with disabilities extends beyond the actual sporting facilities. Although the Olympic Games venues themselves are models of accessible facilities, there are real questions about the extent to which Sydney can be considered disability friendly for the Olympics and Paralympics. For example, the new railway station at the Olympic site is fully accessible but few other railway stations in Sydney are. So someone using a wheelchair will be able to leave the train easily and in comfort at Olympic Park but will he or she be able to get on it in the first place to get there?

Again let me give another example from the Sydney Olympics. Earlier this year the Sydney Organising Committee for the Olympic Games (SOCOG) produced a large and complex booklet for those interested in tickets. The booklet, many pages long and in full colour, was distributed free to virtually every household in the country. But it was not available in braille. The booklet was also available in electronic form on the SOCOG website. But the website did not comply with international standards for accessible websites and so people with visual impairments could not access the information in that way either. When a blind person and associations for people with visual impairments complained, SOCOG said it could not afford to produce a braille edition. It would have cost around $50,000. The Games are costing billions.

Ensuring accessibility and participation requires much more than good venues. There is a long way to go before we can be satisfied that the rights of people with disabilities in relation to sport are being adequately met.

Sport in Human Rights

Sport can have a role in promoting human rights observance and in promoting human rights violations. There are many examples of each. The most famous example of both would have to be that of the 1936 Berlin Olympics which Adolf Hitler saw as an opportunity for the glorification of Nazism and white supremacy but which in the end were a triumph for racial equality through the magnificent achievement of Jesse Owens. A more contemporary example is South Africa during the *apartheid* era when the Government sought to advance the nation's racial policies through sport and the international community used sports boycotts as one means to undermine and isolate the Government.

During the anti-*apartheid* campaigns we were often told that sport and politics don't mix. History puts the lie to that. In fact sport and politics have mixed at least since the beginning of the first Olympics and probably much earlier. The question is not whether but how, especially how the mixing can advance human rights rather than impede them.

An avenue from poverty

Sport can advance the human rights of particular individuals and groups because it can be a vehicle to lift people out of poverty and human rights abuse. Many professional sports people come from disadvantaged groups, from traditionally oppressed minorities. They have fewer opportunities than others in their societies for education and advancement. Sport offers them an important chance to escape poverty and marginalisation. Certainly it offers opportunities for high income for some. But for poorer people generally it provides self esteem, a chance to succeed and to be recognised as someone with skills and abilities. The child soccer players from Liberia, the Millennium Stars, who were denied visas by the Australian Government to attend this conference, are an example of that. They have gone from a

position of virtual slavery, surrounded by violence, to being a group of young people with confidence and determination to survive.

Models for others

Individual sports people and sports generally can provide societies with models for good human rights practice. In Australia we have many Aboriginal sports people who do that. People like Nicky Winmar, whom I have already referred to, and Michael O'Loughlin, another Australian Rules Football player, who gives a lot of his time and energy to encouraging young Aboriginal children. Or Cathy Freeman, a young Aboriginal athlete, who proudly carried the Australian indigenous flag when she won her gold medal at the Commonwealth Games in 1994.

Sports can also model a human rights observant culture and society through both competitors and attendees. The participation of people across racial, ethnic, gender, age and other social groupings can be a model of inclusion and acceptance. Equally, however, when a sport is dominated by one particular group, it can become a model of exclusion, reinforcing cultural values that abuse human rights. We Australians are rightly proud of the accomplishments of our swimmers but I worry when I see so few indigenous young people and others from Australia's ethnic minority groups among the Australian swimming team.

Sports play positive modelling roles when they are seen to address human rights issues that arise. I have already mentioned responses to racist slagging through the development of racial vilification policies and the disciplining of offenders. In this way racism is seen as unacceptable, as contrary to the values that the sport seeks to uphold. The policies have significance well beyond the particular sport that adopts them, in the wider community.

Leadership of sporting heroes

Sporting heroes can break down stereotypes. They can provide leadership for their own particular communities and for the community as a whole, as Jesse Owens did at Berlin in 1936. Ian Roberts, an Australian international rugby league player, has publicly spoken and written about his homosexuality. In doing so, he has punched holes in the frequent typecasting of gay men and given hope and encouragement to young gay people who don't fit the stereotypes or who have difficulty accepting their homosexuality. He is a national leader for human rights, not only a very successful sportsman.

The leadership role of sports people in promoting human rights on the sporting field itself can be more than simply the fact of their success. They are capable of gestures and statements that have meaning well beyond the competition: Cathy Freeman and the flag; Nicky Winmar and his skin colour; the African American athletes who gave the black power salute at the Mexico Olympics; Alwyn Morris and his eagle feather at the Los Angeles Olympics.

Off the field too they can be leaders. Indigenous Australian athletes have played significant roles in advancing reconciliation in this country. Paralympians have promoted the rights of people with disability. Many individual sports people have associated themselves with particular human rights causes through charitable donations.

Boycotts

The ways sport can advance human rights I have discussed so far have been soft ways, personally difficult but not too politically controversial. Everyone likes success and everyone, sometimes grudgingly, recognises and applauds leadership. But other ways of advancing human rights through sport have a harder and far less popular edge. They tackle human rights issues head on. Sporting boycotts are an example of these harder approaches.

Boycotts are an important strategic means of opposing systemic patterns of gross human rights violations. They can express the abhorrence of the international community as a whole, or at least a large part of it, at the acts and practices of a particular nation or nations. The international sporting boycott of *apartheid* South Africa is perhaps the best example from recent history. The boycott was controversial, especially in countries like Australia and New Zealand with long sporting associations with South Africa. In both countries boycotts were imposed only after bitter public debate and

often violent confrontations at sports matches. They were literally forced on sports administrators and governments by the breadth and depth of public feeling and action. They were criticised as mixing politics and sport, although there were few countries in the world at the time where politics and sport were more intrinsically mixed. They were also criticised as harming the cause of human rights, although the credible black leadership in South Africa was strong in its support of boycotts. With the benefit of hindsight, few would deny the significant contribution the sports boycotts made to the overthrow of the *apartheid* regime.

Other sporting boycotts have been far less successful, largely because they have been imposed as a result of deep divisions in international opinion rather than broad agreement. The boycott of the Moscow Olympics in 1980 and the reciprocal boycott of the Los Angeles Olympics in 1984 rank as the outstanding examples of actions that had little effect on improving human rights but, on the contrary, probably did more to set them back. They reflect the need to ensure that sports boycotts, like trade boycotts, have a firm basis in international human rights law and principles and not political or national interests. They must be the product not of posturing or reprisal but of careful strategic choices as to what will best advance the cause of human rights and the well being of those whose rights are violated.

Sporting mega-events

Another example of the harder approach is found in the opportunities provided by mega-events, such as the Olympic Games and the Soccer World Cup. These kinds of events are ripe for exploitation for human rights purposes. They attract world attention. They draw the international media and so offer receptive journalists looking for stories.

These events can be used to draw attention to human rights violations. That is why indigenous leaders in Australia have never supported the idea of a boycott of the Sydney Olympics because of the treatment of indigenous Australians. Why forego the premier opportunity to tell your story to the world's media? Why forego this opportunity to show the world exactly what is happening to indigenous people and in indigenous communities? Of course the organisers of the mega-events will do everything possible to avoid this kind of scrutiny. I see evidence of that in the fact that the Olympic torch relay will start at Uluru, a place of great symbolic significance, but then be taken by air to Alice Springs without going through the depressed, deprived Aboriginal communities in the region. The challenge for human rights activists is to ensure that these best efforts of the organising committee are thwarted and that the mega-event truly does permit the kind of international attention that human rights violations deserve.

More positively, mega-events also provide opportunities to force the pace of human rights reform by highlighting achievements in performance. We saw this with the Seoul Olympics in 1988 when the certainty of the coming world attention advanced the withdrawal of the military from power and promoted democratisation. So sporting mega-events provide opportunities for human rights promotion like few other activities.

Human rights violation

I have to acknowledge, however, that they also provide opportunities for human rights violations. The scale of these events makes them naturally attractive not only to human rights activists but also to many other kinds of activists, including terrorists. Wide ranging, intrusive emergency powers for police and other civil authorities are often introduced to respond to the risk of terrorism, sometimes justified, sometimes not. Residents of the cities that host the events will often complain about the inconvenience visited upon them but they may not realise the extent to which they are subjected to wider powers of arrest and detention, restrictions on freedom of movement and other limitations of their rights.

As seems always the case, those who are least powerful, the poorest, are usually the ones most affected by human rights restrictions. Every Olympics or World Cup is accompanied by stories of poor people being forced out of emergency accommodation and homeless people being taken off the streets and out of town, removed from sight. Poor people also suffer most from the price increases, especially

in rent and food, and other effects on daily life. So mega-events have to be exploited for all possible human rights benefits to compensate in some way for the human rights costs.

Conclusion

Sport gives enjoyment to hundreds of millions of people every week. It is an intricate part of culture and of life. That's why it's so important for its potential and actual effects on human rights. It does not and cannot exist in isolation from the rest of life. It has a context.

So the question I posed earlier remains: not whether sport affects human rights, but how. Human rights are the most important rules beyond the game, the most important criteria for assessing how the game is played. Human rights activists and sports administrators must work together to ensure that sport promotes human rights protection rather than human rights violations. Human rights activists and sports people must work together so that the broader human rights leadership role of sports people can be developed. Academics, journalists and commentators are needed to help us understand better the relationship of human rights and sport and how to develop that relationship positively. Ignoring how sport affects human rights risks discrediting sport and missing important opportunities to advance the well being of all people.

Sport and Social Development in Africa: Some Major Human Rights Issues

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The subject of this paper relates to some of the major human rights issues that arise in respect of sport and social development in Africa. As a social scientist, I have to say that disciplines like sociology and anthropology have had some real ambivalence about their possible complicity in directly involving themselves in the structural development of Africa. In the early post-war period, the so-called modernization perspective tended to be the dominant theoretical position within social science. At policy level, the modernization perspective was broadly in line with the position of Western governments. To put it in an overly simplified way, the emphasis was on strongly encouraging the developing world to follow the West in terms of its model of development. Hence, particular Western constitutions were brought into these states. They were also encouraged to industrialize and to urbanize very rapidly (see Rostow, 1960). Western transnational corporations remained the major economic players in these regions. The entire process was underwritten by enormous loans from Western banks and institutions that are now bankrupting many of these nations.

The problems of the Western model - the myths and the realities - were exposed towards the end of the 1960s. Critical social scientists drew attention to the point that the continuing development of the West came at the expense of the developing world - hence, the West ensured that the non-Western world remained 'underdeveloped' (Frank, 1971). Meanwhile, in social science, we had a greater recognition of, and support for, cultural diversity. In relation to sociology and anthropology, for example, this led to greater empathy being extended to societies with non-Western values and beliefs. Latterly, we have seen social theorists grappling with the intractable problems of trying to think about or comprehend the actions and beliefs of people from non-industrial contexts (Lyotard, 1984). One by-product of these critical perspectives on 'modernization' was a critical stance on cultural transference. In relation to ethics or even human rights, it could have been argued, often in a somewhat crude way, that the West should not seek to transfer its late 20th century, European based values onto a separate cultural context.

Today, something of a middle path needs to be taken, though one that exercises a greater skepticism towards the modernization position. The catastrophes that have struck African states over the past 3-4 decades are certainly rooted in their underdevelopment. But their solution is not served, at the everyday level, by a philosophically-based retreat into cultural relativism, or by an abandonment of the issues of human rights and development.

Instead, we know find ourselves at a juncture where we can make real progress in conjoining human rights and the question of development. As André Frankovits (1998) has made clear in his manual, *The Rights Way to Development*, 'development and human rights are not two separate spheres ... but rather, development is a subset of human rights. Moreover, the right to development and economic, social and cultural rights have universal legitimacy.' Development, then, must not be at the expense of basic human rights.

Now, in the context of this conference, we turn to look at the role of sport, and there would initially seem to be three inter-related ways in which sport relates to development and human rights:

1. We can identify the right to sport as a basic human right in and of itself. And, this is certainly recognized by the most influential NGOs (non-governmental organisations) - for example, according to Article 1 of UNESCO's international charter: 'The right to physical education and sport is fundamental for everybody'.

2. We can identify how sporting organisations serve to promote basic human rights through competition. And, again, this would seem to be contained within the charters of most sporting organisations. For example, and most obviously, we can look at the Olympian ideal:

   > 'The goal of Olympism is to place everywhere sport at the service of the harmonious development of man, with a view to encouraging the establishment of a peaceful society concerned with the preservation of human dignity'. *(The Olympic Charter, Fundamental Principles*, Paragraph 3).

3. Beyond these legal and discursive connections, we can look at the deeper political and historical associations that exist between sports, the development process and human rights in the developing world.

And, to examine some of these latter themes, I'll consider some of the development and human rights issues that emerge generally in the African context.

Now, we have to begin by recognising that the arrival of modern sports in Africa was heavily rooted in a colonial agenda (Baker & Mangan, 1987). Membership of sports clubs would be screened along racial lines, as well as those of class and gender. Sports like rugby union and cricket were particularly favoured by the colonial classes, and employed to reinforce rigid social distinctions. The white populations' almost complete control of resources served to minimize the rights of non-whites in terms of sporting practice. For example, in South Africa, at the height of apartheid, it was common to find up to 100 black sports teams competing to play on a single sports field (Kidd, 1988).

Additionally, we have to recognise that historically, sports have been ideological vehicles for promoting the world-view of powerful elites. In Africa, the colonials found that teaching rugby, cricket or other sports to the black African population would be a useful way of passing their time, but also encourage a sense of cultural dependency among locals on the Europeans, and instill particular values regarding team-work, obedience to one's master, self-sacrifice, and so on.

The colonial army and other members of what might be termed the white working class played an important role in spreading some sports rather than others throughout the black population. In southern Africa at least, soccer was more favoured and so its diffusion was more readily achieved. Additionally, the game was less obviously bound up in the cultural values of the colonizers. It did not necessarily carry the same kind of class imprimateur as, for example, did cricket. Consequently, in the words of Ali Mazrui, the noted African social scientist, the game was seen as 'culture neutral' (Giulianotti, 1999).

And this points us towards a kind of hidden debate that occurs within the social sciences regarding sports and modernisation. Some historians and critical sociologists emphasize the ideological line that I sketched out a moment ago: that, while the Olympian values of sport seem laudable enough, when they come to be practiced, they simply serve Western imperial interests (Hargreaves, 1984). On the other hand, some anthropologists, such as Roberto Da Matta, argue that sport does represent a modernizing force, in more positive ways. In their view, sport contains universalistic, egalitarian and meritocratic principles that provide a strong affirmation of the viability of modern development (see Helal, 1994).

Again, I think we need to take a careful line between the two here. In the post-war and post-colonial milieux, we find that the constitutions of the most settled African states may be democratic and relatively uncontested. Nevertheless, from the most pessimistic vantage-point, a new set of imperial forces may be identified, in the shape of Western transnational corporations and business enterprises.

And sport is no exception here. Contemporary sports institutions are transnational corporations; they operate on a global scale in much the same way as General Motors, BHP or Coca-Cola. And, we continue to see the

more damaging influences of these enterprises within the developing world.

Most obviously, we can describe as imperial, the way in which Western enterprises exploit the rich sporting resources of the developing world. Alan Klein (1991) draws especial attention to this in Latin America, and suggests that baseball clubs from the USA and Japan are able to purchase and refine the rich reserves of human talent for a mere fraction of the labour costs that would be incurred in the USA.

John Bale (1991), in his analysis of American college athletics, makes the same point with regard to the employment of African athletes, to preserve the good sporting name of these educational institutions.

And, perhaps most seriously, there is the case of player exploitation in soccer, especially in West Africa. One Italian football agent based in Africa opened up his own youth team, with a view towards selling on the best young players to top European sides. The Italian football authorities later denounced his terms and conditions, as leaving his young players in a state of 'slavery' (Broere & Van Der Drift, 1997).

Moreover, there are obviously other circumstances in which the local sports-related experience with Western transnational corporations is less than emancipatory. One thinks here, for example, of the production of sports-related products in the developing world that then go on sale in the West. The most extreme instance of this inequality has been the production of footballs by child labourers in rural Pakistan (Marcus & Husselbee, 1997). Less extreme cases perhaps relate to the construction of factories in Africa and Indo-China by the major sports manufacturers, the very low wages that are paid, and the dependency culture that is effectively fostered within the developing community towards the transnational company.

In a more routine way, we see that the sportification of African society may, as elsewhere, be a further vehicle for cultural Westernization. For example, this is perhaps apparent in the close nexus of the marketing of sports with transnational companies. While we find that sport aid is provided to the developing world, often the source of this aid will be a transnational company which is in league with a major sports body. Consequently, a donation to a small sports enterprise through FIFA and MacDonalds becomes a positive marketing vehicle for the latter company in establishing both a foothold in the developing world, and in confirming the symbolic centrality of the company with progressive, sporting participation. And this, of course, leads us into a wider debate on the role and prevalence of Western transnational companies in the sustainable development of the developing world.

However, to repeat the key point, the right to development and general human rights go together - meaning here, that the 'sportification' of Africa can indeed be a positive rather than negative component in establishing peaceful and viable social relationships. And this is most obvious in circumstances where military conflicts have produced social breakdown.

Now, the relationship between sport and conflict resolution is a complex one and needs some extended consideration. We do need to exercise some historical and political caution when drawing a nexus between sport and conflict resolution. Certainly, we can appreciate the various constitutional rules and articles of association at sports organisations like the IOC and FIFA - which emphasize tolerance and understanding towards one's opponents, senses of brotherhood and sisterhood, the priority of playing and competing over winning or losing. All of these values are in keeping with the wider values of NGOs and democratic societies, with regard to guaranteeing individual freedoms and, more specifically, to confirming the right of people to obtain proper physical exercise and sporting experiences.

Yet, on the other hand, we cannot essentialize or mythologize the nature of sporting contests, by ignoring their real nature. Many sports are the focus of intense rivalries and conflicting identities. Indeed, if we look at how social identities are constructed, we can understand sport's centrality. The social identity of people is rooted in a twin process, of identifying themselves within a community, and also, as a consequence, by identifying themselves against other peoples and other communities. Within

the specific sporting associations, we certainly find the embodiment of specific communities; yet, when it comes to competition, we also find that these contests become dramas, as people define themselves against their opponents, against 'the other' (Armstrong & Giulianotti, 2000).

For the major sporting organisations, the claim that 'sport stops war' would certainly enhance the international and market appeal of sports. One could point also at some extra-ordinary examples: for example, in the case of soccer, at the famous football matches that were played between British and German soldiers during the First World War; or when Pele's visit to Africa led to a lull in the civil war in Nigeria in 1969 (Murray, 1995). But, of course, we may also point to the counter-evidence: most violently, with the case of the soccer war in Central America, which produced 6,000 dead after a match between Honduras and El Salvador in 1969; and also with the genocidal conflict in the former Yugoslavia - which began in earnest, it seems, after a riot at a football match involving fans, players, club officials and the security forces from the rival communities (Giulianotti, 1999).

Nevertheless, sport can provide a setting in which conflicts may be dramatized and metaphorically expressed, rather than all-too-really played out on the battle-field. The rules of the game, and the prevailing ethics of the game, provide the rival sides with a common framework, and critical reference points, through which they may interact in a meaningful manner. Otherwise stated, if the rival sides can distill and dramatize their conflict through the theatre of sport and through a conflict on the pitch, then we do have some possible reflection of more orderly and stable relations between the two sides. Additionally, for the casualties of war, sport can take on a therapeutic function; it can enhance some rule-governed behaviour, and the rehabilitation of those traumatized by war.

And, there is some fieldwork that is emerging from Africa which helps to sustain this point. For example, it has been speculated by anthropologists like Paul Richards, that soccer and other sports may play a really positive role in areas of military conflict. From his research in Sierra Leone, Richards (1997) found that obviously, for the vast majority of young people, the way towards self-improvement, towards social mobility and towards establishing greater social status, was closed off in mainstream society. In short, Richards argues, the patronage culture of West Africa tended to prevent ordinary young people from climbing the social ladder through education, career promotion or within most public or private institutions. Instead, young people could turn to two practices to show off their personal skills on a more 'level playing field'. And those practices were: soldiering in one of the various military or guerrilla groups, or playing football. In military situations, young people were given the tag of 'commander for the day' and allowed to show their prowess in fighting - the most skillful were obvious, they survived. In sports, there lay an alternative, where the penalties for defeat were less severe, but where skill, merit and a bit of luck were also key factors in determining success or failure. Richards, quite understandably, argues that the most important thing is to nourish the underlying belief that sport can provide this level playing field. The most important way in which this can be done, is to ensure that the referees are seen as above reproach by the opposing sides - to guarantee that they are not biased. And, the training of referees and other sports officials would be a useful, practical way of doing that.

Now, this kind of research does point to ways in which sporting organisations and Western aid agencies can come together to advance the cause of human rights and development in Africa. The Aid agencies do seem to believe that sport has a real role to play:

According to the UN High Commissioner for Refugees, Sadako Ogata, 'Sports and recreation are vital for all children. For a refugee child they are irreplaceable in helping rebuild a destroyed world' (IOC, 1999a).

According to the Red Cross in Indo-China, 'Sport transforms men and women by endowing them with strength, endurance, vivacity and courage. Every school, every group of pupils living in a given region must create its own climate of well-being and joie de vivre ... All these activities provide a background against which young people can learn to live healthy lives and promote among

the population the desire to establish a new culture' (ICRC, 1999).

And, in recent years, we have seen a real expansion in this kind of work, and it is useful to summarise here some of that endeavour:

1. International Committee of the Red Cross (ICRC) has become heavily involved in linking sport to its campaign to ban anti-personnel mines. In the UK, this has resulted in sports athletes like Sally Gunnell becoming strong advocates of the campaign. At a more global level, the French soccer star and celebrity David Ginola has been enlisted for the campaign. More institutionally, the European Football Union (UEFA) has joined up, and is contributing 1 million Swiss francs to aid the rehabilitation of landmine victims. UEFA also provided the ICRC with airtime to disseminate its message during the European Champions League.

2. UNICEF were one of a number of NGO's that helped to set up the so-called 'Spirit of Soccer' campaign in Bosnia during and after the civil war in the former Yugoslavia. The project involved football matches being organised by a former professional football player from England, followed by an educational class on landmines and other safety issues within the war-torn zone.

3. UNICEF are also talking with organisations such as FIFA, the world football governing body, and the ICC, which controls international cricket, with a view towards forming a partnership.

4. The charity ActionAid in 1998 set up a 'One World One Goal' campaign. The campaign sought to 'bring people together' through employing the world medium of football in 'small initiatives', such as staging football matches between rival communities, or organising clubs to promote a peaceful environment. While the campaign emphasized its work in Africa and Latin America, it also included work in some projects in the inner-cities of the UK (ActionAid, 1998).

5. The world football governing body, FIFA, has set up a new development programme, entitled appropriately enough, GOAL (FIFA, 1999). The aim is to identify and help to rectify some of the specific problems faced by the individual member associations. Within the context of Africa, especially sub-Saharan Africa, it is to be expected that many of these problems will relate to health, educational and other human rights issues - and that FIFA's football-centred aid will assist in addressing some of these problems.

6. FIFA are also working with their nominated children's charity, 'SOS Kinderdorf', at a global level. The children's villages in South Africa, Mozambique and the Gambia are among those that are particularly well patronised by national associations.

7. For their part, the IOC (the International Olympic Committee) have entered a collaborative arrangement with the UNHCR (that is, the United Nations High Commissioner for Refugees). The collaboration goes back to 1995, and has provided basic infrastructural and equipment support for children living in refugee camps. One of the biggest camps has been in Kenya, and housed up to 50,000 people; an official documentary on their work shows the IOC and the UNHCR helping to link people together through sport (IOC, 1999b). The IOC have also been involved in campaigns to distribute special sports kits throughout refugee camps - particularly those in Tanzania, Guinea, and Sudan. The IOC has also been involved in specific sport aid projects in Burundi, Rwanda and Madagascar.

The IOC's development work is organised through the Department of Humanitarian and Youth Affairs, which has organised new projects in Somalia and in Yemen.

This leads me on to look at some issues and problems that may emerge in the new millennium, as sports and everyday human rights come together.

First of all, we may note that the focus of modern sports is increasingly on young people's active participation. Not only is this emphasis on youth reflective of the demands of elite-level sport, at which young people predominate; it is also exaggerated by the increasingly strong preconcern of our consumer-centred culture with images of youth and youthfulness. And modern sports are, of course, very much wrapped up in this new cultural industry. Hence, we find that visibly older people become somewhat incongruous in sports participation. It is to be hoped that sports-related development in Africa does not by-pass the older generations. In many circumstances, the divisions between the generations are already stark enough. The consequences of massive HIV infections in central and southern Africa are highly damaging here. A middle generation of peoples, aged between 20 and 45, has been most painfully exposed to HIV infection, resulting in the catastrophic loss of parental figures throughout entire communities. Instead, the parental role must be performed by grand-parents, and so any kind of recreation must be encouraged to reduce the domestic burdens. Sports-centred work must seek to bridge this division, not reinforce it.

Second, there are many, particularly complex problems surrounding the sport and development question for just over half of the given population in a given society. Specifically, I am talking here about the various political, cultural and human rights issues surrounding the participation of women in sports.

At the grassroots levels, there may be strong cultural mores that dissuade or prevent women from actively participating in sports. In Zanzibar, for example, we find the case of the 'Women's Fighters' soccer team which is required to play in the hijab and whose players are beaten on occasion by their disgraced male relatives (Giulianotti, 1999).

The various NGOs that operate in Africa have something of a delicate issue to resolve here. On one hand, they may certainly view the promotion of women in the cultural sphere as part of the human rights dimension. And there is, of course, plenty of evidence that would seem to confirm this. There are far more limited personal opportunities that are available to women; there are often oppressive domestic labour experiences that confront women; and, in terms of sexual exploitation, there are greater health dangers suffered by young women with regard to sexually transmitted diseases, notably HIV/AIDS. Meanwhile, at home, the Western NGO may make, as one of its aid policies, specific stipulations on the involvement of women, as a reflection of anti-sex discrimination practices that exist in the West more generally.

On the other hand, the involvement of the NGO in promoting the social position of women may well result in their alienating the prevailing regimes in these countries. To the state, development work may be acceptable and welcome, so long as it does not extend beyond economic modernization and into the realms of social policy. A further problem for the NGOs relates to the differences that need to be recognised between strategies for utilising male and female sport. Male sport stars are at the centre of the NGO campaigns. For female sport, this is rather more difficult, mainly because there are so few female sporting icons who are recognisable on a global level. Sports such as tennis and athletics, to some extent, provide women of such status, but these sports lack the enormous international appeal of, for example, soccer or basketball.

The difficult issues for some of these states to resolve concern the social values and internationalist potential of elite-level sport. In the developing world, as elsewhere, sporting successes can represent an important, symbolic affirmation of the incumbent political regime. In Australia, as in Angola: winning at sport helps the political class to appear as the patrons of success. For many states in Africa, a quick entry to sporting success may be had through an emphasis on sporting activities that are out with male professional sports. For example, in soccer, it is far easier for Nigeria or Cameroon or Ghana to make real, sudden headway in international competition in the women's game or in youth soccer, rather than in the men's game. This kind of success can give these nations a real political 'foot-in-the-door' within the soccer world, and provide a good basis for the attempt to host these kinds of matches. Yet, this does open up some potential problems regarding the difference in state acceptance or

general cultural support for women's football at the elite level and at the everyday, grassroots level.

Third, we have to resolve the relationship between two rights: on one hand, the right to access to sport as opposed to open discrimination, and on the other hand the right to cultural autonomy and diversity. In Africa, as I've noted, sport was a particularly powerful vehicle for cementing fundamental social inequalities along 'racialised' lines. In the post-colonial and post-apartheid world, fundamental inequalities still remain in terms of material wealth and cultural freedom. Sports continue to tell this tale, with regard to the distribution of membership inside sporting associations, and at the elite level, in terms of who does and does not represent the new nation. Now, as we have seen in South Africa, active steps have been made to try to ensure that in sports like rugby union and cricket, the representation of non-white players is reflected in the national sides. The cricket teams in Zimbabwe and, to a lesser extent, Kenya, have these problems as well.

And yet, we must also note that a strong degree of choice may also have underpinned the movement of the black majorities of these nations into other sports, out with the old colonial and Commonwealth sports of rugby and cricket. We can certainly see this in the case of South Africa, where the local, national and cultural identities of black communities are much more heavily tied in with the global sport of soccer, as opposed to cricket and rugby. In part, this division also has a strongly geographical aspect to it, with these latter sports being played in some parts of South Africa rather than others. But there is also a component here that relates to cultural autonomy and diversity on the part of urban black populations.

Now certainly, we can only commend the political strategy of the post-apartheid South African state, which seeks to provide a more level playing field for non-white athletes and spectators, and which also seeks to break up the role that sport such as rugby continues to play in preserving the more racist and xenophobic culture within white South African society. But, some academic commentators on South Africa are also coming to consider the possibility that some kind of cultural difference in sports participation is no bad thing, at least in the medium term, so long as it is rooted in the expression of cultural identity and autonomy, rather than social exclusion (Nauright, 1998). Certainly, for the next generation or so in South Africa, the association of sports like cricket and especially rugby with white domination is deeply engrained and difficult to shake. Additionally, there is something that is at least symbolically symmetrical in the way that the new South Africa might shake off the most negative vestiges of colonialism - apartheid - by shedding the Commonwealth sports in favour of global sports like soccer or athletics.

Finally, in the longer-term, the most important function of football and other sports in Africa must relate to their potential as media for communicating between cultures. Specifically, the global adulation that is given over to sports stars, and the constant media coverage of elite athletes, must provide us with a bridge of mediation between the developing world and the developed world. The successes of African athletes on the international stage provide immense educational opportunities, for explaining the often dreadful regional and national backgrounds of these elite performers. In this sense, the mass media and the NGOs have a real responsibility here too. They have to avoid reifying the athlete's celebrity status. Currently, the campaigns are very much centred around using sports celebrities to spread the word. Ideally, the sports celebrity will be from the developing area, but will be very well known to a Western audience - for example, the soccer player George Weah, whose work on behalf of the people of Liberia has been truly exceptional.

In the longer term, the media and the NGOs need to move away from repeating the cult of celebrity, and thus to avoid the possibility that the tragedies of the athlete's homeland become part of a marketing melodrama. Instead, the emphasis needs to stay on the social context from which the athlete emerges - the military conflicts and civil wars, the famine, the mass migration of refugees, the human disaster of HIV infection and so on.

It is, of course, absurd to think that sports participation could have a direct impact upon

these catastrophes. All of these problems are rooted in the extra-ordinarily deep, and widening, divisions between the developed and developing worlds, in economic and political terms. For NGOs in the shape of charities, it does seem that this message is inescapable. As ActionAid (1998) state in their One World One Goal campaign, contemporary struggles are a reaction against material and fundamental forms of deprivation - water, land, housing, basic education, and so on. Only 'integrated' campaigns will prove effective, with sport playing a part.

The popularity of sport - in both the donor and receiver countries - is undeniable, and its centrality to the popular culture of both kinds of society is there for all to see. In short, organised sport provides us with development and human rights opportunities that are too good to miss.

References

ActionAid (1998) 'Scoring a Goal for Peace', London: ActionAid.

Armstrong, G. & R. Giulianotti (eds) (2000) *Oppositional Cultures in World Football*, Oxford: Berg.

Baker, W.J. & J.A. Mangan (eds) (1987) *Sport in Africa*, New York: Holmes & Meier.

Bale, J. (1991) *The Brawn Drain*, Urbana: University of Illinois Press.

Broere, M. & R. Van Der Drift (1997) *Football Africa!* Amsterdam: KIT Press.

FIFA (1999) 'GOAL - FIFA's New Development Programme', http://www.fifa2.com

Frank, A.G. (1971) *Sociology of Development and the Underdevelopment of Sociology*, London: Plato Press.

Frankovits, A. (1998) *The Rights Way to Development: a human rights approach to development assistance*, Sydney: Human Rights Council of Australia.

Giulianotti, R. (1999) *Football: a sociology of the global game*, Cambridge: Polity.

Hargreaves, J. (1984) *Sport, Power and Culture*, Cambridge: Polity.

Helal, R.G. (1994) *The Brazilian Soccer Crisis as a Sociological Problem*, unpublished PhD thesis, Department of Sociology, New York University.

ICRC (1999) 'A Look at the Red Cross of Vietnam', http://www.icrc.org

IOC (1999a) 'Sports Kits for Refugee Youth', http://www.olympic.org

IOC (1999b) 'Documentary and PSA on the Olympic Movement's Humanitarian Activities', http://www.olympic.org.

Kidd, B. (1988) 'The Campaign Against Sport in South Africa', *International Journal*, 43 (autumn).

Klein, A. (1991) 'Sport and Culture as Contested Terrain', *Sociology of Sport Journal*, 8.

Lyotard, J.-F. (1984) *The Postmodern Condition*, Minneapolis: University of Minnesota Press.

Marcus, R. & D. Husselbee (1997) *Stitching Footballs: voices of children in Sialkot, Pakistan*, London: Save the Children.

Murray, W. (1995) *The World's Game: a history of soccer*, Urbana: University of Illinois Press.

Nauright, J. (1998) *Sport, Cultures and Identities in South Africa*, Leicester: Leicester University Press.

Richards, P. (1997) 'Soccer and Violence in War-Torn Africa: soccer and social rehabilitation in Sierra Leone', in G. Armstrong & R. Giulianotti (eds) *Entering the Field: new perspectives in world football*, Oxford: Berg.

Rostow, W.W. (1960) *The Stages of Economic Growth*, Cambridge: Cambridge University Press.

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Beyond a Boundary:
Sexual Harassment in Sports Employment

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Introduction

In the conference presentation, I shall discuss aspects of an ongoing research project on the extent to which the United States' sex discrimination laws have impacted upon sports participation and sports employment. The research to be discussed is concerned with how recent court cases have changed the law on liability for sexual harassment by employees, and how the new law impacts upon educational institutions whose student-athletes make allegations of harassment against college employees. I will show how the new law impacts specifically upon sports provision in educational institutions and will suggest what lessons other jurisdictions could learn from the United States' experience. This written paper is an opportunity to provide an overview of the new law on sex discrimination in the United States.

Sex Discrimination and Sport

The law on sexual harassment in college sport is based on the provisions Title IX of the Educational Amendments Act. Passed by the US Congress in 1972, Title IX prohibits gender-based discrimination in educational institutions that receive federal financial assistance. Section 90(1) provides (in salient part) that:

> No person in the United states shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Title IX has been used primarily to ensure that educational institutions provide adequate opportunities for members of both sexes to participate in their sports programmes.

Additionally, it has been used to address educational institutions' failure to create more work opportunities for female sports coaches and (along with the provisions of the Equal Pay Act, 1963) to prevent disparities in coach remuneration that exist solely for reasons of sex.

According to the Office of Civil Rights (OCR) at the US Department of Education, sexual harassment that amounts to discrimination under the terms of Title IX may be defined as:

> Unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature, imposed on the basis of sex, which could:
>
> (a) deny, limit, or provide different aids, benefits, services or opportunities;
> (b) condition the provision of aids, benefits, services or opportunities; or
> (c) otherwise limit a student's enjoyment of any right, privilege, advantage or opportunity protected by Title IX.

The forms of behaviour that are covered by the OCR's definition include (but are not limited to):

- unwelcome verbal banter or jokes of a sexual nature;
- unnecessary patting and touching;
- verbal harassment;
- subtle pressure for sex;
- constant 'invasion of personal space';
- demanding sexual favours with explicit or implied threats about a person's employment status;

- offering preferential treatment in exchange for sexual activity; and
- sexual assault.

In the educational setting, sexual harassment includes offers of better grades or references in exchange for sexual activity, commenting upon students' sexuality or remarks about their bodies, clothing or sexual activity.

Evidently, there is a broad range of behaviour that amounts to sexual harassment under Title IX. While some of the examples of unacceptable behaviour have been quite blatant - such as the medical school that used slides of Playboy centrefolds to enliven anatomy lectures - other forms of harassment are far more subtle, but no less demeaning. The more subtle forms of sexual harassment are likely to violate Title IX under the 'hostile environment' theory, while demands for sexual favours normally fall under the rubric of 'quid pro quo'.

In order to be considered 'hostile environment' sexual harassment, the conduct in question must be 'pervasive and severe' and must be perceived as unwelcome or offensive. It need not have a detrimental effect on a person's employment: conduct that makes for unpleasant or offensive workplace conditions will suffice, so nude calendars, pornographic graffiti or e-mail attachments or unwelcome sexual jokes will amount to 'hostile environment'. So will the conduct outlined in *Kracunas*, where a University professor, having arranged to meet a student to discuss her grade 'embarked upon a sexually explicit discussion of his personal sexual history, told (the student) that he envisioned her naked and inquired into her personal sexual activity'.

Ordinarily, 'quid pro quo' sexual harassment is easily recognisable, and because the pressure for sex in return for career or educational preferment may be either explicitly or implicitly applied, 'the critical point is not whether the victim submits voluntarily, but whether (she) submitted to unwanted conduct'.

Until the Supreme Court decisions in the summer of 1998, the scope of the sexual harassment provisions under Title IX had been defined by the decisions in three earlier cases. In *Alexander v Yale University*, current and former Yale students had sued the University after being harassed by male faculty members and administrators. They argued that the University had refused to seriously consider their complaints, and that this amounted to a violation of that part of Title IX which requires institutions receiving federal financial assistance to 'adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints'. The District Court found that the complaints of the students who had graduated were moot, and that the alleged incident of harassment made by the only plaintiff who was still a student had never occurred. The decisions were upheld by the Court of Appeals for the Second Circuit, which also noted that Yale had adopted proper grievance procedures in the interim. However, the case established that sexual harassment of students was prohibited by Title IX.

In *Franklin v Gwinnett County Public Schools*, a school pupil brought a Title IX action alleging harassment by Andrew Hill, a teacher, which culminated in Hill interrupting class, requesting that Franklin be excused and subjecting her to what the court termed 'coercive intercourse'. Franklin said that even though school officials investigated the matter and knew of Hill's harassment of her and other pupils, they took no action against him. Indeed, they tried to pressure her into not pursuing the complaint when Hill resigned on condition that the actions against him were not pursued. Franklin filed a Title IX suit, seeking damages from the School District over its handling of the matter. The Supreme Court held that the School Board had a duty under Title IX not to discriminate on the basis of sex, and when a teacher sexually harasses a pupil because of the pupil's sex, that teacher discriminates on the basis of sex'. If an educational institution ignored an improper relationship between a student and a staff member, it could be on the receiving end of a Title IX lawsuit.

Finally, in *Harris v Forklift Systems* a former employee sued the employer on the ground that the Company President's conduct towards her amounted to sexual harassment and violated Title VII of the Civil Rights Act, 1964. Title VII provides that it is an unlawful employment practice:

> For an employer to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individuals' race, colour, religion, sex or national origin.

Throughout Harris' employment with the Company, its President frequently insulted her and directed sexual innuendoes towards her. When Harris complained, he apologised, said he had only been joking and promised he would stop. However, after several weeks he started making offensive comments again and Harris quit her job. The District Court held that even though the Company President's comments would offend a reasonable woman, they were not so severe "as to seriously effect Harris' psychological well being or lead her to suffer injury". However, the Supreme Court said that Title VII was violated if the work environment was permeated with discriminatory ridicule, insult and intimidation which severely or pervasively alters the victim's employment. Title VII does not require the plaintiff to show that psychological harm resulted. To determine whether a 'hostile environment' existed, it would be necessary to consider 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance'.

Three Supreme Court decisions from 1998 further extended the law on sexual harassment. *Oncale v Sundowner Offshore Services* concerned a male employee who had been harassed by male co-workers and whose employer dismissed the incidents as horseplay. The Supreme Court ruled that the sexual harassment provisions of Title VII apply to same-sex harassment. In *Burlington Industries v Ellerth*, the Supreme Court held that that an employee has a cause of action under the provisions of Title VII of the Civil Rights Act 1964 even if the harasser's threats had not been carried out. In this case, a sales representative who repeatedly rebuffed the amorous advances of a middle manager suffered no adverse consequences and was, in fact, promoted. She had been familiar with the company's sexual harassment policy, but rather than use that procedure, she went straight ahead and filed a lawsuit. The Supreme Court was asked to rule on whether the employer could be liable for the harasser's behaviour when there had been no detrimental effect on the plaintiffs employment status.

The Court held that the absence of tangible negative consequences did not prevent an employee from bringing a claim. However, the Court went on to say that employers can use the 'affirmative defense' and limit potential liability if they can show that they took reasonable steps to prevent and remedy sexual harassment. Employers may also avoid liability if they can show that an employee unreasonably failed to take advantage of corrective opportunities provided by the employer. The Court allowed the case to go forward, but allowed the company the opportunity to mount an affirmative defence.

In Faragher v City of Boca Raton the plaintiff, a female lifeguard, had suffered sexual harassment by supervisors. Her supervisors had subjected her (and other female lifeguards) to uninvited and offensive touching and lewd remarks. Although she told another supervisor about the others' behaviour, the supervisor failed to report the misconduct to his superiors. The plaintiff had not taken steps to report the harassment to the City authorities and neither she nor her harassers had been aware of the city council's written policy against sexual harassment.

Shortly before the plaintiff resigned, another female lifeguard wrote to the City Council's personnel director and complained about the harassment. The plaintiff subsequently discovered that at least five other female lifeguards had made complaints about the conduct of the same supervisors. The Council investigated the complaint and reprimanded the harassers. Subsequently, the plaintiff filed suit claiming the City was liable for the harassment she had suffered. The case turned on whether, in the circumstances, the Council could be held liable for a first-line supervisor's sexually harassing behaviour.

The Supreme Court ruled in the affirmative: an employer will normally be liable for a pervasive, hostile environment of harassment - and is liable for the misconduct of its employees - regardless of whether it had been

aware of the harassment. Its reasoning was based on the fact that employers have the opportunity to screen, train and monitor staff members who carry out supervisory roles. However, the Court also said that an employer would have a defence if it could establish that it exercised reasonable care to prevent and correct harassment; and that the complaining employee unreasonably failed to use the existing complaint procedures. In this case, the City's sexual harassment policy had never been disseminated effectively among the beach employees and the internal complaint procedure did not provide a mechanism for bypassing the offending supervisors.

Employer Liability: The New Playing Field

These last two decisions have substantially expanded employers' liability for sexual harassment by supervisors. In these decisions, the Supreme Court has developed a 'theory of supervisory harassment', which amounts to a ground breaking extension of the law on sexual harassment. The theory is based on the premise that supervisors' authority over others gives them greater opportunity to harass. It is derived in part from the agency principle, under which employers are liable for the actions of their employees when those employees are acting within the scope of their authority. It means that, where the supervisor was 'aided in the agency relation' in committing unlawful harassment, the employer is liable for that supervisor's harassing conduct. If a supervisor takes some 'tangible employment action' in respect of an employee who submits to or rebukes his advances (eg, a change in employment status or reassignment to a lesser position), the supervisor would have necessarily been aided in the act by virtue of his position. The employer would, therefore, be held strictly liable.

The Court's holding that employers would be liable for this kind of 'quid pro quo' supervisory misconduct does not particularly depart from the prior case law of the lower federal courts. Far more radical, however, is the effect of these decisions on those forms of harassment where no tangible employment action has taken place. In summary, the new rule is:

> An employer is liable to an employee for an actionable hostile environment created by a supervisor who has immediate (or successively higher) authority over the employee. When no tangible employment action is taken, an employer may raise an affirmative defence to liability or damages. The affirmative defence requires proof by a preponderance of evidence that:
>
> 1. The employer exercised reasonable care to prevent and correct promptly any sexually harassing behaviour; and
>
> 2. The plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise.

This affirmative defence is not available when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion or undesirable assignment.

Previously, the federal courts had tended to apply a negligence standard to determine an employer's liability when a supervisor created a hostile environment. This negligence standard generally required the plaintiff to prove both a) that the employer knew or reasonably should have known about the harassment; and b) that the employer failed to take prompt and effective remedial measures after being informed of the harassment. Now, the employee need only prove that a direct line supervisor engaged in actionable sexual harassment. If the harassment culminated in a tangible employment action, the employer has no defence and is liable for damages. If no tangible employment action was taken against the plaintiff, the employer may raise the affirmative defence, the burden of proof being on the employer.

The practical impact of the recent cases may be summarised as follows:

- Whereas many federal courts previously required plaintiffs to prove that the employer had been negligent, the new theory of supervisory liability makes the

harasser's employer liable unless the employer can prove both strands of the affirmative defence. Thus, future litigation will centre on the employer's ability to prove those defences.

- There will often be instances where the affirmative defence will only serve to *lessen* liability rather than eliminate it. For example, a supervisor may engage in conduct that is so severe that a single incident amounts to sexual harassment (indecent assault or false imprisonment, for example). In these circumstances, the employer will still be liable even if the employee fails to report the misconduct. However, the amount of damages will be reduced if the employer can prove that the employee reasonable should have reported the harasser's misconduct.

- As a matter of law, all employees must maintain and be able to prove that they disseminated to all employees an anti-harassment policy that includes what the Court termed 'a sensible complaint procedure'. Failure to comply with this will leave an employer defenceless against the unlawful acts of its supervisors. A large employer would be unable to prove it exercised reasonable care to prevent or correct sexually harassing behaviour if a) it had no policy; or b) it failed to disseminate its policy; or c) it failed to include a means of bypassing the harassing supervisor to register the complaint.

- The Court requires that employers take reasonable care to prevent, as well as correct, any sexually harassing behaviour. By including the element of prevention, the Court implied that maintaining an anti-harassment policy alone is not enough to avoid liability. What constitutes reasonable measures to avoid harassment will probably vary, depending upon the industry, the size of the undertaking, etc. At a minimum, prudent employees will put all their supervisory personnel through rigorous training on an ongoing basis. Other means of prevention can be addressed through the specifics of the harassment policy itself, dissemination and reaffirmation of the policy, as well as a variety of creative company actions.

- Employers should anticipate that the newly created theory of supervisory harassment will apply equally to other forms of harassment prohibited by Title VII of the Civil Rights Act as well as the Americans with Disabilities Act - i.e., harassment based on national origin, race, creed or disability.

Devising Preventative Policies

In the wake of the recent decisions, personnel departments are currently re-assessing their anti-harassment policies. Given the scope of the Supreme Court judgments, it appears that preventing harassment from occurring is the only way of avoiding liability because any tangible adverse employment action that flows from the harassment will automatically result in the employer incurring liability. This requires employers to ensure that they take immediate, bold and continuing steps to prevent harassment. Secondly, employers are under obligation to use 'reasonable care' promptly to prevent and correct harassing behaviour. If they do so, and an employee unreasonably fails to take advantage of preventative or corrective opportunities, the employer will not be liable for the harassment if there has been no tangible adverse employment action. In other words, an employer's efforts at prevention and response are critical.

Sport, Human Rights and Industrial Relations

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Abstract

Professional team sports have developed a series of employment rules which have severely limited the economic freedom and human rights of players. The major abuse of such rights have been rules which have denied players the ability to seek employment with alternative clubs, once their contract with their 'original' club has expired. Players have sought to restore such rights through the formation of player associations and actions before the courts. This paper examines the industrial relations dimensions of human rights in sport by mainly focusing on developments in North America, the United Kingdom and Australia. Decisions of the courts concerning forced labour/slavery and freedom of movement/choice of employment are analysed. The major hypothesis of the paper is that the courts, in finding against such rules on the basis of individualistic, or natural rights, interpretations of human rights have, paradoxically, enhanced the collective determination of employment conditions and provided a fillip to player associations.

Sport, Human Rights and Industrial Relations

The opening paragraph of the *Universal Declaration of Human Rights* proclaims 'recognition of the inherent dignity and … the equal and inalienable rights of all members of the human family'.[i] The Universal Declaration, and other human rights' instruments, see freedom, or freedoms, associated with employment as integral to the attainment or recognition of human rights. For example, Article 4 of the Universal Declaration states that 'No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms'. A similar statement condemning slavery is contained in Article 8 of the *International Covenant on Civil and Political Rights*. In addition, the International Labour Organization, in 1930 and again in 1957, adopted conventions condemning, and seeking the abolition of, forced and compulsory labour.

Article 23, Clause 1, of *the Universal Declaration of Human Rights* states 'Everyone has the right to work, to free choice of employment'. Article 6 of the *International Covenant on Economic, Social and Cultural Rights* declares that 'The State Parties to the present Covenant recognise the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard these rights'.

Various human rights' instruments recognise, or acknowledge, freedom of association and the right of workers to join trade unions to protect their employment rights. Article 23, Clause 4, of the *Universal Declaration of Human Rights*, for example, says 'Everyone has the right to form and join trade unions for the protection of his rights'. Similar statements are contained in Clause 8 of the *International Covenant on Economic, Social and Cultural Rights*, and Clause 23 of the *International Covenant on Civil and Political Rights*, respectively. The International Labour Organization has also adopted conventions upholding the independence of trade unions. In 1948 it adopted the Freedom of Association and Protection of the Right to Organise Convention (Number 87), and in 1949, the Right to Organise and Collective Bargaining Convention (Number 98).

Professional team sports is not an activity which, in the popular (or most) imagination(s), is usually associated with human rights. The apparent function afforded such athletic contests is to provide spectators with entertainment; whether it be at the stadium or

safely ensconced in the bosom of one's family in front of a television set. At worst, professional team sports are an opiate of the masses; at best, they provide a form of respite and distraction from the atrocities and abuses of human rights which are continually visited upon mankind.

Players of professional team sports have been subjected to a series of labour market rules which have substantially curtailed their economic freedom and human rights. The major rules have been the reserve or option system (North America) and the transfer system[ii] (United Kingdom, Western Europe and Australia) which binds a player to the initial club which employs them for the rest of their playing life.

In response, players have turned to collective action, in the form of player associations/trade unions, in seeking to remove, or overcome abuses associated with, such controls. Different leagues, and their respective constituent clubs, have been opposed to the formation and operation of player bodies. Leagues have portrayed player associations - and their leaders - as a foreign element antipathetic to the operation and 'good' management of sport. At worst, leagues have either refused to recognise and bargain with player associations, and/or have stonewalled in their dealings with them; at best they have begrudgingly come to the bargaining table following legal actions or threatened, and actual, 'concerted' pressure by players.

In 1909 English soccer's Football Association withdrew recognition of - or less euphemistically, sought to destroy - the Association Football Players' Union, which had formed in December 1907.[iii] Amongst other things, the Football Association objected to the union pursuing legal actions on behalf of members for arrears of wages clubs owed players and actions under the *Workmen's Compensation Act 1906*.[iv] Union secretary Herbert Broomfield responded to the Football Association by saying that the management committee of the union 'are not convinced that they are expected to regard seriously the opinion that a football player forfeits a common legal right on entering into a professional agreement with a football club'.[v]

This quote from Broomfield encapsulates the position adopted by different generations of players across all professional team sports. They have wanted to be afforded the same employment rights as other workers. Players have wanted to be free to enter into negotiations with prospective employers; to be able to negotiate a mutually agreeable contract with the various clubs which are prepared to employ them.

With the obvious exception of American baseball (see below), the courts, generally speaking, have struck down various labour market controls which have restricted the employment rights of players. In the United States of America such controls have fallen foul of the *Sherman Antitrust Act 1890* and the *Clayton Act 1914*; in the United Kingdom and Australia the common law doctrine of restraint of trade; and in Western Europe, in the 1995 *Bosman* case,[vi] Article 48 of the Treaty of Rome, which ensures the free movement of workers within the European Economic Community.

The courts have found against such controls from the perspective of classic liberal, or natural rights' interpretations, of human rights.[vii] Such controls have been anathema to judges imbued with liberal values. They have been perceived as infringing unreasonably on the natural employment rights of players. In contradiction to critics of rights' discourses[viii] decisions of the courts have not only aided individual players, but also, and more significantly here, have held out the prospect of enhancing their collective interests by strengthening the hand of player associations in their dealings with their respective leagues and clubs.[ix]

Or to state this proposition in an alternative form: liberal or natural rights' interpretations of the law, with the associated triumphening of individualism have, in the area of professional team sports, provided a window of opportunity for the development of the collective determination of employment conditions. Unfavourable decisions before the courts have 'encouraged' leagues to enter into collective bargaining deals with player associations to protect various labour market controls. Such controls enshrined in collective bargaining agreements negotiated at arms length in 'good

faith' can be shielded from antitrust or common law actions. The content of such agreements – the extent of freedoms afforded and benefits provided to players – in turn, are a function of the bargaining strength and negotiating skills of the respective parties.

This paper is concerned with providing an examination of human rights dimensions of industrial relations in professional team sports. It is organised into five sections. Section one briefly describes the different labour market rules which operate in professional team sports. Section two examines various cases where courts have considered the *forced labour*, or *slavery*, aspects of such controls. The next two sections, which constitute the bulk of the paper, focus on how the courts have responded to rules which have restricted the *mobility* and *freedom* of players to obtain employment with alternative clubs, once their contracts with their 'original' clubs have expired. Section three surveys decisions in North America; section four the United Kingdom and Australia. The examinations of the case law in these two sections are integrated with analyses of developments and issues associated with the activities of player associations and the collective determination of employment conditions. Section five provides a conclusion, where the major threads of the discussion are drawn together.

Labour Market Controls in Professional Team Sports

League and club officials have consistently argued that sporting labour markets, and hence the contracts of players, need to be strictly controlled to ensure the survival of their respective sports. It is argued, that such controls help to bring about an equal distribution of playing talent among competing teams. Without such restrictions, it is claimed, rich clubs would secure the most skilled players, and through their continual domination of the competition, reduce the commercial viability of, or destroy, the sport. Subsidiary arguments justifying controls have been the need to maintain team stability, minimisation of wages and costs, and a conviction that clubs should receive compensation for players who change clubs.

Cairns, Jennett and Sloane, in a survey of the economics of professional team sports, have said 'it is relatively uncontroversial that labour market controls have not given equality of performance'.[x] The benefits of labour market controls are negligible, or illusory, and hardly justify the denial of players' human rights. Moreover, there are alternative methods, consistent with employment freedom and/or human rights' instruments, in which sporting equality can be achieved – namely revenue sharing or redistributing income between clubs.[xi]

Three different types of labour market controls can be distinguished. They are recruitment of players, the movement of players between clubs, and the use of maximum wages.

Excluding normal market mechanisms, where players and clubs negotiate (initial) contracts, two major types of recruitment have been used in professional team sports. The first is zoning. Clubs are given exclusive rights to the services of prospective players who reside in their particular allocated geographic area (zone). Players have no choice in the initial club which might employ them. Zones usually operate in tandem with residential requirements of certain periods, to restrict players from being able to take up employment with other clubs by moving to another zone. Zoning schemes have been a feature of Australian sports.

The second method of recruitment is the draft. With drafting, potential new players are placed in a common pool and are chosen (drafted) by clubs in terms of their reverse order, or standing, in the competition in the previous year; with the process being repeated a number of times. Drafting, like zoning, denies players the ability to choose and/or negotiate with prospective clubs which might be prepared to employ them. Players can only obtain employment with the club which drafts them. The draft was first adopted in American football in 1935; its usage has spread to other North American sports, and Australia in the late 1980s, early 1990s. In Australia this method of selecting new players is known as the *external* draft.

Once a player signs with a club, leagues have developed a variety of rules which enable clubs to maintain control over, and/or restrict the

ability of, players to obtain employment with other clubs. Six such rules can be distinguished – the transfer system, the reserve or option system, the 'Rozelle' rule, right of first refusal, assignment and the external draft.

Under the transfer system a player who signs with a club is bound to that club for the rest of their playing life. A player, even though their contract with their original club has expired, can only move to a new club with the permission of their original club. The obtaining of such permission invariably involves the payment of a transfer fee to the original club, in 'compensation' for the loss of the said player. Fees are also paid for players who change clubs, or are bought and sold, during the life of their contract. Transfer fees were first introduced in English soccer in 1891. They have been a mainstay of soccer worldwide, and were utilised for a large part of the twentieth century in Australian rules football and rugby league.

The reserve or option system involves a contract whereby a club has a right (or option) to re-sign a player after the expiry of the contract. Given that each new contract contains an option clause, the club, in effect, has a perpetual right to the services of a player. The reserve system was first introduced in American baseball in 1879. Its usage subsequently spread to other North American sports, and to Australian rules football from the mid 1980s to mid 1990s.

Two variations of the reserve or option system have been developed. Prior to 1963 the rules of American football allowed players to play out their option year. That is, if a player chose to not sign a new contract, he could play out the option of his old contract, subject to a mandatory ten per cent salary cut, and, at the end of the option period be declared a free agent. Such a player, then, would be enabled to seek employment with any club in the league. R.C. Owens used this device to change clubs in 1963.

Following this the National Football League introduced the so-called 'Rozelle' rule to block this source of mobility and employment freedom for players. Under the 'Rozelle' rule, a club which obtained a 'free agent' had to compensate the club which had lost the said, or so-called, 'free agent'. If the two clubs could not agree on compensation, National Football League commissioner[xii] Alvin Ray 'Pete' Rozelle was empowered to direct the acquiring club to compensate the club which 'lost' the player as he saw fit.

Under the right of first refusal, players, following the expiry of their contract with their current club, are able to enter into negotiations and 'sign' with a 'new' club. However, the player's previous club can match the offer of the 'new' club, thereby negating the ability of the player to take up employment with a new club. The right of first refusal has been a feature of North American basketball and football, and has also been utilised in Australian basketball, baseball and soccer.

Assignment enables clubs or leagues to relocate or (re-)assign players to another club. Assignment has been a feature of North American sports, and has been used in Australian rules football and baseball.

The *internal* draft is a uniquely Australian contribution to the player rules of professional team sports. Under the internal draft current players who have not negotiated a new contract with their club are placed into a common pool and are selected by clubs, per the external draft (see above). The internal draft was introduced into Australian rules football in 1988. It was also utilised, for a brief period, in rugby league in the early 1990s.

Two types of wage maxima have operated in professional team sports. Limits have been placed on the income that can be earned, either by individual players or the team (league) as a whole, in what has been referred to as a salary cap. Individual wage maxima have operated in English soccer, a number of Australian sports and ('unofficially') in American baseball. A salary cap was first introduced in American basketball in 1983 following negotiations between the National Basketball League and the National Basketball Players' Association. Salary caps have spread to American football and a number of Australian sports.

Forced Labour, Slavery

As already mentioned the international community has adopted conventions condemning forced or compulsory labour and slavery. Article 2, Clause 1, of the International Labour Organisation's *Convention Concerning Forced or Compulsory Labour 1930* defines such labour to 'mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. Article 1 of the *Slavery Convention, 1926*, adopted by the League of Nations, and *Amended By Protocol, 1953* by the United Nations defines slavery as (Clause 1) 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised', and (Clause 2) the 'slave trade includes … all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged'.

It could be argued that many of the labour market controls which operate in professional team sports breach these conventions. Neither zoning nor drafts enable players to 'voluntarily' choose their employers. If players decide not to play with the club fate has determined for them, they face the 'menace' and 'penalty' of being denied employment in their chosen profession. The various rules which take from players the ability to negotiate with prospective employers impose a 'penalty' of reduction in income and other entitlements.

'Trades' associated with the transfer system, the 'Rozelle' rule, right of first refusal and assignment require a player to play with a club with which he 'has not offered himself voluntarily'. Transfer fees and other arrangements involving player trades involve 'any or all of the powers attaching to the right of ownership … [and] acts involved in … acquisition … with a view to selling or exchanging'.

There are three cases where actions have been mounted against such controls on the basis of forced or compulsory labour and slavery.[xiii] In 1970 Curt Flood claimed that baseball's employment rules, whereby he was traded by the St. Louis Cardinals to the Philadelphia Phillies, against his will, constituted a form of peonage and involuntary servitude, in contravention of the Thirteenth Amendment of the Constitution of the United States of America. The Thirteenth Amendment, which was ratified in 1865 after the American civil war, states (Section 1) 'Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction'. Mr Justice Cooper of the United States District Court rejected Flood's application. He said:

> 'A showing of compulsion is … prerequisite to proof of involuntary servitude … [Flood] is not compelled by law or statute to play baseball for Philadelphia. We recognise that under the existing rules of baseball, by refusing to report to Philadelphia [Flood] is by his own act foreclosing himself from continuing a professional baseball career, a consequence to be deplored. Nevertheless, he has the right to retire and embark upon a different enterprise outside organised baseball. The financial loss he might thus sustain may affect his choice, but does not leave him with 'no way to avoid continued service' …[quote omitted] Accordingly, we find that [Flood] has not satisfied the essential element of this cause of action, a showing of compulsory service.'[xiv]

In the early 1980s a Dutch soccer player, a Mr Muhren, brought an action before the European Commission of Human Rights. He maintained that his former club had set a prohibitive transfer fee on him, which precluded his ability to obtain employment with a club of his choice. He claimed that such fees were inconsistent with Article 4, Clause 2, of the European Convention on Human Rights. It states 'No one shall be required to perform forced or compulsory labour'.

The reasoning of the European Commission on Human Rights in this case is similar to that of Mr Justice Cooper in *Flood*.[xv] The Commission said Article 4, Clause 2, contained two elements which required consideration. First,

the labour or service must be performed against the person's will; and second, the obligation to perform such labour or service 'must be either unjust or oppressive or …constitute an avoidable hardship'.

With respect to the first element, the Commission suggested 'that prior consent is a decisive factor whether the work concerned should or should not be considered as being 'forced or compulsory' … the applicant freely choose to become a professional football player knowing that he would in entering the profession be affected by the rules governing the relationship between his future employers'. On the second element, the Commission concluded that even if the transfer fee system 'produce[s] certain inconveniences ... it cannot be considered as being oppressive or constituting avoidable hardship'. It also found that such a system did not directly affect the player's contractual freedom.[xvi]

In 1995 the Australian Soccer Players' Association[xvii] claimed, in an action before the Australian Industrial Relations Commission, that the transfer system conflicted with the freedom of choice in employment per Article 23, Clause 1, of the Universal Declaration of Human Rights (see above). In a decision, which is noteworthy for its brevity on this point, the Australian Industrial Relations Commission found that, while 'Generally speaking restraints on players will, to some degree, impinge on players' freedom of choice in employment ... it overstates the position to say that the compensation fee system conflicts with freedom of choice in employment.'[xviii]

On other occasions, the courts have seen fit to comment on, or draw attention to, the 'servile' nature of employment rules in professional team sports. In 1914, in *American League Baseball Club of Chicago v. Chase*, Mr Justice Bissell of the Supreme Court, Erie County, New York strongly criticised baseball's reserve system. The case involved the Chicago club attempting to stop Hal Chase from taking up employment with the Buffalo club of the Federal League.

Mr Justice Bissell said, due to the reserve system 'the baseball player is made a chattel', and 'would seem to establish a species of quasi peonage unlawfully controlling and interfering with the personal freedom of players'. He asked 'But why should a player enter into a contract when his liberty of conduct and of contract is thus curtailed'? 'The answer', he said, 'is that he has no recourse. He must either take the contract under the provisions of the National Agreement,[xix] whose organization controls practically all of the good ball players of this country or resort to some other occupation'. Mr Justice Bissell also said:

> 'While the services of ... baseball players are ostensibly secured by voluntary contract a study of the [reserve] system ... reveals the involuntary character of the servitude which is imposed upon players by the strength of the combination controlling the labor of practically all of the players in this country ... The quasi peonage of baseball players ... is contrary to the spirit of American institutions and is contrary to the spirit of the Constitution of the United States.'[xx]

In 1949 Daniel Gardella brought an action against baseball after being 'blacklisted' for having played in a rival Mexican league. As part of a 2/1 majority which found for Gardella, Mr Justice Frank of the United States Court of Appeals, Second Circuit, said:

> 'we have here a monopoly which, in its effect on ball-players like the plaintiff, possess characteristics shockingly repugnant to moral principle that, at least since the War Between the States, has been basic in America, as shown by the Thirteenth Amendment of the Constitution, condemning 'involuntary servitude' ... For the 'reserve clause', as has been observed results in something resembling peonage of the baseball player[xxi] ... I may add that, if the players be regarded as quasi-peons, it is of no moment that they are well paid; only the totalitarian-minded will believe that high pay excuses virtual slavery. In what I have said about the nature of the contracts made with the players, I am not to be understood as implying that they violate the Thirteenth Amendment or the statutes

> enacted pursuant thereto. I mean simply to suggest that those contracts are so opposed to the public policy of the United States'.[xxii]

In 1991 Mr Justice Wilcox of the Federal Court of Australia, on appeal, in an action concerning the operation of the internal draft in rugby league, said 'the right to choose between perspective employers is a fundamental element of a free society. It is the existence of this right which separates the free person from the serf.' He also quoted from Lord Lindley's 1901 decision in *Quinn v. Leatham*:

> 'As to the plaintiff's rights. He had the ordinary rights of a British subject. He was at liberty to earn his own living in his own way, provided he did not violate some special law prohibiting him from so doing, and provided he did not infringe the rights of other people. This liberty involved liberty to deal with other persons who were willing to deal with him. This liberty is a right recognised by law; its correlative is the general duty of every one not to prevent the free exercise of this liberty, except so far as his own liberty of action may justify him in so doing. But a person's liberty or right to deal with others is nugatory, unless they are at liberty to deal with him if they choose to do so.'[xxiii]

Freedom of Choice in Employment: North America

Baseball's reserve or option system rendered players dependent on the tender mercies of their clubs. Denied the ability to seek alternative employment, clubs could not only 'persuade' players to 'agree' to 'low salaries', but also devised means to escape contractual obligations. Clubs deducted sums for uniforms, travelling and medical expenses, and imposed fines for profanities expressed on the diamond and other misdemeanours. Players were also threatened with fines if their play or performance didn't improve; and if it did they were fined anyway because improved play now was an indicator of slacking in the past. Clubs also employed Pinkerton spies to watch over players in the conduct of their private affairs.[xxiv]

Players resented the reserve system and the associated degree of control it afforded clubs/owners over their employment. On three occasions, during the early decades of baseball's operation, they formed player associations in attempting to improve their lot. They were the National Brotherhood of Professional Baseball Players (1885-1890); the League Protective Players' Association (1900-1902) and the Baseball Players Fraternity (1912-1918). The three lacked the leadership and organisational skills required to survive as entities in the baseball industry.[xxv]

The operation of these respective player associations coincided with periods where Orgnaized Baseball was challenged by rival leagues - the Players League (1890), when players, with the aid of financial backers established 'a league of their own'; the American League (1900-1902) and the Federal League (1914-1915).[xxvi] Rival leagues provided players with the chance to seek alternative employment; and, in turn, generated a series of actions which tested baseball's reserve system.

John Montgomery Ward was the leading figure in the formation of the National Brotherhood, baseball and sports' first union. The New York club sought an injunction restraining Ward from joining the Players' League, per the reserve clause contained in his 1889 contract. Mr Justice O'Brien of the Supreme Court of New York County declined this application, for two major reasons. The first was based on the common law notion that 'a court of equity will not make a contract which the parties themselves have not made, and ... will not enforce an indefinite one'. Mr Justice O'Brien found that there was nothing in Ward's 1889 contract which provided guidance on what would be the terms and conditions of his employment in 1890. He said, 'Not only are there no terms and conditions fixed, but I do not think it is entirely clear that Ward agrees to do anything further than to accord the right to reserve him upon terms thereafter to be fixed.'

Second, Ward's 1889 contract contained clauses which enabled the New York club to terminate his contract because he had violated

it, and on ten day's notice for any reason. Mr Justice O'Brien concluded that the reserve clause, set against this ten day term, suffered from a 'want of fairness and of mutuality'. He said:

> 'The club may at any time, at the beginning, in the middle, or at the end of the playing season, when the player is in New York or San Francisco, or anywhere else, and without the assignment of any cause whatever ... [terminate the contract] leaving the player to make his way home as best he can. In thus considering the obligations which, under the [club's] construction of the contract, each has assumed, we have the spectacle presented of a contract which binds one party for a series of years and the other party for 10 days, and of the party who is itself bound for 10 days coming into a court of equity to enforce its claims against the party bound for years ... There is no obligation on the part of the club to pay the player any salary whatever for the second playing season. True, it is stated that he shall not be reserved at less than a certain salary. But the reserving club may easily dispose of this. It may wait until just before the second playing season opens, and, after every chance for a profitable engagement has passed by, then give the player 10 days' notice ... and, as the playing season has not opened, the club would not even be obliged to pay the 10 days salary'.[xxvii]

New York also sought an injunction restraining Ward's teamate, Buck Ewing, from joining the Federal League. Mr Justice Wallace at the Circuit Court, New York, drawing on the decision in *Ward*, turned down this request. He said:

> 'In a legal sense [the reserve clause] is merely a contract to make a contract if the parties can agree. It may be that heretofore the clubs have generally insisted upon treating the option to reserve as a contract by which they were entitled to have the services of the player for the next season upon the terms and conditions of the first season, and even requiring him to enter into a new contract containing the option for reservation; and it may be that players have generally acquiesced in the claims of the clubs. However this may, the players were not in a position to act independently; and, if they had refused to consent to the terms proposed by the clubs, they would have done so at the peril of losing any engagement ... It follows that the act of [Ewing] in refusing to negotiate with the club ... while a breach of contract, is not the breach of one which the [club] can enforce.'[xxviii]

The players' victories in these cases, however, proved to be pyrrhic. The Players' League was deserted by its financial backers and collapsed, as did the National Brotherhood. And to complete this innings of baseball history, in due course, Organised Baseball altered player contracts to include clauses which stated that players received specific sums of money for 'agreeing' to the reserve clause, and that part of their 'high' pay was compensation for the ten day notice clause.

In 1902 Napolean Lajoie of Organised Baseball's Philadelphia club signed to play with a Philadelphia club in the rival American League. The former club sought an injunction from the Supreme Court of Pennsylvania restraining such a move. It maintained that the reserve clause contained in Lajoie's contract, particularly the two elements identified above, satisfied tests of mutuality and reasonableness as required by a court of equity. Mr Justice Potter agreed with this line of reasoning and restrained Lajoie from joining the American League's Philadelphia club.[xxix] The jurisdiction of this decision, of course, was limited to Pennsylvania. Lajoie was traded to Cleveland in the American League. He was provided with the luxury of a short vacation whenever Cleveland played in Philadelphia; for fear of being arrested if he should visit that city.

Reference has already been made to the 1914 decision of Mr Justice Bissell in *Chase* where he found the reserve system reduced players to 'chattels' and 'quasi-peons'. Organised Baseball's Chicago club was attempting to

block Chase from taking up employment with Buffalo in the Federal League. The case is also of importance because it constitutes the first attempt to utilise the *Sherman Antitrust Act 1890* in the legal battles over players' employment rights. Under the *Sherman Antitrust Act 1890:*

> 'Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal ...
> Section 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdeameanour ...'[xxx]

Mr Justice Bissell found that 'Organized Baseball' is now as complete a monopoly of the baseball business for profit as any monopoly can be made. It is in contravention of the common law, in that it invades the right to labor as a property right, in that it invades the right to contract as a property right, and in that it is a combination to restrain and control the exercise of a profession or calling.' Despite this finding, however, he could not accept 'the proposition that the business of baseball for profit is interstate trade or commerce, and therefore subject to the provisions of the Sherman Act'.

Mr Justice Bissell defined commerce as the 'interchange of goods, merchandise or property of any kind; trade; traffic ...' Even though he described players as 'chattels' and 'quasi-peons', in other parts of his decision (see above), he did not accept the proposition that 'baseball players are bought and sold and dealt in among the several states, and are thus reduced and commercialised into commodities'. He said, 'We are not dealing with the bodies of the players as commodities or articles of merchandise; but with their services as retained or transferred by contract' (Compare this with the statement elsewhere in his decision that players have no choice in their employment - see above). 'Baseball', he said, 'is an amusement, a sport, a game that clearly comes within the civil and criminal law of the state, and it is not commodity or an article of merchandise subject to the regulation of Congress on the theory that it is interstate commerce'.[xxxi]

At the end of 1915 the trade war between Organised Baseball and the Federal League came to an end, with the negotiation of a peace deal in Cincinnati. This agreement, however, did not satisfy the principals of the Baltimore club of the Federal League. The Baltimore Federals initiated legal action claiming that Organised Baseball was a monopoly in breach of the *Sherman Antitrust Act 1890*.

The action eventually found its way to the Supreme Court of the United States of America. In 1922 Mr Justice Holmes, speaking for a unanimous court, ruled against Baltimore, thereby exempting baseball from the reach of the *Sherman Antitrust Act 1890*. He said:

> 'The business is giving exhibitions of baseball, which are purely state affairs. It is true that, in order to attain for those exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and States. But the fact that in order to give exhibitions the League must induce free persons to cross state lines and must arrange and pay for their doing is not enough to change the character of the business ... the transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words.'[xxxii]

In 1923 in *Hart* the Supreme Court deliberated on the applicability of the *Sherman Antitrust Act 1890* to vaudeville artists. A promoter claimed, relying on *Federal Baseball*, that the provision of vaudeville artists was purely a state affair, and that the transportation of such artists across state borders was 'incidental' to the performances supplied. The Supreme Court rejected this line of reasoning. Mr Justice Holmes, on behalf of the court, said the matter 'was brought before the decision in the *Base*

Ball Club Case, and it may be that which in general is incidental, in some instances may rise to a magnitude that requires it to be considered independently'.[xxxiii] In *Hart* the Supreme Court began the practice of providing baseball, above most other activities where interstateness, the exchange of monies and the making of profits were linked - a notion seemingly different from 'interstate commerce' - including, and especially other sports, the privilege of an exemption from the jurisdiction of the *Sherman Antitrust Act 1890.*

It is not until 1949 that the next major case concerning employment rules in North American sport occurs. The case involves baseball's blacklisting of Daniel Gardella after playing in a Mexican League (see above). Gardella argued that the substantial sums baseball now received from broadcasting and television rights constituted a new factor which negated *Federal Baseball*. A 2/1 majority of the United States Court of Appeals, Second Circuit, accepted such reasoning. Mr Justice Frank, for example, said:

> 'the defendants have lucratively contracted for the interstate communication, by radio and television, of the playing of the games ... the interstate communication by radio and television is in no way a means, incidental or otherwise, of performing the intra-state activities ... here the games themselves, because of the radio and television, are, so to speak, played interstate as well as intrastate ... there is a substantial interstate commerce of a sort not considered by the Court in the Federal Baseball case.'[xxxiv]

In 1953 the Supreme Court was provided with an opportunity to reconsider *Federal Baseball.* The case involved George Toolson of the New York Yankees who objected to being assigned to a minor league team. He maintained that baseball's reserve system violated the *Sherman Antitrust Act 1890.* A majority of the court upheld *Federal Baseball* on the basis of 'stare decisis'. The majority said:

> 'In *Federal Baseball* ... this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation ... We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation.'[xxxv]

Promoters of theatrical entertainments and boxing, respectively, tried to shield themselves from antitrust actions following the Supreme Court's decision in *Toolson*. On both occasions, in almost identical prose, the Supreme Court said that *Toolson* was a narrow application of 'stare decisis' in upholding baseball's exemption as granted in *Federal Baseball.*[xxxvi] In *International Boxing Club*, a majority of the court said, 'Indeed, this Court's decision in the *Hart* case, less than a year after the *Federal Baseball* decision, clearly established that *Federal Baseball* could not be replied upon as a basis of exemption for other segments of the entertainment business, athletic or otherwise.'[xxxvii]

Two subsequent cases, fourteen years apart, reaffirmed baseball's privileged antitrust position. In 1957 William Radovich initiated proceedings against the National Football League who blacklisted him because he had previously played with a rival league. A majority of the Supreme Court found that 'the volume of interstate business involved in organised professional football places it within the provisions of the [Sherman] Act'. To the extent that this ruling 'is unrealistic, inconsistent or illogical', given decisions in *Federal Baseball* and *Toolson*, the majority said, 'were we considering the question of baseball for the first time upon a clean slate we would have no doubts'.[xxxviii]

The second case, in 1971, involved basketballer Spencer Haywood. Under basketball's rules players could only join, or be drafted to, clubs after having played four years in college. Haywood signed with Seattle prior

to this effluxion of time; and the National Basketball Association barred his playing. Haywood maintained that such an action constituted a violation of the *Sherman Antitrust Act 1890*. The Supreme Court concurred. It simply said 'Basketball ... does not enjoy exemption from the antitrust law'.[xxxix]
In the early 1970s Curt Flood, with the backing of the Major League Baseball Players' Association, challenged baseball's reserve system. He objected to being traded by the St. Louis Cardinals, a club he had played for, for twelve years, to the Philadelphia Phillies. He claimed that such a trade violated antitrust and civil rights legislation, the common law and constituted a form of peonage and involuntary servitude in contravention of the Thirteenth Amendment of the United States' Constitution. The peonage, involuntary servitude aspect of this claim has already been discussed above.

With respect to the antitrust aspect of Flood's claim the Supreme Court decided to follow stare decisis and reaffirmed its previous rulings in *Federal Baseball* and, more especially, *Toolson*. A majority of the court concluded that 'Professional baseball is a business and it is engaged in interstate commerce'. They also found that 'its reserve system [in] enjoying exemption from the federal antitrust laws, ... is, in a very distinct sense, an exception and an anomaly'. They added, the court's earlier decisions in *Federal Baseball* and *Toolson* 'have become an aberration confined to baseball'. Having said this, the majority, nonetheless, concluded that it was Congress's duty to bring about an end to this aberration. They went on to add, if there was any inconsistency or illogic in their stance, that :

> 'If we were to act otherwise, we would be withdrawing from the conclusion as to congressional intent made in *Toolson* and from the concerns as to retrospectivity therein expressed. Under these circumstances, there is merit in consistency even though some might claim that beneath that consistency is a layer of inconsistency.[xl]

In a dissenting judgement, Mr Justice Marshall, indicated an alternative legal path for resolving employment issues in baseball and sport. He suggested exploration of federal labour law (the *National Labor Relations Act 1935*) as an alternative to antitrust actions.[xli] Moreover, the *Clayton Act 1914* provided deals negotiated by labour (and other) organisations with immunity from antitrust actions. Section 6 states:

> 'The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.'

In 1946 there was a fourth abortive attempt to establish a players' association in baseball. It was called the American Baseball Guild. Organised Baseball countered this attempt by providing players with some concessions and the introduction of a representative system, where discussions were held with players chosen from each club. In 1954 the Major League Baseball Players' Association was formed. It was a rather inactive, passive body until the appointment of a former Steelworker Union official in the person of Marvin Miller in 1966. In the 1950s player associations were also formed - some of which were short-lived - in football, basketball and ice-hockey. As with baseball, it was not until the 1960s, and early 1970s, that these respective organisations became more active in protecting and advancing members' rights.[xlii]

Following *Flood*, cases concerning players' rights hinged on the extent to which leagues/clubs could use labour law to shield themselves from antitrust attacks. This, in turn, was dependent on the 'nature', or 'state', of collective bargaining within the respective sports. With the exception of baseball, America's legal regime encouraged the growth of collective negotiations in professional team sports.

In 1972 in *Boston Professional Hockey Association* and *Philadelphia World Hockey Club* the courts were asked to adjudicate on ice-hockey's reserve system, following players taking up employment with a rival league.[xliii] In both instances ice-hockey attempted to deflect antitrust attacks on the basis of an alleged labour exemption. The trial judges, respectively, rejected such a defense. In *Philadelphia World Hockey Club*, Mr Justice Higginbotham, of the United States District Court, Pennsylvania, said it was unclear if the National Hockey League Players' Association had been registered under the relevant provisions of the *National Labor Relations Act 1935*, hockey's Board of Governors had not ratified 'agreements' negotiated with the players' association, and that the reserve system had 'never been the subject of bona-fide, good-faith collective bargaining'.[xliv] Similarly, in *Boston Professional Hockey Association,* Chief Judge Caffrey, of the United States District Court, Massachusetts, could not find any evidence that bargaining had occurred over the reserve clause.[xlv] *In Philadelphia World Hockey Club* Mr Justice Higginbotham said:

> 'The labor exemption which could be defensively utilized by the union and employer as a shield against Sherman Act proceedings when there was bona fide collective bargaining, could not be seized upon by either party and destructively wielded as a sword by engaging in monopolistic or other anti-competitive conduct. The shield cannot be transmuted into a sword and still permit the beneficiary to invoke the narrowly carved out labour exemption from the antitrust laws. To allow and condone such conduct would frustrate Congress' carefully orchestrated efforts to harmoniously blend together two opposing public policies.'[xlvi]

For want of the existence of collective bargaining agreements the courts also found against football and basketball's respective employment rules.[xlvii] In *Smith*, which found against football's draft, Mr Justice Bryant, of the United States District Court, District of Columbia, said, that courts needed to consider whether issues 'have been "thrust upon" a weak players union by the owners'.[xlviii] In *Mackey*, Mr Justice Larsen, of the United States District Court, Minnesotta, said that the 'weakness' of the union was an issue he took into account in finding against football's 'Rozelle' rule. Even though two collective bargaining agreements had been entered into, he could find no evidence of 'any trade-off or quid pro quo whereby the union had agreed to the Rozelle rule in return for other benefits.'[xlix]

Berry and Gould maintain that the courts' concern, in *Smith* and *Mackey*, with employment conditions being 'thrust upon a weak union' constitutes 'a misunderstanding of federal labor law policy and the realities of the collective bargaining process'. The notion of 'good faith bargaining' in American labour law has not been interpreted to mean that a party must move from its original position when negotiating. 'Good faith bargaining' is essentially an endorsement of a preparedness to take part in a process which involves discussions and negotiations. Parties, in agreeing to not pursue certain issues may be enabled to gain concessions on other issues which are of importance to them. Though, what comes out of bargaining will be highly dependent on the strength, strategic position and negotiating skills of the respective parties. Returning to the situation in American football in the mid 1970s Berry and Gould observed that 'If the union had not ... relinquished bargaining rights [on the 'Rozelle' rule], it might not have had a collective bargaining agreement at all'.[l]

The National Hockey League and National Hockey League Players' Association negotiated a collective agreement in 1976. A clause in this agreement stated that ice-hockey's employment rules were 'fair and reasonable'. Dale McCourt of the Detroit Redwings objected to being assigned to the Los Angeles Kings, as part of a compensation package following the Redwing's acquisition of 'free agent' Rogation Vachon. In a 2/1 majority the United States Court of Appeals, Sixth Circuit, found that the collective bargaining agreement protected ice-hockey's assignment rule from antitrust attack. Writing for the majority Mr Justice Engel acknowledged:

> 'the well established principle that nothing in ... labor law compels either

> party negotiating over mandatory subjects of collective bargaining to yield on its initial bargaining position. Good faith bargaining is all that is required. That the position of one party on an issue prevails unchanged does not mandate the conclusion that there was no collective bargaining over the issue.'[li]

Labour law, and/or the relative strength or skills of the parties in collective bargaining, would now become the major determinants of players' rights and employment conditions. Player associations though, could use the actual or real threat of union decertification to negate the owners use of the labor exemption in antitrust actions as a tactic in collective negotiations.[lii]

North American player associations, or one in particular, encountered a new problem. Michels has written how labour organisations may become subject to an 'iron law of oligarchy'. Amongst other things this involves a situation where leaders abuse their positions of power to further their own interests, at the expense of their members.[liii] Such a fate befell the National Hockey League Players' Association under the leadership of Alan Eagleson from the late 1960s to early 1990s. Staudohar reports that in 1994 Eagleson was indicted on numerous counts of racketeering, embezzlement and fraud following an FBI investigation of his period as the National Hockey League Players' Association director. The charges included misappropriation of union funds and receiving kickbacks from insurance brokers on league and disability coverage.[liv]

Flood protected baseball, and its reserve system, from antitrust actions. Despite this, the Major League Baseball Players' Association found a means to bring about the reserve system's demise. Grievance disputes in baseball, in the absence of a viable players' association, were traditionally 'resolved' by baseball's commissioner. Following the appointment of Marvin Miller as its leader, in 1966, the Major League Baseball Players' Association, sought to bring this practice to an end. In 1970 it convinced Organised Baseball that grievance disputes should be heard before a mutually agreed independent arbitrator, per the usual practice of North American collective bargaining agreements.

In 1975 players Andy Messersmith and Dave McNally declined to sign new contracts with their respective clubs and play out their option year. After playing out their options both players claimed they were free agents and could negotiate with the various clubs prepared to employ them. Organised Baseball disputed this line of reasoning. The issue would be resolved by baseball's new grievance procedure. Private arbitrator Peter Seitz ruled in favour of Messersmith and McNally.[lv] Baseball's reserve system could simply be brought to an end by all players playing out their option year.

Seitz's decision substantially enhanced the strategic position of the players' association in subsequent dealings with Organised Baseball. The choice which confronted the latter was negotiating an agreement acceptable to the players' association which contained 'some' restrictions on player mobility, or, in the absence of an agreement, free agency for all players. After a series of negotiations the parties agreed on a new system of rules to govern the future employment of baseballers. The most important of these was that players after six years of major league service would become free agents. They would be able to negotiate with various clubs interested in obtaining their services.

Industrial relations in baseball has been characterised by distrust and rivalry since Seitz's decision. Organised Baseball has strenuously attempted to reduce the freedoms afforded to players in the mid 1970s, and the Major League Baseball Players' Association has, just as strenuously, resisted such attempts. The 'best' example of such tensions is the 232 day lockout which disrupted the 1994 season, and, for the first time since 1904, brought about the cancellation of the World Series.[lvi]

In October 1998 President Clinton signed the *Curt Flood Act 1998*, which ended the exemption baseball's employment rules had enjoyed from antitrust actions.[lvii] The 1994 lockout helped persuade Congress to respond to the Supreme Court's request in *Toolson*, almost fifty years earlier, to overcome an 'inconsistent', 'illogical' and 'anomalous'

decision which the court found itself unable or disinclined to rectify.

Freedom of Choice in Employment: United Kingdom and Australia

The players of English soccer objected to the various employment rules which were developed and imposed on them by the sport's governing authorities. English soccer adopted a transfer system in 1891, and a maximum wage of four pounds per week in 1901. In 1893 and 1898 there were two abortive attempts to establish a players' union. In December 1907 a third attempt proved more successful with the formation of the Association Football Players' Union;[lviii] the oldest continuous players' body in world sport. Among its objects the union sought to abolish 'all restrictions which affect the social and financial position of players' and to provide legal assistance to members 'involving claims under the Workmen's Compensation Act 1906, recovery of wages due, and breaches of contract.'[lix]

Once the union sought to act on these objects - particularly workers' compensation claims - it encountered increasingly bitter opposition from both the Football League and Football Association.[lx] In 1909 the latter sought to bring about the destruction of the players' union. Amongst other things, it required players to sign contracts for the 1909/1910 season renouncing their membership of the union. The determination of players to maintain their allegiance to the union - particularly the members of Manchester United, and, to a lesser extent, Newcastle United, the respective Cup and League champions of 1908/1909 - and a likely disruption to the commencement of the 1909/1910 season resulted in an ultimate backdown by the Football Association. It, again, agreed to recognise and negotiate with the fledging players' body.

In 1912 the players' union backed player Harry Kingaby in an action against soccer's transfer system. Kingaby had played for Aston Villa in 1906. He had been unable to establish himself as a regular member of the team, and joined a Southern League club in 1907. At the time the Football and Southern leagues did not have an agreement on transfer fees for players moving between the two leagues. This is something they rectified in 1910. Aston Villa placed a £350 transfer fee on Kingaby; which was later reduced to £300 on appeal. For reasons which are unclear, Kingaby and the union did not base their case around the restraint of trade doctrine. Lord McNaughten in *Nordenfelt* in 1894 defined the doctrine as follows:

> 'The public have an interest in every person's carrying on his trade freely; so has the individual. All interference with individual liberty of action in trading, and all restraints of trade of themselves, if there is nothing more, are contrary to public policy, and, therefore, void. That is the general rule. But there are exceptions. Restraints of trade and interference with individual liberty of action, may be justified by the special circumstances of a particular case. It is a sufficient justification, and indeed, it is the only justification, if the restriction is reasonable - reasonable, that is in reference to the interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public.'[lxi]

Rather, Kingaby's claim for damages was based on his loss of employment and the malicious charging of an excessive transfer fee. Mr Justice Lawrence dismissed Kingaby's application. He found that the placement of a transfer fee did not constitute a tort; nor was there any evidence that Aston Villa had acted maliciously against Kingaby.[lxii]

Mr Justice Lawrence's decision also contains a passing reference to the *Trade Disputes Act 1906*, as a possible defence against actions attacking soccer's transfer system. Section 1 of the Act states 'An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.'[lxiii] Mr Justice Lawrence said his 'judgment was not based on the Trade Disputes

Act, though he doubted if it would not apply to the defendant'.[lxiv] With these words Mr Justice Lawrence opened up the prospect of using labour law as a possible defence for leagues and clubs in restraint of trade cases; prior to the analogous use of such a strategy against antitrust actions in North American sport.

Costs were awarded against (Kingaby and) the players' union. It attempted to organise a game amongst members to raise funds to meet these costs. The Football Association decided not to grant permission for the playing of such a game. Union secretary Alfred Owen wrote a bitter letter to the Football Association over its stance. The Football Association and Football League would not agree to sanction a game until the union's management committee disassociated themselves from Owen's letter, and publicly rebuked him. They acceded to this request. Owen resigned from his position as secretary. Harding, the union's official historian has said, 'The Union had thus allowed its secretary to be hounded out of the game, a disgraceful episode and one that could do it no good in the eyes of its members ... [it was now] in virtual bankruptcy and impotent.'[lxv]

It was not until the 1950s, under the stewardship of secretary Cliff Lloyd, that the union - after 1958, the renamed Professional Footballs' Association - was able to reassert itself as a viable force in English soccer. In the mid 1950s it secured a ten per cent share of television rights; income which has placed it in good store to pursue the benevolent, welfare and transition to post-soccer career needs of members. Threatened strike action in 1961 brought about the abolition of maximum wages; which stood at £20 per week. In 1963 the players' body backed Newcastle United player George Eastham in a challenge to soccer's transfer system.

Following *Kingaby*, and prior to *Eastham*, there had only been one other occasion where the courts had 'commented' on the transfer system. In 1955 Ralph Banks fell out with his club Aldershot. Even though his contract with Aldershot had expired, under the transfer system his future employment was subject to the discretion of the club; who had placed a 'high' transfer fee on him. The issue before Mr Justice Rankin of the County Court was Aldershot's attempt to evict Banks from premises provided by the club. The minutes of the union's annual general meeting of 14 November 1955 record that Mr Justice Rankin said, 'It is a penalty imposed on a professional player for his refusal to accept terms he considered unsatisfactory. As he cannot play elsewhere in Britain or the World it is a closed shop.' The minutes also state that Mr Justice Rankin was not prepared to consider whether the transfer system was a restraint of trade because the case before him was primarily concerned with the possession of a house.[lxvi]

The major issue before the court in *Eastham* was the ability of clubs to stop players from taking up employment with alternative clubs, following the expiry of contracts with their original clubs. Mr Justice Wilberforce described soccer's employment rules as:

> 'an employers' system, set up in an industry where the employers have succeeded in establishing a monolithic front all over the world, and where it is clear that for the purpose of negotiation the employers are vastly more strongly organised than the employees. No doubt the employers all over the world consider the system a good system, but this does not prevent the court from considering whether it goes further than is reasonably necessary to protect their legitimate interests.'

He found rules which restricted the ability of players, out of contract, to take up alternative employment operated as a restraint of trade. He said:

> 'There may be players who have shown quite plainly that they are not going to continue with a particular club or to sign with it, and in their case, placing them on the retain list[lxvii] does substantially interfere with their right to seek other employment – and I emphasise this – does so at a time when they are not employees of the retaining club. That seems to me to operate substantially in restraint of trade.'

The Football League mounted a number of defences in support of the transfer system.

They were that it encouraged clubs to invest in the coaching and training of younger players, aided the attainment of sporting equality, maintained team stability and prevented the poaching of players. Mr Justice Wilberforce rejected these defences. He found little evidence 'that clubs in general do spend large sums in training professional players, other than apprentices'. Nor could he find any evidence that Newcastle United had expended the profit they had made in fees in the buying and selling of Eastham 'in training the plaintiff to his present pitch of excellence'.

Mr Justice Wilberforce also concluded that the transfer system had not brought about the attainment of sporting equality. He said:

> 'Under the present system the richer clubs – which are to be found in the larger centres of population – already tend to secure the better players; this is simply because, both from bigger gate-money and from the contributions of local supporters of affluence, the clubs in the large centres inevitably enjoy greater resources, and because the best, if not the only way to use these resources is to buy players with them. It is not established to my satisfaction that any substantial change in this respect would be brought about if the [transfer] system were abolished.'

He pointed out that staggered long term contracts could be used by clubs to ensure that players are not attracted to play with other, richer clubs. He also said that such contracts would help clubs to maintain team stability and prevent poaching of players by other clubs.[lxviii] Eastham's and the players' body's victory in this case strengthened the latter's hand in subsequent negotiations with the Football League and Football Association over members' employment rights. In the mid 1960s, and again in the latter part of the 1970s, the Professional Footballers' Association negotiated major changes to soccer's employment rules which enhanced the human rights of members.

The mid 1960s changes included players being given a free transfer if clubs did not offer them contracts equal to last year's terms, and an independent tribunal to resolve salary disputes between players and clubs – with players to receive the terms of their previous contract during the dispute period. The changes in the latter part of the 1970s provided free agency for players aged 33, with five years service with a club, and players out of contract being free to move to a new club, with a fee to be subsequently negotiated between the clubs concerned. If the clubs are unable to agree the fee will be determined by an independent tribunal.

The Professional Footballers' Association also found itself gaining in stature and importance in the deliberation processes within English soccer. Current secretary, Gordon Taylor, on a number of occasions, has acted as an honest broker in helping to resolve disputes between various forces and personages which have divided soccer's employers.[lxix]

Australian courts have drawn on *Eastham* in their examination of professional team sports' employment rules. In 1971 in *Tutty*, the High Court of Australia, on appeal, adjudicated on the reasonableness of the New South Wales Rugby League's employment rules. The facts of *Tutty* are similar to those of *Eastham.* Balmain used the transfer system to block attempts by Dennis Tutty to obtain employment with other clubs, even though his contract had expired and he sat out of the game for a season. Like Mr Justice Wilberforce, the High Court found such rules to be an unreasonable restraint of trade.[lxx]

Since *Tutty* the general practice of Australian courts has been to find against various employment rules which restrict the ability of players to obtain employment with alternative clubs.[lxxi] Only three cases will be considered here, because of their connections with the activities of player associations in the respective sports.

Throughout the twentieth century different generations of players across a variety of Australian professional team sports have attempted to form player associations. Beginning with players of the Victorian Football League prior to World War One, continuing through to baseball players in 1997 there have been thirty examples of failed attempts to establish such bodies. With small

memberships (sometimes widely dispersed), and members with limited incomes such player bodies have found it difficult to generate enough funds and obtain leaders to sustain themselves as viable organisations.[lxxii] Australia currently has seven player associations; the majority of whom are only of recent vintage. The oldest is the Australian Football League Players' Association which formed in 1973. The Rugby League Players' Union was formed in 1979; The National Basketball League Players' Association in 1989; the Australian Professional Footballers' Association in 1993; both the Rugby Union Players' Association and the Australian Cricketers' Association in 1995; and, finally, the Australian Netball Players' Association in 1997 – the only organisation representing female athletes.[lxxiii]

In *Foschini* in 1983 Mr Justice Crockett of the Supreme Court of Victoria found the then Victorian Football League's transfer rules to be an unreasonable restraint of trade. As with *Eastham* and *Tutty*, South Melbourne, or the Sydney Swans as the club became known, blocked Silvio Foschini, an uncontracted player from joining St. Kilda. The case was further complicated by the fact that South Melbourne were relocating to Sydney and required players, such as Foschini, still a teenager, to also relocate. In his decision, Mr Justice Crockett also passed comment on the league's zoning rules. He said:

> 'If the desire is, as claimed to assist the less successful sides by a better access to talented players I should have thought that the 'draft' system … would … be a preferable system to zoning in Victoria.'[lxxiv]

Following *Foschini* the Victorian Football League substantially altered its employment rules. In 1985 it introduced a salary cap, the external draft in 1986 and the internal draft in 1988.[lxxv]

Foschini's action was bankrolled by St. Kilda. The then Victorian Football League Players' Association – it changed it name in 1989 – played no part in the proceedings of this case. *Foschini* appears to have completely passed the Victorian Football League Players' Association by. There is no evidence that it attempted to use *Foschini* as a bargaining lever to enhance players' employment rights, as had occurred in North America and the United Kingdom, following similarly favourable court decisions. Moreover, the Victorian Football League Players' Association hardly had any input into the new employment rules developed by the Victorian Football League in the mid to late 1980s – the salary cap and the two drafts. The Victorian/Australian Football League Players' Association has been a relatively passive organisation; prepared to accept what is given rather than to struggle in defence of players' rights.

In 1988, and again in 1990, the now Australian Football League Players' Association agreed to the various terms contained in the Australian Football League's standard player contract, with its various restrictions on player mobility and total earnings. In late 1992 the Australian Football League withdrew recognition of the players' association. Threatened strike action, and, more significantly, proceedings before the Australian Industrial Relations Commission and the possibility that the matters in dispute would be arbitrated, induced the Australian Football League to review its stance on recognition.

The parties eventually entered into a collective bargaining agreement for the 1994 and 1995 seasons.[lxxvi] It established a minimum wage of $7,500, minus deductions for board and lodging. While the 1994/1995 Collective Bargaining Agreement was silent on such issues, it, in effect endorsed the Australian Football League's player rules – salary cap[lxxvii] and drafting. Subsequent collective bargaining agreements in Australian rules football have contained clauses whereby the Australian Football League Players' Association agrees that the league's rules:

> 'including and without limitation, restrictions on the freedom of players to transfer from one Club to another, restrictions on the total payment an AFL Club may give or apply for the benefit of a player … are necessary and reasonable for the purpose of protecting the legitimate interests of the AFL.'[lxxviii]

The second case occurred in 1991 when the Full Court of the Federal Court of Australia found the New South Wales Rugby League's internal draft to be an unreasonable restraint of trade.[lxxix] This is the case where Mr Justice Wilcox likened the draft to serfdom (see above). This action was mounted by the then Association of Rugby League Professionals. It was the first time in the history of Australian sport that a players' association had initiated action against a league's employment rules – and they were successful to boot.

It might be thought that such a victory would have helped to consolidate the association's position. Nothing could be further from the truth. Since the case the rugby league players' body has virtually collapsed. Throughout most of the 1990s it has hardly had more than twenty members. In 1992 it failed in an attempt to negotiate a collective bargaining deal with the New South Wales Rugby League. In an apparent effort to consolidate its organisational effectiveness it merged with the Media, Entertainment and Arts Alliance. The next two to three years were devoted to disputes over members between the principals of the 'new' and 'old' unions. Players found themselves more concerned with cashing-in on the high salaries that were on offer during the trade war between the Australian Rugby League and Super League after 1995, than worrying about the concerns of a players' organisation.[lxxx] In 1997 the Media, Entertainment and Arts Alliance based organisation negotiated a 'bare bones' consent award with the Australian Rugby League, under the auspices of the Australian Industrial Relations Commission. The organisation that in 1991 had defeated the internal draft found itself agreeing to a grievance procedure where disputes would be resolved by an appeals committee of the Australian Rugby League.[lxxxi]

The third case involved the 1995 attempt by the then Australian Soccer Players' Association to abolish the transfer system before the Australian Industrial Relations Commission (see above). The Commission concluded that the 'system in its present form should be abolished'. However, it should not 'be abolished until consideration has been given to whether something else be put in its place', or whether it 'could be modified so as to remove its unsatisfactory features'. The Commission went on to advocate that negotiations should occur between the parties under its auspices. The Commission also said that negotiations concerning modification of the transfer system should also include 'all the terms of an agreement or award to cover the remuneration and conditions of employment of professional soccer players'. The Commission, added, that if the parties are unable to reach agreement 'arbitration may be necessary'. The decision's final sentence states, 'Without pre-empting what the Commission might do at any time in the future, we reiterate our view that, on the evidence and material before us, the present [transfer] fee system should be abolished'.[lxxxii]

Since that decision two collective bargaining agreements have been negotiated in Australian soccer. In distinction to Australian rules football both agreements contain clauses which enhance players' freedom of choice in employment. First, players who do not receive an offer of employment from their current club thirty days prior to the expiration of their contract on 'terms and conditions no less favourable' than their previous contract automatically become free agents. Second, players who are 26 years of age, or have played six seasons, automatically become free agents, and remain so for the balance of their careers in Australia.[lxxxiii] The former clause models the practice that was adopted in English soccer after *Eastham*, and the latter, North American baseball following negotiations after Peter Seit'z private arbitration brought an end to the reserve system. The Australian Professional Footballers' Association has been at the fore in promoting its members economic freedom and employment rights.[lxxxiv]

Summary and Conclusion

Fields and Narr have said that 'The world is a field of struggle over [human] rights without any guarantee of success'.[lxxxv] Such an observation is apposite concerning human rights in professional team sports. From their inception, sports in North America, the United Kingdom, Western Europe and Australia adopted rules which severely limited the human rights and economic freedom of players. Players have resented such controls. They have looked for means, at worst, to

mitigate their affects; at best, to bring about their abolition.

Players have employed two methods in their struggles to win back their rights. First, they have turned to collective action, forming player associations or trade unions. The earliest such bodies were formed in North America and the United Kingdom in the latter part of the nineteenth century, and Australia in the early years of the twentieth century. As Scoville has said 'player associations are almost as old as professional team sports'.[lxxxvi]

Player associations have had a chequered history in the annals of professional team sports. It is only in recent decades that they have experienced success in winning back players' rights and obtaining improvements in income and associated entitlements. In the 1960s the Professional Footballers' Association heralded the rise of player associations with its victories in abolishing soccer's maximum wage and Mr Justice Wilberforce's finding against the transfer system in *Eastham*. North American player associations, lead by the Major League Baseball Players' Association achieved similar victories in the 1970s. It is only in the 1990s that Australian player bodies have come into prominence.

The second method has been to attack such controls in the courts. While judges have occasionally referred – to the 'chattel', 'peonage', 'quasi-peonage' or serfdom' aspects of such controls they have found it difficult to strike down arrangements – which involve the trading, buying and selling of players – as a form of forced labour or slavery. Judges, however, imbued with natural rights and common law principles of freedom and individual liberty have found it easier to find against such rules on antitrust grounds, as in North America, or as restraints of trade, as in the United Kingdom and Australia.

Leagues have found their employment rules vulnerable to legal attack. A possible means of protecting themselves against such action is to have player associations endorse such, or modified, rules, in collective bargaining agreements negotiated at arms length and in 'good faith'. The courts, in defending the human rights of players on *individualistic* grounds have, paradoxically, enhanced the *collective* governance of sport. The courts have provided leagues with an incentive, and at times have explicitly encouraged them, to recognise and negotiate with player associations. The law, then, has provided a window of opportunity for the players of professional team sports, to make use of collective action. This is not something which has traditionally been afforded to workers in other walks of life. It is a window, moreover, which would close if the leagues of various professional team sports adopted employment rules consistent with various human rights' instruments developed by the international community.

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[i]Notes

i Extracts from the various human rights' instruments referred to here are drawn from Brownlie I. (ed) *Basic Documents on Human Rights* (second ed), (Clarendon, Oxford, 1981).

ii This is a generic term. Such arrangements have sometimes been referred to as the retain and transfer system, or the transfer and compensation system.

iii In 1958 it changed its name to the Professional Footballers' Association.

iv In 1909 the Court of Appeal ruled that footballers were covered by the Act. See *Walker v The Crystal Palace Football Club, Limited* [1910] 1 KB 87.

v *Athletic News*, 23 February 1909. For examinations of the dispute see Dabscheck B. '"A Man or a Puppet?": The Football Association's 1909 Attempt to Destroy the Association Football Players' Union' (1991) 8(2) *The International Journal of the History of Sport*, 221-238; and Harding J. *For the Good of the Game: The Official History of the Professional Footballers' Association*, (Robson, London, 1991), 51-83.

vi See Opinion of Advocate General Lenz, 20 September 1995, Case C-415/93, *ASBL Union Royale Belge des Societies de Football Association v. Jean-Marc Bosman; and Union Royale des Societies de Football Association ASBL and Royal Club Leigois SA v. Jean-Marc Bosman*, Court of Justice of the European Communities, Case C-415/93, Luxembourg, 15 December 1995. The opinion and decision, and other relevant cases are reproduced in Blainpain R. and Inston R. *The Bosman Case: The End of the Transfer System*? (Sweet +

Maxwell/Peeters, Leuven, 1996). For a commentary see Dabscheck B. 'Assaults on Soccer's Compensation System: Europe and Australia Compared' (1996) 13(1) *Sporting Traditions*, 81-107.

[vii] For overviews of debates concerning Human Rights see Davidson S. *Human Rights* (Open University Press, Buckingham, 1993); Donnelly J. *Universal Human Rights in Theory and Practice* (Cornell University Press, Ithaca, 1989); Fields A.B. and Narr W.D. 'Human Rights as a Holistic Concept' (1992) 14(1) *Human Rights Quarterly*, 1-20; Stammers N. 'Human Rights and Power' (1993) Xli(1) *Political Studies*, 70-82; Stammers N. 'A Critique of Social Approaches to Human Rights' (1995) 17(3) *Human Rights Quarterly*, 488-508; Galenkamp M. 'Collective Rights' (1995) 16 *Netherlands Institute of Human Rights*, 53-102; and Pritchard S. '*The Jurisprudence of Human Rights: Some Critical Thoughts and Developments in Practice*' (1995) 2(1) *Australian Journal of Human Rights*, 3-38.

[viii] For a review see Pritchard, op cit.

[ix] For discussions of the 'merging' of individual and collective sports labour law see Berry R.C. and Gould W.B. 'A Long Deep Drive to Collective Bargaining: Of Players Owners, Brawls and Strikes' (1981) 31(4) *Case Western Reserve Law Review*, 685-813; Berry R.C., Gould W.B. and Staudohar P.D. *Labor Relations In Professional Sports* (Auburn House, Dover, Massachusetts, 1986); and Opie H. and Smith G. 'The Withering of Individualism: Professional Team Sports and Employment Law' (1992) 15(2) *University of New South Wales Law Journal*, 313-355.

[x] Cairns J., Jennett N. and Sloane P.J. 'The Economics of Professional Team Sports: A Survey of Theory and Evidence' (1986) 13(1) *Journal of Economic Studies*, 3-80, at 33.

[xi] For discussions concerning revenue sharing see ibid; Davenport S. 'Collusive Competition in Major League Baseball: Its Theory and Institutional Development' (1969) 13 Fall *American Economist*, 6-30; Noll R.G. (ed) *Government and the Sports Industry* (Brookings Institution, Washington D.C. 1974); Dabscheck B. 'Sporting Equality: Labour Market vs. Product Market Control' (1975) 17(2) *The Journal of Industrial Relations*, 174-190; Atkinson S.E., Stanley L.R. and Tschirhart J. 'Revenue Sharing as an Incentive in an Agency Problem' (1988) 19(1) *Rand Journal of Economics*, 27-43; Zimbalist A. *Baseball and Billions: A Probing Look Inside the Big Business of Our National Pastime* (Basic Books, New York 1992); and Fort R. and Quirk J. 'Cross-subsidization, Incentives, and Outcomes in Professional Team Sports Leagues' (1995) XXXIII *Journal of Economic Literature*, 1265-1299.

[xii] Commissioners of North American leagues are persons appointed and paid by the various owners/clubs to perform certain defined administrative functions and to act as the titular head, or front person, of the league.

[xiii] Lowenfish L. *The Imperfect Diamond: A History of Baseball's Labor Wars* (Revised Edition) (Da Capo, New York, 1992), at 69 refers to a decision by a Mr Justice Talty of the St. Louis City Circuit Court, who in 1902 denied an injunction against Jack Harper moving to a rival league, on the basis that baseball's reserve system was a form of involuntary servitude. This matter is also referred to in Seymour H. *Baseball: The Early Years* (Oxford University Press, New York, 1989), at 315; and Burk R.F. *Never Just A Game: Players, Owners and American Baseball to 1920* (The University of North Carolina Press, Chapel Hill, 1994), at 154.

[xiv] *Flood v. Kuhn*, 316 F. Supp. 271 (1970), at 280-281. The matter was finally determined before the Supreme Court on antitrust principles. See *Flood v. Kuhn* 407 U.S. 258 (1972). See below.

[xv] *Flood v. Kuhn*, 316 F. Supp. 271 (1970).

[xvi] Application No. 9322/81, *X v. The Netherlands*, European Commission of Human Rights Decisions and Reports, 3 May 1983, Vol. 32, 180 at 183.

[xvii] In 1999 it changed its name to the Australian Professional Footballers' Association.

[xviii] *Media, Entertainment and Arts Alliance v Marconi Fairfield Soccer Club and Australian Soccer Federation*, Australian Industrial Relations Commission, Dec 1285/95 S Print M2565, Sydney, 9 June 1995, at 56. The soccer players merged with the Alliance in 1993.

[xix] An agreement between the various clubs/owners in baseball which enshrined the rules which governed its operation.

[xx] *American League Baseball Club of Chicago v. Chase*, 149 NYS 6 (1914), at 12, 17, 13 and 19. Though, as will be shown below, when it came to the issue of antitrust, Mr Justice Bissell was

less strident in his criticisms and analysis of baseball's employment rules.

[xxi] A reference to *Chase* ibid.

[xxii] *Gardella v. Chandler*, 172 F. 2d 402 (1949), at 409 + 410.

[xxiii] *Adamson v. New South Wales Rugby League Limited*, (1991) 31 FCR 242, at 267 + 268. Also see Adamson v. *New South Wales Rugby League Limited*, (1990) 27 FCR 535 for the decision of the trial judge; and *Quinn v. Leathem* [1901] AC 495, at 534.

[xxiv] For details concerning such practices see Burk op cit.

[xxv] For details concerning their respective histories see ibid; Lowenfish, op cit; Seymour, op cit; Seymour H. *Baseball: The Golden Age* (Oxford University Press, New York, 1971); Dworkin J.B. *Owners Versus Players: Baseball and Collective Bargaining* (Auburn House, Boston, 1981); and Voigt D.Q. 'Serfs versus Magnates: A Century of Labor Strife in Major League Baseball' in Staudohar P.D. and Mangan J.A. (eds) *The Business of Professional Sports* (University of Illinois Press, Urbana and Chicago, 1991), 95-114.

[xxvi] For details consult Seymour (1989) op cit, and Seymour (1971) op cit.

[xxvii] *Metropolitan Exhibition v. Ward*, 9 NYS 779 (1890), at 781, 784 and 783.

[xxviii] *Metropolitan Exhibition v. Ewing*, 42 F 198 (1890), at 204 + 205.

[xxix] *Philadelphia Ball Club v. Lajoie*, 51 A 973 (1902).

[xxx] Also see Sections 2, 3 and 4 of the *Clayton Act 1914*.

[xxxi] *American League Baseball Club of Chicago v. Chase*, 149 NYS 6 (1914), at 16 + 17.

[xxxii] *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922), at 208 + 209.

[xxxiii] *Hart v. BF Keith Vaudeville Exchange*, 262 US 271 (1923), at 274.

[xxxiv] *Gardella v. Chandler*, 172 F. 2d 402 (1949), at 410 + 412.

[xxxv] *Toolson v. New York Yankees*, 346 U.S. 356 (1953), at 356 + 357.

[xxxvi] *United States v. Shubert*, 348 U.S. 222 (1955); *United States v. International Boxing Club of New York*, 348 U.S. 236 (1955).

[xxxvii] *International Boxing Club* at 242. See *Shubert*, at 229 for a similar statement.

[xxxviii] *Radovich v. National Football League*, 352 U.S. 445 (1957), at 452.

[xxxix] *Haywood v. National Football League*, 401 U.S. 1204 (1971), at 1205. For the subsequent decision of the lower court see *Denver Rocketts v. All – Pro Management*, 325 F. Supp. 1049 (1971).

[xl] *Flood v. Kuhn*, 407 U.S. 258 (1972), at 282-284.

[xli] Ibid, at 294-296. Also see Jacobs M.S. and Winter R.K. 'Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage' (1971) 81(1) *The Yale Law Journal*, 1-29 which is referred to in Mr Justice Marshall's dissent.

[xlii] For details concerning the development of player associations in this period see Berry, Gould and Staudohar, op cit; Dworkin, op. cit; Voigt, op. cit; Lowenfish, op. cit; Miller M. *A Whole Different Ball Game: The Sport and Business of Baseball* (Birch Lane, New York, 1991); Korr C.P. 'Marvin Miller and the New Unionism in Baseball' in Staudohar and Mangan, op cit, 115-134; and Staudohar P.D. *Playing for Dollars: Labor Relations and the Sports Business* (ILR Press, Ithaca, 1996).

[xliii] *Boston Professional Hockey Association v. Cheevers*, 348 F. Supp. 261 (1972); *Philadelphia World Hockey Club v. Philadelphia Hockey Club*, 351 F. Supp. 462 (1972).

[xliv] *Philadelphia World Hockey Club*, ibid, at 497, 483 and 485.

[xlv] *Boston Professional Hockey Association*, op cit, at 267.

[xlvi] *Philadelphia World Hockey Club*, op cit, at 499 + 500.

[xlvii] See *Kapp v. National Football League*, 390 F. Supp. 73 (1974); *Kapp v. National Football League*, 586 F. 2d 644 (1978); *Smith v. Pro-Football*, 420 F. Supp. 738 (1976); *Smith v. Pro-Football*, 593 F. 2d 1173 (1978); *Robertson v. National Basketball Association*, 389 F. Supp. 867 (1975); and *Robertson v. National Basketball Association*, 556 F. 2d 682 (1977).

[xlviii] *Smith v. Pro-Football*, 420 F. Supp. 738 (1976), at 743.

[xlix] *Mackey v. National Football League*, 407 F. Supp. 1000 (1975), at 1010 and 1009. Also see *Mackey v. National Football League*, 543 F. 2d 606 (1976), especially at 616; and *Reynolds v. National Football League*, 584 F. 2d 280 (1978).

[l] Berry and Gould, op cit, at 768 + 769.

[li] *McCourt v. California Sports*, 600 F. 2d 1193 (1979), at 1200.

[lii] For details concerning the trajectory of collective bargaining in football, basketball and ice-hockey see Berry, Gould and Staudohar, op cit; and Staudohar op cit.

[liii] Michels R. *Political Parties: A Sociological Study of the Oligarchic Tendencies of Modern Democracy* (Dover Publication, New York, 1959).

[liv] Staudohar, op cit, at 149. For other examinations, or rather critiques, of Eagleson see Cruise D. and Griffiths A. *Net Worth: Exploding the Myths of Pro Hockey* (Viking, Toronto, 1991); and Conway R. *Game Misconduct: Alan Eagleson and the Corruption of Hockey* (MacFarlane Walters and Ross, Toronto, 1995).

[lv] See Seitz P. 'Are Professional Sports Sports or Business? Or How Much Would you Pay for Catfish Hunter?' *Industrial Relations Research Association 29th Annual Proceedings* (Madison, 1976/77), 324-328. Also see *Kansas City Royals Baseball Corporation v. Major League Baseball Player Associations*, 532 F. 2d 615 (1976) where Organised Baseball unsuccessfully appealed Seitz's decision.

[lvi] For accounts of these various developments in baseball see Dworkin, op cit; Lowenfish, op cit; Miller, op cit; Berry, Gould and Staudohar, op cit; Staudohar, op cit; Jennings K.M. *Swings and Misses: Moribund Labor Relations in Professional Baseball* (Praeger, Westport, 1997); and Marburger D.R. (ed) *Stee-Rike Four! What's Wrong with the Business of Baseball* (Praeger, Westport, 1997).

[lvii] Major League Baseball Player Associations, *Press Release*, 28 October 1998.

[lviii] See note (3).

[lix] *Athletic News*, 23 March 1908.

[lx] The Football Association is an umbrella organisation which governs English soccer. Various leagues are affiliated to it and under its authority. One such league was the Football League; the most popular and commerically successful league in the sport.

[lxi] *Nordenfelt v. Maxim Nordenfelt Guns and Ammunition*, [1894] AC 535, at 565.

[lxii] *The Times*, 28 March 1912. Also see Grayson E. *Sport and the Law* (Second Edition) (Butterrworths, London, 1994), at 10 + 63-65.

[lxiii] In essentials, it is similar to Section 6 of the United States of America's *Clayton Act 1914*. See above.

[lxiv] *The Times*, 28 March 1912.

[lxv] Harding, op cit, at 103.

[lxvi] Minutes, Association Football Players' and Trainers' Union, Annual General Meeting, 14 November 1955. In 1919 the union changed its name to include trainers. Also see Grayson, op cit, at 8 + 9.

[lxvii] A list of players whom the club wished to retain for the next season, and not available for transfer to other clubs. If the club and player could not agree on terms the player was still under the control of the club; even though he was out of contract.

[lxviii] *Eastham v. Newcastle United Football Club* [1964] Ch 413, at 438, 430-431, 436 + 433.

[lxix] For examinations of developments concerning English soccer and the associated role of the players' union/association see Harding, op cit; Dabscheck B. 'A Man …' op cit; Dabscheck B. '"Defensive Manchester": A History of the Professional Footballers' Association' in Cashman R. and McKernan M. (eds) *Sport in History: The Making of Modern Sporting History* (University of Queensland Press, St Lucia, 1979), 227-257; and Dabscheck B. 'Beating the Off-side Trap: The Case of the Professional Footballers' Association' (1986) 17(4) *Industrial Relations Journal*, 350-361.

[lxx] *Buckley v. Tutty*, 125 CLR 353 (1971). Also see *Tutty v. Buckley* [1970] 3 NSWR 463.

[lxxi] Other relevant cases include *Hawick v. Flegg*, (1958) 75 The Weekly Notes 255 (rugby league; League management committee didn't follow due process in administration of rules); *Elford v. Buckley* [1969] 2 NSWR 170 (rugby league; dispute over oral contract, rules not a restraint); *Hall v. Victorian Football League*,

[1982] VR 64 (Australian rules football, decided in 1977; zoning rules an unreasonable restraint); *Hoszowski v. Brown*, Supreme Court of New South Wales, no 1667 of 1978, unreported (soccer; player able to change clubs, transfer system not a restraint); *Adamson v West Perth Football Club*, (1979) 27 ALR 475 (Australian rules football; transfer system barring player from changing leagues an unreasonable restraint); *Walsh v. Victorian Football League*, (1983) 74 FLR 207, (Australian rules football; transfer system, difficult issues of law re *Trade Practices Act 1974* and restraint of trade, matter should proceed to trial); *Hughes v. Western Australian Cricket Association*, (1986) ATPR 40-676 (cricket; disqualification for playing in rival league void); *Hawthorn Football Club v. Harding* [1988] VR 49 and *Buckenara v. Hawthorn Football Club* [1988] VR 39 (Australian rules football; option clause not an unreasonable restraint of trade); *McCarthy v. Australian Rough Riders Association* (1988) ATPR 40-836 (rodeo; rules barring joining rival association unreasonable restraint of trade); *Carfino v. Australian Basketball Federation* (1988) ATPR 40-895 (basketball; barring movement to another club in league an unreasonable restraint to trade); *Barnard v. Australian Soccer Federation* (1988) 40-862 (soccer; rules barring playing with a rival league an unreasonable restraint of trade); *Nobes v. Australian Cricket Board*, Supreme Court of Victoria, no 13613 of 1991, unreported (cricket; zoning and residential qualifications an unreasonable restraint of trade); *Canberra Bushrangers Baseball Team v. Byrne*, Supreme Court of the Australian Capital Territory, no SC 707 of 1994, unreported (baseball; option clause, not tested, absence of contract); and *Penrith District Rugby Football League Club v. Fittler and Sing*, Supreme Court of New South Wales, no. 4562/3 of 1995, unreported (rugby league; contracts with club void as club had joined rival 'Super' league).

[lxxii] For details concerning these various failed attempts see Dabscheck B. 'Playing the Team Game: Unions in Australian Professional Team Sports' (1996) 38(4) *The Journal of Industrial Relations*, 600-628; and Dabscheck B. 'Australian Baseball's Second Unsuccessful Attempt to Establish a Players' Association' (1998) 14(2) *Sporting Traditions*, 87-90.

[lxxiii] The majority of these organisations have changed their titles. Their current titles are provided here.

[lxxiv] *Foschini v. Victorian Football League*, Supreme Court of Victoria, no 9868 of 1982 (unreported), at 25.

[lxxv] For a critical analysis of these changes see Dabscheck B. 'Abolishing Transfer Fees: The Victorian Football League's New Employment Rules' (1989) 6(1) *Sporting Traditions*, 63-87.

[lxxvi] For an account of these developments see Dabscheck, 'Playing the Team Game …' op cit, at 618-621.

[lxxvii] Buti A. 'Salary Caps in Professional Team Sports: An Unreasonable Restraint of Trade' (1999) 14(2) *Journal of Contract Law*, 139-153 argues that the courts would strike down salary caps. See *Johnston v. Cliftonville Football and Athletic Club*, [1984] N1 9. For further discussion concerning salary caps in Australia see Pengilley W. 'Sporting Drafts and Restraint of Trade' (1994) 10 *Queensland University of Technology Law Journal*, 89-122 at 114-116; and in North America see Foraker S. J. 'The National Basketball Association Salary Cap: An Antitrust Violation?' (1985) 59(1) *Southern California Law Review*, 157-181; and Daspin D.A. 'Of Hoops, Labor Dupes and Antitrust Ally-Oops: Fouling out the Salary Cap' (1986-1987) 62(1) *Indiana Law Journal*, 95-125.

[lxxviii] Australian Football League – Australian Football League Players' Association, Collective Bargaining Agreement, 1995/98, Clause 21, Schedule A. Similar language appears in Clause 6 of the Australian Football League – Australian Football League Players' Association, Collective Bargaining Agreement, 1998-2003; and Clause 11 of the National Basketball League - National Basketball League Players' Association, Collective Bargaining Agreement, 1996-98.

[lxxix] *Adamson v. New South Wales Rugby League Limited*, (1991) 31 FCR 242.

[lxxx] For details concerning these developments see Dabscheck, 'Playing the Team Game …' op cit, at 616-617.

[lxxxi] *Media, Entertainment and Arts Alliance v. Balmain District Rugby League Football Club*, Australian Rugby League Players Award 1997, Australian Industrial Relations Commission, A2491 AS Print P5383, 25 September 1997.

[lxxxii] *Media, Entertainment and Arts Alliance v. Marconi Fairfield Soccer Club and Australian Soccer Federation*, Australian Industrial Relations Commission, Dec 1285/95 S Print M2565, Sydney, 9 June 1995, at 69-70, 79-80.

[lxxxiii] Ericsson Cup Collective Agreement, 1996-1999, Schedule B; and Soccer Australia – Australian Professional Footballers' Association, Ericsson Cup Collective Agreement 1999-2001, Schedule B.

[lxxxiv] The Rugby Union Players' Association was formed following a battle between rival 'leagues' when Rugby Union turned professional. The players' association agreed to stay with the establishment after the signing of a letter that 95 per cent of television rights would be distributed at the 'direction' of the players' association. Once the rival 'league' disappeared the players' association experienced problems enforcing this direction. It commenced legal proceedings before the Supreme Court of New South Wales, and, after an initial victory on a procedural matter, subsequently negotiated a comprehensive collective bargaining agreement. In 1997 Australian cricketers threatened strike action in gaining recognition and negotiating a collective bargaining deal, which substantially increased the income of Sheffield Shield players. In 1998 netballers also negotiated a collective deal. For details concerning these developments see Dabscheck B. 'Trying Times: Collective Bargaining in Australian Rugby Union' (1998) 15(1) *Sporting Traditions*, 25-49; Dabscheck B. 'Running to the Same End: The Australian Cricket Pay Dispute' (1999) 71(1) *A Q Journal of Contemporary Analysis*, 52-56; and Dabscheck B. 'A Safety Net for Netballers', (1998) 8(3) *Australian and New Zealand Sports Law Association Newsletter*, 9-10.

[lxxxv] Fields and Narr op cit, 6.

[lxxxvi] Scoville J.G. 'Labor Relations in Sport' in Noll (ed) op cit, 206.

Child's Play: In the Best Interests of the Child

Patricia Stirbys

Introduction

Whether from the inner city or from a reserve, Aboriginal[1] children need greater opportunities to participate freely and without limitation in sport. It is recognized through international declarations and conventions that a child shall have the full opportunity for play and recreation which promotes their general culture, and that equal opportunities be provided for cultural, artistic, recreational and leisure activity. Participation in sport increases the possibilities for the child to develop skills and abilities, not only in sport, but also in such areas as teamwork, cooperation and strategy building which will assist them in the greater society.

After realizing that few opportunities existed for First Nation children to participate in mainstream sports, the Saskatchewan First Nation[2] community in 1974 created the Saskatchewan Indian Games. Two hundred children participated in its first year. However, twenty-five years later, despite the continuous growth of the Saskatchewan Indian Games from its small beginnings to the participation of over 2600 participants today, the barriers for Aboriginal participation in sport still remain.

The following paper is a brief overview about the Saskatchewan experience from one perspective. It includes the provisions of the *Declaration on the Rights of the Child* and the *Convention on the Rights of the Child* as the framework for the discussion on the importance of participation in recreation and leisure as opposed to competition. The paper will outline some of the barriers to Aboriginal participation in sport generally, and to participation in the broader sporting community. Through two Saskatchewan (Canada) examples, the paper will illustrate solutions to overcoming these barriers.

International Declarations and Conventions: Declaration of the Rights of the Child and the Convention on the Rights of the Child

The following provisions of the *Declaration of the Rights of the Child* and the *Convention on the Rights of the Child* are the frameworks for discussion. Neither the Declaration nor the Convention mentions competition, but rather raises the importance of play, recreation and leisure activities.

According to Principle 7 of the Declaration of the Rights of the Child: *The child shall have full opportunity for play and recreation which promotes his or her general culture and enables the child on a basis of equal opportunity to develop his or her abilities, individual judgment, sense of moral and social responsibility and to become a useful member of society*.

Many First Nation communities, mostly rural, do not have regular sport and recreation activities for children and youth; thereby the 'full opportunity for play and recreation' is lacking. In the urban centers, as well, barriers exist which hinder Aboriginal participation in sport. Without such ongoing physical activities, young people can potentially miss out on the teamwork and learning that sports activities could provide. Involvement in sport can benefit in many ways.

Studies have shown that regular involvement in sport can reduce stress in children, help them to perform as well or better academically[3] and even reduce crime. In Northern Manitoba (Canada), those communities with a sport

[1] The term Aboriginal includes Indian (status and non-status), Metis and Inuit.

[2] The terms First Nation and Indian are used interchangeably.

[3] Canadian Association for Health, Physical Education and Recreation, 1982.

program showed a 17.3 percent reduction in crime, and on average, a 10.6 percent increase in crime in communities without a program.[4]

Rural and urban communities, therefore, have an incentive to create accessible sport programs and to overcome barriers to participation in sport. As has been illustrated, positive outcomes can result both for the child and the community when sport and recreation programming is made available.

Also, Article 31 of the Convention on the Rights of the Child:

> *States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.*
>
> *States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.*

Article 31 combines recreation and play with culture. An important step in ensuring a sense of belonging for Aboriginal children is attention to their culture. Perhaps the founders of the Saskatchewan Indian Games had this in mind when they created their Games. Prayer and spirituality play a large role in most local and major Aboriginal events such as the Games during which an elder gives a prayer and a blessing for the participants; Aboriginal coaches and role models provide training and encouragement to the children and; immediate and extended family members participate as volunteers. Attention to culture in its simplest form means building a relationship with the individual child by asking them about their goals and aspirations and meeting with their family. The building of relationships is as important as the game.

We all recognize that the global response to the Declaration and the Convention is slow and sometimes limited. Governments need to incorporate the principles of the Declaration and the articles of the Convention into their own public policies. While the Declaration and the Convention apply more specifically to international labour codes, they are also broad enough to apply to sport to protect our young athletes from exploitation in the quest to win. When applying such Declarations and Conventions to sport, we must focus on the development of the child and away from winning as the main goal.

When coaches, parents and communities begin to understand the true value of sport and its potential impact on the development of children in all cultures, races and across genders, then they will endeavour to promote the rights of the child within the context of sport.

Overview of the Saskatchewan Indian Games

The Saskatchewan Indian Games were created in 1974 to address the exclusion of First Nation children and youth from mainstream sports activities. When the First Nation community decided to create a separate Indian Games, it had two main objectives. The first objective was to help develop the infrastructure on each reserve that hosted the Games, and the second objective was to develop coaches and athletes. Through fundraising and corporate support, host reserves have new arenas, ball diamonds and soccer pitches. In addition, the Games have helped to build a community through volunteerism, leadership and large-event skill development. The young athletes have benefited from their involvement in healthy competition, if only during these Games. However, the second objective to develop coaches and athletes is evolving much slower.

While many volunteers have taken introductory coach training, few have hands-on experience to train young athletes effectively. Understandably, it will take some time to gain experience and be comfortable with one's training technique. However, experienced coaching is essential to developing the child's most basic skills and to encouraging their continued participation in sport.

[4] Synthesis of the Research on the Benefits of Recreation, University of Manitoba, 1989.

The Saskatchewan Indian Games provide First Nation children, usually only those living on reserves, with an opportunity to participate in a variety of sports. This practise leaves out a large number of children in urban centres who may be status or non-status Indian, or Metis. Despite these exclusions, the Games are successful in terms of participation. However, too much time and money is spent exclusively on the Indian Games and not enough effort is directed to other opportunities for the rest of the year. Because of the lack of a development program for young athletes, many of the participants in the Indian Games are still at an introductory level of skill development. A broad base of training needs to be developed for every level of ability, while at the same time providing further training for those individuals showing promise for more elite sport.

Despite the marked increase in participation in the Indian Games from 200 participants in its first year to 2,600 participants today, the last twenty-five years have seen a limited increase in the participation of Aboriginal children in events outside of the Indian Games. The minimal increase may show that greater partnerships need to be created between the Aboriginal communities and provincial and national sports bodies to encourage Aboriginal participation. As will be discussed later in this paper, SaskSport, a federation of provincial sport organizations in Saskatchewan (Canada), along with sport stakeholders, have identified the need for Aboriginal Sport Development and for overcoming a number of barriers.

If we believe in the statements provided in the Declaration and the Convention that sport can create a solid foundation for personal development for a child, then long term strategies need to be implemented and supported.

Barriers to Participation

Both Aboriginal and non-Aboriginal sport organizations are slow to respond to the growing Aboriginal population. Demographic statistics for Saskatchewan show that one-quarter of all births are Aboriginal. By the year 2011, about 40 percent of the province's population under the age of 24 will be Aboriginal. Now is the time to address many of the barriers that prevent or limit the participation of Aboriginal children in sport. The following paragraphs will provide some of the existing barriers.

Perhaps one of the greatest barriers is the financial limitations of Aboriginal families to enrol the child in an activity requiring a fee. A large percentage of Aboriginal families are in poverty due to an inability to find employment or to find work that provides them with a salary much above minimum wage. These financial limitations also make it difficult to pay for transportation. In addition, the urban centres now contain over half of many of the Aboriginal communities, but only about 20 percent of Aboriginal families are involved in urban sport activities. Many Aboriginal families are not aware of the activities available to them, and that lack of awareness restricts their ability to participate.

The lack of parental involvement or Aboriginal role models also poses a barrier. Without parental encouragement, the child could potentially seek other activities which put them into trouble with the law. More Aboriginal role models, coaches and volunteers are required to develop a healthy view of sport in a child and to show both Aboriginal children and their parents that they are welcome and included in all activities.

Finally, existing sport programs show a lack of cultural support or little attention to cultural issues affecting young athletes within the urban centers. Greater linkages and integration between Aboriginal and non-Aboriginal sport organizations may increase understanding of cultural issues.

Generally, Aboriginal children have little opportunity to develop their abilities, individual judgment and sense of moral and social responsibility through sport either on reserve or within the urban centers. Yet, sport has the potential to be the venue through which these aspects of the child can be developed.

Elimination of Barriers and Relationship Building

What can communities and organizations do to overcome barriers to ensure the development

of the rights of the child in sport, culture, recreation and leisure and ensure that the best interests of the child are met? Two organizations in Saskatchewan (Canada) have demonstrated that cross-cultural partnerships can help to create solutions to overcome barriers.

Wascana Racing Canoe Club

In 1993, in the city of Regina, the Wascana Racing Canoe Club placed a special emphasis on exposing inner city Aboriginal children to the sports of kayaking and canoeing. The Canoe Club first had to overcome three main barriers: transportation, financial, and attitudinal.

To address the first barrier of transportation, organizers provided a bus to transport the children to the pool at the University and back home. Secondly, to resolve a financial issue that the children generally came from low-income homes, sponsorships were found to cover the cost of providing the program and the children participated free of charge. Thirdly, to ensure a positive attitude and full benefit for each child, the children developed their skills together as a group, yet at their own pace, gained confidence and then were integrated into the club as a whole. As well, to encourage their participation, the Canoe Club liaised with Aboriginal role models to speak to the youth in the core-area schools about the benefits of participating in sport. The Canoe Club also worked closely with community resources like Youth Unlimited that had expertise in working with low-income and core area Aboriginal youth.

The success of the kayak and canoe project was indicated through the positive reactions of the twenty-five children who participated in the program, the positive relationships that were built and the commitment of the coach who took diversity training to be more sensitive to the participants' culture.

SaskSport and Aboriginal Sport Development

SaskSport, a federation of provincial sport organizations in Saskatchewan, participated in a series of consultations with sport stakeholders in 1993 and identified the need for Aboriginal Sport Development. The objective of Aboriginal Sport Development is to broaden the participation base and increase the quality and diversity of sport opportunities for Aboriginal people by involving the Aboriginal community.

The program has three goals:

1. To facilitate the development of effective relationships, alliances and linkages between Aboriginal agencies and communities within the sport system;
2. To develop an Aboriginal coaching strategy that significantly increases the number of qualified coaches to provide leadership within Aboriginal communities; and
3. To increase the number of Aboriginals participating in sport.

SaskSport has partnered with the Federation of Saskatchewan Indian Nations and the Metis Nation to initiate training and educational opportunities that enhance community planning, management and coordination of programs and services. Sharing knowledge assists in increasing understanding within the sport community of the cultural basis of Aboriginal sport. However, much of the resulting information from the partnering organizations does not always get transferred to the local communities. Therefore, a communication and training strategy is recommended that involves the grassroots communities. Such a strategy needs to be implemented on the reserves and widely marketed in the urban centers where more ideas for programming and training are needed most.

In addition, the lack of coaching experience limits the quality of skills that can be taught to the young athletes. A coaching strategy requires joint motivation in long-term, ongoing planning, promotion and implementation of coaching initiatives between the various levels of the Indian and Metis governments, the coaching associations, provincial sport governing bodies and universities. By working together, the broader partnership can train potential Aboriginal recruits as course conductors for the delivery of National Coaching Certification Programs.

To assist in expanding Aboriginal participation, it is recommended to increase the awareness, education and strategies that address gender balance within Aboriginal sport and recreation programming. Few participants tend to be young Aboriginal girls.

The Aboriginal Sport Development program has made some headway in terms of forming alliances between SaskSport and Aboriginal organizations, and developing coaches. However, as has been discussed, there must be a greater sharing of training and educational opportunities with grassroots communities, an increase in the quality of coaching and an increase in Aboriginal participation, in part, by addressing gender balance in programming.

Overall, the urban program developed by the Wascana Canoe Club was a success. As well, the Aboriginal Sport Development program has made some progress toward reaching its goals and objective, but more implementation of ideas needs to be made. Unfortunately, few sport programs exist on rural reserves because limited budgets do not allow for ongoing programming in sport, culture and recreation. With the expected demographic increase in Aboriginal children and youth, it is important to continue to build bridges between the Aboriginal groups and non-Aboriginal sport sector to improve participation in sport, and to enhance understanding between cultures.

Conclusion

It can be concluded that an opportunity exists in both recreational and competitive sport, to eliminate barriers and to build relationships between cultures, genders and among races. Some steps have been taken to achieve this ideal.

Without a doubt, successes have been achieved when Aboriginal youth participate in mainstream competitive sporting events. However, many others need to first learn the joys of sport through participation in activities at their community level from a young age. They should be encouraged to stay involved in sport and be shown the opportunities and potential for more elite sport should they choose. The development of ongoing recreational programs for young people through the cooperation of grassroots communities, Aboriginal and non-Aboriginal sports organizations is essential.

Sport is more than a game, and sport is more than just winning. It includes the right, the respect and the full opportunity for play and recreation, the promotion of the individual's general culture, and equal opportunity to develop abilities and recreational and leisure activity.

We have a responsibility and an obligation to ensure that all children from all economic and cultural walks of life are provided with the appropriate and equal opportunities to reach their full potential. Sport can help them reach that potential.

Biography

Patricia Stirbys is a Cree member of the Cowessess First Nation in Saskatchewan, Canada. She has graduated from Broadcasting, English and Law. She is currently a practising lawyer.

Patricia was actively involved with the development and care of children through her position as Director of Human Resources and Programs for Cowessess First Nation overseeing the Sport, Recreation and Culture program, and as a member of the Board of Directors for the Yorkton Tribal Council Indian Child and Family Services Inc.

Prior to joining the Cowessess Band Office, Patricia had the opportunity to work in both Aboriginal and non-Aboriginal government organizations providing contract services and launching the Aboriginal Cultural Awareness Program. Patricia has been actively involved in sports since childhood and recognizes the positive impact it has on the full development of people. She has had the opportunity to be involved in children's sport at a coaching level and continues to remain active in sport herself.

Athletes Fighting For Their Right To Compete - A Case Study

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Abstract

For most people who are not involved in sport, there is a tendency to believe that it is a world of fair play and that it is the best environment in which children, and people in general, could be involved. Carrard (1991) says that there was a feeling that sport was related with fairness and loyalty and while there is no doubt that many athletes and administrators still promote them, the fact is that 'the world of sport is neither better nor worse than the rest of the world' (p. 516). It can turn out to be the most anti-democratic, frustrating and castrating environment in which the hopes of young people can be banished. National Sporting bodies exist in order to support participants and encourage the practice of sports. This case study presents the situation faced by a group of young gymnasts from a particular country in 1996, who happened to be at the time members of the Champion National Junior Team. Due to problems related with club affiliation to the National Gymnastics Federation, many children were left without participation during that year in competitions, and this particular group followed legal proceedings in order to fight for their rights to participate. Unfortunately for themselves and sport, they were not successful.

Introduction

In the world of sport, rules have become a necessary part of the game or event. The addition of umpires, referees, judges and even timekeepers assures that rules are carried out appropriately. While constantly changing, they are well accepted by participants, so well, in fact, that there are normally few occasions when there is a need for intervention outside the sporting scene. Those few times would involve the athlete(s) in situations which could precipitate long term suspensions. In any case we can say that the athlete is undoubtedly aware of the possibility of rule infringement, whether it is stepping outside of a boundary line, using unnecessary physical force, or taking a banned substance. The athlete is expected to be warned of possible infringements, and to be in some degree of control of their destiny, depending to some extent on the knowledge and awareness of their overseers, and the age of the participants.

In the case that is presented below, it could be said that the athletes were unaware of their infringement, that it occurred before any chance of competition, and that even their overseers lacked the prerequisite knowledge and any control over the developing situation. It is an unfortunate story, but one from which we continue to learn that child athletes are subject to the control of adults for their participation in sport, and that administrators do not always have the same objectives as the participants.

The growth and popularity of sport, as well as the possibility to communicate among scholars have brought out a series of questions, case studies and concerns in general about the value of sport to the development of the individual (Chalip, 1996). There are sad comments such as 'perhaps some individuals doubt the validity of democracy in sport because they have never seen democracy in action within the sport milieu' (Belle, Durrant & Stoll, 1993:3). It has been associated with oppressive political systems, with a lack of democracy, however, we wonder what has been happening in sport. Is it a system that sometimes goes beyond the laws created in their own country? The following is an example of how the very simple right of participation has been oppressed for a group of gymnasts.

Background

In late 1995 a group of people decided to create a gymnastics club called 'Araguaney'. They were informed by the Regional Sport Institute - Aragua (I.N.D.-Aragua) that this club had already been registered in previous years but it was not operational any longer, so they had to renew it according to the procedures established by the 'National Sport Law'. In December (26/12/95), after the club was recognized by the I.N.D. - Aragua and in order to participate in the activities organized by the Aragua (State) Gymnastics Association (A.G.A.) and Venezuelan Gymnastics Federation (F.V.G.), they decided to introduce the renewed document (club membership application) in order to be affiliated. They were certified by the Association on 28/01/1996.

The Affiliation period of the F.V.G. is from January to March. By February the Board of the A.G.A. changed and was in a Temporary Reorganization Commission**.** The club, in order to be affiliated to the Federation, followed the procedures and submitted the required documents to this Commission. On March 12, 1996 they were informed that the club was not considered legal by the F.V.G. Paradoxically, for the Regional Sport authorities they were recognized as legal but the F.V.G. decided that they were illegal for wrong proceedings in the Renewal document . However, in 1994 there was a similar case with another club and it was not considered illegal by the F.V.G. In March, the affiliation process to the F.V.G. finished.

From March until June there were many meetings which involved the Club, A.G.A, I.N.D. - Aragua, FUNDEA (Aragua Sport Foundation), F.V.G., and even presentation to a Regional Juvenile Court Judge. There was no way to solve the problem. During these months a new A.G.A. Board was elected.

Gymnasts

A group of young gymnasts from the ages of 11 to 15 years, who had been practicing gymnastics since they were 4 years old (average) decided to change to the new club in December 1995. In 1995 they were the National Champion Team of the Junior Games (the top sport event in Venezuela). They won the three all-round and some individual places in the competition. Some of these gymnasts had been members of the National team.

The club originally had about 80 gymnasts. Most of them were young and were at the beginning of their experience in gymnastics. They did not have expectations to compete in that year at the National level. The Club tried by all means possible to consider the affiliation to the F.V.G. but they did not receive it. The elite gymnasts by June were not officially registered and had no chance to participate in any event. So, their parents decided to go through legal actions to at least get them to participate in the National Junior Games that were going to be held in December 1996.

The National Sport Junior Games represent the most important sport event in the country. There is a great concern among several states to get a distinguished position in the general results of the games. The winners in the latest editions have obtained significant prizes from their own state governments.

Legal Procedures/Court Proceedings:

- On June 18, 1996 the parents represented by lawyers introduced a judicial review against the F.V.G. and the A.G.A. to the 'First Judge of the Civil and Mercantile on First Instance, in Aragua State' - Contentious Administrative. The F.V.G and A.G.A was represented and assisted respectively by a lawyer. The parents asked to allow the gymnasts to compete and stated that they have been affected by the no affiliation in their constitutional rights. The F.V.G. and A.G.A. insisted that the judicial review was not appropriate because the negative decision to affiliation was to the club, not to the gymnasts.
- On July 17, 1996 the verdict was favourable to the parents. The court decided that the legal procedure was right and that the F.V.G. and A.G.A. should affiliate the gymnasts in order to allow them to participate in the regional and national activities.

- The F.V.G. and A.G.A appealed this decision before the Superior Judge of the State. On August 21, 1996 the decision was revoked. The Judge declined to recognize the case declaring legal incapacity.
- The case was sent to the 'First Contentious Administrative' - Higher Court in Caracas. On September 4, 1996 the competence of the Court began to be considered.
- October 10, 1996, the process continued. The parents' petitions were the same. The F.V.G. and A.G.A. were represented by the lawyer who continued with the same position and added that it was out of time because the period of affiliation ended in March 15, 1996. Another document was introduced by the F.V.G. The Assembly of Associations and the F.V.G. signed a document on October 11, 1996 allowing the gymnasts to be registered under the following conditions:

    - To affiliate 5 gymnasts in artistic gymnastics and 1 in rhythmic gymnastics for the purpose of participating in the National Junior Games.
    - To register 1 or 2 gymnasts in the different Gymnastics Association except in the Aragua State one (State of origin). They have to respect the regulations of the clubs, Association and Federation for their registration
    - The gymnasts have to respect the conditions established by each Association in order to integrate the different states' teams
    - The gymnasts will participate in the National Junior Games 1996 if they respect the above conditions

- December 5, 1996 the verdict of the Court rejected the judicial review applied by the parents against the F.V.G. The Court considered that the participation of the gymnasts in the competition was possible because of the document signed by the Associations; the petition applied by the parents was right according to the law; however, there was a mistake in the procedure because the legal procedure should have been applied to the club.

Consequences

The National Junior Games were initiated in early December. The gymnasts travelled to the place of the competition at the expenses of the I.N.D. - Aragua. A last meeting was arranged with the F.V.G., Associations and a mediator, but it was unsuccessful. The gymnasts did not compete.

Most of the gymnasts had been training for years together. The decision of the Associations and F.V.G. to allow them to compete but representing other states, in other teams, and separated from their fellow gymnasts, was not accepted by the gymnasts themselves. Besides that, they did not know the conditions that they had to follow. The problems they faced made them closer as a team.

These gymnasts used to train with 7 coaches, three of whom were Judges. The Judges before the actual problems started were not called to judge. After the National Junior Games they all received suspensions for two years from the F.V.G. Some of them were never asked to appear at the Federation. None of them were direct employees of the Federation as there is no membership card for coaches or judges. Most of them worked ad-honorem. They received a decision from the Federation with a series of charges that could not be proven, which were similar. None of the judges instigated legal procedures because of the long process they had been through and what the gymnasts suffered they did not believe it was worthwhile. The parents also received a written admonishment.

During 1996, the gymnasts, in spite of all the problems and publicity of the case, continued training 6 days a week with the same plan to compete. After they saw the start of the gymnastics competition at the National Junior Games, their morale was low and they were disappointed by the system restricting them from their favorite sport.

In the following year, 1997 some of the gymnasts decided to quit, after they had been training for nine years (average). Others continued, and had problems with the affiliation again but it was eventually solved. They participated in the National Junior Games

but did not receive the same excellent results of two years ago.

Conclusion

To what extent do children in sport (the gymnasts) have to be punished by wrong procedures? To what extent was the pedagogical purpose of sport accomplished? To what extent does the sport lose people? To what extent can the Federation, as the organization trustee of the discipline in the country, ban gymnasts who are the product of their own organization and investment made by the country?

Comben & Madden-Butler (1998) make reference to the importance for Associations to provide grievance procedures for dealing with disputes between the member of the organization. When the procedures are not clear, most often the problem may end up with bodies with no expertise in sport. In some countries there is a National Sports Dispute Centre or the Court of Arbitration. But, in many countries these structures do not exist. What can the young sport practitioners do in order to protect their rights? Sport administrators should be educated as to how to use law to prevent legal crises or at least manage difficult situations wisely (Opie, 1996).

There is no wonder about the individual problems and power concerns in this case. However, should the gymnasts have to pay for a problem that arose while they continued training? Maybe the answer lies with the philosophical basis of sport. Without athletes, gymnasts or sport practitioners there is no need for our complex sport bodies and structures. What is a school without children? What is a gym without gymnasts?

Because of its educational foundation, sport must foster and support a democratic philosophy (Beller, Durrant, & Stoll, 1993).

References

Beller, J., Durrant, S., & Stoll, S. (1993, June/July). A bill of rights for athletes: A novel idea or blasphemy? *For the Records*. pp. 3-5.

Carrard, F. (1991). Legitimacy and legality of international structures in sport: Aspects and implications of arbitration and sanctions in international sport. In F. Landry, M, Landry & M. Yerles (Eds), *Sport the Third Millennium: Proceedings of the International Symposium 1990* (pp. 514 - 520). Quebec, Canada: les Presses de L'Universite Laval Sainte-Fox.

Chalip, L. (1997). Action research and social change in sport: An introduction to the special issue. *Journal of Sport management*. 11, 1-7.

Comben, L. & Madden-Butler (1998). In the parliaments . *ANZSLA Newsletter 8*, (3). p.4.

Instituto Nacional de Deportes (1996). *Lineamientos del plan general del deporte 1997 - 2000.* Caracas, Venezuela: Planificación y Coordinación Deportiva del Institituto Nacional de Deportes

Opie, H. (1996, December/ 1997, January). Sport and law or sport law. *For the Records*. pp. 6-7.

The information about the case is in the following official documents:

Amparo Constitucional. Juzgado Primero de Primera Instancia en lo Civil y Mercantil del Estado Aragua 186º y 137º. Maracay 17/7/96. Legal file 96-1550

Expediente Nº 96-18151. Corte Primera de lo Contencioso Administrativo. Caracas 5/12/96. Legal File: 96-18151

Sport and Human Rights in the Early Years of the German Democratic Republic (GDR)

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Introduction

In recent years, as a result of the social and human catastrophes caused by the two World Wars in the first half of the present century, the recognition and respect of human rights has been recognized as a global task and obligation. The first international expression of this overdue recognition was the declaration of human rights by the General Assembly of the United Nations on December 10, 1948. Since then universal legal support for the protection of human rights has been in existence, at least formally. For all practical purposes, all national constitutions are based on a nation's rights and the human rights connected with them. Unfortunately, however, the realisation in the past five decades has lacked in putting those principles into practice and up to this date one can witness a massive amount of offences. The spectrum of those offences is widespread and reaches from the direct, politically motivated, offences impingement on the basic individual rights for freedom to the secondary deeds in the social environment of religion, commerce and social life. The following paper intends to concentrate on the general field of the rights of the individual.

In this respect the greatest significance is given to the so-called, rights of freedom such as the development of a personality, individual mobility, as well as the freedom of opinion and the freedom of assembly and of association. In the spectrum of the offences against human rights, we possess significant examples in the history of Germany during the present century. Examples can easily be seen in the restrictions by the feudalistic monarchy up to the end of World War I, by those of the Nazi dictatorship, as well as by those of the authoritarian regime of the communist GDR after World War II. In all three above-mentioned phases offences can be noticed also in relationship to sports and human rights; historiography has yet to deal with many of these offences. This author has devoted about three decades to study the theme of sports under dictatorship and authoritarian regimes and in recent years has dealt with developments in the early years of the GDR within the frame of a large project in sport history.

Human Rights and Sports

The complexity of human rights is being discussed at present primarily in relation to discrimination on the basis of sex and of ethnic origin, as well as matters pertaining to doping. Due to the rise of sports to the status of a relevant mass phenomenon of the modern industrial society, since the beginning of the 20th century, the relationship between sports and human rights became a theme in relationship to discrimination against the basic rights of the individual. From the history of sport in Germany the following examples are worthwhile mentioning:

1. The restrictions of the freedom of organisation of labor sports, which were oriented towards the political opposition, under the authoritarian regime of the monarchy up to 1914.
2. The persecution on racial basis of Jews in general and of Jewish athletes in particular, as well as the liquidation of the freedom of opinion within organisations, that liquidation included detention and even murder by the fascist Nazi regime.
3. Similar organisational restrictions by the state of the GDR government (and previously by the Soviet occupation forces) to exclude all 'unreliable' sport functionaries and the limitation of movement of all athletes.
4. The exclusion of East German athletes from participation in the Helsinki Olympics of 1952 due to manipulations of the West German NOC as part of the 'Cold War' politics.

Human Rights and Sports in the GDR

Human Rights and the Constitution

From the very beginning the GDR claimed to take up the formal legal basis of state and society in relationship to human rights. Paragraph 5 of the original constitution of the GDR of 1949, states that 'the universally accepted rules of the rights of nations should be enforced in relation to the power of the state and of each citizen'. The following paragraphs details citizen's rights:

Par. 6: 'All citizens possess equal rights before the law'.

Par. 8: 'The personal freedom, the inviolability of one's place of dwelling, the secret of mail and the right to settle down in any place are guaranteed. The state has the right to limit or to cancel those freedoms only on the basis of laws pertaining to the total population'.

Par. 9: 'All citizens have the right, within the limits of the laws pertaining to the total population, to express the opinions without restrictions and in public. For this purpose they have the right to assemble peacefully and unarmed.'

Par.12:'All citizens have the right to organize clubs and societies as long as these are not opposed to the code of law.'

(Verfassung der DDR, 1949: 14-16)

In reality, the GDR did not abide to its constitution. The goal of the constitution was to create the image of a compatible state on the international scene for the GDR, but in reality such a constitution would have been opposed to the claims of dominance of the communist rulers. This holds especially true for the dominant role of the State-Party - the SED - which was raised, not later than 1948, to a dominant role by the Soviets in their zone of occupation. The SED became de facto, the only determining political power, and had the realization of socialism under the model of 'the dictatorship of the proletariat' and as its only recognized form of societal organisation as its principal goal. Connected with this were the ideological principles, political goals and mechanisms of ruling of communism, which were fundamentally opposed to a Western oriented parliamentary democracy. 'The Party and its leadership are always right' became the normal policy in the area of Stalin's dominance in that era. Deviations and opposition were persecuted and punished through incarceration and even killings (cf. Mählert, 1998).

The role of sports in the GDR-System

The absolute dictatorship of the state and of the party concerned the development of the area of sports as well. Especially as sport held a prominent position in the societal concept of the GDR. On one hand physical culture and sports were considered an important element in the education of a 'socialist personality' and on the other hand they were considered by the communist rulers to be a popular element which could assist them in transmitting their political goals to the masses. In both aspects the SED followed in the footsteps of the Communist Party of the Soviet Union. The SED practised a rigorous influence on the organisation of sports and their contents as a social subsystem. It submitted, therefore, sports were under the control of the state and the party[5].

Offences against human rights in sports

The restrictions and details of human rights in the area of sports can be observed in the pluralistic forms of organisation, in attempts to organize alternative structures of sports, and alternative contents[6], as well as in the restriction of mobility.

Compulsion of Organisation and the Loss of Freedom of Opinion

The organisational structure of sports in republican Germany of the 1920s, the era prior to the fascist dictatorship, was extremely

[5] Up to 1950 the sport was in the responsibility of the Deputy Prime Minister, Walter Ulbricht. Since 1952 it was controlled by a 'State Committee for Physical Culture and Sport' and thus led by the state. After 1955 an independent department of the SED came into existence as de facto most responsible institution for sport.

[6] For example on one hand professional sports were forbidden, after being declared 'capitalistic and decadent', on the other no discussion about the pre-militaristic 'Society for Sport and Technology', created in 1951, was permitted.

pluralistic and was adjusted to the democratic philosophy. The spectrum of sport organisations reached from the conservative movement of the Turners, through to the bourgeois-liberal movement of sports, to the socialist labor sports movement. All these organisations functioned on the national level through local Turner and sports clubs. Under the Nazi regime all these traditional organisations were forbidden and the clubs were forced to join a unified federation controlled by the state. At the end of World War II the task was to revive the voluntary and autonomous structures within a democratic society under the control of the four occupational powers.

In the Soviet Zone of Occupation the Soviets, together with their German partners, the SED, tried very hard to introduce its socialist system. Following a delay for tactical reasons[7], the Communist dominated state party introduced, in 1948, a complete new organisational system of sports, based on the system of centralisation. This was done against the will of the traditional bourgeois circles and even against the will of the majority of veteran members of the old labor sports movement. The state youth organisation, the 'Free German Youth' (FDJ), and the trade unions became responsible for the new sport organisation, which 'elected' its leadership only by pro forma[8]. Alternative sport organisations were not allowed and the traditional clubs were replaced by organisations at the workplace, the so-called 'Betriebssportgemeinschaften'. That way, the athletes were bound to their workplace also during their leisure time.

Whoever rejected the above model or was self-employed as a potential 'capitalist' had no chance whatsoever to be active in sports. Whoever protested, was discriminated against and considered a 'sectarian'. Many athletes left the Soviet Zone of Occupation following the creation of the GDR in 1949. Quite a number were, however, victims of the wave of cleansing of Stalin's era, between 1948 and 1953. During that era, the SED eliminated members of the opposition within its own ranks as well as in the other social domains of the GDR. The estimated number of victims of trials with a political nature in the initial years of the GDR runs to about 10 000 a year. Many of those brought to trial received verdicts of prolonged incarceration, some even were condemned to death. They were usually accused of 'agitation to boycott the democratic organisations and institutions of the state' (Knecht, 1069:18-19; Schroeder, 1998:83ff.).

Limitations of Movement

Mobility is considered a must for regular athletic activity. Even the artificial borders between the various zones of occupation in Germany after 1945 could not put an end to that mobility. Such a mobility, however, contradicted the interests of the communist rulers, who were afraid of Western influences of a democratic nature. In 1952 the GDR attempted to close its borders to the West with the aid of fences and mines. Even the visits of relatives on the other side of the border, which had been allowed before, provided they lived near to the border, were now forbidden. The attempts of thousands of GDR citizens to escape to the West were considered 'an escape from the republic' and whoever was caught was brought to trial. Travel to West Germany was allowed only with a special permit, not to speak of the request to change ones domicile. Such laws put an end to voluntary sport connections with the West. Furthermore a significant number of athletes were convicted for allegedly maintaining contacts with the West, for preparing escapes to the West and even for spying for the West. All those received prolonged sentences of incarceration (cf. Knecht, 1969). Those trials were aimed at deterring people from escaping or even contacting the West, as well as to serve as proof concerning the dangers of the activities of the so-called 'Western agitators against peace'.

[7] From 1945 until 1948 the Soviets organised a system of sports in the communities, which served as a kind of interim solution prior to the establishment of the SED system.

[8] Like in all other communist mass organisations, the leadership positions were made available only to members of the party's cadres. Following their formal election, those cadres 'ruled' through binding directives.

Prevention of International Participation

The East German athletes were, however, victims not only of the disregard for human rights by the rulers of the GDR. In the case of prevention of the participation of athletes from East Germany in the Olympic Games of Oslo and Helsinki in 1952 it can be stated that they were prevented from free development of their personality as an indirect result of the battle between politicians and sport functionaries from both West and East Germany, the so-called 'querelles allemandes'.

Recent research has shown that West German functionaries were in the end responsible for preventing the participation of East German athletes (cf. Buss, 1997). West Germany demanded, during the period of the Cold War, the sole right of representation of Germany in all areas of politics, culture and sport. In the area of sports that attitude prevailed, at least in the years 1951/52, in the ranks of the IOC.

In later years that policy broke down due to its irrationality, yet in 1952 the East German athletes were innocent victims of the political interests of the leading nations of the world (cf. Geyer, 1996).

Therefore it is wrong to claim that West German athletes were the first victims of political decisions, when the Federal Republic decided to boycott the Moscow Games of 1980. The first German victims of that kind were the unknown athletes of the GDR, who intended to participate in the Games of 1952. Both cases carry the same weight when one deals with the personal fate of the individuals.

Conclusion

Sport is nowadays, more so than in the past, an integral part of the political system and of the social processes. A fruitful relationship between the dominant political system and the subsystem of sports respects the autonomy of sport as a part of the culture. This holds true especially as far as the autonomy of the athletes is concerned.

The above refers primarily to respecting basic rights of freedom as the central core of human rights. We seem to have learned too little from the negative examples of the 20th century, as can be witnessed from many still existing dictatorships around the world. May the 21st century bring with it more success in this respect and the ability to learn from the past.

Literature and Recommended Readings

Buss, W. (1997). Der Sport im Spannungsfeld der frühen Deutschlandpolitik – Die erste Phase der Anerkennungs- und Abgrenzungsbemühungen im deutsch-deutschen Beziehungsgeflecht, 1950-1955, manuscript for a symposium of the Bundesinstituts für Sportwissenschaften, 18. 04. 1997, 18pp.

Fetscher, I. (1993). Menschenrechte. In: Nohlen, Dieter (Hrsg.): Wörterbuch Staat und Politik, 2nd edit., 377-378. München.

Geyer, M.H. (1996). Der Kampf um nationale Repräsentation - Deutsch-deutsche Sportbeziehungen und die 'Hallstein-Doktrin'. In: Vierteljahreshefte zur Zeitgeschichte 44, (1996), 1, 55-86.

Grundrechte. In: Beck, Reinhart, (1986). Sachwörterbuch der Politik, 2nd edit., 381 – 387, Stuttgart.

Ihmels, K. (1965). Sport und Spaltung in der Politik der Sed, Köln.

Knecht, W. (1969). Verschenkter Lorbeer. Deutsche Sportler zwischen Ost und West, Köln/Berlin.

Kühnst, P. (1982). Der mißbrauchte Sport. Die politische Instrumentalisierung des Sports in der SBZ und DDR 1945-1957, Köln.

Mählert, U. (1998). 'Die Partei hat immer recht!' Parteisäuberungen als Kaderpolitik in der SED (1948-1953). In: Weber, H.Mählert, U. (ed.), 1998: Terror, Stalinistische Parteisäuberungen 1936-1953, 351-458, Paderborn/München/Wien/Zürich.

Pabst, U. (1980). Sport - Medium der Politik. Der Neuaufbau des Sports in Deutschland nach dem 2. Weltkrieg und die innerdeutschen Sportbeziehungen bis 1961, Berlin.

Prokop, S. (1996). Das SED-Politbüro – Aufstieg und Ende /1949-1989), number 40 of the row ,'Forscher- und Diskussionskreis DDR-Geschichte - hefte zur ddr-geschichte', edited by Helmut Meier/Detlef Nakath/Peter Welker. Berlin.
Schroeder, K. (1998). Der SED-Staat. Partei, Staat und Gesellschaft 1949–1990. Munchen.

The Human Rights of the Genetically Engineered Athlete

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Abstract

Traditional definitions of what constitutes a human being in human rights discourse fail to include the new kinds of human beings that are emerging through genetic manipulation. The prospect of such technology and the knowledge that such alterations infringe on a number of human rights and so require further consideration, in order to be clear about their appropriateness for human beings.

This paper identifies the problematic discourse of defining the human, so as to clarify the inadequacy of human rights' theory in an age of high-technology. Whilst the result of any genetic manipulation would still be a human life, it is argued as naïve to assume that the term 'human' requires no further distinction. The 'genetically engineered human' requires addressing as a specific kind of human, one for whom there is potential for discrimination. For example, such knowledge, as will be afforded by the Human Genome Project, requires considerable management, since knowledge of a person's genetic composition creates the potential for discrimination.

The contribution of sports in these brave new worlds to the discussion of human rights is through the demonstration of the inadequacies of current human rights theory to account for the potential cyborg athlete. Sport provides a forum within which addressing the appropriateness of genetic technologies becomes unavoidable. Sports must decide whether the genetically engineered athlete is a legitimate competitor. Through such discussions, it is possible to learn of the inadequacies in human rights theory. For example, when considering cloning, Hans Jonas (1974) argues that 'every human being has a right to a totally new and uncorrupted life of his or her own'. Such a claim requires deliberation, particularly since the current moratorium on cloning is for the purpose of coming to terms with the appropriateness of this technology.

At a time when the world has seen the cloning of animals and potential humans, the controversial emergence of genetic food technologies, and numerous techniques of genetic manipulation, these implications are timely and confrontational. Sport articulates the difficulties facing the integration of new technology, providing a template upon which the tenability of arguments can be realised. The uncertainty about genetic technologies, which pervades modern society, can be made clearer through placing such technologies in the context of human rights, within which sport makes a most significant contribution.

Introduction

The genetic revolution is characterised by a host of ethical and social issues that are drawing attention across a multitude of disciplines. Not least of these is how knowledge about the human genome will impact upon the application of human rights. It is becoming increasingly apparent that conventional human rights do not suitably protect the new kinds of human that are emerging as a result of a plethora of new and prospective genetic techniques. Moreover, the very sanctity of the human species is often deemed to be under threat as a result of such technology. The significance of this is made explicit in the recently drafted Universal Declaration on the Human Genome and Human Rights by the United Nations Educational, Scientific, and Cultural Organisation (UNESCO, 1997). Within this document, UNESCO urges for the application of such technology to respect human dignity and to ensure the protection of individuals from such effects as genetic discrimination that might derive from being engineered. Additionally, an emerging literature is

endeavouring to address how human rights can be sustained in an age of genetic engineering. Most notably, this discourse has been informed by the recent text edited by Justine Burley (1999), which comprises the 1998 Amnesty lectures of Oxford University. The situation remains a moral minefield through which genetic technologies must navigate if they are to gain any kind of legitimacy.

Of course, for a paper that seeks to consider the implications of genetically engineered athletes, it is incumbent upon me to address the more general concerns about human rights and to present a case for presuming that the circumstances of my argument are not overly presumptuous or unrealistic. Indeed, one might intuit that the conclusion of the more general issues about genetic technologies might make redundant the application of genetic engineering to sporting contexts. However, it will be argued that they do not, or rather, that human rights are *not necessarily* jeopardised by the emerging knowledge and applications of genetic engineering techniques to human beings. Furthermore, it will be argued that a considered application of genetic technologies will allow the benefits that such science can undoubtedly bring. Nevertheless, it would be irresponsible of me to conclude that the human rights issues pertaining to genetic technologies are either straightforward or entirely clear.

Initially, it is important to make explicit that, whilst the social circumstances implied within my argument might presume a lot about the application of genetic technologies, this paper endeavours to make some sense of how genetic engineering will impact upon human practices, in this context, competitive sport. Thus, the more general concerns about human rights are of secondary importance, since I am endeavouring to consider circumstances that presume that the application of such technology is possible. I am interested to learn how society could integrate human beings that are genetically engineered, given the novel circumstances that arise through such creation. For such understanding must precede the application of such technologies if we are to avoid the regrettable determinism that describes so much retrospective study of science and technology. In summary, this paper will illustrate fundamental difficulties with sustaining human rights in sport within a genetically engineered society. From such conclusions, it will then be argued how sport needs to reconsider its understanding of what constitutes the legitimate competitor in order to ensure it does not jeopardise the human rights of the genetically engineered athlete.

The Genetic Revolution and Human Rights

Apparently, we are entering a Brave New World[9] in which we are now able to augment organisms beyond what was 'naturally' intended. To comprehend the significance of this claim for human rights it is necessary to articulate some critical, though more general implications deriving from such technologies. From the present literature, there are numerous arguments that make problematic the integration of genetic technologies with human rights. Such arguments are diverse and largely specific to the kinds of engineering technique that is being considered (Ho, 1998). Thus, the prospect of cloning humans, for example, has implications for human rights that are different from the genetic modification of, so called, 'novel foods' (Lenoir, 1997, p.69). Nevertheless, amongst the various concerns specific to human rights are:

[9] The sarcasm in my tone is for a genuine frustration at the overuse of Huxley's seminal work. Its metaphor is surely approaching the most overused of the decade and seems assumed by so many authors that to write about genetic technologies is to invoke the ideas within this text. Yet, Huxley did not presage many of the intricacies that are emerging as the technologies become realised and to quote him endlessly does very little more than invoke unsubstantiated concern. In an era where the application of genetic technologies is far from being fictional, surely we should avoid the dystopian guise of Huxley and endeavour to seek rational, cautious consideration of these, potentially beneficial, technologies. We can all recognise the dangers that are implicated by using genetic technologies (such as Nazi eugenicide), though ought not presage every document with warnings simply to ensure the seriousness of their consideration. Indeed, it might be argued that the hysteria surrounding concerns about human cloning is overwhelmingly influenced by Huxlian ideas and likewise Frankenstein analogies.

1. The treating of an individual as a means to an end, rather than an end in him/her self, which conflicts with the Kantian maxim upon which human rights theory is based (Putnam, 1999).
2. That every human has a right to a unique genotype (against the prospect of cloning) (Valk, 1997).
3. That present genetic engineering techniques are so experimental that they are likely to inflict a degree of harm on the unborn life that is morally unacceptable (Wilmut, 1999).
4. That by engineering persons, we enact a form of eugenicide that will lead to the discrimination of and/or the devaluing of particular kinds of persons (Ledley, 1994).
5. The institutionalising of genetic technologies may lead to governments or businesses breeding qualities for their purposes (Rhodes, 1995) .
6. That the making public of genetic information may lead certain individuals to be disadvantaged and discriminated against, such as might be the case with insurance or employment opportunities (Burley, 1999; Hendriks, 1997; Keyley, 1996; Rothstein & Knoppers, 1996).

Of course, these concerns about why such technology might not be acceptable are complemented with arguments that consider human rights to be jeopardised if genetic technologies are *not* developed and used to their full. It is recognised by Rhodes (1995) that, unless an alternative can be proven to deliver substantial harm, to prevent the use of cloning humans would be an infringement on a person's liberty. Indeed, the potential for cloning human cells to provide additional reproductive opportunities and thus, benefits to people who are genetically disadvantaged are overwhelming (Harris, 1999). As was recognised at the outset, these discussions are ongoing and it would be spurious to simply glance over them. However, in the context of the present discussion, there are only a limited number of ways in which human rights are affected by the prospect of genetic engineering, more properly, recombinant technology (rDNA).

As such, I will now consider the assumptions about human rights that are made by considering circumstances whereby persons might be genetically enhanced for sports competition. Upon bypassing these concerns, the more pressing issue (with respect to sport) will be posited that the emergence of engineered athletes within sport makes problematic the application of human rights and demands a restructuring of sports competition or, at least, a revising of what constitutes legitimate competition.

Human Rights Issues to be Resolved before we have Genetically Engineered Athletes

There would seem to be three central issues with respect to the sustaining of human rights that need considering in order to present the circumstances whereby human beings could become genetically enhanced:

1. That genetic manipulation does not conflict with the rights of the unborn.
2. That gene therapy will give way to effective gene enhancement.
3. That governing bodies would be privy to the genetic information of an athlete.

Within each of these issues, there will also arise sub-issues that will impact upon the realisation of genetically engineered athletes. For example, whilst gene enhancement might derive from gene therapy, it will be necessary to confront the appropriateness of engineering humans and thus, the morality of selecting 'desirable' genes, the implications of which adopt a eugenic guise. Alternatively, whilst gene enhancement might be considered morally acceptable, it might be that the effects of such technology are very limited and thus the position will depend upon the practical limitations of genetic technologies. Such issues will be addressed below. Upon ascertaining that these concerns do not preclude the realisation of genetically enhanced humans, it will then be appropriate to consider the implications of genetically engineered athletes in sports competition.

That genetic manipulation does not conflict with human rights of the unborn

Much like arguments relating to the use of reproductive technologies, one might adopt a

position about the moral status of genetic technologies that makes redundant all other questions. Thus, in the context of abortion, if one adopts the *Zygotic Principle* (Harris, 1998) and considers that from conception the entity is to be afforded full human rights[10], then it no longer becomes relevant to question whether it is acceptable to abort the embryo, since to do so would constitute murder and thus, a rights (and legal) violation (Hadley, 1996). Similarly, if one adopts a pseudo-religious position on the sanctity of life and the immorality of meddling with creation, often considered to be 'playing God', then further discussions about the moral status of such entities become irrelevant; it will be deemed unacceptable to even make use of such technology (Fleming, 1987).

A comparable position may be taken with respect to genetic engineering techniques. If one ascribes full rights status to the human zygote (the product of egg and sperm fusion), then questions concerning the legitimacy of manipulating an entity that has full human rights become irrelevant, since it would be deemed a violation of human rights to use the human embryo in any way whatsoever that might jeopardise its survival. In the context of current technologies, this would almost certainly be the case and would especially be the case for developing 'designer' genes such as might enhance the athletic capability of an embryo. Such techniques would be in violation of Article 5e of UNESCO's (1997) declaration on the human genome and human rights.

However, there seems little support (and due reason) for ascribing full rights to the human embryo. Various arguments have been posited by philosophers about the moral status of the human embryo/foetus. Most notably, these positions are considered in depth by Harris (1998) where it is concluded that the moral status of the human embryo (which is the entity implicated by genetic engineering techniques), must reflect what it is, rather than what it will become (the argument of 'potentiality'). As such, neither the human embryo nor the foetus 'attains a moral status comparable to that of adults at any stage of its three trimesters of gestation' (p.65). With respect to human rights, this conclusion is preceded by Warnock (1987), where it is identified that the embryo has a special status, demanding special human rights that respect it as being human and definitely alive, though which recognise that an embryo is far from being fully human. A comparable conclusion is made by Fleming (1987), which endeavours to make more explicit the extent of the rights to be afforded to the human foetus rather than the embryo. In re-stating the Minimal Rights position, Fleming identifies that the interests of the human foetus for continued existence make problematic experimental genetics that would allow the development of enhancing techniques. Similar conclusions are implicit of UNESCO's (1997) declaration on the human genome, though still do not necessitate the inability to engineer the human genome accepting – at least – Warnock's (1987) 14 day limitation upon the human embryo (that until 14 days after conception, the human embryo cannot be harmed and could thus, be used for experimentation – providing such research is respectful of the humanity of the embryo). Adopting the minimal rights position and the special status of the embryo (though not to treat them as the same) does not appear, necessarily, to violate the rights of the embryo and thus, can be argued as satisfying the first assumption of this paper.

That gene therapy will give way to effective gene enhancement.

This second assumption makes claim to a conceptual conundrum that is implicated within this entire discourse: what counts as 'playing God'? It is identified to recognise that for the genetic composition of an athlete to be of any importance, it will be necessary for the so-called 'designer genes' to fulfil their promises and make humans who are super-human. However, moving from genetic engineering for corrective purposes (gene therapy) to those where enhancement is sought is no small step. Such experimentation on persons is fraught with concerns over the efficacy of engineering techniques that might

[10] The Zygotic Principle need not entail the ascribing of full human rights to the zygote or to conclude that the zygote is to be regarded as a person, though it is used to illustrate the point that one might, quite justifiably, take this, or something like this position.

infringe upon human dignity. The most clear example remains Dolly's creation which was the result of 277 'wasted' embryos. A similar success rate with human embryos would simply not be acceptable and is quite explicitly of concern within UNESCO's (1997) declaration. However, the logistics of such change are not of interest here; for the sake of argument we can assume that it is possible to engineer a human with relative (acceptable) degrees of success. There remains the ethical dilemma of how therapeutic engineering would give rise to engineering for enhancement. Let us first examine the efficacy of genetic engineering humans.

It is often purported that by genetic engineering making possible the construction of life, that it is unnatural and to be avoided.[11] On reflection, it seems reasonable to argue that humans have always 'played God', through their employment of means to promote longevity of life. From consuming a balanced diet, to the use of drugs, surgery, and other medical aids, humans have been engineering their bodies for many years. Therefore, whilst not to trivialise its significance, the ambition of gene therapy to correct dysfunctional genes seems simply to extend these aspirations by preventing the development of 'disabling genes'[12]. Thus, one might conclude that, given human existence has always been directed to sustain life[13], then genetic engineering, in itself, is not contrary to this ideal and, consequently, can be argued as being a quite natural pursuit. Furthermore, given the uncontested benefit of ensuring that a human being has as harm-free a life as is possible, the argument for gene therapy is strong. A similar position can be posited for *enhancing* the genome of an embryo.

It would seem that the very basis upon which gene therapy is premised is quite unstable. What constitutes a dysfunctional gene and what counts as correction? Surely to correct a gene is also to enhance it. The retort might then be that there is a difference between enhancing a gene to a level or normal functioning and enhancing it beyond normal functioning (creating super genes). However, the question begs as to what constitutes normal functioning. What is normal for one person would not be normal for another. Perhaps there could be a biological standard of normal functioning, though the question remains as what would be the basis for such standards. Amongst persons who are not engineered through genetics, there are varying degrees of genetic capability and so the concept of normality does not seem appropriate to use in any standard context. Perhaps a dysfunctional gene might be one that would yield an individual's having muscular dystrophy or cerebral palsy. Though it could also be argued to encompass genes that render a person susceptible to asthma or blindness. One might even consider that, if there was a gene that could determine the height and weight of a person (the metabolic gene), then these might also become desirable to engineer. A similar position could be taken with respect to athletic capability – if one could make the embryo a more athletic, fitter person, then to not ensure this might be construed as having harmed the person by not allowing such benefit.[14]

The danger with both correcting and enhancing genes, and where human rights intervene, is that many biological genes have social implications and that their blurring could render the kind of prejudice that UNESCO seek to avoid throughout their declaration (most notably Articles 2a, 2b, 6, and 7). Thus, through seeking the correction of a gene that

[11] The association between the unnatural creation of life and its negative association cannot be pursued here though are is considered in Reiss & Straughan (1996).

[12] I am careful here to not claim genetic abnormalities as necessarily being disabling. It is made quite clear by Ledley (1994) that the presumed disadvantage of some 'dysfunctional' genes is really contingent upon environmental factors. For example, the genetic mutation that causes sickle cell can be considered an advantage in that it protects an individual from malaria.

[13] It must be recognised that such ambitions do not give rise to boundless life preservation, people must endeavour to do so within legal and means that do not infringe the rights of others. Thus, for example, it is unacceptable to seek the preservation of a particular kind of people as was characteristic of the Nazi genetic programme (Glover, 1999).

[14] A gene that could engineer athletic capability is particularly difficult and thus, particularly interesting, since it would seem perfectly reasonable to claim that to ensure an enhanced level of athletic capability is, indeed, to promote the health of that embryo, which seems therapeutic.

would yield a person to have characteristic X, one might be asserting that X is not socially desirable rather than basing such a decision upon that gene as being detrimental to health. As such, there is potential for the engineering of *social* genes, which can be construed as being most definitely eugenic in nature.[15] However, there still remains argument to conclude that such eugenics is not necessarily infringing upon human rights. For providing such research is sensitive to the minimal rights of the embryo and treats the life with dignity and respect, the kind of eugenics that is implicated by modern genetics is of a positive kind (Ledley, 1994). The ever present analogy of genetic engineering with something like the truly horrific Nazi eugenic programme is, rightly, to be remembered though not entirely appropriate an analogy. The Nazi programme was characterised by such factors as its having a preconceived ideal for all persons. Furthermore, it was underpinned by the racially insensitive Social Darwinism and its indifference to the autonomy and interest of individuals (Glover, 1999). In contrast, modern genetics does not ascribe to any of these claims, which are more appropriately described as a *negative* eugenic policy.[16] The choosing by parents to enhance their child is an individual liberty much like choosing one's partner or dressing one's child as one wishes. As such, there seems no justification for the prohibition of genetic technologies (correcting or enhancing) on the basis of them embodying eugenic principles that would prevent the expression of individual rights. Furthermore, the inability to distinguish between what is 'dysfunctional' or normal, renders it probable that 'designer genes' will become sought after – and rightly so. Apart from the potential to harm the embryo through experimentation (that is a technological limitation at present), one can liken the engineering of designer genes to giving one's child a good education (Ayabe & Tan, 1995), which surely is not contrary to human rights. Consequently, it is considered here that through the successes of gene therapy[17], there will emerge a reforming of what constitutes normality and disability, such that it will become deemed a disadvantage to have only normal functioning genes (Steiner, 1999). In order to ensure one is not subject to such disadvantage, the seeking of designer genes would become commonplace.

That sports governing bodies would be privy to the genetic information of an athlete

Now that it seems feasible for a human to be enhanced for athleticism without necessarily infringing upon the rights of individuals, or upon humanity itself, it remains to be understood how such a person will fit into sports competition. The remaining assumption addresses the wider concern about the prospect of mapping the human genome and is less about engineering enhancement than it is about the implications for human rights of gaining knowledge about individual genotypes. In order for genetic engineering to have any relevance to competition, it is important to understand first whether information about engineered athletes would be disclosed. If such information remains private, then it would seem that governing bodies have no basis upon which to react to engineered athletes within competition. The implications of this alone are problematic for sports, since the resulting circumstances would be where the enhanced

[15] These concerns are outlined in Ryan's (1999) response to Glover (1999) where he identifies that scientists can be blind to the social implications of discovering genes that might account for, for example, homosexuality or alcoholism. Problematic of such conclusions is that they can give rise to 'genetic essentialism' (Keyley, 1996) which would give kudos to the determining factors of the genome at the expense of any possible social influence or responsibility.

[16] Distinguishing between somatic cell (non-hereditary) and germ cell (hereditary) therapy seems unnecessary. The more pressing concerns about eugenics are clearly from the latter method of engineering and are implicit of my subsequent deliberations. By default, the less problematic implications of somatic cell engineering are also considered. Indeed, if there is any doubt of the efficacy of my arguments about eugenics, the circumstances posited in my thesis need only consider somatic cell engineering, which make redundant the more pressing concerns that such engineering will affect the gene pool.

[17] It is important to note that gene therapy is still a relatively new technology and has experienced very limited success in its efforts to correct genes. As such, it must be stressed that very major developments must take place before the application of such technology will seek enhancement.

and unenhanced are competing alongside each other and thus, where the unenhanced are at a disadvantage as a result of their genetic composition (which seems to be in violation of UNESCO's declaration).

However, it remains unclear whether it is appropriate for governing bodies to be afforded such information. These concerns are not dissimilar from how the prospect of genetic information may become problematic for employment. It is recognised by Hendriks (1997) that 'the unrestricted use of genetic information poses a number of threats to the exercise and enjoyment of human rights' (p.557). For example, the potential for employers to use genetic information as a tool to reduce economic risk and to select employees who are deemed less of a risk, invites discrimination that is in conflict with the rights of the disadvantaged individual. To understand how this might become manifest within sport, one may draw parallels with issues relating to the privacy of the athlete and the desire to ensure athletes are not using doping methods.

Thus, if one is to take a similar line of argument, it might be construed that, for the sake of equitable competition (Ledley, 1994), it is fundamental that athletes disclose the specifics of their genotype in a comparable manner to how athletes must make themselves open to testing for doping methods (Rose, 1988). However, in so doing, it must be recognised that given the public domain within which competitive sport is placed and the necessary reaction of governing bodies to such information, the athlete's genotype would most likely become public knowledge and thus might impact upon human rights outside of sports competition. For example, one might consider the recent interest into how genetic information might affect possibilities for attaining life insurance. If an individual's genetic information is made public and knowledge of predisposition for disease is part of this information, then insurance companies will be reluctant to insure that individual for a low premium. Consequently, the genetic information will have resulted in that individual being prejudiced as a result of her/his genotype. Alternatively, if the individual is aware of her/his genetic constitution, then there is potential for that individual to take advantage of the insurer (Sandberg, 1995). Similarly, if the specifics of an athlete's genotype are made public knowledge, then the athlete might find issues arising outside the context of sport that have an impact upon her/his rights and freedoms.[18] Indeed, it might even be deemed unacceptable for such athletes to compete within sport, since it might be argued that their enhanced genotype constitutes a form of enhancement that is ethically unacceptable in sport. Though of course, if such details are not given to governing bodies, then the status of equitable competition is challenged.

What is most clear about these implications is that the disclosing of genetic information to governing bodies must be done cautiously so as to ensure genetic discrimination does not take place. However, within sport the possibilities to ensure discrimination does not take place are uniquely problematic. If governing bodies ignore genetically enhanced competitors, then there is potential for the unenhanced to suffer and, perhaps, for future generations to be coerced towards enhancement for fear that they will no longer be viable competitors in sport and beyond. Alternatively, if they are to react to such enhanced competitors, then there seems a need to disclose genetic information. Furthermore, upon receiving such knowledge, sports must then endeavour to preserve the integrity of equitable competition or else make ban genetically engineered athletes from competition, which would also seem discriminatory. It is argued here that such conclusions would yield a fundamental restructuring of sports competition, whereby the enhanced compete separate from the unenhanced. Indeed, such realities may demand a comparable revaluation of the appropriateness of enhancement in sport, since

[18] However, this might be avoided by providing governing bodies with only information that is relevant to competition – any genetic information that might identify the athlete as having been enhanced. Such information could be made public without having any detrimental impact upon the individual's ability to be treated fairly in the context of, for example, life insurance, since such information would favour the athlete. However, understanding the tenability of this solution requires further knowledge as yet unknown about the human genome and so we must remain cautious.

it would seem problematic to legitimise competitive sport where athletes can be enhanced genetically, whilst banning the use substances that could have a similar effect (the argument to harm notwithstanding).

Conclusion

As was maintained at the beginning of this paper, of particular interest is how the application of genetic technologies will impact upon human rights within sport. Upon reflection of the circumstances of my argument, it would seem that we have a situation whereby genetically engineered athletes would and could seek to compete in elite sports. This does not presume that a human being that has been engineered in such way need follow some eugenic programme that denies her/him of personal liberties (treating that individual as an object). Rather, it is to conclude that the use of genetic engineering (to ensure that one's child is privy to the most advantage), is likely to yield some athletes who will be at an advantage over others.[19] As such, competitive sport will need to be sensitive to such novel kinds of human.

The many issues relating to human rights that derive from the prospect of using genetic technologies are overwhelming and cannot be overstated. This paper has sought to articulate how the application of human rights is influenced by the more radical kinds of genetic technique that are the subject of much popular discourse and an increasing amount of academic literature. More specifically, this paper has sought to ground these more fantastical ambitions of genetic technology within sensible arguments about its implications for personal and public liberty. It has been concluded that, whilst the development and use of genetic technologies does not necessarily constitute an infringement upon human rights, their application to humans in sport would seem to make problematic the sustaining of human rights. Uniquely, sports would require radical transformation in its limiting the permissible means of performance enhancement when faced with genetically enhanced athletes to prevent any discrimination. As such, much discussion is demanded to comprehend the justification for current ethical positions on the legitimacy of performance enhancement in sport and for an ethics on the human genome to be even more sensitive to the more lived implications of genetic engineering for human relations. Both seem overwhelming and make a 5 year moratorium upon the use of human cloning seem far too short a period of discussion. Whilst the realisation and application of some of the technologies remains fictional, there seems due reason to assume this is a mere practicality, and with such technologies in such close proximity to these times, it remains imperative to be more prepared than brave as we enter into this new world.

[19] Again, I am careful here not to fall into genetic essentialism, particularly with sports. Whilst there may be some grounds to argue that the success of an athlete is determined, in part, by her/his genes, one cannot (and should not) discount a variety of environmental factors that contribute to the fitness of an elite athlete. Nevertheless, it can be argued that, given that elite athletes are distinguished only by the tiniest of margins, an enhanced genotype will be of great significance.

References

Ayabe, S., & Tan, S. Y. (1995). Entering the Age of the New Genetics with Eyes Wide Open. *Hawaii Medical Journal, 54*(April), 460-463.

Burley, J. (1999). Bad Genetic Luck and Health Insurance. In J. Burley (Ed.), *The Genetic Revolution and Human Rights* (pp. 54-60). Oxford: Oxford University Press.

Fleming, L. (1987). The Moral Status of the Foetus: A Reappraisal. *Bioethics, 1*(1), 15-34.

Glover, J. (1999). Eugenics and Human Rights. In J. Burley (Ed.), *The Genetic Revolution and Human Rights* (pp. 101-124). Oxford: Oxford University Press.

Hadley, J. (1996). *Abortion: Between Freedom and Necessity*. London: Virago.

Harris, J. (1998). *Clones, Genes, and Immortality*. Oxford: Oxford University Press.

Harris, J. (1999). Clones, Genes, and Human Rights. In J. Burley (Ed.), *The Genetic Revolution and Human Rights* (pp. 61-94). Oxford: Oxford University Press.

Hendriks, A. (1997). Genetics, Human Rights and Employment: American and European perspectives. *Medicine and Law, 16*, 557-565.

Ho, M. (1998). *Genetic Engineering - Dream or Nightmare?: The Brave New World of Bad Science and Big Business*. Bath: Gateway Books.

Keyley, J. (1996). Using Genetic Information: A radical problematic for an individualistic framework. *Medicine and Law, 15*, 715-720.

Ledley, F. D. (1994). Distinguishing genetics and eugenics on the basis of fairness. *Journal of Medical Ethics, 20*, 157-164.

Lenoir, N. (1997). Are attitudes towards bioethics entering a new era? *Journal of Medical Ethics, 23*, 69-70.

Putnam, H. (1999). Cloning People. In J. Burley (Ed.), *The Genetic Revolution and Human Rights* (pp. 1-13). Oxford: Oxford University Press.

Reiss, M. J., & Straughan, R. (1996). *Improving Nature?: The Science and Ethics of Genetic Engineering*. Cambridge: Cambridge University Press.

Rhodes, R. (1995). Clones, Harms, and Rights. *Cambridge Quarterly of Health Care Ethics, 4*(1), 285-290.

Rose, A. (1988). Mandatory Drug Testing of College Athletes: Are Athletes Being Denied their Constitutional Rights? *Pepperdine Law Review, 16*, 45-75.

Rothstein, M. A., & Knoppers, B. M. (1996). Legal Aspects of Genetics, Work and Insurance in North America and Europe. *European Journal of Health Law, 3*, 143-161.

Ryan, A. (1999). Eugenics and Genetic Manipulation. In J. Burley (Ed.), *The Genetic Revolution and Human Rights* (pp. 125-132). Oxford: Oxford University Press.

Sandberg, P. (1995). Genetic Information and Life Insurance: A Proposal for Ethical European Policy. *Social Science Medicine, 40*(11), 1549-1559.

Steiner, H. (1999). Silver Spoons and Golden Genes: Talent Differentials and Distributive Justice. In J. Burley (Ed.), *The Genetic Revolution and Human Rights* (pp. 133-150). Oxford: Oxford University Press.

UNESCO. (1997). Universal Declaration on the Human Genome and Human Rights. Hypertext Document: http://www.unesco.org/ibc/genome/projet/index.html [Accessed: May 1999].

Valk, A. C. v. d. (1997). Cloning as a Test Case of Autonomous Technology. *Society for Philosophy and Technology, 3* (1). Hypertext Document: http://scholar.lib.vt.edu/ejournals/SPT/v3_n1html/vandervalk.html [Accessed: 1999].

Warnock, M. (1987). Do Human Cells Have Rights? *Bioethics, 1*(1), 1-14.

Wilmut, I. (1999). Dolly: The Age of Biological Control. In J. Burley (Ed.), *The Genetic Revolution and Human Rights* (pp. 19-28). Oxford: Oxford University Press.

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The New Racial Stereotypes of the 1990s

Richard E. Lapchick

I am so very honored to be with you today to discuss The New American Racial Stereotypes of the late 1990s. I am lucky to have been invited to join your most distinguished group of speakers. I am especially pleased to be here with the young men from Liberia who represent the resurrection of hope in their troubled land.

I thank André Frankovits and all your conference leaders, for their confidence that I could say something worthwhile for this particular audience. In my country, sports are in great disarray. That fact makes it harder for so many athletes who want to contribute to the improvement of human rights to be able to do so.

It is easy to get discouraged about our sports workplace in the United States. Two days of the *Orlando Sentinel* last month are instructive:

On the college level:

- Two key student-athletes on Michigan State's men's final Four team were arrested for larceny.
- The Florida Gators faced a scandal regarding UF student-athletes illegally taking cash from an agent.
- Washington State's top pass receiver was arrested for domestic violence.
- Four Cal State Fullerton baseball players were arrested in South Bend for throwing rocks from the top of a building. They were in town for the NCAA tournament.
- Alabama-Birmingham's leading rusher was suspended after being arrested on drug charges.

On the pro level:

- In boxing, Mike Tyson was making another post-prison comeback for $25 million.
- Don King, facing more federal charges.
- Dennis Rodman was charged with assaulting a woman in a hotel lobby.
- Miami Dolphin defensive lineman Shane Burton faced jail time for a second drunk driving conviction.
- Pro skating coach Richard Callaghan was charged by a second person of sexual misconduct and assault.

On the fan level:

- Larry Johnson, Chris Childs and Marcus Camby were pelted with coins and beer in a playoff game in Indiana.

That was two days last month - and in a paper not known for tough stories.

Sport is one of society's broadest cultural common denominators. There is more space in our newspapers for sports than national and world affairs; the same is true for nightly local TV news shows; weekend programming is glutted with TV sports not to mention multiple all-sports networks.

Politicians and ministers use sports jargon to explain the world and morality. College coaches are paid more - in many cases much more - than college presidents. I have just completed co-authoring the autobiography of Grambling State's Eddie Robinson. We are calling it Never Before, Never Again because the loyalty of coaches to their institutions has, for the most part, given way to the next highest bidder. It is unlikely that we will ever see an Eddie Robinson again.

The thought of a college student-athlete remaining on campus for four years seems quaint. Emerge Magazine publishes a Bottom 50 List of the colleges with the 50 worst records for graduating African American student-athletes in basketball, football and track and field. To avoid the list you need no more than a 11 percent graduation rate in

basketball and 22 percent in football. There were 38 schools who had not graduated a single African American basketball student-athlete in 6 years.

Many student-athletes are said not to care because the glory of pro ball looms large for men and now, also for women.

Male pro athletes make what seem like preposterous amounts of money; fans can't count on them to be on the same team as a result of free agency; nor can fans even count on their home town team being in their home town next year.

I want to spend a significant amount of time this afternoon talking about what I consider to be the biggest problem in American sport today. It is the issue of how stereotypes about our athletes and coaches can affect both the way the game is played, the way it is reported on, and the way fans - and the public at large - view the game and its players. It is largely an issue of racism, which I consider to be the single greatest plague on American society in general.

To set the stage, I feel a need to tell you a little about myself. I had stopped doing this many years ago until Arthur Ashe, who I used to do many speaking engagements with, told me I must tell audiences about myself so they know why I do the things I do.

I thought I was meant to play in the NBA. Not that I had the talent, but everyone thought I had the genes to follow my father, Joe Lapchick, basketball's first great big man for a team called the Celtics. I was ready to believe but as you can see, the genes got confused.

But in 1960, I was 14 and the tallest player in New York. I had no interest when it was suggested that I go to Europe to visit my sister. I had my game to work on. Then my father told me I could go to the Rome Olympics. Well on the way from Germany to Rome, we stopped at Dachua. I was never the same person after that, seeing for the first time what horror man was capable of inflicting on his fellow human beings.

- While that fateful summer opened my eyes on the broader issues of the world I also got to Rome and saw that sport was more than a game, that it was a way to communicate, to bring people together.

Unknown to me at that time, those two events acted to set my life's course.

They also helped me understand what I had misunderstood as a child.

There were no integrated teams when my father was the center on the Original Celtics.

- The Celtics were the first white team to play vs. black teams. There were riots in five of those games because whites weren't ready to watch people of different races play against each other.
- In 1950, he brought Nat 'Sweetwater' Clifton up the to Knicks and Red Auerbach brought Chuck Cooper up to the Celtics.
- I looked outside my bedroom window to see picketers.
- I picked up the phone to hear 'Nigger-lover' calls. I didn't know what they meant, but I knew that many people did not like this man who was, for me, the sun, the moon and the stars.
- In 1978, my son Joe, named after my father, came into the den of our home in Virginia and asked, Daddy, are you a 'Nigger-lover?'
- It seemed like the circle had been closed around three generations of Lapchicks.

The call was because I was the National Chairperson of the coalition of groups that had come together to boycott South Africa in sport because of apartheid. We were trying to stop the South African Davis Cup team from playing in Nashville. I went there to try to build the protest and to announce that the African nations would boycott the 1984 LA Olympics if this team came to America. When I flew back to Virginia, I felt that, perhaps for the first time in my life, that I had done something worthwhile.

I was working late in my college office the next night. The office was in the library which closed at 10:30. At 10:45 I answered a knock on the door expecting a routine visit by campus security. Instead, it was two men with stocking masks who proceed to cause liver and kidney damage, a concussion and carved 'Niger' in my stomach with a pair of office scissors.

As an activist in the area of race relations, I always knew that violence was possible, but I never expected what followed. The police accused me of self-inflicting the wounds and asked me to take a polygraph or lie detector test. I refused after consulting with the nation's civil rights leaders.

When I went back to Nashville, I realized I was the issue and South Africa wasn't. Therefore, I flew to Washington, took a polygraph and then flew to New York where I was examined by the medical examiner.

Before we released this information, South African Minister of Information Connie Mulder came to New York, announcing victories on two fronts: the Davis Cup was going to take place and Richard Lapchick had been destroyed.

That brought the Justice Department in to investigate a connection between the Virginia police, the Virginia Klan, whose Grand Wizzard was a guest of the South African government several weeks after the attack, and the South Africa security forces.

After we released the results of the polygraph and the medical examiners tests, I received a kidnap threat on my son, Joe, who was missing for the most terrifying 2 1/2 hours of my life. I placed a kidnap call for help to the Virginia police, who returned the call two weeks later.

I finally went to South Africa in 1993 with a group of NBA players and coaches including Patrick Ewing, Dikembe Mutombo and Alonzo Mourning. Our first stop was the American Embassy in Pretoria. The Ambassador blew by the celebrities and came directly to me.

> 'I want you to know that I was here in 1978. Half of us wanted you killed, the other half considered you a hero. I was in the latter group.'

He took me upstairs where he showed me the 4 1/2 inch thick file with my name on it. The pages inside documented my daily movements from 1968 through 1981 and he said this information was regularly given by our government to the South African security forces.

I have shared this with you so they you know that I speak to you as a passionate academic. My father taught me that, armed with information, we can affect change. Change is what fighting racism is all about.

It is ironic that as we turn into the new Millennium, hopeful that change will end the ills such as racism that have plagued American society throughout past centuries, more subtle forms of racism in sport may be infecting American culture.

Polite white society can no longer safely express the stereotypes that so many believe about African-Americans. Nonetheless, surveys show that the majority of whites still believe that most African-Americans are less intelligent, are more likely to use drugs, be violent and are more inclined to be violent against women.

However, sport as it is currently being interpreted, now provides whites with the chance to talk about athletes in a way that reinforces those stereotypes about African-Americans. With African-Americans dominating the sports we watch most often (77 percent of the players in the NBA, 65 percent in the NFL, 15 percent in Major League Baseball {another 25 percent are Latino}, 57 percent in NCAA Division I basketball and 47 percent in NCAA Division IA football are African-American), white Americans tend to 'think black' when they think about the major sports.

Many athletes and community leaders believe that the public has been unfairly stereotyping athletes all across America. The latest, and perhaps most dangerous, stereotype, is that playing sport makes athletes more prone to being violent and, especially, gender violent.

Rosalyn Dunlap, an eight-time All-American sprinter who now works on social issues involving athletes, including gender violence prevention, said:

> 'perpetrators are not limited to any category or occupation. The difference is that athletes who rape or batter will end up on TV or in the newspapers. Such images of athletes in trouble create a false and dangerous

> mindset with heavy racial overtones. Most other perpetrators will be known only to the victims, their families, the police and the courts'.

On America's predominantly white college campuses, student-athletes are being characterized by overwhelmingly white student bodies and faculties while they are being written about by a mostly white male media for a preponderance of white fans.

I recently spoke at an elite academic institution to a group of distinguished international fellows. I asked members of the audience to write down five words they would use to describe American athletes. In addition to listing positive adjectives, not one missed including one of the following words: dumb, violent, rapist or drug-user!

In the past two years, I have met with NBA and NFL players as well as college student-athletes on more than a dozen campuses. There are a lot of angry athletes who are convinced the public is characterizing them because of the criminal acts of a few.

Tom "Satch" Sanders helped the Boston Celtics win eight world championships. Sanders noted, 'If they aren't angry about their broad brush depiction, they should be. The spotlight is extremely bright on athletes; their skills have made them both famous and vulnerable. Their prominence means they will take much more heat from the media and the public for similar situations that befall other people with normal lives'.

Many American men have grown to dislike athletes. Given the choice, a typical man might want the money and the fame but knows it is unattainable for him. After reading all the negative stories about athletes, he doesn't want to read about Mike Tyson complaining about being treated unfairly when Tyson has made a reported $100 million in his post-release rehabilitation program; or about the large number of pro athletes signing contracts worth more than $10 million a year.

The anger of some white men extends to people who look or act differently than themselves. They are a mini-thought away from making egregious stereotypes about the 'other groups' they perceive as stealing their part of the American pie.

Big time athletes fit the 'other groups'. Whether it is an African-American athlete or coach, or a white coach of African-American athletes, when something goes wrong with a player, the national consequences are likely to be immediate.

Sanders expanded on this. 'Everyone feels that athletes have to take the good with the bad, the glory with the negative publicity. However, no one appreciates the broad brush application that is applied in so many instances. Of the few thousand that play sport on the highest level, if four or five individuals in each sport - particularly if they are black - have problems with the law, people won't have long to wait before some media people are talking about all those athletes'.

Here is the equation we are dealing with as stereotypes of our athletes are built. Fans, who are mostly white, observe sport through a media filter which is overwhelmingly made up of white men. There are 1,600 daily newspapers in America. There are only four African American sports editors in cities where there are pro franchises and 19 African American columnists. Both numbers, as reported at the recent conference of the National Association of Black Journalists, have almost doubled since 1998 and represent a positive sign. Nonetheless, there are no African American sports writers on 90 percent of the 1,600 papers!

I am not, nor would I ever suggest that most or even many of the white writers are racist. However, they were raised in a culture in which many white people have strong beliefs about what it means to be African-American.

The obvious result is the REINFORCEMENT of white stereotypes of athletes, who are mostly African American in our major sports.

According to the National Opinion Research Center Survey, sponsored by the National Science Foundation for the University of Chicago, whites share the following attitudes:

- 56 percent of whites think African-Americans are more violent;

- 62 percent think African-Americans are not as hard working as whites;
- 77 percent of whites think most African-Americans live off welfare;
- 53 percent think African-Americans are less intelligent; and
- 61 percent think African-Americans are more likely to use drugs.

It can be expected that some white writers learned these stereotypes in their own upbringing. When they read about an individual or several athletes who have a problem, it becomes easy to leap to the conclusion that fits the stereotype. Sanders said:

> 'Blacks in general have been stereotyped for having drugs in the community as well as for being more prone to violence. However, now more than ever before, young black athletes are more individualistic and insist on being judged as individuals for everything.'

Sports Specific Problems

There are, of course, problems in college and pro sports. For the purposes of this paper, I will only deal with those that involve problems and perceptions of athletes.

Our athletes are coming from a generation of despairing youth cut adrift from the American dream. When the Center for the Study of Sport in Society started in 1984, one of it's primary missions was helping youth balance academics and athletics. Now, the issue for youth is balancing life and death.

We are recruiting athletes:

- who have increasingly witnessed violent death. If an American child under the age of 16 is killed every two hours with a handgun, then there is a good chance that our athletes will have a fallen family member or friend. More American children have died from handguns in the last ten years than all the American soldiers who died in Vietnam. Tragedies in places like Paduka, Kentucky and Littleton, Colorado have shown us that violent deaths are not limited to our cities.
- who are mothers and fathers when they get to our schools. There are boys who helped 900,000 teenage girls get pregnant each year so we are increasingly getting student-athletes who will leave our colleges after four years with one or more children who are 4-5 years old.
- who have seen friends or family members devastated by drugs.
- who have seen battering in their home.
- who were victims of racism in school. Three quarters (75 percent) of all students surveyed by Lou Harris reported seeing or hearing about racially or religiously motivated confrontations with overtones of violence very or somewhat often.
- who come home alone: 57 percent of all American families, black and white alike, are headed by either a single parent or two working parents.

We desperately need professionals on our campuses who can deal with these nightmarish factors. The reality is that few campuses or athletic departments have the right people to help guide these young men and women into the 21st Century.

So what are our problems?

Academic Issues in College Sport

Academically, we get athletes who have literacy problems. The press discusses that student-athletes have literacy problems extensively throughout the year as if it was a problem unique to athletes. However, it is rarely reported - and never in the sports pages - that 30 percent of *all entering freshmen* must take remedial English or Math.

Academically, we get athletes who will not graduate. It is - and always should be- an issue for college athletics to increase the percentages of those who graduate from our colleges. However, the demographics of college have now changed to the point where only 14 percent of entering freshmen graduate in four years. If an athlete does not graduate in four years, some call him dumb; others say the school failed him. Few note that he may be typical of college students.

Don McPherson nearly led Syracuse to a national championship when he was their quarterback in the 1980s. After seven years in the NFL and CFL, McPherson worked until recently directing the Mentors in Violence Prevention (MVP) Program. MVP is the nation's biggest program using athletes as leaders to address the issue of men's violence against women.

McPherson reflected on the image of intelligence and athletes. "When whites meet an uneducated black athlete who blew opportunities in college or high school, they think he is dumb. They don't question what kind of school he may have had to attend if he was poor, or how time pressures from sport may have affected him. If they don't make it as a pro athlete, they're through without a miracle."

'I met lots of "Trust Fund Babies" at Syracuse. They blew opportunities. No one called them dumb, just rich. We knew they would not need a miracle to get a second chance.'

'I played at Syracuse at a time when being a black quarterback had become more acceptable. But the stereotypes still remained. As a player, people still remember me as a great runner and scrambler. I had not dented their image of the physical vs. intelligent black athlete.'

This was in spite of the fact that McPherson led the nation in passing efficiency over Troy Aikman and won the Maxwell Award. He won many awards but Don McPherson was most proud of being the nation's passing efficiency leader. 'I should have shattered the image of the athletic and mobile black quarterback and replaced it with the intelligent black quarterback. Unfortunately, stereotypes of football players, mostly black, still prevail. They make me as angry as all the stereotypes of black people in general when I was growing up.'

McPherson wore a suit to class and carried the *New York Times* under his arm. He was trying to break other images of African American men and athletes. But McPherson said that those whites who recognized his style were both 'surprised and said I was "a good black man" as if I was different from other black men. Most students assumed I was poor and that football was going to make me rich. Like many other blacks on campus, I was middle class. My father was a detective and my mother was a nurse.'

There is a common belief that student-athletes, especially those in the revenue sports, have lower graduation rates than students who are not athletes. The facts do not bear this out. Yet it is difficult to get accurate reporting.

Irrespective of colour or gender, student-athletes graduate at higher rate than non student-athletes:

- White male Division I student-athletes graduate at a rate of 58 percent vs. 57 percent for white male non-athletes. African-American male Division I student-athletes graduate at a rate of 42 percent vs. 34 percent for African-American male non-athletes.
- White female Division I student-athletes graduate at a rate of 70 percent while 61 percent of white female non-athletes graduate. African American female Division I student-athletes graduate at a rate of 58 vs. only 43 percent of the African-American female non-athletes.

The disparities, however, remain when we compare white to African-American student athletes:

- white male Division I basketball student-athletes graduate at a rate of 52 percent versus a 38 percent graduation rate for African-American male Division I basketball student-athletes, still higher than the 34 percent grad rate for African-American male non-athletes.
- White female Division I basketball student-athletes graduate at a rate of 71 percent while only 57 percent of African-American female Division I basketball student-athletes graduate.

College sport does not own these problems. They belong to higher education in general and its inheritance of the near bankruptcy of secondary education in some communities. The publication of graduation rates, long feared by athletic administrators, at once revealed those scandalous rates, but also showed what poor

graduation rates there were for all students of colour. It turned out that our predominantly white campuses were unwelcoming environments for all people of colour.
African-American student-athletes arrive on most campuses and see that only 7 percent of the student body, 3 percent of the faculty and less than 5 percent of top athletics administrators and coaches look like them. Unless there is a Martin Luther King Center or Boulevard, all of the buildings and streets are named after white people.

In many ways, the publication of graduation rates for student-athletes helped to push the issue of diversity to the forefront of campus-wide discussions of issues of race, ethnicity and gender. Educators finally recognized what a poor job they were doing at graduating all students of colour.

Drugs and Alcohol in Sport

We will get athletes who use drugs. CNN Headline news will understandably run footage of every name athlete who is arrested with drugs. It has become a common belief that athletes have a particular problem with drug and alcohol abuse. Reoccurring problems of athletes like Darryl Strawberry reinforce this image but facts do not bear this out.

According to an extensive *Los Angeles Times* survey of athletes and crime committed in 1995, a total of 22 athletes and three coaches were accused of a drug-related crime in 1995. That means that, on average, we read about a new sports figure with a drug problem every two weeks! Anecdotally, those numbers have seemed continue in succeeding years. Each new story reinforces the image from the last one.

Their stories are and surely should be disturbing. But those stories are rarely, if ever, put in the context of the 1.9 million Americans who use cocaine each month or the 2.1 million who use heroin throughout their lives. A total of 13 million or a staggering 6 percent of the American population use some illicit drug each month! When you look at the 18-25 male age group in general, the percentage leaps to 17 percent. Twenty-two athletes represent a small fraction of a single percent of the more than 400,000 who play college and pro sport in America.

The NBA's drug policy with the potential of a life-time ban is generally recognized as a model for sports. The policy may have stopped a substance abuse problem that existed before its inception.

In the same *Los Angeles Times* survey, 28 athletes and 4 coaches had charges related to alcohol. None of these 32 cases were put in the context of the 13 million Americans who engage in binge drinking at least 5 times per month. Yet we read about a new athlete with an alcohol problem every 11 days. Such images can surely create a building sense of problems in athletics if they are not viewed in the context of society.

Athletes and Violence

We are getting athletes who have fights during games, in bars and on America's campuses. Is there a link between the violence of a sport and one's actions away from that sport? There is certainly a growing body of public opinion that assumes that; media reports regularly imply that the violence of sport makes its participants more violent in society.

Are sports any more violent today than 20 years ago when no one would have made such an assertion? Or is it the fact that our streets and our schools surely are more violent. According to the National Education Association, there are 2,000 assaults *in our schools every hour of every day*! It is an ugly phenomenon that is neither bound by race, class, geography, nor by athlete vs. non-athlete.

Athletes and Gender Violence

We do have athletes who are the perpetrators in cases of gender violence. In the wake of the OJ Simpson case, any incident involving an athlete assaulting a woman has received extraordinary publicity. The individual cases add up to the mind-set stereotype of 1999: athletes, especially basketball and football players, are more inclined to be violent towards women than non-athletes.

Joyce Williams-Mitchell is the Executive Director of the Massachusetts Coalition of Battered Women's Service Groups. As an African American woman, she abhors the imagery of athletes being more prone to be violent against women. 'It is a myth. The facts do not bear this out. All the studies of patterns of batterers defined by occupation point to men who control women through their profession. We hear about police, clergy, dentists, and judges. I only hear about athletes as batterers when I read the paper. They are in the public's eye. Men from every profession have the potential to batterers.'

There have been, of course, too many cases of athletes committing assaults on girls and women.

However, there has never been a thorough, scientific study conclusively showing that athletes are more inclined. The only study that comes close was written by Jeffrey Benedict, Todd Crossett and Mark McDonald. It was based on 65 cases of assault against women over three years on 10 Division I campuses. Thirteen (13) of the cases involved athletes; 7 were basketball or football players.

In spite of the authors pointing out the limitations of both the small numbers and the fact that they did not control for use of alcohol, tobacco and the man's attitude toward women (the three main predictors of a male's inclination to gender violence), the press regularly quotes their study without qualification. Media reports never state that it is a study that came up with 13 athletes over three years. They simply say that the study concluded that nearly 20 percent of all campus assaults are committed by student-athletes and most are committed by basketball or football players. This is racially loaded conclusion.

Here is some critical data usually missing in the debate about athletes and violence against women:

- In 1994, 1,400 men killed their significant others. OJ Simpson was the only athlete accused of murder.
- In 1998, an estimated three million women were battered and close to one million were raped. According to various reports in the press over the past five years, between 70 and 100 athletes and coaches have been accused of assault against a woman each year.
- In data released earlier this year in the *Chronicle of Higher Education's* annual campus crime survey, there were 1,053 forcible sex offenses in 1997. Less than 35 student-athletes were arrested.

Gender violence is a serious problem of men in America. The cost of crime to America is pegged at $500 billion per year according to a National Institute for Justice research report for the Justice Department released in March 1996. Gender assault and child abuse account for $165 billion - more than one third of that total! Men who beat their significant others are statistically also likely to beat their children.

There have been numerous cases in corporations in which women brought suits against the corporation for harassment and/or assault. The *Boston Globe* gave extensive coverage to the case in which there were 16 formal legal complaints for incidents from sexual harassment to rape at Astra USA, Inc., a chemical company. Mitsubishi had a suit against it placed by 29 women for the same reasons. No stories about Astra suggested that working in a chemical company produced this climate. At Mitsubishi, no one suggested any relationship to the manufacturing process is a link to gender assault. So why do stories about athletes imply such a linkage to athletics? Does it fit white America's racial imagery?

Some observers say athletes are trained to be violent and we can expect that to carry over into our homes. If this is true about training, then what about the training we give to police, the Army, Air Force, Navy and Marines to use lethal force. Will they come home and kill?

With all the recent publicity about the horrors of gender violence, it would be easy to forget that it was America's big, dirty secret until the notoriety surrounding the OJ Simpson case. Few were willing to talk about gender violence. But we can never change if we do not confront this disease that is devouring our communities. The same unwillingness to confront racism diminishes society's ability to eradicate it.

Neither were being realistically discussed on college campuses nor in corporate boardrooms.

We are paying a horrible human price as we realize that society rarely told men that their dominating and controlling actions against women have helped create a climate in which there is a seemingly uncontrollable tidal wave of men's brutality against women.

I believe that athletes should take a leadership role on this, just as they have on drug abuse and educational opportunities. In 1990, Louis Harris completed a landmark study which showed that our children desire to participate in changing their society and viewed athletes as their first choice in terms of who they wanted to hear socially relevant messages.

The MVP Program, organized in 1992 by Northeastern University's Center for the Study of Sport in Society, has been on more than 55 campuses over the last seven years training male athletes to be spokespeople on the issue of gender violence. Each of those schools has become proactive on an issue that has hurt so many women and their families. There has not been one incident since MVP training.

Most of the players in the NFL and NBA are deeply religious, family-centered men who are constantly giving back to their communities with time and money. Why can't we accept that athletes want to help?

Sport and those who play it can help educate us and sensitize us. While we can't ignore the bad news, we should also focus on the overwhelming good news of what athletes do to make this a better world.

What is the power of sport? Sports can bring good news that can lift the weight of the world. Just look at the miracle of the young Liberian men here this week. That is a powerful gift to possess, one we all share when we use it in the most noble way we can - to lift the spiritual poverty that hovers over our children. That spirit is the antidote to the loneliness and the feeling of being unwanted that so many young people are burdened with.

We can give them the richness of spirit that comes with being part of a real team, being interdependent and being able to count on a brother or a sister in a time of need.

The community needs positive role models now more than ever. They can help young people to believe in what they cannot yet see. Our children need faith considering what they do see in their communities.

The distortions about our athletes and the crimes that a few of them commit need to be put in their real social context. The misleading perceptions need to be corrected so we can focus on the truth and what is really necessary. In that way, we can help America live up to the dream that Jackie Robinson created for us more than 50 years ago.

Perhaps no issue before sports in the United States is of greater importance than fulfilling the second half of Jackie Robinson's dream: that sport not only affords people the opportunity to play the game but to manage and run it after their playing careers end.

Colleges escape the scrutiny of professional sports where there are still no African-American or Latino majority owners; only 12 head coaches of colour in the NBA, MLB and NFL; no African American or Latino presidents in the NFL or MLB; nor any GMs in MLB.

But colleges have an even worse record:

- 3.2 percent of college athletics directors are African-American.
- 7.8 percent of college head coaches are people of colour.

The fact that so few staff, faculty and other students on campus look like African-American student-athletes we recruit impacts on their potential to graduate as they feel less welcome on our campuses.

Emerge Magazine prints an annual list of the 50 schools with the worst graduation rates for African-American male athletes. The results of the 1999 *Emerge* study are frightening. To dodge the list for men's college basketball, you merely had to have a graduation rate of 11 percent, 38 of the 50 schools did not graduate a single African-American athlete through four straight classes!

The greatest tragedy, of course, is that these numbers reflect other racial issues on our campuses. The percentage of African-American faculty is stagnating and remains lower than the percentage of head coaches; the proportion of African-American administrators is below that of athletic directors and their assistants.

As bad as the graduation rates for male and female African-American student-athletes are, as stated earlier, they exceed the graduation rate for both male and female African-American students in general.

Most of America's campuses remain enclaves that preserve white privilege.

These stories unfortunately demonstrate the depth of racial problems in American sport and how hard it is for African-Americans and other minorities to obtain that promises that were made to them. Once again, sport teaches us lessons in life. But when will the lessons be complete?

Jesse Robinson, Jackie's grandson, is now a college student-athlete. We will not fulfill his grandfather's dream for America until we first recognize the depth of America's racial problems in and out of sport. Jackie Robinson believed in the rainbow of America's people living peacefully and respectfully together. Will another half century pass before we can celebrate that part of Jackie's dream? Our children - and Jackie's grandson, cannot afford for us to wait.

America cannot afford to continue to stereotype our athletes and, thus, reinforce negative racial images. Unfortunately, too much of the international sports community wants to emulate American sport. I sincerely hope that international sports community studies and learns from our lessons before it does too much more emulating.

The Ideals of Olympism

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Abstract

Olympism was proposed in the late Nineteenth Century as the humanistic ideal for the forthcoming Twentieth Century. Its idea was to educate through the provision and encouragement of sport as one of the humanities.

Pierre de Coubertin, founder of the modern Olympic Games, has been called 'the Olympic Humanist'. Professor Conrado Durántez, an Olympic Historian, has praised de Coubertin for giving 'the citizens of the 20th Century the extraordinary opportunity to bring together in perfect accord the enriching spirit of Olympism and a festival of peaceful competitions held every four years and generating not only unity but mutual respect' (Durántez, 1994:9).

But, have the *Ideals of Olympism* been achieved?

Upon reviewing the 'Fundamentals of Olympism' and specifically those best related to the humanist ideals, it could be argued that the theory of Olympism in the modern era never quite achieved its ideals: racism, politics or commercialism seemed to get in the way. Examples of this downfall are demonstrated in the following paper.

The Sydney 2000 Olympic Games are calling themselves the 'Athletes Games'. There is an endeavour to return at least part of the motive behind staging the Games back to the original thought, that they are about athletes coming together every four years to compete in peace and harmony.

Notwithstanding that Olympism has achieved a degree of goodness in the world, the focus of its ideals in a practical sense needs to be on the rights of humans: as athletes, as spectators and as communities. Can we do better in the 21st Century?

Pierre de Coubertin – the Humanist, and his Ideals for Olympism

Olympism was proposed in the late Nineteenth Century as the humanistic ideal for the forthcoming Twentieth Century. It was an idea conceived by Baron Pierre de Coubertin[20] a French born aristocrat, and a mediocre yet tenacious sportsman.

Olympism had the idea to educate through the provision and encouragement of sport as one of the humanities. Its ideal was to transcend individual and national pride in competition. However, as the journalist Damian Grace pointed out in his article '*No Winners in the moral Olympics*':

> 'The Games have become less an expression of the ideals of Olympism than an opportunity to prove that winning is everything. Getting a result for sponsors, national pride, the athletes and the IOC is what the Games are about. Would a modern John Landy stop mid-race to assist a fallen Ron Clarke in the Sydney Olympics? Unlikely' (Grace, 1999).

However, de Coubertin had hoped that the peacekeeping mission of the Games would be an important model for the world, stating:

> 'Every four years, the restored Olympic Games … [will] little by little dissipate the ignorance in which people live with

[20] Pierre Frédy, Baron de Coubertin was born in Paris, France in 1863. He strongly believed that sport and athleticism should be part of a young man's education, and that the concept of Olympism would promote communication and understanding between nations. Therefore, in 1892, he announced his intention to the Sorbonne (the French Parliament) to revive the Olympic Games. Four years later, the first *modern* Olympic Games were held in Athens, Greece. Today de Coubertin is known as the Founder of the modern Olympic Movement, and, *the Olympic Humanist*.

> respect to others, an ignorance which breeds hate, compounds misunderstanding and hastens events down the barbarous path towards merciless conflict' (Durántez, 1994:22).

de Coubertin also did not want sport to be exclusive, that is, to be available only to the rich and those with idle time. He wanted all sports to be available to all people, and because of this was accused of 'Utopian lunacy' for such idealism. He acknowledges this criticism and refutes it by stating 'All sports for all people … utopian perhaps, that we should endeavour to make a reality' (Durántez, 1994:30).

It was de Coubertin's lifelong commitment to implement such ideals as noted above that led to his being called 'the Olympic Humanist'. Professor Conrado Durántez[21] states this is so because he gave us 'The citizens of the 20th Century, the extraordinary opportunity to bring together in perfect accord the enriching spirit of Olympism and a festival of peaceful competitions held every four years and generating not only unity but mutual respect' (1994:9).

However, is this really what de Coubertin and his followers have achieved this Century? And, have the *ideals of Olympism* been achieved?

It can be argued that the answer is 'only in theory' if one considers the 'Fundamentals of Olympism' included in the Olympic Charter. Those of the nine 'Fundamentals of Olympism' that are specific to the humanist ideals of Olympism are as follows:

1. 'Olympism is a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind. Blending sport with culture and education, Olympism seeks to create a way of life based on the joy found in the effort, the educational value of good example and respect for the universal fundamental ethical principles.

2. The goal of Olympism is to place everywhere sport at the service of the harmonious development of Man, with a view to encouraging the establishment of a peaceful society concerned with the preservation of human dignity.

3. The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practised without discrimination of any kind in the Olympic spirit, which requires mutual understanding with the spirit of friendship and fair play.

4. The practice of Sport is a human right. Every individual must have the possibility of practicing sport in accordance with his or her needs' (IOC, 1997:8).

The Olympic Games have provided competitors and witnesses alike with moments of glory that have been soul satisfying. However, this is not to say that athletes always meet in a 'festival of peaceful competition' where they generate unity and mutual respect for their fellow athletes.

In fact, it could be argued that the theory of Olympism in the modern era has never quite achieved its ideals as racism, politics or commercialism seem to get in the way. Following are just a few examples of where de Coubertin's reality has fallen short of the Olympic ideal*:*

1912, Stockholm: Jim Thorpe became a hero of the Olympic Games, however there was an element of racist stigma attached to his hero status because he was labeled as a 'native'. Within a year of the Stockholm Games, Thorpe was no longer classed as an 'amateur' sportsman, a pre-requisite for Olympic competitors at that time. de Coubertin claimed that 'a number of people … maintained that Thorpe was an American citizen of Red Indian origin and that was why he had been used as a scapegoat' (Durántez, 1994:31). Thorpe did not compete at another Olympic Games.

1920, Antwerp: These Games were held soon after the destruction of World War I, when the wounds of participating countries were far from healed. This resulted in these Games having a strong military influence and being highly

[21] Professor Durantez is an Olympic Historian and author of "*Pierre de Coubertin: the Olympic Humanist*". In 1994, he was President of the Pierre de Coubertin Committee, President of the Spanish Olympic Academy and President of the Association of Latin American Olympic Academies.

nationalistic with countries strongly competing against one another.

The Statue planned for the entrance gate to the Stadium – and as depicted on the official posters – was a discus thrower. However this was changed to a statue of Belgian soldier throwing a grenade. This would surely have heightened nationalist fervour.

1936, Berlin: National Socialists commandeered the popularity of the Games to promote 'the hollow façade of a new and better Germany' to the rest of the world (Constable, 1996:03). Unbeknownst to the world at that time, this was a farce of human rights.

1972, Munich: Political terrorism precluded the Olympic Movement being able to 'contribute to building a peaceful and better world'. The Olympic ideals of Athletes practising sport 'without discrimination', in the 'spirit of friendship and fair play' were thwarted (Miller, 1992:11).

1980, Moscow: An American led boycott was held against the Games in protest of Russia's invasion of Afghanistan and violation of their human rights. This is an interesting paradox because by protesting the violation of Human Rights, the boycottees were violating the ideals of Olympism.

1996, Atlanta: Upon an agreement with the IOC to accept teams representing both China and Taiwan at the Olympic Games, the Taiwanese flag (at China's insistence) is not allowed to be displayed.

1996 Badminton Finals: China Vs Taiwan. A Taiwanese national, residing in America was gaoled for displaying one Taiwanese flag amongst a sea of Chinese flags at the finals being attended by IOC President Samaranch and Chinese IOC officials.

Growing Commercialism

Since the 1984 Los Angeles Olympic Games in particular, commercialism has been more prevalent at each Games. Whilst sponsorship has contributed to raising the profile and audience participation of the Games, the question remains whether this influence is diluting the true meaning and the true ideals of Olympism. For example, commercialism favours the sponsorship of 'elite and bankable personalities' over the Olympic ideal of equality for all athletes.

However, IOC President Samaranch reasons that through commercialism, the symbols of the Olympic Games (i.e. five rings, flag and flame) bring to mind the world united in peace and sport - 'That is our [the Olympic Movement's] motto and philosophy, and we are trying to do much more than stage a Games every two years' (Miller,1992:18).

The few examples shown above lead to the question: 'Will the Olympic Movement have learned enough lessons from this Century to better honour, implement and preserve the ideals for which it stands?'

As de Coubertin had hoped, perhaps the Games have 'little by little dissipate[d] the ignorance in which people live with respect to others'. For example, the past decade has seen the acceptance of Eastern Bloc nations and South Africa into the Olympic fold. Therefore, whilst Olympism has achieved a degree of success for its human rights ideals, more attention will be required in the 21st Century to the rights of humans - as athletes, as spectators and as communities - rather than continuing the current focus on sponsors, the media and the bureaucracy of the IOC and sporting organisations.

Whether the 2000 Games are patented as the last Games of the 20th Century or the first of the new millennium, they are nevertheless at a turning point in history for the Olympic Movement which must recognise that the rules and fundamental principles reflect the society in which they are invented.

The Sydney 2000 Olympic Games are calling themselves the 'Athletes Games'. By this the Sydney Organising Committee for the Olympic Games (SOCOG) mean to provide 'an environment which will enable athletes to perform at their peak' (SOCOG, 1999:8). There is an endeavour to return at least part of the motive behind staging the Games back to the original thought, that they are about athletes coming together every four years to compete in peace and harmony.

If SOCOG is successful in this endeavour, then the Olympic symbols will indeed invoke thoughts of the youth of the world united in peace and sport. Hopefully we will learn with time that these symbols also stand for other ideals, such as 'encouraging the establishment of a peaceful society concerned with the preservation of human dignity'.

Then perhaps, Durántez comments can be updated to offer '*the citizens of* ***the 21st Century*** *the extraordinary opportunity … [for] a festival of peaceful competitions … generating not only unity but mutual respect*'.

References

Cahill, J., (1999), *Running Towards Sydney 2000 – the Olympic flame and torch*, Walla Walla Press, Sydney.

Constable, G., (1996), *The Olympic Century: The Official 1st Century History of the Modern Olympic Movement: XI, XII, & XIII Olympiads: Volume 11*, World Sport Research & Publications Inc. Los Angeles.

Durántez, C. (1994), *Pierre de Coubertin: The Olympic Humanist*, Musee Olympique, Lausanne.

Grace, D., (1999) 'No Winners in the moral Olympics' in *Opinion*, Sydney Morning Herald, P.17 (n.d.).

International Olympic Committee (IOC), (1997), *The Olympic Charter* , in force from 3rd September 1997, Lausanne.

Miller, D. (1992), *Olympic Revolution: The Olympic Biography of Juan Antonio Samaranch*, Pavilion Books Limited, London.

Renson, R., (1996), *The Games Reborn: The VIIth Olympiad Antwerp, 1920*, Pandora/Snoeck-Ducaju & Zoon, Belgium.

Speech by the Russian Olympic Committee President, Vitaliy Smirnov, 1998 available at: http://www.tased.edu.au/tasonline/tassport/toc/olympism.htm

Olympic Games and the Citizens:
A Look at the Potential Impact of Hosting the Games

Charlene Houston

Introduction

It is an honour to address a conference that finally dispels the myth that the Olympic Games is merely about sport. In Cape Town a considerable amount of effort went into raising people's awareness of the impact of this mega-sporting event on various spheres of life, including human rights. I am here to share some of the concerns we had with hosting the Games.

Cape Town bid to host the 2004 Olympic Games. The bid was known as the 'Developmental Bid'. We in the development sector, therefore, concluded that the bid should be of benefit to the poor.

The non-government officers I worked for, Development Action Group, undertook some research into cities that had previously bid for/hosted the Games. We wanted to see what the implications were for the poor in particular.

The cities we considered were:

Los Angeles (hosted in 1984);
Seoul (hosted in 1988);
Barcelona (hosted in 1992);
Atlanta (hosted in 1996);
Manchester (bid unsuccessfully for 1996 and 2000);
Toronto (bid unsuccessfully for 1996);
Beijing (bid unsuccessfully for 2000); and
Sydney which was then called the 'Green Games'.

Our findings are contained in a publication called *The Olympics and Development: Lessons and Suggestions, 1996.*

No simple comparison can be made between these cities. However, like Cape Town, they all sought to further aims like racial integration, urban redevelopment or environmental sustainability.

I will talk briefly about the Cape Town bid and then focus on three issues in particular: Land and housing, community participation and civil rights. I will introduce some of the findings of DAG's research and then share suggestions made by the development sector on dealing with these issues. Due to a lack of time I will not be able to do justice to these topics.

Cape Town's Bid

Cape Town is the legislative capital of South Africa. The Province is home to 4 million people. It is considered the wealthiest province since unemployment rates are less than that in any other province and income levels are higher. The Province's contribution to the Gross Domestic Product (GDP) consistently exceeds the national average. The tourism industry is growing rapidly and is expected to boost the economy substantially in the medium term.

After the first democratic election in 1994, the new government considered economic growth, improved socio-economic conditions and job creation to be its key challenges. The Cape Town Bid Company dubbed the bid "the developmental bid". The Bid was promoted as a key to economic growth, particularly in tourism. It received full support from the new Cabinet. The benefits of hosting the Games were listed in the Candidature File as follows:

1. A dynamic for human development;
2. A boost to the GDP;
3. The potential of sporting events to unify the nation;
4. It would strengthen the Olympism Movement if it were seen to be committed to progress for all nations, not only the big economies; and

5. It would confirm Africa's place in the family of nations and boost confidence in this continent (represented by the 5th ring).

Land and Housing

Hosting the Olympic Games inevitably leads to tension as to how land is used. Land that is required to meet the infrastructural needs of a city may be compromised to build practice and competition venues.

Preparation for the Games places additional pressure on the demand for housing as it requires special accommodation for athletes, administrators, media, officials of the International Olympic Committee (IOC) and tourists. The tendency has been to consider these requirements at the cost of residents' needs.

In Atlanta public housing units were renovated to improve the image of the area. Most of the original residents of these units were unemployed and could not afford the subsequent increase in rent. They were therefore evicted. Further displacement of residents occurred when private landlords upgraded flats in areas close to the city, in anticipation of an influx of people with spending power. In this way, well-located housing became too expensive for the working class. The process of gentrification was thus sped up by preparation for the Games.

In Seoul low income residents were forced to sell their houses at less than market value. Effectively, these low income residents subsidised what became middle income housing.

In Barcelona construction capacity became limited as Olympic work took priority over the public housing programme. Delivery of public housing slowed down significantly as a result.

Suggestions for the Cape Town bid included:

- To follow the example of Los Angeles in passing special legislation to increase tenants' awareness of their rights and to avoid unwarranted evictions during the preparation and hosting phases. Legislation could also be promulgated to place a ceiling on rental for a specific time.
- Develop a housing strategy to meet the local housing backlog and link the Olympic needs to it.
- Reserve land for low cost housing programmes.
- Create incentives to ensure that construction capacity is not compromised on low cost housing projects during the Bid's preparation phase.
- Land released for Olympic related development should not be at less than market price.

Community Participation

There is a difference between receiving information and being integrally involved in Olympic related developments, particularly, impact management. Participation is often sought too late or used to manipulate support. For example, in Seoul, Joint Redevelopment Committees were set up and used to basically sanction evictions from houses earmarked for renovations. On the other hand in Atlanta there was a public sector – run information office with dedicated staff to ensure that communities were kept informed.

Suggestions for the Cape Town bid included:

- A plan for ongoing, meaningful participation as was developed in Atlanta.
- Establish independent information sources to guide lobbying and participation in decision-making.

Civil Rights

History reflects that the violation of civil rights was very much a part of preparations for hosting the Games in Los Angeles, Seoul, Barcelona and in Atlanta where a special ordinance made it illegal for the homeless to sleep in vacant buildings. The Atlanta Task Force for the Homeless produced a report highlighting these incidents. There were 'clean up campaigns' to have the homeless removed to the outskirts of the city and vagrants were regularly arrested or fined. In Seoul, despite legislation to prohibit evictions, poor people were evicted from the area designated to be the

Olympic torch route in a bid to 'spare embarrassment to visitors'.

Suggestions for the Cape Town bid included:

- A thorough impact assessment has to be done timeously to ensure that an effective management plan is put in place.
- Anticipated need of the homeless could be addressed in advanced as part of preparing the city for the Games

The Development Charter

In Cape Town, development activists used the concept of a Development Charter as a tool to rally support among communities as well as a tool to lobby for mitigation measures based on comprehensive impact assessments. The Charter was well received by the Cape Town Bid Company as a constructive contribution from those concerned about the impact of bidding and hosting.

The Charter advocated a commitment to various principles for development. This included a commitment to:

1. Improved quality of life

This made particular reference to the housing conditions of the urban poor. Affordable housing would contribute to a reduction in diseases like TB and a reduction in the housing backlog. Furthermore, it referred to the use of public land in Olympic developments. Since public land is a resource that should be used to address the needs of the poor, the profits from the sale of public land should be used to finance Reconstruction and Development projects. Such land release must proceed according to negotiated principles. There should also be an increase in the number of people who have access to community and sport facilities. The opportunity should be used to improve the long term public transport needs of Cape Town by making transport safer and easier to access.

2. Environmental Impact Assessments (EIAs)

EIAs were considered an important tool to monitor the process. These should be carried out through Independent Commissions to maintain credibility. EIAs would ensure that planning and development is geared to addressing quality of life indicators. It would also inform environmentally responsible (especially regarding the quality of water and air) development.

3. Sports and culture

Equal opportunities had to be reflected in sport and culture development and in the provision of facilities.

4. Employment

Jobs had to be accessible to all people and should benefit the unemployed in particular. (Often these jobs are taken by employed people who take temporary leave from their permanent jobs). Job training opportunities should be provided by employers. All employees should be entitled to a fair wage. Opportunities should be created for small business development especially for women and blacks.

5. Public Process

The Bid Company was expected to actively encourage public participation and the local authority was called to be committed to disclosure regarding the use of public resources. The public's access to independent information sources was considered essential.

Environmental Charter

Environmental activists supplemented the Development Charter with an Environmental Charter. Its key emphasis was:

- that the environment should be broadly defined to include socio-economic and biophysical components;
- that broad participation is crucial during the preparations for the bid;
- that development must be in line with existing Strategic Development Frameworks;
- that preparations must be based on the philosophy and principles of integrated environmental management and sustainable development; and

- that must be geared toward improved quality of life.

Lessons

Although the Cape Town bid was unsuccessful, it yielded both positive and negative impacts. While there are now more sports facilities than before, they are not evenly spread throughout the region. Due to IOC (International Olympic Committee) requirements, the facilities had to be located within a certain radius of the main stadium. This meant that venues have not always been placed in areas that really needed them.

Sports facilities, while needed, are not at the top of the priority list as far as Cape Town's poor are concerned. However, it has been prioritised above housing and job creation for the sake of the Olympic Bid. The housing that was to have been built during the preparation phase would have catered for higher income groups because it had to meet certain IOC standards, thus making it unaffordable to the poor of the city.

The government in any city has to take responsibility for its citizens by minimising costs and maximising the benefits of hosting the Games. The IOC insists, however, that the government of the host city must underwrite the Games. The records show that very often the costs exceed the budget for the Games and the government ends up paying the difference. The bid is often initiated by the private sector and they should be asked to provide the guarantees instead of the government.

It is important for the host city to do impact assessments as early as possible and as regularly as possible so as to have an impact management plan that facilitates the spread of benefits and the protection of the vulnerable members of society.

Such a plan would enable effective mitigation measures to ensure that local people have a positive experience and that tourists needs are not met at a cost to citizens.

The bidding process in Cape Town was highly politicised. The Bid Company did much to silence the critical voices at the time. The exclusion of communities led to a lack of co-operation and a degree of opposition. Towards the end of the bidding phase the Bid Company appointed a Director of Community Relations but very little meaningful interaction occurred. By publishing a book, we forced the Bid Company to address some of the issues. They eventually committed themselves to negotiate around the Development Charter should Cape Town win the bid.

Conclusion

While one could debate whether the costs of the Olympic Games outweigh the benefits, one thing is certain: To date, it is not been possible to meet the priority needs of the city's poor and meet IOC standards at the same time. It would be appropriate for those standards to be reviewed in the context of the needs of cities in the 21st century.

Enhancing Healthy Mega-Events: Planning for Health Rights

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Abstract

Mega Sports-Events have the potential to threaten life and limb and thereby diminish spectators' and athletes' expectations of recreation, health and well-being. This paper discusses why this may occur. It will also highlight new research, which provides a model that identifies important elements associated with 'unsafe' practices at mega-sports events that may lead to spectator and participant human rights abuses. Human rights in this context includes the expectation that organisers and promoters are obliged to provide a duty of care to the participants of the event and that an individual has the right to attend or participate in mega-sports events whilst remaining in the same (or an enhanced) state of health and well- being.

Interviews with health planners with event management experience helped identify essential components of successful health planning at mega sports-events. All data were qualitatively analysed to establish a series of categories identifiable with health planning fundamentals that catered for the rights of spectators and athletes alike. The findings from the research indicate that all mega-sports events are unique in design and estimated impacts. In light of this, the developed categories guide the assessment of the dynamics associated with mega-sports events and the potential loss of human rights. We developed a model, which describes the relationship between the individual and the event variables.

The research highlights the variability of mega sports-events and the particular influences attributed to each. This paper describes a model designed to help identify impacts associated with any mega-event, and therefore, minimise potential human rights abuses. Application of the model allows the event organiser to address each variable thereby reducing negative health-related impacts and human rights abuses.

Introduction

Mega-sports events are becoming larger and more frequent. Attending such an event should not place the individual in such a situation that diminishes their expectations of recreation, leisure, health and well being. It should be the right of every individual to attend an event knowing that there will be no compromises concerning personal safety and individual human rights. This paper argues that by following planning guidelines, regardless of the size of the sports event, actual and potential human rights abuses can be decreased.

Individual human rights include the expectation that organisers and promoters will provide a safe and hospitable environment for participants. At the same time, the expectation remains that individual's participation in mega-sports events will result in the same, or an enhanced, state of health and well being as prior to the event.

To maintain this expectation, the potential impacts associated with the event type need to be determined by the organisers before the event. With appropriate procedures in place, the potential impacts of a 'high-risk' event should decrease, whilst the accuracy associated with supplying appropriate levels and types of health-care should increase.

Historically, sports event planning involves estimating the impacts according to the previous event or from similar events. Unfortunately, this 'prediction based' planning does not allow for the individuality of the event type, consequently mega-events are often planned inappropriately (Leonard, 1996; Webster, 1996). Whilst two similar events can be compared for trend analysis, they will not

provide a complete understanding of what will happen with regard to health and human rights impacts (Spaite et. al., 1987).

There are many recent examples where inappropriate planning has led to large-scale health and safety problems and ultimately human rights abuses in mega-sports events. Some of the more memorable examples include: the 1989 Hillsborough stadium crowd crush, the 1990 Bath football stadium fire, the 1992 Bastia stadium stand collapse, the 1998 crowd crush in Guatemala City during the soccer world cup qualifiers and the 1999 Woodstock riots. These catastrophes emphasise the need for event planning to involve a process where all variables are identified and discussed with respect to an individuals' right to expect to participate in mega-events in safety.

We conducted research that identifies a mechanism that allows organisers to plan for potential human rights impacts. A series of interviews with health planners specialising in event management quantified the potential impacts that can be associated with mega-sports events. Our analysis of the findings led to the development of a model that is designed to help event organisers prepare as best they can when addressing human rights issues.

Methodology

We conducted interviews with health planners specialising in event management to establish their perception of the essential components for running events that did not affect the individuals health and human rights. We identified eighteen subjects through purposive sampling.

We conducted semi-structured interviews based around themes of inquiry (Hickman & Longman, 1994; Breakwell, 1990). We analysed the interview data qualitatively via content analysis (Berg, 1989) using an inductive approach to category analysis (Abrahamson cited in Berg, 1989). The variables identified from the data highlight many themes not completely accounted for within the literature. We then transformed these themes into health planning categories to form the basis of our model.

Results

The main findings from the research indicate that mega sports-events are all unique in design, requiring individual assessment. There appeared to be no single or absolute method of planning for a mega-event to reduce or eliminate human rights impacts.

From our analysis of the interviews, we developed a series of emergent themes into variable headings, which were further refined into categories. The four categories groups represent the first level for investigation in mega-event planning for human rights. These four groups comprise the structure of the proposed event-planning model.

Figure 1 outlines the developed model.

Table 1 lists the categories and associated variables.

Discussion

The research highlights the variability of mega sports-events, particularly the impacts attributed to like events. The identified categories and variables reflect how complex it can be planning for human rights. Whilst we were unable to identify a particular planning methodology, we were able to pinpoint essential planning components.

From the findings we were able to develop a model (Figure 1) for event organisers to use when planning their event. The model describes the relationship between the categories and event variables that could potentially impact on human rights. The model can be used to accommodate event-specific factors associated with any sports event, maximising health and well-being and minimising potential human rights abuses.

The model centres around four basic principles (categories): event administration and planning, event medical coverage, public health and environmental considerations and contingency and special requirement planning. Each group is briefly described as follows.

Figure 1. Event Planning Model for Assessing Human Rights Impacts

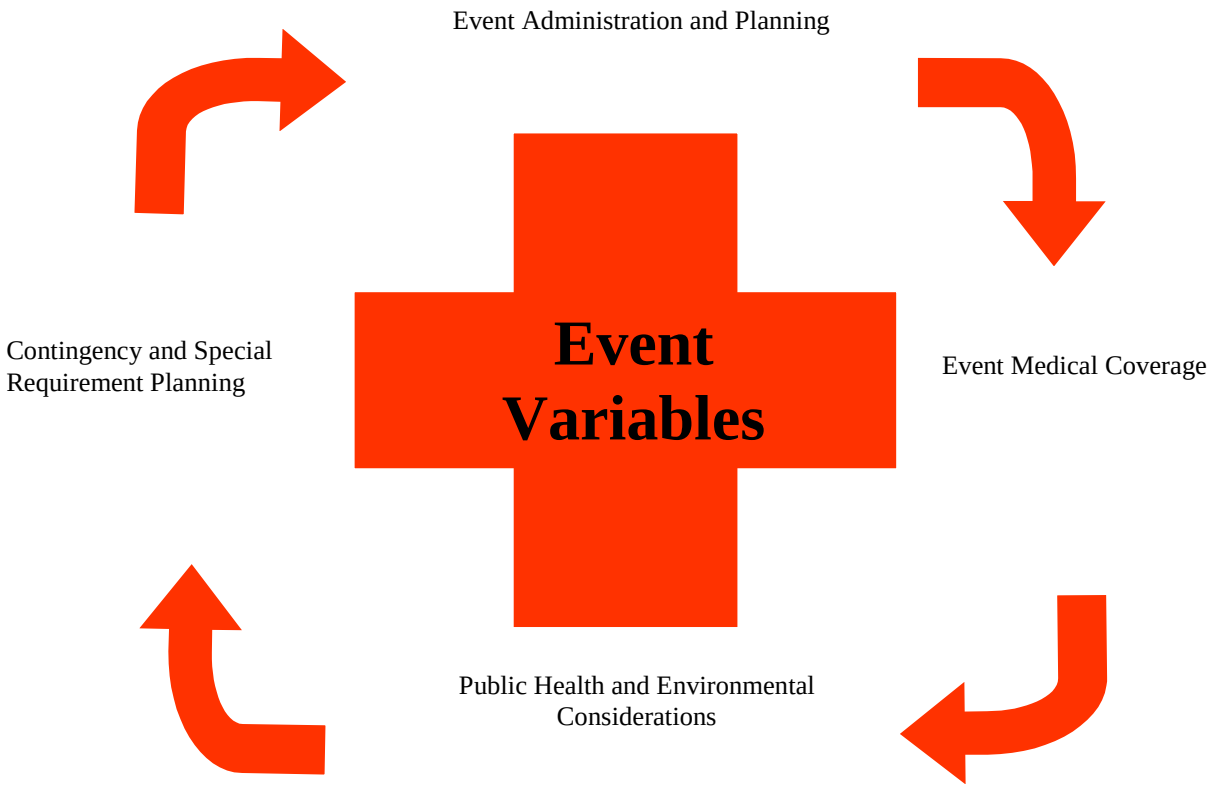

Table 1. Categories and associated variables

1. EVENT ADMINISTRATION & PLANNING

Administrative Co-ordination.
Channels of Communication.
Council Co-ordination.
Duration of Pre-event Planning.
Event Analysis - During and Post.
Financial Constraints.
Insurance Coverage.
Political Climate Stability.
Road, Parking and Transport Access.
Role Descriptions Education and Training for Service Providers.
Security Co-ordination.
Strategic Management Team.
Technology Utilisation.

3. EVENT MEDICAL COVERAGE

Counselling and Welfare Provision.
Emergency Services Coverage and Involvement.
Event Profile and Perceived Coverage.
Event Type, Site and Location Descriptions.
Impact Variability Between Settings.
Medical Coverage Rehearsal.
Minor Impact Analysis.
Mobile Medical Coverage.
On-site Care Assessment and Provision.
Predictive Research Analysis.
Staff Expertise and Health Constancy.

3. PUBLIC HEALTH & ENVIRONMENTAL CONSIDERATIONS

Environmental Health Concerns.
Food Hygiene and Contamination.
Hospital Notification and Impact Planning.
Mass Gathering Rules and Regulations.
Pedestrian and Road Trauma.
Public Health Notification and Surveillance.

4. CONTINGENCY & SPECIAL REQUIREMENT PLANNING

Disaster and Evacuation Planning.
Dual Mass Gathering Provision.
Mass Gathering Risk.
Regional Resource Availability and Adaptability.
Special Circumstance Availability.
Unusual Disease Spread and Provider Education.

* Each of the variable headings has a description which cannot be included in this article due to size constraints

Event Administration and Planning

This refers to the allied services associated with allocating and planning health-care and medical coverage at the mass gathering. It focuses on the event organisers' ability to co-ordinate and communicate with all service providers in advance of the sports event, ensuring for successful health provision and resources. It requires efficient administrative co-ordination including co-operation between security, local government and event administrators. Fundamental to the success of the coverage is the interaction between organisers' and their ability to research the event, safeguarding against unforeseen circumstances. All subsequent groups and associated categories are dependent on its successful implementation.

Event Medical Coverage

This group refers to all event variables associated with health planning and medical coverage. It stresses the importance of a thorough examination of the event and its dynamics before its implementation. It suggests that successful coverage will only result from correct preparation. The importance of accurate prediction techniques, site and event analysis, expertise and stakeholder involvement are all determining factors essential to achieving successful health and medical provision at sports events.

Public Health and Environmental Considerations

This group indicates recognition of the importance of allied health services. All mega-events can potentially have a huge impact on the health and well being of the individual at the event and the surrounding community. Issues relating to personal hygiene, sanitation and food contamination need addressing to minimise any impacts on individual health. Sports events of extended duration particularly need thorough monitoring and planning. Consequently, all public health issues need to be considered in advance and planned for accordingly, including notification of local health departments and hospitals.

Contingency and Special Requirement Planning

This group refers to planning for the unexpected health issues along with the predicted ones. Contingency plans including preparations for evacuation, disasters and unusual impacts. Essentially, the event organiser is required to look past basic event preparation and health coverage and foresee all possible impacts. It requires an assessment of the initial risk associated with holding the mass gathering and what 'special' considerations could arise. If the event requires 'special' planning e.g., visiting dignitaries, or is held in conjunction with another event or will display unusual health impacts e.g., World Transplant Games, extra planning and precautions need to be taken and discussed to determine the events continued 'safe' status.

Conclusion

Whilst many papers have been written on health planning requirements and medical coverage for mega-sports events, none have conducted a stakeholder analysis and none have explored the broader concept of human rights abuses.

The identification of event variables and the development of the model provide a unique opportunity for event organisers to analyse their events thoroughly prior to planning for human rights impacts. The model allows individual events to be treated individually. Until the literature provides a complete planning framework for event organisers, the use of our model will provide a closer link between human rights issues and mega-sports events.

References

Berg, B. (1989). *Qualitative Research Methods for the Social Sciences,* Allyn and Bacon, Massachusetts.

Breakwell, G. (1990). *Interviewing - Problems in Practice*, The British Psychology Society, Leicester.

Hickman, L. & Longman, C. (1994). *Case Method - Business Interviewing,* Oracle Corporation, Berkshire.

Leonard, R. (1996). 'Medical Support for Mass Gatherings', *Emergency Medicine Clinics of North America,* vol. 14, no. 2, pp. 383-397.

Spaite, D., Criss, E., Valenzuela, T., Meislin, H., Smith, R. & Nelson, A. (1987). 'A New Model for Providing Pre-hospital Medical Care in Large Stadiums', *Annals of Emergency Medicine,* vol. 17, no. 8, pp. 95-98.

Webster, G., (1996). 'Emergency Medical Care Provision at Large Gatherings: Sydney Division Ambulance Experience', *Response,* February, pp. 11-29.

Mega Events and Human Rights

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Abstract

This paper reviews the social impacts of mega-sporting events with particular reference to issues of politics, community identity, resident displacement and human rights. Reference will be made to a number of sporting events. The paper observes that the social dimensions have received very little analysis in relation to economic studies and forecasts with results that the sometimes severe social costs of hosting mega-sporting events get little recognition by event organisers and government. The paper concludes by arguing that social impact analysis needs to become a standard component of any bidding process involved with sporting events, and that the Olympic Games in particular requires the adoption of a charter with reference to the social impacts of such an event.

Introduction

Whether it is to attract a new car factory or the Olympic Games, they go as supplicants. And, even as supplicants, they go in competition with each other: cities and localities are now fiercely struggling against each other to attract footloose and predatory investors to their particular patch. Of course, some localities are able successfully to 'switch' themselves in to the global networks, but others will remain 'unswitched' or even 'plugged'. And, in a world characterized by the increasing mobility of capital and the rapid recycling of space, even those that manage to become connected in to the global system are always vulnerable to the abrupt withdrawal of investment and to [partial] disconnection from the global system (Robins, 1991:35-36).

Urban Centres, Mega-events and Reimaging

Although urban centres have long attracted visitors, it is only in recent years that cities have consciously sought to develop, image and promote themselves in order to increase the influx of tourists (e.g., Burns et al., 1986; Law, 1993; Page, 1995; Murphy, 1997; Essex & Chalkey, 1998). Following the economic restructuring of many regions and the subsequent loss of heavy industry in many industrial and waterfront areas in the 1970s and 1980s, tourism has been perceived as a mechanism to regenerate urban areas through the creation of leisure, retail and tourism space. This process appears almost universal in the developed world. Such a situation led Harvey (1988, cited in Urry, 1990:128) to ask 'How many museums, cultural centres, convention and exhibition halls, hotels, marinas, shopping malls, waterfront developments can we stand?' Similarly, Zukin (1992:221) observed that the city is a site of spectacle, a 'dreamscape of visual consumption'. One of the primary justifications for the redevelopment of inner city areas for sports and events is the perceived economic benefits of tourism (e.g. Hall, 1992; Law, 1993; Page, 1995). For example, in Australia the 1986/87 America's Cup Defence was used to develop Fremantle, a Commonwealth Games bid from Victoria was used as a justification for the further redevelopment of the Melbourne Docklands, while Sydney is utilising the 2000 Olympic Games to the same effect (Hall, 1998a). However, such redevelopments are not without their social and economic costs (Olds, 1998). As Essex and Chalkley (1998:195) cautioned with respect to the Atlanta Olympics experience, 'As a result of the traffic congestion, administrative problems, security breaches and over-commercialisation, Atlanta did not receive the kind of media attention it would ideally have liked. Its experience highlights the dangers as well as the benefits of being under the international Olympic spotlight'.

Urban imaging processes are clearly significant for urban planning and development. The ramifications of such an approach are far reaching, particularly in the way in which cities are now perceived as products to be sold with the focus on the supposed economic benefits of sport and tourism reinforcing 'the idea of the city as a kind of commodity to be marketed' (Mommaas and van der Poel, 1989:264). Contemporary urban imaging strategies are typically policy responses to the social and economic problems associated with deindustrialisation and associated economic restructuring, urban renewal, multi-culturalism, social integration and control (Roche, 1992, 1994). The principal aims of urban imaging strategies are to:

- attract tourism expenditure;
- generate employment in the tourist industry;
- foster positive images for potential investors in the region, often by 'reimaging' previous negative perceptions; and
- provide an urban environment which will attract and retain the interest of professionals and white-collar workers, particularly in 'clean' service industries such as tourism and communications (Hall, 1992).

Urban imaging processes are characterised by some or all of the following:

- the development of a critical mass of visitor attractions and facilities, including new buildings/prestige/flagship centres (e.g., shopping centres, stadia, sports complexes and indoor arenas, convention centres, casino development);
- the hosting of hallmark events (e.g., Olympic Games, Commonwealth Games, the America's Cup and the hosting of Grand Prix) and/or hosting major league sports teams;
- development of urban tourism strategies and policies often associated with new or renewed organisation and development of city marketing (e.g. 'Absolutely, Positively Wellington', Sheffield City of Steel, Cutlery and Sport); and
- development of leisure and cultural services and projects to support the marketing and tourism effort (e.g., the creation and renewal of museums and art galleries and the hosting of art festivals, often as part of a comprehensive cultural tourism strategy for a region or city).

Reimaging is intimately connected to the competition between places in a time of intense global competition for capital. According to Kotler et al. (1993) we are living in a time of 'place wars' in which places are competing for their economic survival with other places and regions not only in their own country but throughout the world. 'All places are in trouble now, or will be in the near future. The globalization of the world's economy and the accelerating pace of technological changes are two forces that require all places to learn how to compete. Places must learn how to think more like businesses, developing products, markets, and customers' (Kotler et al., 1993:346). Mega-events are intimately connected to the place marketing process because of the way in which it is often used as a focus by government for regional redevelopment, revitalisation and promotion strategies. For example, Hughes (1993:157, 159) observed that 'the Olympics may be of particular significance in relation to the "inner city" problems that beset many urban areas of Europe and N[orth] America' and noted that Manchester's bid for the 2000 Summer Olympics were 'seen as a possible contribution to solving some of the city's 'inner city problems'. Indeed, it is the inherent belief that the Olympics or other mega events will attract tourism and investment because of the improved image and promotion of a place which serves to justify redevelopment, often with large investments of public funds and with the suspension of normal planning practice (Hall & Hamon, 1996). Such a situation has important implications for notions of human rights and public participation in urban planning.

Mega-Events

Short-term staged attractions or hallmark events have been a major component of the growth of tourism in Australia in the past decade. Hallmark tourist events, otherwise referred to as mega (Ritchie & Yangzhou, 1987) or special events (Bums et al., 1986) are major festivals, expositions, cultural and sporting events which are held on either a

regular or a one-off basis. Hallmark events have assumed a key role in international, national and regional tourism marketing strategies, their primary function being to provide the host community with an opportunity to secure high prominence in the tourism market place for a short, well defined, period of time (Ritchie, 1984; Hall, 1992).

The hallmark event is different in its appeal from the attractions normally promoted by the tourist industry as it is not a continuous or seasonal phenomenon. Indeed, in many cases the hallmark event is a strategic response to the problems that seasonal variations in demand pose for the tourist industry. Although, the ability of an event 'to achieve this objective depends on the uniqueness of the event, the status of the event, and the extent to which it is successfully marketed within tourism generated regions' (Ritchie, 1984:2).

The positive image which events are able to portray to the public, and the media exposure they offer, probably explains the lengths to which governments and politicians will compete to host major national and international events. For example, in Australia cities and State Governments have competed for the right to host the 1996 and 2000 Olympic Games, Victoria and New South Wales have competed to host the Australian Motorcycling Grand Prix, while Victoria aggressively outbid South Australia for the rights to hosting the Australian Formula One Grand Prix. Such is the extent of interstate rivalry that nearly all State Governments have now established specific event units to assist in the bidding for major sporting and cultural events.

Given the large sums of money involved and the potential for high media profile it is therefore not surprising that the analysis of the impact of events is also often highly political not only between government parties but between the government and public interest groups. For example, there has been substantial debate over the economic benefits of the Qantas Australian Formula One Grand Prix. According to Tourism Victoria (1997a:24;b), the 1996 Grand Prix 'was watched by an estimated overseas audience of more than 300 million people, Total attendance at the race was 289,000 over the four days... An independent assessment of the 1996 Grand Prix indicated that it provided a gross economic benefit to the Victorian economy of $95.6 million and created 2,270 full year equivalent jobs'. In contrast, a thorough evaluation of the 1996 Grand Prix by Economists at Large and Associates (1997) for the Save the Albert Park Group concluded that the claim of $95.6 million of extra expenditure was:

1 ... a misrepresentation of the size of the economic benefit;
2. claimed gross benefits are overstated or non-existent; and
3. ironically, compared to what might have been achieved, Victorians are poorer where they could have been wealthier, if the government had chosen a more 'boring' investment than the Grand Prix (1997:8).

The amount of local involvement and the actions of government in the planning of events would appear to be crucial to deriving the maximum benefit from hosting an event for the host community. The more an event is seen by the impacted public as emerging from the local community, rather than being imposed on them, the greater will be that community's acceptance of the event. However, the international dimension of many events will often mean that national and regional governments will assume responsibility for the event's planning. Because of the interests and stakeholders that impact upon upper levels of government, local concerns may well be lost in the search for the national or regional good with special legislation often being enacted to minimise disturbance to the hosting of an event. The short timeframe in which Governments and industry have to react to the hosting of events may lead to 'fast track planning', where proposals are pushed through the planning process without the normal economic, social and environmental assessment procedures being applied. For example, in the case of the 1982 Asiad Games in India it was reported that:

> 'Hypocrisy and cynicism are even more evident than usual in New Delhi. The crores being spent on Asiad [The Asian Games of 1982 stand out in sharp relief against the real requirements of the people... The

> twisted values involved in advertising the luxuries and choice of expensive dishes available in five star hotels when millions are in search of food... descriptions of spacious air-conditioned suites each fitted with colour television sets... and other luxuries, appear side by side in the newspapers with grim reports of near famine conditions in large parts of the country.' (*Indian Express*, October 30, 1982, in Richter, 1989:124).

Similarly, the 1990 Asian Games in Beijing were used by the Chinese to help improve their image in the post-June 4, 1989, Tianenmen Square massacre (Knipp, 1990). Indeed, it is a testimony to the power of political events that the Square is now a tourist attraction in its own right.

For much of its history the Olympic Games have been marred by, some-time violent, political controversy. Although the Olympics have never been without a political dimension, it is nevertheless important to recognise that the use of the such large events to make political statements has gone hand-in-hand with the growth of media technology. Rather than just being a sporting event the Olympic spectacle has become a medium for the communication of political discontent, diplomacy, and disagreement. As MacAloon, (1984:273-274) commented in relation to the Munich massacre of the Israeli Olympic team:

> 'Terrorism was nothing new in 1972. Who had not read about it or watched it on TV? One might even say that it had come to be taken for granted in the contemporary world as 'something we just have to live with.' But at Munich, terrorism was yanked out of the banal and burned into the hearts and minds of millions across the earth. The Games provided the ultimate stage for the terrorists, and the rest of the world an avenue by which terrorism was "re-bounded", returned from a "fact of life" to a fact.'

The Olympics is not the only major event to feel the effects of its high media profile. The 1986 Commonwealth Games in Edinburgh were struck by the withdrawal of African, Asian and West Indian competitors over Mrs. Thatcher's policy on South Africa. The media attention given to the Games provided the boycotting countries an opportunity to attempt to pressure the British Government into altering its stand on relations with South Africa. Similarly, at the 1982 Commonwealth Games in Brisbane, Aboriginal groups conducted demonstrations and protest marches in order to highlight issues of social inequality. As McGregor (1984:11) reported: 'Over the ten days of the Games, land rights received such publicity that if all the reports and photographs of the subject published in *The Courier Mail* during those ten days were collated, they would fill roughly the equivalent of the entire news columns of one edition of *The Courier Mail*.

The media profile of the Olympics therefore makes it a tool that can not only be used by the organising city and country to raise a high profile but also by other groups as well. However, the profile of the events is such that, as noted above, normal planning procedures are often suspended and the focus is on making the Games run well rather than their wider community and social impact.

A classic example of the failure of governments to give adequate attention to the broad impacts of hallmark events is Sydney's hosting of the 2000 Summer Olympics. The bid for the Games had as much to do with Sydney and state (New South Wales) politics than a rational assessment of the economic and tourism benefits of hosting the Games. As research on large scale events such as the Olympics or World Fairs has indicated, the net costs of the event often tend to far outweigh any net benefits, except in terms of potential political and economic benefits for urban elites (Hall, 1992). The Sydney Games appears designed more to assist with urban redevelopment and imaging than it is with concern over the spread of social, economic and environmental impacts (Hall & Hodges, 1996). Furthermore, there is a possibility the hosting of the Olympic Games may actually serve to dissuade rather than encourage some visitor arrivals. As Leiper and Hall (1993:2) observed in their submission to the House, Representatives' Standing Committee on Industry, Science and Technology Inquiry into

Implications for Australian Industry Arising from the Year 2000 Olympics:

> A major outcome could be that the 'tourist boom' imagined by many commentators might be just that - imagination. The Olympics will attract certain types of tourists, but it will certainly repel other tourists who, in normal circumstances, would have visited Sydney and other regions of Australia... Moreover, there is no certainty that publicity around the Olympics, broadcast internationally about Australia, will lead to any significant increase in inbound tourism in the months and years afterwards.

While these arguments were dismissed by the Australian Tourist Commission as being 'rather light' and 'unsubstantiated', it is interesting to note that Tony Thirlwell, Chief Executive Office of Tourism New South Wales, confirmed that there was a need for some 'reality checks' to be bought home to New South Wales in the light of the Atlanta Olympics experience.

The simple fact that people travel to Olympic Games for sports events cannot be overstated. ... Zoo Atlanta, Six Flags Over Georgia and other attractions... suffered adversely because of the Olympic Games. Revenue losses were caused by Olympic distortion of attractions usual visitation patterns and by costs of their attempts to leverage off the Olympics (Thirlwell, 1997: 5).

Nevertheless, the expectations for the Olympics are high. According to Tourism New South Wales (1997a:1), 'an extra 2.1 million overseas tourists are expected between 1994 and 2004 - A $4 billion tourism boost', while the Games are also regarded as important in increasing the exposure of Sydney in the international media and contributing to the ability of the Sydney Convention and Visitors Bureau to win major international conference. In addition, Tourism New South Wales (1997b:9) reported the results of a survey which reported that outside Sydney '39 per cent of respondents said they would definitely or probably travel to Sydney for the event' with the survey also finding 'that 73 percent of Sydneysiders were interested in attending Games events'. Unfortunately for the Games organisers, initial ticket sales were not as great as they had expected and at the time of writing this chapter many games events remain unsold. Nevertheless, despite both the overt and 'hidden' costs of hosting events substantial gains can be made through event tourism if strategies are carefully considered, appropriate strategies developed and there is meaningful consultation with affected stakeholders. However, unfortunately, this is rarely the case.

The Sydney 2000 Games

Until the recent confirmation of long alleged (Simson & Jennings, 1992) corruption and scandal within the Internatonal Olympic Committee (Evans, 1999; Magnay, 1999; Stevens & Lehinann, 1999; Washington, 1999), the success of the Sydney 2000 Olympic bid has been highly regarded by much of the Australian media and certain quarters of government and industry as having the potential to provide a major economic boost to the New South Wales and Sydney economy. The initial economic impact study undertaken for the New South Wales (NSW) Government by KPMG Peat Marwick suggested that the net economic impacts as a result of hosting the Games would be between $4,093 million and $4,790 million, and between $3,221 million and $3,747 million for Sydney (KPMG Peat Marwick, 1993). More recently, a report by the accounting firm Arthur Andersen undertaken in conjunction with the Centre for Regional Economic Analysis at the University of Tasmania stated that the Olympics would generate a total of $6.5 billion in extra economic activity in Australia from 1994-95 to 2005-06 with $5.1 billion of this activity occurring in NSW. The report also indicated that the NSW government would collect about $250 million in extra tax revenue against official government estimates of $602 million. The State Treasurer, Mr. Egan, described the significance of the gap as 'an academic exercise' that would not affect the NSW budgetary position (Power, 1999:9). In addition, in January 1999 the NSW Auditor-General, Tony Harris, calculated the readily quantifiable cost to the state government of hosting the Olympics at $2.3billion, which was approximately $700 million above the $1.6 billion figure included in the 1998 state budget.

Presumably, the greatest benefit of the Olympics is seen in terms of employment with the Arthur Andersen report noted earlier stating that the Olympics will create 5,300 jobs in NSW and 7,500 jobs Australia-wide over a 12 year period (Power, 1999). However, this still ranks as an expensive job creation exercise.

From its earliest stages the political nature of planning and decision-making associated with the Sydney Olympics was quite clear (political in the sense that politics is about who gets what, where, why and how). As with any mega-event, much, if not all, of these planning decisions will have substantial implications for the longer term economic and social development of the city and the region. For example, the state government passed legislation in 1995 with respect to the Sydney Olympics to assist in the development and regeneration of projects associated with the Games. This was achieved at the cost of the people of Sydney losing their rights of appeal to initiate a court appeal under environment and planning legislation against the proposed Olympic projects. The location and dealings of the amendment were far from being open and honest. As Mr. Johnston of the Environmental Defenders' Office commented, 'this amendment is buried on page 163 of the threatened species legislation.... not a bill where you would find such a change, and you have to wonder why they put it there' (Totaro, 1995:1).

Further legislation passed under the New South Wales Government's Olympic Co-*ordination Authority Act* allows, somewhat ironically given the green image which was an integral part of the Games bid (Sydney Organising Committee for the Olympic Games (SOCOG) 1996), all projects linked with the Games to be suspended from the usual Environmental Impact Statements requirements. These changes are expected to affect all the areas involved with Olympic activities (Totaro, 1995). Unfortunately however, the same reasons which propel cities to stage large scale tourist events (i.e. redevelopment, dramatic urban development) and also to fast-track the planning process, 'are also the some of the very factors which result in an adverse affect on residents in cities in which they are held' (Wilkinson, 1994:28).

In the case of the Sydney Olympics at least the need to consider the environmental dimensions of the Games did receive attention. In contrast, the socio-cultural dimensions of the Games were not an issue in the bidding process, except to the extent in which the different cultures of Australia could be used to promote an image which might see the bid attempt succeed. According to the Sydney Olympics 2000 Bid Limited (SOB,1992:19), 'With the dawn of the new millennium, the peoples of the earth will look to the Olympic Movement for renewed inspiration. Sydney's cultural program for the 2000 Olympic Games will celebrate, above all, our shared humanity and the eternal goals of peace, harmony and understanding so sought amongst the peoples of the world'. Indeed, one of the objectives of the cultural program is to 'foster awareness and international understanding of the world's indigenous cultures, some of which have survived from earliest times, and to promote especially, a knowledge and appreciation of the unique culture of the Australian Aboriginal peoples' (SOB, 1992:19).

It is therefore ironic that the Australian Federal government has been trying to alter native title legislation in order to extinguish some Aboriginal claims to pastoral leases. An action which is already leading to suggestions that some Australian Aboriginal groups may call on some African and South Pacific nations to boycott the Games in order to attempt to improve the human and land rights position of Aborigines (Sydney 2000 Olympic Games News, 1997). While such a boycott is potentially significant, other social dimensions of the hosting of mega-events may have more immediate impacts on certain sections of the host community.

The Housing and Real Estate Dimensions of Mega-Events

Mega-events which involve substantial infrastructure development may have a considerable impact on housing and real estate values, particularly with respect to their 'tendency to displace groups of citizens located in the poorer sections of cities' (Wilkinson, 1994:29). The people who are often most impacted by hallmark events are typically those who are least able to form community

groups and protect their interests. At worse, this tends to lead to a situation in which residents are forced to relocate because of their economic circumstances (Hall, 1994; Olds, 1998).

In a study of the potential impacts of the Sydney Olympics on low-income housing, Cox et al. (1994) concluded that previous mega-events often had a detrimental effect on low income people who are disadvantaged by a localised boom in rent and real estate prices, thereby creating dislocation in extreme cases. The same rise in prices is considered beneficial to home owners and developers. Past events have also shown that this has lead to public and private lower-cost housing developments being pushed out of preferred areas as a result of increased land and construction costs (e.g., Cox et al., 1994; Olds, 1998). In the case of the Barcelona Games 'the market price of old and new housing rose between 1986 and 1992 by 240 percent and 287 percent respectively' (Brunet, 1993 in Wilkinson, 1994:23). A further 59,000 residents left Barcelona to live else where between the years of 1984 and 1992 (Brunet, 1993 in Cox et al., 1994).

In relation to Australia, past mega-events have lead to:

- increased rentals;
- increased conversion of boarding houses to tourist accommodation;
- accelerating gentrification of certain suburbs near where major events are held; and
- a tendency for low income renters to be forced out of their homes (Hall and Hodges, 1996).

Studies of previous events also indicate that an inadequate level of prevention policies and measure was developed to ameliorate the effects of hosting mega-events on the low-income and poor sectors of the community. The pattern that has occurred from past events therefore has very real and serious implications for the hosting of the 2000 Games. Nevertheless, despite the increasing concern and attention being given to resulting social impacts caused by hosting mega-events such as the Olympics (Olds, 1988, 1989, 1998; Cox et al., 1994), and the undertaking of such a study with the previous Melbourne bid to host the 1996 Summer Games (Olympic Games Social Impact Assessment Steering Committee, 1989), no social impact study was undertaken by the Sydney bid team during the bidding process. This may be considered as somewhat surprising given the potential impact of the Sydney 2000 Olympics and associated site development on housing and real estate values in the Sydney region. After the bid was won, a comprehensive housing and social impact study was carried out by Cox et al. (1994). The housing report also presented a number of recommendations that could be implemented as a positive strategy to ameliorate such impacts in relation to the preparation and hosting of the Sydney Games. However, this study was undertaken for low-income housing interests not the State Government or the Sydney Olympic organisation.

Since the announcement in September 1993 that Sydney would be the Olympic 2000 host city, an increasing number of developments have commenced in the traditional inner west industrial suburbs near the main Games site at Homebush Bay, while the Olympics has also assisted in giving new impetus to the Darling Harbour development. In the municipalities of Leichhardt, Ashfield, Drummoyne, Burwood, Concord and Strathfield an increasing number of apartment projects are being built in an area known as the 'Olympic corridor'. The increase of residential activity is having a significant affect on the housing areas located through the Olympic corridor with one of the main outcomes sought by real estate interests being to 'raise the profile of this area and create demand for residential accommodation' (Ujdur, 1993:1).

Recent housing developments have indicated a movement towards the 'gentrification' of many of the inner western suburbs of Sydney by white-collar professionals and a move away by lower income earners from the traditional low income areas as higher income households are targeted. The Olympics is therefore greatly accelerating existing socio-economic processes. As a result, the cost of private housing is increasing in the inner west region in particular and throughout the metropolitan area in general. The potential for problems to occur is heightened by the fact that many of the tenants in these areas are on Commonwealth (federal government) benefits for

unemployment, sickness, disability and aged persons, and more often than not are single people (Coles, 1994). It is these people who will suffer as the prices of houses and rentals increase in their 'traditional' cheaper housing areas forcing them to relocate in extreme cases.

Approximately 20 per cent of Sydney residents rent accommodation, yet Sydney is facing a 'rental squeeze' as the shortage of rental properties continues to increase along with a rise in rentals. The situation worsened significantly throughout 1995, and church leaders and welfare groups expect the situation to get more desperate as the Olympics approaches (Russel, 1995). Although the Sydney Olympics were four years away, by early 1996 housing impacts, such as increasing rental and real estate prices, had clearly begun to emerge in specific areas of Sydney. Indeed, as has been stated in the Sydney media: 'As the revitalization of the inner city continues and is hastened by the Olympics, it is expected that the problem of homelessness will be exacerbated' (Coles, 1994:15). As the redevelopment for the Games continues, the Homeless Centre predicts that 'the greatest potential negative impact of the Sydney 2000 Olympics will be those living in low cost accommodation' (Coles, 1994:2)

A number of means are available for protecting and monitoring the effect of the Games on low-income residents (Hall, 1992; Cox et al., 1994). The main options include:

- the establishment of a housing impact monitoring committee;
- development of an Olympics accommodation strategy;
- tougher legislation to protect tenants and prevent arbitrary evictions;
- provision of public housing and emergency accommodation for disabled people; and
- a form of rent control.

Despite intensive lobbying from housing, welfare and social groups the State and Commonwealth Governments have failed to act on the significant housing and community issues which have emerged. One likely reason for this is that the Olympic concerns of government have been concentrated more on the development of Olympic facilities and infrastructure and, more recently, the potential implications of the IOC scandal on both the image of the Games and any possible affect on the ability of the Sydney Games to raise commercial sponsorship (Riley, 1999). Furthermore, a change in government at the federal level in 1996 from the middle-ground Labor Party to the rightwing Liberal-National Party coalition, has meant that national financial assistance to the New South Wales Government for low-income housing and urban redevelopment and infrastructure projects has all but dried up (Hall and Hodges,1996). However, the political reality of the Olympics is that the social impacts of the Games are not an issue.

Share the Spirit. And the Winner is ... ?

Despite claims to the contrary from the Olympic movement as to the social value of the 'Olympic spirit', the Games are more about the spirit of corporatism that the spirit of a community. The Olympics are not symbolic of a public life or culture which is accessible to all local citizens. The Sydney Olympics, along with the increasingly event and casino driven economy of the State of Victoria and the other Australian states, are representative of the growth of corporatist politics in Australia and the subsequent treatment of a city as a product to be packaged, marketed and sold, and in which opinion polls are a substitute for public participation in the decision-making process. Nevertheless, as Smyth (1984:258) has recognised 'for sustenance of the urban economy and future livelihoods, it may also be necessary to first promote the project to the local population. A tentative conclusion of this analysis is that local authorities and initiators fear local reactions, and so try to avoid them. This begins to induce two consequences:

- an inability to listen, understand and respond to local needs, in other words, reinforcing the move away from serving towards political and economic control and power; and
- an open invitation to move further towards governance and away from government, in other words, away from accountability and towards implicit secrecy.

In the case of the Sydney Olympic bid the former Premier and key member of the bid

team, Nick Greiner, argued that 'The secret of the success was undoubtedly the creation of a community of interest, not only in Sydney, but across the nation, unprecedented in our peacetime history' (1994:13). The description of a 'community of interest' is extremely apt, as such a phrase indicates the role of the interests of growth coalitions in mega-event proposals (Hall, 1997). The Sydney media played a critical role in creating the climate for the bid. As Greiner stated:

> Early in 1991, one invited senior media representatives to the premier's office, told them frankly that a bid could not succeed if the media played their normal 'knocking role' and that 1 was not prepared to commit the taxpayers' money unless 1 had their support. Both News Ltd and Fairfax subsequently went out of their way to ensure the bid received fair, perhaps even favourable, treatment. The electronic media also joined in the sense of community purpose (1994:13).

Greiner's statement begs the question of 'which community?'. Certainly, the lack of adequate social and housing impact assessment prior to the Games' bid and post 'winning' the Games, indicates the failure of growth coalitions to recognise that there may well be negative impacts on some sections of the community. Furthermore, in terms of the real estate constituency of growth coalitions such considerations are not in their economic interest. Those which are most impacted are clearly the one's least able to affect the policy making and planning processes surrounding the Games (Hall, 1997). The perceived 'need' by some interests for the tourism and associated economic developments of hosting an Olympic Games, creates 'a political and economic context within which the hallmark event is used as an excuse to overrule planning legislation and participatory planning processes, and to sacrifice local places along the way' (Dovey, 1989:79-80). For example, it took the NSW Government and the Australian Olympic Committee eight years to release one of the major confidential documents outlining the terms and conditions under which NSW taxpayers through the government are responsible for funding Sydney's bid, building venues and meeting all costs associated with the Games (Moore, 1999). It is only now that the IOC scandal has broken that the Australian commercial media is investigating the bidding process (e.g., Moore et al., 1999), but it is now too late. The recently released contract noted above states: 'The State and the city will not permit the [organising committee] to cancel the staging of the Games for any reason whatsoever, including *force majeure*' (Moore, 1999:7).

In focusing on one narrow set of commercial, economic and political interests in the pursuit of major sporting events such as the Olympics, other community and social interests, particularly those of inner-city residents, are increasingly neglected (Hall, 1992, 1994). However, this is something which has been known for a relatively long time, but do we learn from it?

Toronto: 'the biggest and most costly mega-project in the history of Toronto'

Toronto is making a bid to host the 2008 Summer Olympic Games. Toronto's bid, as with its previously unsuccessful bid for the 1996 Games, is built on a waterfront redevelopment strategy which seeks to revitalise the harbour area through the development of an integrated sports, leisure, retail and housing complex. However, as in the case of Sydney, or in any other mega-event with substantial infrastructure requirements, substantial questions can be asked about the process by which the event has been developed and as to who actually benefits from hosting the event.

One of the most striking features of the new Toronto bid is the extent to which information on the bid is either unavailable or provides only limited detail on the costs associated with hosting the event. However, unlike the Sydney Olympic bid, Toronto has been fortunate to have a non-profit public interest coalition, Bread Not Circuses (BNC), actively campaigning for more information on the bid proposal and for government to address social concerns.

BNC argue that given the cost of both bidding for and hosting the Olympics, the bidding

process must be subject to public scrutiny. 'Any Olympic bid worth its salt will not only withstand public scrutiny, but will be improved by a rigorous and open public process' (Bread Not Circuses, 1998a), and also argued that Toronto City Council should make its support for an Olympic bid conditional on:

- the development and execution of a suitable process that addresses financial, social and environmental concerns, ensures an effective public participation process (including intervenor funding), and includes a commitment to the development of a detailed series of Olympic standards. A time-frame of one year from the date of the vote to support the bid should be set to ensure that the plans for the participation process are taken seriously;
- a full and open independent accounting of the financial costs of bidding and staging the Games; and
- a full and open independent social impact assessment of the Games.

The other key elements of a public participation process include:

- a full, fair and democratic process to involve all of the people of Toronto in the development and review of the Olympic bid;
- an Olympic Intervenor Fund, similar to the fund established by the City of Toronto in 1989, to allow interested groups to participate effectively in the public scrutiny of the Toronto bid;
- an independent environmental assessment of the 2008 Games, and strategies should be developed to resolve specific concerns; and
- the development of a series of financial, social and environmental standards governing the 2008 Games, similar to the Toronto Olympic Commitment adopted by City Council in September of 1989 (Bread Not Circuses, 1998a).

In addition, to the factors identified by BNC it should also be noted that the city's previous experiences with stadia and events raise substantial questions about the public liability for any development. For example, in 1982, the then Metropolitan Toronto Chairman Paul Godfrey promised that Toronto's SkyDome, a multipurpose sports complex used for baseball and Canadian football could be built for Can. $75 million, with no public debt. However, the final price of the development was over Can.$600 million, with taxpayers having to pay more than half. BNC also noted that even the previous Toronto bid costs were 60% over budget, 'with a great deal of spending coming in the final, overheated days of the bidding war leading up to the International Olympic Committee (10C) Congress. There was no public control, and little public accountability, over the '96 bid', while 'There was virtually no assessment of the social, environmental and financial impact of the Games until Bread Not Circuses began to raise critical questions. By then, it was too late to influence the bid' (Bread Not Circuses, 1998c).

BNC lobbied various city councillors in terms of their decision of whether or not to support a bid. However, only one councillor out of 55 voted against the Olympic bid proposal even though they only had a 20 page background document to the proposal in terms of information. When city councillors voted on the project, they did not have:

- an estimate of the cost of bidding for the Games;
- a list of the names of the backers of 'BidCo', the private corporation that is heading up the Olympic bid;
- a reliable estimate of the cost of staging the Games. a plan for the public participation process, the environmental review process or the social impact assessment process; and
- a detailed financial strategy for the Games.

Such a situation clearly has public interest organisations, such has BNC, very worried as to the economic, environmental and social costs of a successful bid. Clearly, the history of mega events such as the Olympic Games indicates that such a situation is not new (Olds, 1998). In the case of the International Olympic Committee (IOC) they have already sought to ensure that the Games are environmentally friendly, perhaps it is now time to see that they are socially and economically friendly and build wider assessment of the social impacts of the Games into the planning process as a mandatory component of the bidding process. In this vein BNC, in a letter to the IOC

President have requested 'that the IOC, which sets the rules for the bidding process, take an active responsibility in ensuring that the local processes in the bidding stage are effective and democratic' and specifically address concerns regarding the 'financial and social costs of the Olympic Games' and proposed:

1. an international network be created that includes COHRE, the HIC Housing Rights Subcommittee, academics, NG0s (including local groups in cities that have bid for and/or hosted the Games);
2. a set of standards regarding forced evictions, etc., would be developed and adopted by the network;
3. a plan to build international support for the standards, including identification of sympathetic IOC, NOC and other sports officials, would be developed and implemented; and
4. the IOC would be approached with the request that the standards be incorporated into the Olympic Charter, Host City Contracts and other documents of the IOC (Bread Not Circuses, 1998b).

Such a social charter for the Olympics would undoubtedly greatly assist in making the Games more place friendly and perhaps even improve the image of the IOC. However, as at the time of concluding this chapter, the books of the Toronto bid have still not been opened for public scrutiny. Neither has there been any response to the proposal for creation of a set of social standards for the Olympics.

A new basis for mega-events and imaging strategies

Undoubtedly, there will be some positive benefits arising from the hosting of the Olympics. Any event of an Olympic size with its associated spending on infrastructure must have some trickle-down and flow-on effects. However, broader issues over the most appropriate long-term economic, social, environmental, and tourism strategies have not been adequately considered, while the most effective distribution of costs and benefits through the community is all but ignored. Indeed, a substantial case could be put forward that the Olympics has in fact deflected Sydney's planners and developers away from the longer term to concentrate on the target year 2000 (Hall, 1997). The irony is that government, which is meant to be serving the public interest, is instead concentrating its interests on entrepreneurial and corporate rather than broader social goals (Hall, forthcoming).

The revitalisation of place requires more than just the development of product and image. The recreation of a sense of place is a process which involves the formulation of urban design strategies based on conceptual models of the city which are, in turn, founded on notions of civic life and the public realm and the idea of planning as debate and argument (Bianchini and Schwengel, 1991). As Smythe (1994:254) has recognised:

> This needs to be undertaken in a frank way and in a forum where different understandings can be shared, inducing mutual respect, leading to developing trust, and finally conceiving a development which meets mutual needs as well as stewarding resources for future generations... This proposes a serious challenge to the public sector as well as to the private sector, for authorities have undermined the well-being of their local populations by transferring money away from services to pay for flagship developments...

Unfortunately, such ideas have only limited visibility within the place marketing and tourism realms as tourism and place planning is often poorly conceptualised with respect to participatory procedures, while the institutional arrangements for many of the public-private partnerships for urban redevelopment actually exclude community participation in decision-making procedures (Hall, 2000; forthcoming). If there are no lasting benefits and no identifiable economic opportunity costs from selling the city through the hosting of hallmark events, then we are left with the proposition of Bourdieu (1984): 'the most successful ideological effects are those with which have no words' (quoted in Harvey, 1989a:78). The function of a flagship development is then 'reduced to inducing social

stability, assuming the generated experience is sustainable for enough people over a long period and is targeted towards those who are potentially the harbingers of disruption... what is the purpose of marketing the city?' (Smyth, 1994:7). Policy visions for Olympic cities, whether they be for places, sport or for tourism, typically fail to be developed in the light of oppositional or critical viewpoints. Place visions tend to be developed through the activities of industry experts rather than the broad populace, perhaps because the vision of the wider public for a place may not be the same as those of civic boosters who have most to gain from the hosting of hallmark events. Unfortunately, it is likely that in this situation we not only seeing the selling of a city but we are also witnessing the local people being sold short.

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Bianchini, F. and Schwengel, H. (1991). Re-imagining the city. In *Enterprise and Heritage: Crosscurrents of National Culture*, eds. J. Corner and S. Harvey, pp. 212234. London: Routledge.

Bread Not Circuses (1998a). *Bread Alert!* (E-mail edition) 2(2) February 20.

Bread Not Circuses (1998b). *Bread Alert!* (E-mail edition) 2(3) February 26.

Bread Not Circuses (1 998c). *Bread Alert!* (E-mail edition) 2(8) April 8.

Bread Not Circuses (1999.) *The REAL Olympic Scandal: 1he Financial and Social Costs of the Games,* Media Advisory March 17.

Bums, LP.A., Hatch, J.11. and Mules, F.J. (eds.) (1986). *The Adelaide Grand Prix: The Impact of a Special Event.* Adelaide: The Centre for South Australian Economic Studies.

Coles, S. (1994). *Submission to the Preliminary Social Impact Assessment of The Sydney Olympics.* Sydney: The Homeless Persons Information Centre.

Cox, G., Darcy, M. & Bounds, M. (1994). *The Olympics and Housing: A Study of Six International Events and Analysis of Potential Impacts.* Sydney: University of Western Sydney.

Dovey, K. (1989). Old Scabs/new scares: the hallmark event and the everyday environment. In *The Planning and Evaluation of Hallmark Events,* eds. G. J. Syme, B.J. Shaw, D.M. Fenton & W.S. Mueller, pp. 73-88. Aldershot: Avebury.

Economists At Large (1997). Grand *Prixtensions: lhe Economics of the Magic Pudding,* prepared for the Save Albert Park Group. Melbourne: Economists At Large.

Essex, S. & Chalkey, B. (1998). Olympic Games: catalyst of urban change. *Leisure Studies* 17(3): 187-206.

Evans, M. (1999). Sydney linked to IOC crisis. *Sydney Morning Herald* 22 January: 1, 9.

Greiner, N. (1994) .Inside running on Olympic bid. *The Australian* 19 September: 13.

Hall, C.M. (1992) *Hallmark Tourist Events: Impacts, Management and Planning,* Chichester.. John Wiley.

Hall, C. M. (1994). *Tourism and Politics: Policy, Power and Place.* Chichester: John Wiley.

Hall, C.M. (1997). Mega-events and their legacies. In Quality *Management in Urban Tourism.,* ed. P. Murphy, pp.75-87. Chichester: John Wiley & Sons.

Hall, C.M. (1 998a). *Introduction to Tourism: Development, Dimensions and Issues.* South Melbourne: Addison Wesley Longman.

Hall, C.M. (1998b). The politics of decision making and top-down planning: Darling Harbour, Sydney. In Tourism *Management in Cities: Policy, Process and Practice,* eds. D. Tyler, M. Robertson and Y. Guerrier, Chichester: John Wiley & Sons.

Hall, C.M. (2000). *Tourism Planning.Policies, Processes and Relationships.* Harlow: Prentice Hall.

Hall, C.M. forthcoming, 'Rethinking collaboration and partnership: A public policy perspective', *Journal of Sustainable Tourism.*

Hall, C.M. & Hamon, C. (1996). Casinos and urban redevelopment in Australia. *Journal of Travel Research* 34(3): 30-36,

Hall, C.M. & Hodges, J. (1996). The party's great, but what about the hangover?: the housing and social impacts of mega-events

with special reference to the Sydney 2000 Olympics. *Festival Management & Event Tourism* 4(l/2): 13-20.
Harvey, D. (1989a). *The Condition of Postmodernity.* Oxford. Blackwell.
Harvey, D. (1989b). From managerialism to entrepreneurialism: the transformation of urban governance in late capitalism. *Geografiska Annaler* 7 1 (B/ 1): 3 -17.
Hughes, H.L. (1993). Olympic tourism and urban regeneration. *Festival Management and Event Tourism* 1(4): 157-159.
Knipp, S. (1990). A long hard march ahead. *PATA Travel News* October: 22-23
Kotler, P., Haider, D.H. and Rein, 1. (1993). *Marketing Places: Attracting Investment, Industry, and Tourism to Cities,* States, *and Nations.* New York: The Free Press.
KMPC Peat Marwick (1993). *Sydney Olympics 2000 Economic Impact Study, 2 vols,* Sydney Olympics 2000 Bid Ltd, Sydney, NSW, in association with Centre for South Australian Economic Studies. Sydney: Sydney Olympics 2000 Bid.
Law, C. M. (1993). *Urban Tourism:* Attracting Visitors to *Large Cities.* London: Mansell.
Leiper, N. & Hall, C.M. (1993). *The 2000 Olympics and Australia's* Tourism Industries, submission to House of Representatives' Standing Committee on Industry, Science and Technology Inquiry into Implications for Australian Industry Arising from the Year 2000 Olympics, Southern Cross University/University of Canberra, Lismore/Canberra.
Magnay, J. (1999). Games scandals hit Melbourne 2006 bid. *The* Age 21 January: 1,2.
MacAloon, J. (1984). Olympic Games and the theory of spectacle in modem societies. InRite, Drama, *Festival, Spectacle: Rehearsals Toward* a 1heory of *Cultural Performance,* ed. J.J. MacAloon, pp. 241-280. Philadelphia: Institute for the Study of Human issues.
McGregor, A. (1984). The Games v. land rights as a media event. In *The 1982 Commonwealth Games: a retrospect,* 9-12. Brisbane: Australian Studies Centre, University of Queensland.
Mommaas, H. & van der Poel, H. (1989). Changes in economy, politics and lifestyles: an essay on the restructuring of urban leisure. In *Leisure* and *Urban Processes: Critical Studies of Leisure Policy in Western European Cities,* eds. P. Brarnham, 1. Henry, H. Mormnaas & H. van der Poel, pp.254-276. London: Routledge.
Moore, M. (1999). Contract puts burden on taxpayers. *Sydney Morning Herald* 23 January: 7.
Moore, M., Evans, M. and Korporall, G. (1999) Sydney *2000* chiefs told: Lift the lid. *Sydney Morning Herald,* 6 February: 1, 7.
Murphy, P. E. (ed.) (1997). *Quality Management in Urban Tourism,* International Western Geographical Series, Chichester: John Wiley & Sons.
Olds, K. (1988). Planning for the housing impacts of a hallmark event: a case study of Expo 1986, unpublished MA thesis. Vancouver: School of Community and Regional Planning, University of British Columbia.
Olds, K. (1989). Mass evictions in Vancouver: the human toll of Expo'86. *Canadian Housing* 6(1): 49-53.
Olds, K. (1998). The housing impacts of mega-events. *Current Issues in Tourism 1 (1).*
Olympic Games Social Impact Assessment Steering Committee (1989). *Social Impact Assessment Olympic Games Bid Melbourne 1996,* report to the Victorian Government an the City of Melbourne. Melbourne: Olympic Games Social Impact Assessment Steering Committee.
Page, S. (1995). *Urban Tourism,* London: Routledge.
Patterson, E. & Hagan, J. (1988). *First Australian Masters Games: Analysis Appraisal,* Tasmanian Department of Sport and Recreation, Hobart.
Power, B. (1999). $350m tax jolt just 'academic' says Egan. *Sydney Morning Herald* 22 January: 9.
Richter, L.K. (1989). *1he Politics of Tourism in Asia.* Honolulu: University of Hawaii Press.
Riley, M. (1999) Scandal a costly blow to funding for Games. *Sydney Morning Herald* 23 January: 7.
Ritchie, J.B.R. & Yangzhou, H. (1987). The role and impact of mega-events and attractions on national and regional tourism: a conceptual and methodological overview, Paper prepared for presentation at the 37th Annual Congress of the

International Association of Scientific Experts in Tourism (AIEST), Calgary, Canada.

Ritchie, J.BR. (1984). Assessing the impact of hallmark events: conceptual and research issues. *Journal of Travel Research* 23(1): 2-11.

Robins, K. (1991). Tradition and translation: national culture in its global context. In *Enterprise and Heritage: Crosscurrents of National Culture,* eds. J. Corner and S. Harvey, pp. 21-44. London: Routledge.

Roche, M. (1992). Mega-events and micro-modernization: on the sociology of the new urban tourism. *British Journal of Sociology* 43(4): 563-600.

Roche, M. (1994). Mega-events and urban policy. *Annals of Tourism Research* 21 (1): 1-19.

Russel, M. (1995). Plea for action as rent squeeze tightens. *Sydney Morning Herald 20* September: 2.

Simson, V. & Jennings A. (1992). *7he Lords of the Rings: Power, Money and Drugs in the Modern Olympics.* London: Simon & Schuster.

Srnyth, H. (1994). *Marketing the City: The Role of Flagship Developments in Urban Regeneration.* London: E & FN Spon.

Stevens, M. & Lehmann, J. (1999). IOC purge starts race for reform. *The Australian* 26 December: 1.

Sydney 2000 Olympic Games News (1997). Aboriginal activist Michael Mansell suggests that some nations could boycott the games. *Sydney 2000 Olympic Games News* 8 February, http://www.gwb.au/gwb/news/olympic/080927.html

Sydney Olympics 2000 Bid Limited (1992). *Fact Sheets: a presentation of the bid by the City of Sydney to host the games of the XXVII Olympiad in the year 2000.* Sydney: Sydney Olympics 2000 Bid Limited.

Sydney Organising Committee for the Olympic Games (SOCOG) (1996) *Environmental Guidelines.* Sydney: SOCOG.

Thirlwell, T. (1997). Atlanta revisited. *Tourism Now 25(April. 5.*

Totaro, P. (1995). Olympic opponents denied sporting chance. *Sydney Morning Herald* December 16: 1.

Tourism New South Wales (1997a). *Sydney 2000: Tourism and the 2000 Games Fact Sheet.* Sydney: Tourism New South Wales.

Tourism New South Wales (1997b). Olympic visitor boost. *News,* Spring: 9.

Tourism Victoria (1 997a) *Annual Report 1996-97.* Melbourne: Tourism Victoria.

Tourism Victoria (1 997b). *Strategic Business Plan 199 7-2001: Building Partnerships.* Melbourne: Tourism Victoria.

Uldur, G. (1993). *Sydney: Olympics 2000: Impact on Property.* Sydney: Hooker Research Limited

Urry, J. (1990). *The Tourist Gaze: Leisure and Travel in Contemporary Societies.* London: Sage Publications.

Washington, S. (1999). IOC allegations may affect funding. *Australian Financial Review* 19 January: 5.

Western Australian Tourism Commission (1992). *Annual Report.* Perth: Western Australian Tourism Commission.

Wilkinson, J. (1994). *The Olympic Games : Past History and Present Expectations.* Sydney: NSW Parliamentary Library.

Zukin, S. (1992). *Landscapes of Power.* Berkeley: University of California Press.

Being visible: Towards Gay Games VI and Cultural Festival, Sydney 2002

Stuart Borrie

Introduction

Organisers of multi-sport games such as the Masters Games, Goodwill Games, Police Games and Corporate Games face significant challenges in hosting these events. These challenges are common to all host organisations and involve securing community, corporate and government support, raising finance, ensuring the resources are available and coping with the logistics of multiple sports events, with thousands of athletes, across dozens of venues. As hosts of Gay Games VI and Cultural Festival, we face the same challenges. However, as hosts of the largest lesbian and gay sports event, we face unique challenges because we are gay, we are lesbian, we are transgender and we are visible in sport.

This paper provides a brief overview of the Gay Games, discusses why it is necessary to have them and explores some of the unique challenges facing the host organisation as it prepares for Sydney 2002.

Background to the Gay Games

In the first week of November 2002, Sydney will host the largest lesbian and gay sports event in the world. Gay Games VI and Cultural Festival will bring together 11,000 lesbian and gay athletes from more than 60 countries to participate in 31 sports, with a further 3000 cultural participants. Drag queen races, mud wrestling, handbag tossing and power shopping are not official sports at this event! Rather there are serious, sports events such as swimming, athletics, triathlon, tennis and volleyball, many of which are sanctioned by state or national sports associations.

The Gay Games are a quadrennial sporting and cultural event which bring together gay men, lesbians, bisexual and transgender people and their friends from all over the world. The Games have grown from a relatively small sports and arts festival of 1300 participants in San Francisco in 1982 to large multi-million dollar event with 14,000 participants at 1998 Amsterdam Gay Games V in 1998.

Organised around city based teams rather than countries, individuals register to be part of an event where striving for personal best, is the ultimate goal. The three principles of the Games are inclusion, participation and personal best and these principles are applied in all aspects of planning and delivery.

There are no qualifying standards and the Games are open to everyone without regard to sexual orientation, gender, race, religion, nationality, ethnic origin, political belief, physical ability, athletic or artistic ability or HIV status.

The Gay Games attract athletes from elite to the more social, from 18 to 80 plus as well as athletes with specific needs or disability. Athletes participate as individuals, in a safe, supportive environment where there is tremendous camaraderie. All registrants receive participation medals and there are gold, silver and bronze medals awarded to recognise personal achievement. International rules apply, some of these rules are Masters based to recognise the diversity of ages and levels of attainment.

Although there are opening and closing ceremonies, there are no national anthems, no national medal tallies and medal ceremonies are simple affairs recognising personal best.

Rationale for the Gay Games

So why have the Gay Games? The description above partially answers the question; the inclusive nature of the event, the camaraderie,

the solidarity of community and the celebration of personal best, no matter what time, score, distance, height or weight.

Part of the answer also links to why people participate in sport generally. First and foremost are the health benefits. This event encourages lesbians and gay men to participate in sport, to be active and benefit from the health and fitness outcomes.

There are of course the social aspects linked to participation in sport and this is important in the context of the Gay Games. The meeting of the sporting and social worlds of lesbian and gay athletes does not happen comfortably in the broader sports community and the Gay Games provides this connection. For those gays and lesbians in the broader sports community who are not 'out' to team mates or club members, the connection to social encounters pre and post matches is somewhat superficial.

The post match drink where the discourse often centres around everyday issues of relationships, break ups, house buying, family and sex for example, is a discourse closeted gay or lesbian athletes are unable to participate in fully. Consider the gay man who is unable to validate his five year relationship by bringing his partner to the end of season bash. What access does he have to their social world, and them to his?

Although attitudes are changing (Woog, 1998), gay men and lesbians are largely invisible in the broader sports community. For those lesbians and gay men who play sport in this context, the pressures to conform to sporting rituals and social norms are great. In elite sport, the pressures on those who do come out are extreme. Take for example the negative press coverage at the Australian Tennis Open in Melbourne in 1999 which centred around Amelie Mauresmo's visibility as a lesbian athlete. This visible, elite lesbian athlete received extensive coverage and raised sometimes extreme comment on sexuality, gender and masculinity in women's sport.

In focusing on the title of her book, *Strong Women, Deep Closets* (Griffin, 1998), Griffin describes how this title 'attempts to capture the apparent contradiction of physically strong and competent women who feel compelled to hide their deepest personal commitments, family, and love relationships in order to be members of the women's sports world'. She goes on to suggest that 'these deep closets are full of not only lesbians, but also heterosexual women who fear that women's sport is always one lesbian scandal away from ruin' and that 'these strong women coach and compete in the shadow of a demonized stereotype so reviled that all women in sport are held hostage by the threat of being called a lesbian' (Griffin, 1998:ix, x).

It is difficult for lesbians and gay men in sport to be out and visible in the broader sports community. There are examples where vilification and harassment of predominantly lesbian teams in mainstream sports competition have lead to the threat of an anti discrimination cases. Some of these have had positive outcomes, for example the adoption of a code of conduct in one particular association which now guides the behaviour of players, officials and spectators in that sport – a painful journey for some, a positive outcome for all.

All lesbians and gay men should have the right to participate openly in sport, not just as sports people but as gay and lesbian athletes – to be visible, to be supported and to be valued, without the threat of harassment, vilification or violence. Many make the choice to be silent and to conform to the rituals of sport. Hosting the Gay Games in Sydney is an opportunity to make a difference.

Participating in events like the Gay Games provides both significant competition and meaningful social encounters where there is a positive connection between the sport and social worlds of athletes who take part. The Games provides a safe and supportive environment to play sport openly as gay and lesbian athletes. The Gay Games are a highly visible event, and it needs to be. It changes individuals and provides models which serve to educate the broader community as much as it does our own.

As Bruce Hayes, US Olympic gold medallist said of the Gay Games in New York in 1994, '…the Gay Games changed my life, as I am sure they have changed the lives of all who have participated in them ….the Gay Games

give us an opportunity to show ourselves to the world in a way the world is not accustomed to seeing us – as athletes' (Labrique, 1994:28).

Challenges

Indirectly some of the challenges have been touched on above, particularly those that focus on individual struggles to challenge the pressure to conform to sporting rituals, to cross barriers and to be visible in sport.

As a host organisation, we face many challenges also. It is not my objective to paint a completely negative picture here. Sydney 2002 as host organisation has had very good support from all levels of government, from our community and from state and national sports associations and the various government and non-government sports agencies and organisations, not to mention our corporate community who have assisted in much needed sponsorship support.

In expressing this, however, it seems that as a host organisation of a gay and lesbian identified sports event, we have to jump higher and through more hoops to gain the necessary level of recognition and support an event of this significance and impact demands. To illustrate this, here are four examples.

1. Marketing and misinformation
2. Government support – threats and opportunities
3. The outreach challenge
4. Playing by the rules

Marketing and misinformation

The first challenge is about selling and marketing an unknown product and countering the stereotypes and misinformation about gays and lesbians. This is about convincing people that this is a legitimate event, worthy of support and investment, with significant returns to the community and business.

Hosts of relatively unknown multi-sports events have to prove the validity of their event to community, governments and the corporate sector in order to gather support - this is accepted. However, imagine this. A representative of a host organisation goes to a corporate sponsor for the first time with a product called the World Police Games – a multi sport games, hosted in Sydney in 2002 which will attract 11,000 police men and women, attract a further 25,000 visitors to NSW, have a conservative economic impact of $100 million and provide significant return for sponsors and financial support from government.

Now replace the words 'world police' with 'gay'. Although the scope and impacts of the event are the same for our Games, the equation is now a bit different. The product has a slightly different colour and feel to it and for some who want to support it, there is a risk factor attached either internally, from corporate colleagues, staff, executives, board members or externally from share holders and the public.

This is partly because of stereotypical views held by individuals which influence decision making processes and partly due to the fact that the gay and lesbian market segment is not very well defined. Many corporations are unable to see how they can utilise these new markets for commercial return, and governments openly supporting lesbian and gay events face different problems.

Government support – threats and opportunities

Generally speaking, governments, both state and local tend to support tourism based events which show positive benefits to the community. However, governments openly supporting major gay and lesbian organised events presents a new set of problems. Given that parliaments are made up of representatives from the broader community and they themselves represent constituencies, the sum total of the MPs reflects the diversity of this broader community. The social and political environment and stability of the government of the day will of course influence decisions.

There are therefore political risks for governments from within, and from opponents who wish to exploit areas of weakness and score political points from the government of the day.

There are clear examples. When Sydney 2002 received a $75 000 grant for the bid in April 1997, the then Minister for Tourism was criticised by members of his own party and by the opposition. The leader of the State National Party described the Gay Games as 'illegitimate' and 'a travesty of sport' without 'credibility or standing in organised sport' (Sydney Morning Herald, 16 April 1997).

In a call for the government to rescind the grant, a motion was put to the caucus which was soundly defeated 7 to 86, however not before one MP described gays as 'perverts' (SSO, 17 April, 1997) and questioned the use of the term gay; 'I've not seen a happy one yet' one government MP declared (*SMH*, 16 April 1997).

While this criticism represents the view of the minority of the government and we would hope a minority community view, these are some of the people who continue the myths and stereotypes about gays and lesbians through their questionable leadership of the constituencies they represent.

The Outreach Challenge

We are fortunate to be hosting a visible gay and lesbian sports event here in Sydney, in a state which has relatively enlightened legislation protecting the rights of gay men, lesbians and transgender people. However, there will be some coming to our Games in 2002 who will be at risk of being vilified, harassed, discriminated against or physically attacked when they return to their country just because of who they are. There are examples of this. One scholarship participant from Zimbabwe at Gay Games V in Amsterdam, returned home to harassment, vilification and threats of violence which resulted in her returning to Amsterdam, and safety. One lone participant from Lebanon walked into the opening ceremony at Gay Games V with a mask concealing his identity for fear of being recognised.

One of the central planks of Sydney's Games is to reach out and market the Games to our region, the Asia/Pacific. This will ensure a diversity of representation which has not been seen at previous Gay Games. However reaching lesbians and gay men in this region will represent a challenge for Sydney 2002.

Although there has been a significant trend towards decriminalising homosexuality (Amnesty International, 1997) over the last decade, there are countries in the Asia/Pacific region with laws which criminalise homosexuality. Papua New Guinea, India, Malaysia, Singapore, Pakistan and Bangladesh are examples (Amnesty International, 1997). In some of these, for example, Singapore, India, and Pakistan homosexual relations is illegal for men and women and there exists severe penalties (Amnesty International, 1997).

The challenge for Sydney 2002 is to attract gay men and lesbians from a region with diverse cultural and linguistic backgrounds and very different social and legal positions on homosexuality and human rights. It is important to showcase our models which exist here in New South Wales, however strategies will need to be utilised to ensure participants are not put at risk to vilification, discrimination and violence.

Playing by the rules

Watching most Gay Games sports events, it is difficult to see that the athletes in the pool, on the court or on the track are gay or lesbian – there's no big pink sign, and athletic prowess of those who participate explodes the myths surrounding gays and lesbians in sport. There are however a couple of sports where it is obvious that we are who we are. One of the most visible reminders is in sports like figure skating and ballroom dancing. Dancing or figure skating in same gender pairs is a powerful reminder of our relationships. However there is a down side to this. International rules for some governing bodies define pairs in a different way to how we are or would like to play. The International Skating Union (ISU) rulebook for example defines clearly what constitutes a couple, 'A composition of a pair must be one lady and one man' (ISU, 1998:4).

We wish to involve ISU skaters and officials in our event as they make up a large part of the adult figure skating world, however divergence from the ISU rules means sanctioning will not

be forthcoming and therefore the event would not be open to ISU members. Sydney 2002 is working towards sanctioning of the event and a waiver of this rule to include those ISU skaters who want to be involved.

There are of course others many other challenges. For example, some in our own community see the threat government funding being diverted away from more traditional recipients within our community. Educating the media is also important as they have a tendency to ignore the ordinary and choose extraordinary images which stereotype people and communities, for example photographs of a drag queen on ice being published. She may have been part of the show, but this image does not reflect the athletic performance of tens of thousands of ordinary people taking part in a major sporting event. Such imaging only serves to reinforce stereotypes about who we are.

Hosting the Games in Sydney will provide opportunities for change and greater access. Over the next three years Sydney 2002 as host will work towards an important legacy, one which will change attitudes and influence the thinking of sports administrators and athletes, both straight and gay. We will build partnerships with governments and communities and influence sports policy development. We will raise the profile of gay men and lesbians in sport and provide a platform for discussion and change towards not just tolerance, but acceptance in a broader sports community. This visibility is critical and will provide a platform for change.

'Visibility gives inspiration, breaks down stereotypes, leads to respect, gives us a place in this world and in the end, will change laws' (Operations Manager, Gay Games V, 8 August 1998).

References

Griffin, P. (1998). *Strong Women, Deep Closets. Lesbians and Homophobia in Sport*. University of Massachusetts. Human Kinetics. USA.

Amnesty International. (1997). *Breaking the Silence. Human Violations Based on Sexual Orientation*. Amnesty International United Kingdom.

International Skating Union. (1998). International Skating Union, Special Regulations. Figure Skating 1998. Lusanne, Switzerland.

Labreque, L. (Ed). (1994).*Unity. A Celebration of Gay Games IV and Stonewall*, Labreque Publishing, San Francisco.

Woog, D. (1998). *Jocks. True Stories of America's Gay Males Athletes*. Alyson Publications Inc, Los Angeles.

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Histories of Homebush Bay and the Sydney Aboriginal Fight for Recognition

Emma Lee

This paper concerns the Aboriginal histories of Homebush Bay, the meaning of the landscapes and people to the local communities, and the results of the struggle for recognition of the right to promote culturally appropriate images during the Olympics.

Last June, the author was contracted by the Metropolitan Local Aboriginal Land Council to write the Aboriginal history of Homebush Bay. Metropolitan Land Council was asked by the Olympic Co-Ordination Authority (OCA) to produce the history project for their information centre at Olympic Park.

This was the first concerted effort by both OCA and Sydney Organising Committee for Olympic Games (SOCOG) to consult with the local Aboriginal communities, where previously they had not, and instead chosen to consult with the Aboriginal people who they thought were suitable, such as the Northern Territory people. Indeed, the necessity to consult arose out of some local Aboriginal groups talking to the newspapers about their dissatisfaction over their lack of involvement in Olympic process (*The Weekend Australian*, May 23-24, 1998:5). The analogy that I use to describe the situation is that SOCOG, in particular, have invited the world to a party here in Sydney's backyard, but haven't told or invited the owners of that backyard.

Unfortunately, SOCOG believe that the communities here aren't quite the 'right' Aboriginal image for the Olympics. For example, the promotional video from SOCOG that in one frame shows the Opera House next to Uluru, with the complimentary Aboriginal people singing and dancing around Uluru. The fact that these two icons are some 2000km apart, is obviously not a concern to those who made it. Further to this, the Aboriginal images of western desert people dancing around Uluru, whilst is accurate for the western desert, is not representative of Sydney Aboriginal culture.

Given the pressure on the local communities to conform to a particular stereotyped image of lap-lap and spear, it is hardly surprising that the protocols and aspirations of these local communities have been ignored. OCA, however, could have hardly timed their contrite approach to rectifying their lack of consultation better.

When I started the research for this project, a lack of written historical information from colonial diaries or newspapers sent me into a severe panic of deadlines, and the thought of writing a boring and turgid treatise spurred me on to take the apologetic and pleading tact for the next stage of the project, whereby I consulted as widely as I could, including four Local Aboriginal Land Councils, two elders organisations and several other community groups. My consultation methodology was to visit people separately in their own homes or where they felt the most empowered and asked, pleaded and begged people to share their thoughts about Homebush Bay.

The generosity of people sharing their oral histories with me was overwhelming. The project was a smashing success only because of these oral histories showcasing the fluid and dynamic local culture.

The main theme of the oral histories about Homebush Bay was that both coastal (Eora/Dharawal) and inland (Darug) people remember Homebush as a meeting place, where sea people met forest people, and that Homebush Bay was a place of Law (Lee, 1998:22). What is even more amazing is that coastal and inland people have been at conflict well before Watkin Tench in 1790 recorded the intensity of this conflict (1793:225).

Indeed, an interesting twist to the consulting debate was that OCA thought it possible to quell these conflicts, and at the same time find a person or a group to consult with only. My response was to describe these conflicts as

another form of cultural self-expression, just like body art or song and dance, and as a positive experience. Disputes over whether Homebush Bay belongs to inland or coastal people are to be recognised as an indication of association with the landscape; and an expression of the living and dynamic Aboriginal culture of Sydney. The need to protect and care for land boundaries is a powerful feeling for many people. Another term that could be used to describe the conflict over Homebush Bay is patriotism over country. The focus, then, should not be on finding one person or one group to consult with, but the level of importance and connection each group has to Homebush Bay – each group should be consulted with if each group has association with the place (Lee, 1998:18-20).

Going back to the oral histories, where Homebush Bay is a meeting place, there are several forms of supporting evidence to validate these histories. Perhaps the most important are the scar trees (where bark is cut off the tree in particular shapes, but the tree still lives) in the remnant Cumberland Plain forest besides Homebush at Newington. These scar trees all face south, and when I went back to the communities to ask what they thought of these, both coastal and inland people told me these were markers showing the direction of where the whale came from.

Using this information, that Homebush Bay was a meeting place and that scar trees are markers to show the direction where the whales come from, I wrote a model of Aboriginal patterns of movement based on trade and exchange.

In summary of this model, coastal and inland people have seafood, and whale meat, whilst inland people have stone raw materials for tools, as coastal sandstone does not make a sharp cutting edge.

In my mind, trading these goods would mean it is easier to bring stone to the coast, rather than take a whale feast to the mountains (Lee, 1998:29). In this instance, it would seem most unlikely that the inland people would be allowed to pass through coastal territory without getting permission first (or vice versa). Even today, most people will knock at your front door and wait for you to reply before coming in. Aboriginal people are no different, and the coastal people would expect inland people to tell them they were coming across for a feed. Similarly, inland people may need a reminder of the directions to get to the coast.

Given this, we would expect that Aboriginal people would have a system of protocol, or 'customs and regulations dealing with ceremonies and etiquette' (*Concise Macquarie Oxford*, 1982:1012), to trade and travel through other groups country, thereby reasserting Aboriginal ownership laws over land and movement.

In looking at places where coastal and inland people might meet to talk about feasts or trade or war, Homebush seems a good place to do so (Lee, 1998:31). Further, Homebush Bay was referred to by one elder as the 'Flemington Market' of the area. The food types and resources would have been suitable for both coastal and inland people, and the remnant Cumberland Plain forest would have provided fish, land animals, tubers and fruits, as well as woods for implements, such as the mangroves for boomerang making (Assan Timbery, pers comm, 01/07/98).

If the Parramatta region is a crossing zone between inland and coastal people, as was told to me by one member of the local community, then the scars at Newington may well represent the direction markers that show the way to the coast and the whale.

The most pleasant result out of writing such a project was personalising the Aboriginal history and significance of land and culture. The final draft was supported by four Local Aboriginal Land Councils, one elders organisation and several other community groups and individuals. Only one organisation did not support it. Indeed, OCA were very pleased and officially launched the project last December with the Governor of New South Wales presiding over the ceremonies.

Perhaps the greatest achievement is that the four Local Aboriginal Land Councils are in the process of signing an agreement to work together and respect each other's protocols during the Olympics. A cultural heritage centre to be managed by Metropolitan Local Aboriginal Land Council is on the cards to be

built at Olympic Park. SOCOG and OCA have not had any involvement with this, and all the funding has been privately sought.

I suppose that this paper is about showing what people can do when put under pressure to conform to particular stereotypes, and alternately ignored as not being the 'right' cultural images. The local communities will be heard, will be an economic force and will decide on culturally appropriate images to share with tourists. Moreso, they will have done this by themselves without the support from big enterprises and without any money. I am absolutely chuffed that I had a small role to play in this, by listening to the communities' oral histories and translating them into a vibrant historical account of the local people and place.

References

Concise Macquarie Dictionary. (1982). Macquarie Library, Doubleday Australia: Lane Cove.

Lee, E. (1998). *Aboriginal History of Homebush Bay Olympic Site*, Unpublished report to Metropolitan Local Aboriginal Land Council and the Olympic Co-Ordination Authority, Sydney.

Tench, W. (1793). *Sydney's First Four Years being a reprint of a narrative of the expedition to Botany Bay and a complete account of the settlement at Port Jackson,* published 1968, Angus and Robertson: Sydney.

Weekend Australian. (1998). *Blacks split on Games role*, 23-24 May, p5.

Assan Timbery, La Perouse community member, pers comm 01/07/98.

Sharing the Spirit: the impact of the Sydney 2000 Olympics on human rights in Australia

Beth Jewell and Kylie Kilgour

Introduction

The Sydney 2000 Games are being promoted as a golden opportunity for business, employment and tourism. However there has been little consideration of the social impact of the Games on the local community. We are being asked to 'share the spirit' of the Sydney Olympics. This paper raises concerns about the lack of legislative protection for the local community against human rights violations in NSW, in particular with respect to resident's housing rights.

Human Rights and the Olympics

Increasingly the Australian community is looking to international law for remedies and redress against human rights violations by government. In the context of the impact of the Olympics on Sydney's local community a plethora of international covenants are of significance - the Universal Declaration of Human Rights (art. 25, para. 1) the International Covenant on Economic Social and Cultural Rights (art. 11, para. 1), the International Convention on the Elimination of All Forms of Racial Discrimination (art.5(e)(iii)), The Convention on the Elimination of All Forms of Discrimination against Women, The Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. A series of United Nations resolutions have also reaffirmed housing as a fundamental human right.

The Right to Shelter

Approaching housing concerns from a human rights perspective puts a clear focus on the legal obligations of government to respect, protect and fulfil housing rights.[22] The International Covenant on Economic Social and Cultural Rights was signed by Australia in 1975. This covenant guarantees the right to shelter. In 1996 at an 'Expert seminar on the practice of forced evictions', the United Nations Economic and Social Council identified a number of characteristics of domestic law necessary to guarantee this right. Most significantly, this includes legislation which provides security of tenure.[23]

Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection.[24]

Residential Tenancy Law

Australian tenancy law is dealt with on a State by State basis. There are no laws that guarantee tenants security of tenure. In NSW since 1989 a tenant can be evicted for no reason with 60 days notice.[25] This blatant lack of security of tenure is a blatant breach of the International Covenant.

Rent increases are often a reason for a tenancy to be relinquished because the tenant cannot afford the amount of the increase. Currently there are no laws regulating rent levels in Australia, leaving all tenancies potentially insecure. There is no legislative control on the amount rent can be increased. In NSW legislation was introduced in 1987 allowing a

[22] D Wiseman, Human Rights and Forced Evictions, p17.

[23] Report of the Secretary General, E/CN.4/ Sub. 2/1997/7.

[24] Committee on Economic, Social and Cultural Rights, General Comment no.4 (1991), para.8(a).

[25] s58 Residential Tenancies Act 1987.

landlord to increase rent with 60 days written notice. If a tenant wishes to contest a rent increase they have the onus of proving that the rent is excessive in comparison with the market.[26] If the increase isn't 'excessive' in the current market climate it cannot be reviewed.

Rising Rents in Sydney

Traditionally Australians have opted for home ownership as their favoured form of housing. Increasingly however, tenancy is becoming a long term housing option, with a large number of people renting for ten years or more. Currently, 31 percent of NSW residents are tenants.[27]

In light of this shift in the housing circumstances of many Australians, the Commonwealth government conducted a review of its housing strategy in 1992. As part of this the National Affordable Housing Strategy set a 'housing affordability benchmark' of 30 percent of a household income. Ninety-four percent of low income households in Sydney pay more than 30 percent of their income on rent.

Rents are monitored quarterly by the Department of Urban Affairs and Planning through information held by the Rental Bond Board of the rents paid on new tenancies during that quarter. This data shows that rents are on the increase in Sydney generally by 5 percent per annum. There are higher increases in the Olympic corridor. The reports for March and June 1999 bring bad news for tenants. Suburbs traditionally having low rents and largely occupied by low income tenants have had rent increases of up to 22.9 percent[28] Sydney is the most expensive city in Australia to live, rents being 40 percent higher than Melbourne.[29]

Impact of the Olympics on Housing

In 1994 Shelter NSW commissioned a report on the potential impact of the Olympics on Sydney's housing situation. It highlighted concerns about the potential impact the Olympics would have on rent increases and evictions, as well as the criminalisation of homelessness. The report highlighted a number of potential impacts of the Olympics, based on a study of similar 'hallmark' events and comparisons with the Sydney housing market. These impacts included:

- accelerating processes of urban change, especially gentrification pressure on private rental market - increased rents and conversions to other uses;
- conversion of boarding houses to tourist accommodation;
- displacement of low income tenants;
- event site development displacing existing residents;
- increased house prices;
- 'crowding out' of affordable housing investment; and
- harassment of homeless persons.

The report noted that many of these effects reflected pre-existing trends, but that the Olympics would accelerate or exacerbate these trends.[30]

In 1996, the Atlanta Olympic Games demonstrated the particular vulnerability of tenants and homeless people to unfair and discriminatory housing and policing practices during international sporting events. In Atlanta, this included large rent increases in the private rental market, the conversion of emergency accommodation into tourist accommodation, the introduction of vagrancy laws and the use of capsicum spray against the homeless. Rather than easing the housing situation, these measures left behind serious social and economic problems for the people of Atlanta after the Olympics bandwagon moved on.[31]

The impact of the Olympics is already being felt in Sydney. There has been a boom in construction and property development. About $14.5 billion has been allocated to construction of sporting facilities, athlete accommodation, infrastructure etc.[32] These developments are

[26] ss45-48 Residential Tenancies Act 1987.
[27] Department of Urban Affairs and Planning, Housing Indicators Report, p5.
[28] Department of Urban Affairs and Planning, Rent and Sales Report, Issues No. 47 and No, 48.
[29] Real Estate Institute of Australia, 1998.
[30] G Cox et. al, The Olympics and Housing, Shelter NSW, September 1994.
[31] See Appendix 1.
[32] The Australian, 18/7/98.

mostly concentrated along a 12 kilometre spine stretching West from the city to Homebush Bay, where most Olympic events will take place. These areas have traditionally housed a high proportion of low-income and working class people. The result is accelerated gentrification, rising rents and house prices - impacts identified by Shelter in 1994.

Impact of the Olympics on the Inner City Aboriginal Community

In the inner city of Sydney an area known as the 'Block' has been designated Aboriginal housing for the past 25 years. The 'Block' refers to a block of 5 or 6 Streets in Redfern, NSW. A suburb very close to Sydney's Central Business District and now an area of prime real estate.

1 cannot speak in depth on the history and intricacies of the 'Block' and its destruction. 1 am not an Aboriginal. However, 1 can relate my experience as a housing worker/activist in the Redfern and Inner Sydney area for over 13 years.

In 1973 an Aboriginal run housing company was granted $500,000 to purchase 41 houses in the Block, which was to be maintained for Aboriginal housing. As the years progressed it became obvious that the housing company was not well resourced and problems began. In the 80's many people, both Aboriginal and non-Aboriginal, lobbied for the State Housing Department to take over the housing. The government had the resources to rehabilitate the stock and institute fair allocation procedures. It was obviously the State's responsibility to ensure that the Redfern community was adequately housed under the Commonwealth/State Housing Agreement and international human rights conventions.

It was in the late 80s that it became evident to many Aboriginal community members and housing activists that the plan of Government was to clear the area. After all, it was close to the CBD, prime real estate and Sydney was in the beginnings of its Olympics bid for the year 2000. Both Federal and State governments and some very influential businessmen (allegedly), formed a long term strategy to 'clean up' the area, relocate the Aboriginal residents and build high cost apartments with 'tasteful' Aboriginal artifact shops.

A combination of Olympic beautification, over-policing and racism has created an environment where the Aboriginal community suffers atrocious human rights violations everyday.

Lack of Legislative Protection for Boarders and Lodgers

Boarders and lodgers do not have specific legislative rights. They hold common law license agreements. Boarding houses tenants are specifically exempted from protection under the *Residential Tenancies Act 1987* and can be evicted with no notice or right to a hearing at the Residential Tribunal. Rent can be increased with little notice. In 1991 the ALP made a commitment to introduce legislation to protect boarders and lodgers[33]. Eight years later there is still no legislation in place.

In the lead-up to the 1998 Bicentennial over 5,000 low cost rooms were lost across the inner city through conversion of boarding houses to cheap backpacker accommodation or expensive units. The bicentennial was the size of school concert in comparison to the Olympic Games. Imagine the loss of rooms in the 1999-2000 period. Unfortunately, any improvement in State planning legislation has proven to be ineffectual in preventing conversion of boarding houses.

Two recent reports on boarding houses in Sydney have revealed a rapid decrease in the availability of boarding house accommodation in Sydney[34]. Many boarding houses have been converted into flats, hotels and backpacker hostels. The biggest losses have occurred in the inner city area. Since 1988, 76.05 percent of boarding houses in the South Sydney local government area has been lost.[35]

[33] Australian Labor Party, ALP Housing Strategy-A statement of principles, 1991.
[34] The Marrickville Boarding House report.
[35] Davidson, Phibbs, Cox op.cit, pp 11-12.

Homelessness and Human Rights

Under the International Covenant on Civil and Political Rights, it is a fundamental human right that people have the right to freedom of assembly and movement and the right to protest. Many homeless people in Sydney are at risk of having this right derogated due to the introduction of repressive public space laws.

There has been a massive increase in homelessness in Sydney since 1994. Inquiries to the Homeless Persons Information Centre, more than doubled over the past five years and currently stand at around 28,000.[36] At the same time the number of emergency accommodation beds has decreased over the past 5 years.

If you are homeless and in Sydney you may have little choice but to sleep on the streets or in the parks. However a whole raft of new offences and ordinances have been recently introduced which will have a direct effect on homeless people and other people who socialise in public space.

In 1998 amendments to the *Summary Offences Act 1988* were introduced allowing police to search people 'suspected' of carrying a knife and to move on gatherings of three or more people.[37]

There have also been a number of local government ordinances introduced over the fast year controlling the movement of homeless persons in the Surry Hills area, in the inner city. New policing practices in the inner city are targeted at moving homeless people off the streets.[38] Police in Surry Hills/Darlinghurst have apparently been given a directive to move 'vagrants' off the streets.

In October 1998 Blacktown Council put up a motion at the Local Government Association Conference calling for laws controlling 'homeless persons, vagrants and beggars loitering upon city streets'. Although the Local Government Association voted not to support the motion, individual councils have begun declaring 'no-loitering zones'.

Local government councils around Sydney have also begun introducing large numbers of 'a1cohol-free' zones. If a person is found drinking in a designated 'alcohol-free zone' they can be issued with an on-the-spot fine and will have their alcohol confiscated.

The above ordinances and offences give police and in some cases local council employees a great deal of discretion to deal with people in public spaces. It is not far-fetched to expect that in the lead-up to the Olympics the Commissioner of Police will be issuing a directive to police that they remove from the public eye those people who may destroy Sydney's image.

Turning to the experience of Atlanta in the lead-up to the 1996 Olympics:

> 'The Olympics planners in Atlanta were smart enough to know that they needed to do whatever they did in terms of creating a very inhospitable street environment for homeless people before 1995 was over because the World began to descent on Atlanta at the beginning of 1996.'[39]

In Atlanta over 9000 homeless people were arrested during the Olympics period.

State parliament has also announced the possible introduction of 'no protest laws' during the Olympic period. Given that there have been rumours of various protests, particularly from the Aboriginal community, these measures are clearly designed to quash any publicity that may put a dampener on Sydney's 'sharing the spirit profile.

Privatisation of Policing

Security at the Sydney 2000 Olympics is under the command of the Commissioner for Police but private security firms will also be contracted for security at and around venues. This effectively means that private security firms will be controlling behaviour in public

[36] *Sydney Morning Herald* 3/11/98.
[37] ss 11 A-E, ss22A-G.
[38] Daily Telegraph, 21/9/98.
[39] Anita Beaty, 'The homeless Olympics', *Homelessness-The Unfinished Agenda* Proceedings of the Conference August 1998, University of Sydney 1999.

space. As yet there doesn't seem to be any documentation available to the public regarding what powers security guards will have. Under the Local *Government Act* 1993 people can be authorised by local councils to ask people to move on if they are in breach of signs. It is highly likely that councils will employ security firms who will therefore effectively police our city streets. Private security firms are not subject to the same safeguards as the police, for example the Ombudsman.

Conclusion

Clearly the impact of the Sydney 2000 Olympics on the rights of the local community have and will violate international human rights law. This is hardly the 'spirit of the Olympics' in which we are all meant to share.

Football (Offences & Disorder) Act 1999: Football Fans Cry Foul?

Siobhan Leonard

Introduction

The Football (Offences & Disorder) Act 1999 (FODA) was introduced before Parliament as a Private Members Bill on 13 January 1999 as a result of the riots involving fans of the England team at the France 98 World Cup. It received the Royal Assent on 27 July 1999, five days before the start of the new football season. It comes into force at the end of September this year.

Although there is a long history of spectator related violence in the UK, specific legislation to control it has only recently been passed. It was not until the Football Spectators Act 1989 and the Football (Offences) Act 1991 that the problems associated with 'football hooliganism' were singled out for their own legislation. This new Act reinforces the offences legislated for under the two earlier Acts by creating more serious punishments for the offences committed. In doing so, however, the new Act pays scant regard to the human rights of those convicted of football related offences.[40] It raises problems under the European Convention on Human Rights and Fundamental Freedoms (ECHR), the European Community Treaty and the International Covenant on Civil and Political Rights. This paper will concentrate on the problems raised under article 8 ECHR and the erosion of the presumption of innocence and previous good character when sentencing.

The Return of the Hooligan

During the 1990s, football related offences have been on the gradual decline. A number of factors have contributed to this decline. Firstly, all-seater stadiums make the running battles of the 70s and 80s more difficult. Secondly, they have significantly raised the cost of entry, thereby attracting a more affluent, less aggressive fan base. Thirdly, the use of closed-circuit television cameras has made the

detection and apprehension of offenders easier. This has led to less violence in and around the stadiums. As a result, much that could be categorised as football related violence, is happening further from the grounds and is considered to be more a public order problem than a football problem.

At France 98, however, football hooliganism once again took centre stage in Parliament and the media. The riots in Marseilles showed that whatever measures were in place to control this kind of incident, they were proving ineffective. Calls were made in Parliament to sack those involved in the riots, based only on the television images that they were present at the scene.[41] These images dominated the national media for days after.

Since then, the National Criminal Intelligence Service has reported that for the first time in six years, the number of football related arrests increased during the 1998-9 season, from 3,307 to 3,341.[42] On the first day of the season, Cardiff City and Millwall fans rioted in Cardiff city centre, leading to 4 arrests.[43] All of which appears to justify the government's support for the FODA.

However, before the terms of the Act are discussed, all of this must be put into context. Of the 3,341 football related arrests, there were only 258 convictions for what were considered to be crimes of violence, There were over 256,000 recorded crimes of violence in the UK last year.[44] Therefore, football related violence accounted for only around 0.1 percent of all

[40] Schedule 1, FSA 1989.

[41] *The Independent*, 19-6-98.
[42] *Sunday Mirror*, 1-8-99.
[43] *News of the World*, 8-8-99.
[44] Hansard [Commons] 16-4-99, 499.

crimes of violence. This third piece of football specific legislation can only be described as politically motivated panic law.

The Legislation

Under the Football Spectators Act 1989 (FSA), following a conviction for a relevant offence, generally a crime of drunkenness or violence at a professional football match,[45] the court could impose a Restriction Order on the defendant. Such an Order should only be imposed where the court is satisfied that it would help to prevent violence at future matches[46] and can include the duty to report to a specified police station on the occasion of designated matches abroad.

The FODA has amended the Restriction Order in a number of ways in an attempt to stop convicted hooligans from travelling abroad to watch matches involving English teams. The Restriction Order has been renamed the International Football Banning Order (IFBO), to reflect more accurately its effect. However, the real changes have much more far reaching implications than a mere cosmetic name change.

Under the new Act, the convicting court must impose an IFBO if it is satisfied that there are reasonable grounds for believing that the Order would prevent violence or disorder at future designated football matches.[47] The court must give reasons where an Order is not imposed. This applies even where the defendant was previously of good character. The evidence upon which the court will base its reasonable grounds will be supplied by the police's Football Intelligence Unit. The majority of the Unit's information is gathered by police spotters. These are police officers, sometimes working undercover, who collect evidence, often including photographs, of suspected hooligans. The data collected on these suspects is then kept on file and used to rank them in terms of the seriousness of the threat they pose. Suspected hooligans are classed in either Category A, B or C, where the latter are the ringleaders and most dangerous according to the police. This information is then often distributed to foreign agencies, such as police forces and immigration authorities, who can then use it to deny entry to their country to British citizens. This can occur even where the subject has no previous convictions. These minor changes have far-reaching human rights implications.

The Human Rights Implications

> 'Civil liberties are clearly important, but let us concentrate a little more on the civil liberties of the vast majority of decent law abiding citizens rather than those of a minority.'[48]

With that statement, Simon Burns MP, the sponsor of the Bill, dismissed the concerns of a number of Members of Parliament about the human rights implications of his Bill. Similar statements were made throughout the Bill's passage through the Houses of Commons and Lords.

It was generally acknowledged that this was, in human rights terms, an imperfect piece of legislation. However, any breaches of the United Kingdom's treaty obligations were considered to be a price worth paying in the fight against football hooliganism. These views were reinforced by the Football Association, National Criminal Intelligence Service and the Association of Chief Police Officers, all of whom approved the new powers contained within the Act.[49]

The effect on the human rights of football spectators will be examined from two perspectives. Firstly, the removal of the presumption of innocence on sentencing, or previous good character will be examined. Secondly, invasions of privacy by the use of police spotters and the sending of an unconvicted person's 'hooligan status' as either a Category A, B or C hooligan to other agencies are discussed.

English courts have long regarded the previous good character of a convicted offender as excellent mitigation. Although a court may take into account an offender's previous

[45] Note 1.
[46] FSA s15.
[47] Section 1(2).
[48] Hansard, [Commons] 16-4-99, 473.
[49] Hansard, [Lords] 15-7-99, 603-4.

convictions when determining the severity of the crime committed,[50] it is only for the offence currently before the court that the sentence must be imposed. Thus, if the offender displays a regular pattern of behaviour, the sentence imposed may be more severe.

Under FODA, an IFBO must be imposed where the court has reasonable grounds for suspecting that violence and disorder will be prevented by the imposition of the Order. The evidence on which the court will base its reasonable grounds will be that which has been collected by police spotters. This evidence is then effectively being granted the same status as a previous conviction. The evidence will generally not have been of a high enough quality to found a conviction in the past, yet in can now be introduced, uncontested, to increase the punishment on the offender. On the basis of an internal police categorisation of a spectator as a Category A, B or C hooligan, an IFBO can be imposed with the resultant restrictions on free movement and overseas travel and the principle of progressive loss of mitigation becomes inapplicable to football spectators.

The second problem associated with the Act is the way in which the police spotters collect their evidence. The spying on and photographing of football spectators in this way can be seen to be a breach of Article 8(1) ECHR as it is an interference with a person's right to respect for their private life, The collection of information by the police about a person, without that person's consent, will breach Article 8(1).[51] The derogation from this provision allowed by Article 8(2) is not fulfilled in respect of suspected football hooligans.

Firstly, the police do not have the right under the law to collect evidence in this way.[52] There is no law which specifically allows them to forcibly photograph suspects and then keep data about them on file on a 'just in case' basis. To be able to collect and store evidence in this manner would only be allowed if a further legislation was specifically enacted for the purpose.[53] Secondly, the degree of disorder likely to be caused by a football hooligan is considerably less that that usually associated with legislation that is allowed to derogate from Article 8. Thirdly, this leads to the conclusion that such procedures as used by the police are disproportionate to the level of crime and disorder being controlled. As mentioned above, crimes of football related violence accounted for only around 0.1 percent of all recorded crimes of violence in the UK.

The methods of surveillance and data collection used by the police on football fans would appear to mark them out as a serious threat to the very fabric of society. In reality, the offences contained in the football specific legislation are little more than glorified public order offences. Yet football spectators are singled out for treatment that no other section of society would tolerate. Although there were nearly 3,500 arrests at games last season, over 25 million spectators passed through the turnstiles of professional football clubs in the English leagues.

Conclusion

Over the past ten years, successive governments have passed a series of needless and ever more draconian football-specific legislation. This highly political Private Member's Bill was adopted by the present government, who seem intent upon establishing themselves as the most football friendly of all time. The resulting Act strengthens and consolidates the existing legislation, but in the process, pays little respect to the human rights and civil liberties of football fans.

The FODA is panic law, rushed through Parliament to score political points with the electorate, and to assist the Football Association's bid for the 2006 World Cup. The result is a piece of legislation that not only breaches the UK's international obligations, but which may even provoke the very disorder that it is trying to prevent when its full effects are felt by the football spectating public.

[50] Criminal Just Act 1991 section 29, as amended.
[51] *Klass v Germany* A 28 (1978*).*
[52] *Malone v UK* A 82 (1984).
[53] *Murray v UK* A 300 (1994).

Kicking Rights into Touch

Mark James

Introduction - the Act in Context

Since the 1970s, the UK has enjoyed the unenviable reputation as home to some of the worst soccer fans in the world. Whereas incidents of football related violence have actually decreased during the 1990's, the collective public memory is long and the world media, unforgiving. During the FIFA World Cup in France in 1998, the global image of the English soccer fan as an unruly hooligan resurfaced, thanks to intense media coverage of incidents like the Marseilles riots.[54]

As a direct result of this unwanted attention, a private member's bill was introduced before the UK Parliament on 13 January 1999. The Football (Offences & Disorder) Act 1999 (FODA) received the Royal Assent on 27 July 1999, five days before the start of the new football season and comes into force at the end of September.

The FODA is a piece of amending legislation for the existing Football Spectators Act 1989 and the Football (Offences) Act 1991. However, the new Act differs from these in that it creates more serious punishments with more wide-ranging implications as regards both basic human rights and fundamental freedoms under the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the European Community Treaty (ECT). This paper concentrates on the latter and highlights two areas wherein the UK may be in breach of the framework treaty of the European Union:

1. In permitting the confiscation and retention of the passport of an individual based on only one relevant conviction; and
2. Of impeding that individual's right to move freely within the EU in order to work or receive services.

These represent basic rights afforded to all EU citizens, guaranteed respectively by Arts 39 and 49 of the ECT. Under Art 10 of the ECT, the UK in common with the other member states, undertook to adopt ' ... all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this treaty.'

The 'get tough' approach espoused 'by the government throughout the FODA was inspired not only by the violence and bad publicity surrounding the French tournament, but also because of a reported increase in soccer related violence on the domestic front.[55] In August this year, national headlines were once again dominated by reports of warring fans,[56] although whether this can be said to be truly indicative of a burgeoning soccer crime wave is debatable. It would seem therefore, that this new legislation, which has the capacity, to fetter an individual's civil and economic rights, though designed to quell public fear, nonetheless has draconian overtones.

Previous legislation

Since the Hillsborough disaster 10 years ago, successive governments have sought to

[54] For further information on this recent perceived resurgence in fan violence, see Redhead, S., *Post-Fandom and the Millennial Man, 1999,* Manchester: Centre for Law and Popular Culture.

[55] Last year, of the 3,341 football related arrests, only, 258 convictions resulted in convictions for what were considered to be crimes of violence. There were over 256,000 recorded crimes of violence in the UK last year. football related violence accounted for only around 0.1 percent of all crimes of violence. Source of statistics ..Hansard [Commons] 16-4-99,499.

[56] The most recent fracas took place in Cardiff, Wales, between rival Cardiff City and Millwall fans at the beginning of the current football season. It was widely reported in the English press. See *The Independent on Sunday 8-8-99.*

regulate football spectators to an ever-greater degree. They have been frequently portrayed as pariahs whose behaviour must be controlled by the state regardless of the implications of such a crackdown on individual civil liberties.

The existing Football (Offences) Act 1991 contains a series of football specific public order offences. These are little changed by the FODA. The main changes relate to the Football Spectators Act 1989 and the additional punishments that can be handed out following football related offences.

The original Football Spectators Act 1989 was, potentially, a very far-reaching piece of legislation. The ability of the courts to impose Restriction Orders following conviction formed one of the cornerstones of the Act. It is the updating of the content of these that is the basis of the FODA.

In overview, if a defendant has been convicted of a relevant offence, a Restriction Order can be imposed. A relevant offence can be broadly described as an offence of drunkenness or violence, which occurs at or en route to a designated football match,[57] up to two hours before kick off and one hour after the end of the game.[58] Further, a Restriction Order can only be imposed at the discretion of the court where it is satisfied that such an order would help to prevent violence or disorder at future designated matches.[59]

A Restriction Order can include a duty to report to a police station on the occasion of designated football matches abroad between specified times.[60] Where a Restriction Order is imposed, it can be for up to a maximum of five years if the conviction resulted in imprisonment, or two years if not. Finally, s22 allows for the imposition of a Restriction Order on proof of an offence committed abroad. This provision was ineffective for the offences committed during France '98 as the majority of the crimes occurred outside of the specified time limit.

[57] Designated matches are those involving Football League or Premier League teams or the England national team.
[58] Schedule 1, Football Spectators Act 1989.
[59] Ibid, s 15 (1), (2) & (3).
[60] Ibid, s 15 (2).

Despite being in place for a decade, Restriction Orders have rarely been imposed. Prior to England's final France '98 qualifying match against Italy in November 1997, only nine fans were subject to Restriction Orders.[61] This increased to 70 immediately prior to the World Cup Finals. However, these figures must be read in the light of the fact that 363 people were denied entry to France because of information supplied by the Football Intelligence Unit.

New Judicial Powers

Under the FODA, the courts will have the power to impose a wholly new condition as part of an IFBO. They will be able to require the surrender of a person's passport to a police station, not more than five days before a designated overseas match, and it can be retained for as long as is reasonably practicable after the game.[62] It is in the exercise of this power that the most serious challenges to European Community and other rights arise.

Restriction on the right to take up/look for employment opportunities

Art 39 guarantees to EU citizens the right to move freely between member states in search of work. The compulsory surrender of a person's passport may amount to a breach of this instrument, This right is fleshed out in more detail in secondary legislation such as directive 68/360 on the abolition of restrictions on movement and residence for workers of the Member states and their families.

Potentially, passport confiscation infringes an EU citizen's rights, as follows. While passports do not need to be produced at national borders, the would-be worker may only leave his state and move to another to take up a job, or look for one upon production of either a valid ID card or passport.[63] Unlike other member states such as Italy, the UK does not issue ID cards, thus a UK national bereft of a passport cannot exercise his free movement fights when subjected to the FODA.

[61] *The Mirror*, 13-10-97.
[62] S.3 (1) FODA.
[63] E.C. Directive 68/360, Art. 2(1).

As member states are under an obligation both to supply and renew passports,[64] the new law may represent a substantial infringement of this right, especially when one considers the period of time for which a passport may be surrendered under the new legislation. When coupled with the 10 year period during which an IFBO can be imposed, this could be considered to be a punishment disproportionate to the crime committed. This would be particularly so during long tournaments. For example, in the run up to and during France '98, a passport could have been retained by police for the better part of five weeks, under the new legislation. Application of the act in this way therefore has the potential to unreasonably or disproportionately interfere with an EU citizen's right to travel within the Union for employment purposes. Consequently, the UK in enacting the FODA may well be in breach of its treaty obligations.

Restriction on the right to provide or receive services

Similarly, a self-employed individual's right to provide cross-border services could be unduly impeded by the withholding of his passport by the courts, contrary to Art 49 ECT, and Art 2 of Directive 73/148.[65] The Directive mirrors the free movement provisions applying to workers, as set out in Directive 68/360. An alternative method of challenging the new provisions lies in the fact that they also interfere with the right of EU nationals to travel without obstruction within the Union in order to receive as well as provide, services. Case law such as *Luisi & Carbone, Cases* 286/82 and 26/83[66], and *Cowan v. Tresor Publique, Case* 186/87[67] indicates that tourists can be deemed to be service recipients for the purposes of Art 49, in spending money in hotels and restaurants to purchase services.

Derogating from the free movement provisions

Thus far, it would appear that the UK in implementing the FODA, is breaching the ECT. Doubtless the potential for violation exists, albeit that such breaches would be temporary, and in most cases would not last much longer than a month at a time. The final question to be asked therefore, is whether the UK can justify such breaches.

Once an EU national chooses to exercise his right of free movement, his member state should facilitate that right. However in committing themselves to the facilitation of free movement, states have allowed themselves several 'get out' clauses. The Treaty itself provides that member states may derogate in three particular instances. Art 39 provides that, '…the right [is] subject to limitations justified on grounds of public policy, public security or public health.'[68]

These exceptions are fleshed out in detail in Directive 64/221. Their scope has been rigorously tested by case law, which permits derogation only exceptionally. Nevertheless, a British national attempting to overturn a court decision to retain his passport, based on Directive 64/221 would be unable to do so as it applies only to incoming migrant workers and not to nationals of the state in question. Nonetheless Article 10 of directive 68/360 states that 'Member States shall not derogate ... save on grounds of public policy, public security or health' in relation to these provisions, and presumably this extends to ensuring the availability of passports too. Does the individual have any entitlement to challenge the decision using Community law rights?

This form of 'reverse discrimination' occurs where a member state treats its own nationals less favourably than non-nationals living or working within its borders, and is not expressly forbidden by the treaty, the assumption being that member states should be able to regulate their own internal affairs. Does the new legislation fall within this exception? It is submitted that this is not the case here. Once

[64] *Ibid.* the member states must 'act in accordance with their laws'. See Art. 2(2) of the directive.
[65] See footnote 12.
[66] [1984] E.C.R. 377.
[67] 14 [1989] E.C.R. 195.

[68] These exceptions are mirrored in Article 43 and 49, which deal correspondingly with establishment and services. Article 10 of directive 68/360 also states that 'Member States shall not derogate … save on grounds of public policy, public security or health' in relation to these provisions, so presumably this extends to ensuring the availability of passports too.

the decision to travel is made and tickets purchased by the individual concerned, then any decision to obstruct, based on national legislation, has external as well as internal repercussions, bringing him within the scope of Community law.[69]

There is however no specific legislation or case law dealing with this hybrid situation. A failure to provide a passport in such circumstances represents a breach of community law. This may be tested in the European Court of Justice either on a reference from a national court dealing with an individual appeal, or alternatively, by the Commission of the EU bringing enforcement proceedings against the UK government, for breach of its basic obligations under the ECT.[70] Until an actual challenge to the FODA is raised in the national courts, the matter will not be resolved satisfactorily.

Conclusion

It is highly likely that the FODA, given its ability to impede the free movement of British workers, service providers and recipients, even temporarily, has the potential to breach the ECT. Although existing legislation and case law restricting the movement of undesirables inter state, does not apply overtly to the present scenario, it is likely that the Act could be challenged successfully. There are strong parallels between this situation and the practice of reverse discrimination, which is at present tolerated by the EU. However, of the latter it has been said that,

> '... as market integration accelerates and national borders lose economic relevance, the logic of the purely internal situation diminishes.'[71]

The individual effected by this new legislation has an opportunity, however limited, to challenge the legislation under the auspices of the ECT. If this fails, he might in any event be able to bring a privacy action under the ECHR, given the fact that passports may be confiscated in cases where soccer related crime is suspected but no convictions have occurred.

[69] *Ibid.*
[70] These procedures are provided for in Articles 234 and 226 of the treaty, respectively.
[71] Weatherill, S., & Beaumont, P., E.C. Law, 2nd edn, 1996, London: Penguin, p. 612.

Drug Testing, Human Rights and the Law

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Introduction

No one here today could be unaware of the drug dramas in which sports of all kinds are currently embroiled. One of the reasons we are all so aware is because of the effects of our own craven addiction to that habit-forming stimulant of 'sports pages first, and then the rest of the newspaper'. Lately, however, the news of high profile positive-testing athletes, together with the sheer weight of numbers testing positive for nandrolone in particular, has not been buried in the sports pages, but splashed across the front pages.

It is a big news issue. In the Olympic city it will only get bigger. And as with all big news items, everyone seems to have a view on what must be done.

The human rights context

There is a need to place in context the expanding debate on the use of drugs in sport. It is our concern in this paper to highlight the specific issues of human rights concerns and the relevant boundary-marking requirements of the law.

But first we need to set the general scene.

Sport as a Public Affair

Sport is a public affair. Sports people are public people. They perform **in** public, **for** the public and **to** the public's delight, or despair (if you happen to be a fan of English cricket, or just occasionally the NZ All Blacks).

But the question is: does the public in some sense own sportsmen and women? What do they owe us or what can we reasonably expect/demand of them?

Athletes as Private Persons

We - the public - do not 'own' sports people. Any more than we 'own' movie stars or politicians (in fact we have more call on politicians given their publicly elected status).

Beneath all their public personas, athletes are still individual, private persons. As such they are owed the same respect for their basic human rights as you and me. The dignity of the individual inherent in the notion of human rights can be no more justifiably intruded upon in the case of athletes, than can the dignity of others. Dignity is of course the bedrock of human rights - the UDHR and all other international and regional human rights instruments refer to it as such. Importantly also, it is recognised as an essential ingredient in sport. The IOC Charter, for example, states that:

> 'the goal of Olympism is to place everywhere sport at the service of the harmonious development of man, with a view to encouraging the establishment of a peaceful society concerned with the preservation of human dignity'.

It also proclaims that:

> '… the practice of sport is a human right. Every individual must have the possibility of practising sport in accordance with his or her needs'.

In respect of the taking of, and testing for, drugs, the principal relevant rights are:

- Privacy and bodily integrity (testing procedures and private habits & hobbies);
- Liberty or freedom of movement;
- Right to an adequate standard of health care (the unknown side-effects of performance enhancing drugs);
- Right to a fair trial (testing, hearing and sanctioning procedures);

- Right to earn a living (contractual and restraint of trade issues); and
- Right to practice one's religious beliefs.

All of these rights are covered in human rights instruments - international, regional and domestic - to which almost all States are subject. In consequence, States are obliged to ensure the protection of those rights to all people within their jurisdictions the rights listed.

So this, briefly, is the human rights context in which the drugs and sport debate must take place. The fact that it is seldom recognised, usually overlooked and sometimes deliberately ignored, simply re-enforces the need for the human rights issues to be forced to the front of our minds.

Standards of Behaviour in Sport

To be sure, different standards of public behaviour may be rightfully expected of public persons such as athletes and sports people. Such a concept is not new to society, nor to the law. Consider, for example, the 'public figure' defence to a defamation action in US - where the bar of what can be legally said about public figures (esp. politicians) is set higher than for ordinary folk on account of the politician's supposed consent to being in the public eye - *New York Times v Sullivan 1964.*

The base question for law is where those standards are in respect of athletes? Where is the balance to be struck between what can fairly be expected of public performing athletes and their individual human rights.

Why Prohibit Drug-Taking?

Behaviour in respect of drug-taking among elite and even non-elite sportsmen and women is today perhaps the most difficult element of this balancing exercise.

The rationale for the prohibition of the use of certain listed drugs, quantities of stimulants and related doping practices is inherently problematic. At the most superficial level the rationale is axiomatic - it is to stop cheating; to stop some gaining an 'unfair advantage' over others. But what of other 'artificial' techniques, methods and strategies that have as their sole aim the fashioning of an athlete's edge over their opponents. These include -better coaching; more sophisticated equipment; more effective training regimes; and specially structured diets. Is not drug-taking just another artificial device to improve upon nature?

Well, the answer is Yes and No!

It appears that the consensus of opinion is against drug-taking on the basis that its effects are qualitatively different from that of other aids.

According to the IOC Charter:

> 'The use of doping agents in sport is both unhealthy and contrary to the ethics of sport ... it is necessary to *protect the physical and spiritual health of athletes,* the *values of fair play and competition,* the *integrity and unity of sport* and the rights of those who take part in it at whatever level'.

The reasoning appears to be based on the three-way combination of:

1. concern for the athlete's well-being;
2. the potentially gross advantage gained from drugs rendering their use inherently unfair; and
3. concern for the public image of sport.

The public dimensions of the second and third reasons are clear enough. The matter of concern for the athlete's health is pitched at a more individual level. And it is here that so many of the human rights questions on this issue come to bear. It is at this point that the athlete's right to privacy, and their liberty to choose how to prepare themselves for competition and to administer to their own health, are so clearly pitted against the State's concerns to protect public health and even morals, and to enforce the rule of law. The matter boils down to whether it is the State or the individual who knows best how to *preserve the health of an athlete.*

Which Drugs should be Banned?

There are a whole host of lists of banned substances issued under the auspices of national and international sports associations. Typically - taking the IOC Medical Code - they prohibit certain classes and quantities of drugs and stimulants (steroids; amphetamines; caffeine & cocaine), and certain methods and practices (eg blood-doping). They also place restrictions on the use of other substances such as alcohol, pain-killers and anti-inflammatories.

The question of which drugs should be banned raises a stream of problems including the updating of the lists, the matching of the banned drugs with the availability and integrity of procedures to test for them,, and the dissemination of the lists to all relevant people.

In terms of the contents of the banned lists there are two main classes of problems that bear on the athlete's rights to privacy and liberty. These are:

1. whether to ban the 'simple', natural augmentation of an athlete's innate physical qualities and sporting prowess - eg blood-doping (esp. when using one's own blood); the taking of colostrum or 'natural' food supplements (eg 'creatine', which has been recently reported, most elite swimmers take); and the excessive consumption of chocolate or coffee (!). Consider also, the taking of 'everyday' medication: headache tablets; birth control pill or puffers for asthma sufferers; insulin; and mega vitamins); and

2. whether to ban life-style drugs that may have no (or even negative) performance-enhancing qualities. For example, marijuana (Canadian snowboarders); speed; alcohol; ecstasy (Canberra Raiders players); and other opiates. The taking of such stimulants is much more a matter of sports image rather than individual athletes' health or fairness in competition.

Testing Procedures

All sports bodies have membership rules. They all also have disciplinary procedures for when those rules are broken. It is of course essential that the disciplinary procedures as well as the rules themselves fall within the law. Thus, in respect of drug testing and disciplining, while restrictions may be placed on the liberty of members; their privacy may be intruded upon in certain circumstances; and sanctions may be placed on their participation in the sport over which the body has jurisdiction, the sports body is still subject to the general law.

This is so whether the body is national or international, public or private. The law guarantees the basic right to the protection of the law and to a fair trial to athletes as to every other person in our society.

In respect of the procedures adopted to test for drug use and to determine what sanctions shall be handed out there are a set of five specific legal concerns:

1. The nature of the contractual obligations that the athletes, clubs and associations are under and their direct or indirect relationship to national or international governing bodies. [eg. Athletics Australia (comprising state and territory members) - is part of the 1AAF (International Amateur Athletic Association); ARL - players, clubs and the ARL].

2. The manner in which samples are obtained from athletes (eg the athlete cannot be physically forced to provide a sample, for that would constitute an 'assault' in law.) Only certain samples may be taken - usually urine, though blood-testing is widely anticipated for Sydney 2000 and already the standard AFL Players Contract specifically provides for blood, tissue or urine testing (Rule 2.14). *Note* that blood-testing is of a different order than urine testing if only because of the invasiveness of the procedure - clear consent will have to be obtained and the use of the sample strictly regulated. (NB potential problem for Jehovah's Witnesses) [cf the balancing of individual rights against public interest in urine sample taking in the AFP - A*nderson v Sullivan (1997)* 148 ALR *633* -Fed Ct (Finn J)].

3. The evidentiary requirements made of the testing procedures themselves to ensure their integrity and fairness - that is, identification of competitor; determining that sample comes from competitor; integrity of transfer of sample from competitor to testing; scientific proof the presence of the banned substance or quantity.

   The recent collapse of the case against West's league player Adrian Rainey bears out this point. [ASDA procedures which allowed a sample to sit unattended for 40 minutes on the floor of the Cronulla Surf Club were found by Justice Diedre O'Connor of the NSW Administrative Appeals Tribunal to be too lax. See similarly, *JWC v NZ Sports Drug Agency* (1996) in the Auckland District Court.]

4. The requirements of 'natural justice' - administrative law in Australia requires that the manner in which sanctions are determined, whether by way of a hearing or not, are fair (free from bias). And that the athlete is provided with an opportunity to explain themselves. This is a matter of some current controversy given that a number of incidents of positive tests being returned have been leaked, with the athlete's being named, before any hearing or final determination has been made. Christie, Ottey & Javier Sotomayor have been effectively presumed 'guilty'. In terms of the law, test results are merely a step in the process not the conclusion.

5. The vexed problem of the athlete's knowledge of (a) their taking of a specific substance and that (b) the substance is in fact banned. Generally speaking, it is assumed that sports people are aware of the banned substances and practices relevant to their discipline - the onus, in other words, is on them to know or find out (see ASDA rules). This can be problematic. For example, it has been suggested that the prohibited levels of nandrolone in Linford Christie's recent test sample are consistent with use of the food supplement 19-Nor which was not on the banned list until two weeks before Christie was tested.

   There is another, insidious dimension to this 'awareness' issue. That is where the drugs are systematically administered without the athletes' knowledge or even against their wishes. This was the well-documented incidences of such wholesale administration within the former East German track and field teams; and the strong suspicion of the same practice in Chinese women's swimming.

Punishment?

Suspension from competition is for many sportsmen and women today an extremely serious matter. The shame and stigma is significant, but for the elite athletes it is the loss of earnings that is perhaps the most dramatic effect. The financial consequences of being effectively branded a cheat can be truly staggering - appearance fees lost; endorsement contacts withdrawn and future earnings torpedoed.

The right to earn a living is a recognised universal human right. True, it is not unlimited and where the law has been broken, clearly it can be qualified or withdrawn. However, this simply goes to show how important it is that the manner in which the determination of a sanction against a competitor who has tested positive must be as reliable and as secure as possible.

The significance of this point is apparent from the growing body of case-law concerning restraint of trade issues in respect of the restriction of an athletes' right to compete. Consider, for example, the *Bosman* case (1996) in the EU, the result of which was effectively to dismantle the transfer fee system in European soccer.

Courts have also recently considered whether the suspension of tennis players from competition as a result of the contravention of the ITF's drug code constituted an unreasonable restraint of trade. In *Wilander & Novacek v Tobin & Anor* (1996), the English Court of Appeal accepted that the rule that provided for suspension if players were found to have contravened the drug code, while fully justified, was a restraint of trade. The question was whether it was reasonable or not. The

Court held in that case that the rule was *not* unsuitable or disproportionate; the combination of an initial review body, appeal committee and courts provide 'ample' protection to the athlete and it would be totally unreasonable to require yet further procedures for their protection.

Conclusion

It is clear that lawyers and courts are already playing a more significant role in the sports regulation in general, and in drug-testing in particular. Their involvement is set to expand markedly over the next few years. The Lausanne-based Court of Arbitration for Sport (CAS) work-load has been steadily expanding since it was established in the early 1983.

In the domestic courts and tribunals Katrina Krabbe, Butch Reynolds, Dennis Mitchell, Steve Vinnicombe, and Dean Capabianco are likely soon to be followed by some of the recent crop of nandrolone positive tests including, one would think, Christie and Ottey. Certainly more will follow them.

It is true that at the forefront of the minds of these athletes and their lawyers is not the protection of their rights to liberty and privacy. The focus, rather, is on dollars and naming rights, not human rights. Whether the human rights of *all* sportsmen and women are nevertheless advanced by such legal action is a moot point. In the *Wilander* case it was held that "while courts must be vigilant to protect the genuine rights of sportsmen ... they must be equally vigilant in preventing the courts' procedures being used unjustifiably to render perfectly sensible and fair procedures inoperable".

Human rights, then, are not only integral to the manner and consequences of drug testing, they are also protected by law. The fact that they are seldom raised in the drug testing debates and determinations - both legal and non-legal - is something to be regretted rather than accepted.

We are not advocating a 'lets do drugs' approach. Nor are we making some naive plea to leave the 'poor' athletes alone. Rather, we recognise the practical reality of drug-testing and - lets face it - the political certainty that testing there will always be. But, in so doing, we are insisting that the testing be not only effective but fair. That is, after all, nothing more than what we ask of sportsmen and women themselves when they compete against each other. Indeed, it is rather less. We usually *demand* that they win!

Biography

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Drugs, Sport and Human Rights

Michael Burke and Terence Roberts, Victoria University of Technology

Introduction

On the third anniversary of the implementation of the Islamic fatwa on Salmon Rushdie, a group of his supporters came together to maintain their opposition to the death sentence. Tom Stoppard, the famous author and playwright, said the following:

> *What this occasion is not, I hope, is the one thing it appears to be; a gathering of Western Liberals to deplore attitudes uncongenial to Western liberalism. That particular circularity won't roll anywhere, anymore…. The least ingratiating interpretation of this occasion would be that we are writers closing ranks for literature…. Literature, the freedom of expression… is categorically invalid in this argument…. The right to freedom of expression is not fundamental…. To a theist, free expression can never be fundamental…. The notion of tolerance as a human virtue, the concepts of liberty and pluralism as we venerate them today were as unintelligible to St. Augustine, as they were to his contemporary, Mohammed… (Fraser-Cook, 1992)*

Stoppard continued by arguing that the complacency a nation or a community holds about the truth or goodness of their beliefs is brought into sharp doubt by opposition to those beliefs. And merely asserting 'human rights' of free speech and tolerance as universally good would not satisfy those opponents who see such rights as a sign of a decaying or disharmonious society. Instead, it will be necessary to engage with our opponents on their terms, to listen to their stories and endeavour, if we still feel resistance towards those stories, to turn them inward against their authors.

What Stoppard was explaining was that the concept of universal 'human' rights is decidedly a Western concept. But it is also a Western concept which we, in the West, do not always agree to follow. We will suggest that the case of the Chinese swimmers is one where a Western sporting nation has not provided their so-called 'basic human rights' of a fair hearing and a just trial to this threatening group of individuals. The idea of a fair hearing requires that the jurors are capable of, and motivated to, listen to the defendants. Free speech is a useless right if no one will listen. For some people, free speech does not fall in their laps. They must fight a difficult battle against society's prejudices, traditions and dominant discourses to win this right.[lxxxvii]

The case of the Chinese female swim team is indicative of the unwillingness of the Western sports community to listen to all peoples' stories. The Chinese swimming team was banned from participating in the Pan-Pacific swimming games because of claims made by other competing nations that it was involved in institutional drug use. This paper will investigate the revulsion felt both towards the female Chinese swimmers who engaged in steroid use, and those whose body shapes and/or performances made it necessary for us to believe that they had engaged in steroid use, evidence notwithstanding.

It is important to acknowledge at the outset that the issue of fairness is not central to the current presentation.[lxxxviii] Rather than contribute further to that larger debate, the authors wish to concentrate on how the drug ban might contribute to one of the deleterious consequences of sport, a consequence that, ironically enough, arises out of the efforts of sport legislators to be 'fair'. That consequence is the maintenance of restrictive gender/sex boundaries in sport because of different penalties for female transgressors as compared to their male counterparts, and the effects these

restrictive gender boundaries have on the female's authority as a free speaker.

There continues to be, both in the general public and the athletic community, what Lavin refers to as 'a pervasive opinion' against the use of drugs in sport (1987). We will argue that the pervasive dislike of athletes using drugs is not explained entirely by the 'good' practice of sport and fairness. It also has something to do with the desire to maintain the socially constructed, gender boundaries in society through an opposition to anything that might reduce the overt differences between male and female athletic bodies and performances. This reduction in overt differences would produce the threatening idea, to male power at least, that the sexes exist as overlapping continuums rather than mutually exclusive categories, or, in MacKinnon's (1987:40) terms, that sex was a construction necessary to the maintenance of already existing hierarchies of power and rights. Simon, citing the American College of Sports Medicine, lists as one of the serious side-effects of steroid use, the '...masculinization of females' (1984:6). Why is this a serious side-effect? Masculinization and feminisation are social constructions, and not biological categories. Therefore, the serious side-effect of masculinization must be that females no longer fit the category which is socially constructed as suitable for their sex, that females with big muscles have begun to encroach on what was once exclusively male territory.

A second limitation of the argument relates to the political agenda it seeks. It hopes to produce nothing more than an increased capacity to listen; in other words, nothing more than extending the human right to be listened to at a fair trial to a group of people who have been denied that right. Should or could this listening lead to change? That is a question that this paper cannot hope to answer. This paper does not argue for any change beyond an expansion of our willingness and capacity to listen to others. Change will occur only if the sport community is touched by the stories it hears and is swayed to believe that the drug ban produces enough pain to warrant change.

Maintaining The Consensus Against Drug Use(rs)

As early as 1980 W.M. Brown located the ban on drugs as one of a group of rules, including amateur laws, weight categories and sex and age restrictions, which could be contrasted with constitutive rules. These former rules all limit *who* can play the game, as distinct from constitutive rules which limit *how* the game is played. The legitimisation of such rules exists within the democratic and socialised concerns of the public and ebbs and flows with changes in social, political and philosophical thought (1980:21).

Davis and Delano (1992) reviewed a number of anti-drug media texts and campaigns, which partly explained why this socially constructed boundary is currently drawn where it is in terms of the use of drugs by athletes. The authors suggest that the campaigns play on a number of unexamined western cultural assumptions such as: that bodies fit into unambiguous natural categories according to sex; that drugs are artificial substances which disrupt this gender dichotomization; and that the present (and appropriate?) gender order in sport and society is produced by these differential gender characteristics.

Davis and Delano question all three assumptions encouraged by the media campaigns. Social theorists have revealed how human bodies are socially and culturally constructed such that certain presentations of the body are favoured over others. To assume a 'naturalness' to body construction obscures the powerful social and political forces that create the body, its gendered shape, and its practices. This elevates to the status of essential and unavoidable 'truth' what is at most a contingent social construction. In addition, the campaigns assume and promote the idea that drugs are artificial. Again, this assumption obscures the question about who is to decide whether a technique is artificial (e.g. drugs, genetic engineering) or natural (e.g. training, diet).

Finally, Davis and Delano examine the assumption of physical gender dichotomization included in many of the texts. They argue: 'Certain characteristics, which many men and women possess without drug use, but which

are violations of notions of gender dichotomization, are presented as abnormal and disgusting in the campaign rhetoric' (1992:7). The characteristics include the commonly observable breasts on men, and facial hair and deep voices in women. In addition, impotency is seen as unmasculine and aggression as unfeminine. Such texts imply that any person who falls outside these bipolar categories, whether as a result of having taken steroids or not, is not really a person because they can be neither 'truly' male nor female. These socially constructed characteristics and categories of male and female, as produced and supported by the discourse of such media texts, are mutually exclusive. Yet, and as Davis and Delano argue, there is a significant overlap between the sexes on these characteristics. Some real men do have observable breasts. Some real women do have hairy faces.

While anecdotal, the members of my[lxxxix] undergraduate Sport Ethics class were generally repulsed by the sight of the Chinese women swimmers. These swimmers displayed a body-type that did not fit into the socially constructed category of female. They had large muscular backs, narrow hips, small breasts and powerful legs, arms and shoulders. In the terms used by Davis and Delano, they were abnormal and disgusting (1992:7). They looked like men, but were labelled 'women'. Interestingly, the class was not similarly disgusted with Ben Johnson. The problem with Johnson was not that he was a freak, although many students had seen the changing configurations of Johnson's musculature over time. He remained a male, perhaps became even more of a male, with a strong, powerful, aggressive body. His sin was against a lesser god; he merely cheated. The problem with the Chinese swimmers was that they were gender freaks first, and cheaters a distant second.

Fairchild (1989:76) argues that we can appreciate athletic bodily refinements as exemplary even though these developments are considered abnormal in normal life. This is because we can demarcate sporting bodies from social bodies. We are suggesting that such demarcations are less likely with respect to female athletes, because athleticism, especially female athleticism, must be understood in the wider context of heavily guarded, socially constructed gender categories.

What effect does this differential identification of athletes by gender have on gender roles in the wider society? Iris Young says, sarcastically, if a women succeeds at sport, she is either not really a women (i.e. has male characteristics) or it is not really a sport (1988:336). Sport remains an important area in western society for males to assert their traditional dominance through masculinity. Women's excellence in sport threatens this dominance. Therefore, muscularity, power, aggression and violence are described as natural for men, but as either abhorrent or eccentrically humorous in women athletes[xc] (Davis and Delano, 1992:12,13).

Is this a dangerous or cruel description? In several ways it is. Women in sport are placed in the ambiguous position of participating in an activity which is 'perceived as gender inappropriate' (Davis and Delano, 1992:14). They may do several things to make it more appropriate, most of which seem to add to the problem of gender dichotomization. They might, for example, wear inappropriate and uncomfortable uniforms (body suits in basketball, skirts in hockey and netball), or flirt with the judges (ice-skating, synchronised swimming), or wear make-up (synchronised swimming), or produce 'girlie' calendars (golf, athletics), or agree to rulings in law which discriminate against them in terms of participation (ice hockey, football).

What they must not do is challenge the dichotomous construction of society by suggesting that the imposition of drug bans may be a patriarchal defence strategy. They must, in order to have a voice, say only that which the powerful in their sports community want to hear.

There is another cruelty perpetuated by these descriptions, which serves to split women as a political group. Davis and Delano argue:

> 'All of these texts imply that any person who takes steroids, or who happens to have any of the above listed characteristics [i.e. facial hair, deep voices, small breasts, and large muscles for women; large breasts,

> small genitals, and baldness for men][xci] without taking steroids, is outside the categories of male and female and thus not fully human' (1992:9).

Thus, those who do not fit the dichotomous gender categories are rendered 'invisible' (1992:11). It is this cruelty that we will go on to discuss in terms of the importance of being male in some societies, and in some social practices such as sport.

Creating Humanity - The Work of Richard Rorty

David Rieff, a reporter on the Bosnian crises, wrote the following:

> A Muslim man in Bosansi Petravac...[was] forced to bite off the penis of a fellow- Muslim. If you say that a man is not human, but the man looks like you and the only way to identify this devil is to make him drop his trousers - Muslim men are circumcised and Serb men are not - it is probably only a short step, psychologically, to cutting off his prick (in Rorty, 1993:1).

Rorty comments on the dehumanisation of Muslims by Bosnian Serbs. The perpetrators do not consider themselves guilty of violating *human* rights, because they do not consider Muslims to be human. It is the same 'rationality' which allowed the distinction made by the Crusaders between humans and savages, made by the Black Muslims between humans and blue-eyed devils, made by American white landowners between humans and black slaves, and made by the Nazis between humans and Jews. In all cases the use of the term *men* means *people like us* (1993:2).

For our argument, the most interesting distinction Rorty makes is between male as human, and female as sub-human or quasi-human. In certain cultures, and within certain practices, it is extremely important to be a male. Only men enjoy the rights gained by being human. So to be a non-male is one way to be a non-human. (1993:3) To be non-male is to be the Other; the one who *we* are not like and would never reasonably aspire to be like. As men, we thank our respective lords that we are neither women, raped nor castrated.

One way of being non-male is to have your genitals shrink and your breasts enlarge. This is one of the fears that the popular media texts concerning drug use insidiously play upon; if you use drugs as a male athlete, you may be successful, but at the cost of becoming 'female'. How does this apply to females who use drugs in sport? This situation may create a great threat for the *we*, the community of males. For if *we* define ourselves in terms of what *we* are not (that is, female), and those that are not us, can become us, our identity is suddenly under threat. If females can become part of the community of *we*, either through the use of drugs, genetic manipulation, or by surgery, how can *our* superiority be maintained as central to our humanity.[xcii]

The point being made here is that gender transgression is not equally acceptable, because of power dimensions in society, which are very evident, and may even be exaggerated in, and defended by, sport. The powerful is an exclusive set; it is powerful both over, and in contrast to, the subordinate. Men who, through surgery, appearance, sexual preference or drugs, become more female-like, threaten neither the exclusivity nor the contrast-effect of the powerful. They may actually enhance exclusivity by reducing the size of the class. However, women who, through surgery, appearance, sexual preference or drugs, become more male-like, threaten both the exclusivity of the male class and the differences between the sexes. As the effects of steroid use are more visible in females than males, an ironic and gendered twist may be operating within the dominant response to the use of such drugs; a twist which has been discussed in terms of Johnson who, at least overtly, appeared to become more male. The Chinese swimmers, however, also became more male, less female. Through their appearance they may have threatened the exclusivity of the men's club. In sum, there may be good reasons why gender transgressions generally, and drug use specifically, does not cut both ways equally. One transgression, male to female, contributes to the exclusivity of the powerful elite, whilst

the reverse threatens this exclusivity and contrast.

This should make us wary of the dangers of a 'human rights' philosophy that purports to deal with a generalised human subject as if it was ungendered. Rorty, and others, hope to discredit views that suggest that we are capable of revealing a transcultural 'human' base that will expand the membership of our community and will result in new rights and freedoms for those who do not currently have them. Humanity, so understood, is useless in such an expansion because the *other* is considered neither rational nor human and is, therefore, not worthy of the rights bestowed by membership in our community. They are *them*, and this exclusion is a *heartfelt* sentiment (1993:13).

But neither will a contextualised Western rationality of human rights do the job of expanding our community because we are unaffected by the failure of the *other* to cohere with our community, and so do not feel any need or desire to listen to them. The *other* merely remains the irrational or immoral other; that important object who we define ourselves as different to, better than and more authoritative than. Expanding the *we* is the product of neither foundational rationality nor a new revelation within our current rationality, but of hearing sad and sentimental stories about the effects of our exclusions (Rorty, 1993:7).

What of women in sport, especially those women, like the Chinese swimmers, who appear to use drugs? Their situation sharpens our suspicion of two forms of revulsion towards drug takers: a mild, puritanical distaste of the act of deception and a stronger revulsion of the act of challenging gender boundaries. Are the Chinese swimmers threatening the security of the male-dominated practice of sport? Are we less comfortable about this threat in the West, where many other traditional male/female boundaries have broken down, than in the East, where many barriers remain? Will it work to label the Chinese swimmers as irrational, or sub-human, and thereby exclude them from the 'rational' discussion of this problem?

We think it is more important for our sport community to expand its breadth. It should be noted that this is not the claim that all we believe should be dropped just so as to expand the community; that is, that drug use should be sanctioned simply because some previously excluded *others* use drugs. It is the stronger and more general claim that females should be listened to in this debate on drugs, while entertaining the possibility that their stories may encourage a sentimental re-education which might change both the dominant Western rationality about the issue of drugs and the dominant patriarchal rationality about dichotomous sexual categories.[xciii] Once we listen sympathetically to their stories and appreciate the lack of security and dignity they may feel in their lives and sporting practise, our *we* may expand to include Chinese female swimmers who appear to use steroids. But this expansion can only happen if *we-the-sports-community* recognise the threat that this may pose to our self-understanding and history.

What might we hear if we listen rather than exclude? One example will be sufficient to display the complex stories that may emanate when other cultures are listened to. The Hong Kong national swimming coach, Chan Yiu Hoi, demonstrated a problem that confronts Chinese swimming officials. Holding up a dried deer penis, an enhancer of physical strength in China since ancient times, and more recently used by Chinese swimmers, he said: 'They tested this and found there were growth hormones inside' (McGregor and Jeffery, 1995). Such conflicts between subordinate Eastern society and rituals, and the dominant Western globalisation of sport should make us question who is the 'human' we refer to when we argue that the drug ban fits in with the United Nations' *Declaration of Human Rights*. Is the 'human' referred to male or female, Western or Eastern?

Why should *we* listen to the Chinese female swimmers and not simply demand that they listen to and agree with our rational community? Quite simply, because we are the more secure and have the power of a secure identity to cope with change. The Chinese swimmers are the 'Other' excluded from the dominant community. But this exclusion is far greater, and far more 'heartfelt', than we have so far described. We should recall that prior to their entry into sports, Chinese females are already part of two marginal groups - female

and Eastern sub-humans. They enter sports and are further marginalized, so that their identification with the sub-group *female* is now also threatened. Should we then demand that they risk their identification with the group *athletes* by speaking out against the ban on drugs? This position of insecurity and aloneness would not be a comfortable place from which to speak nor one that, with current deafness, is likely to be heard.

Rorty suggests that: 'Morality is as Wilfrid Sellars has said, a matter of "we-intentions". Most moral dilemmas are thus reflections of the fact that most of us identify with a number of different communities and are equally reluctant to marginalize ourselves in relation to any of them' (1985:218). Some people, at certain times, are secure and strong enough to tell their own stories, even though they conflict with the shared ideas of the community. But other athletes are not so secure; they may suffer at the boundaries and barriers of language, of poverty, and, for our argument, of race and sex. Should we leave the Chinese swimmers, in the insecure position of not being able to tell their stories without moral condemnation; of not having a chance to invoke sentimental sympathy?

As good liberals, we should be willing to listen to those less secure. The case of the black slave in America may be suggestive. The black slave was considered sub-human. This allowed Thomas Jefferson to produce large scale liberal freedoms, whilst retaining ownership of black slaves. How did the abnormal discourse that blacks were human, become normal? A popular story is that it may have been due to comfortable and secure 'Yankees' listening to the stories of black people, and finding something that allowed the blacks to be included within the community of humans. This exemplifies Rorty's position: that to expand *our* community we need to become people who are peaceful, secure and sentimental enough to develop the capacity to listen to the stories and hardships of others. Perhaps this is how we members of a safe, liberal society should approach the Chinese swimmers. It would seem to be a more tolerant position than the one calling for immediate suspension of the team from Pan-Pacific and Olympic carnivals, prior to any such listening.

References

Brown, W. M. (1980). 'Ethics, Drugs and Sport.' *Journal of the Philosophy of Sport*. VII; 15-23.

Brown, W. Miller. (1990). 'Practices and Prudence.' Presidential Address: Philosophic Society for the Study of Sport, 1990, *Journal of the Philosophy of Sport*. XVII; 71-84.

Bhuvanendra, T. A. (December 1998- January 1999). 'Human Rights in the Realm of Sport' *Olympic Review*, 26; 15-35.

Davis, Laurel R. and Delano, Linda C. (1992). 'Fixing the Boundaries of Physical Gender: Side Effects of Anti-Drug Campaigns in Athletics.' *Sociology of Sport Journal*. 9/1; 1-19.

Fairchild, David L. (1989). 'Sport Abjection: Steroids and the Uglification of the Athlete.' *Journal of the Philosophy of Sport*. XVI; 74-88.

Fraser-Cook, Janet. (director) *What is to be done?* Produced by John Bush, BBC Television Productions, London, February 14, 1992, shown on ABC television (Melbourne), February 17, 1992.

Lavin, Michael. (1987). 'Sport and Drugs: Are the Current Bans Justified.' *Journal of the Philosophy of Sport*. XIV; 34-43.

MacKinnon, Catherine. (1987). *Feminism Unmodified*. Cambridge, MA: Harvard University Press.

McGregor, R. and Jeffery, N. (1995). 'Drugs 'out of control' in Chinese Swimming.' *The Australian*, No. 9693, November 23, 1995.

McLaren, Richard. (1998). 'A New Order: Athletes' Rights and the Court of Arbitration at the Olympic Games' *Olympika*. 7; 1-24.

Rorty, Richard. (1985) 'Postmodernist Bourgeois Liberalism.' In *Hermeneutics and Praxis*. Edited by Robert Holinger. Indiana: University of Notre Dame Press; 197-202.

Rorty, Richard. (1991) 'Feminism and Pragmatism' *Radical Philosophy*. 59; 3-14.

Rorty, Richard. (1992). 'A Pragmatist View of Rationality and Cultural Difference' *Philosophy East & West*. 42/4; 581-596.

Rorty, Richard. (1993). 'Human Rights, Rationality, and Sentimentality.' *The Yale Review*. 81/4; 1-20.

Rorty, Richard. (1995). 'Is Truth a Goal of Enquiry? Davidson vs Wright.' *The Philosophical Quarterly*. Vol 45, No 180; 218-300.

Schneider, Angela J. and Butcher, Robert B. (1993-94). 'Why Olympic Athletes Should Avoid the Use and Seek the Elimination of Performance-Enhancing Substances and Practices From the Olympic Games.' *Journal of the Philosophy of Sport*. XX-XXI; 64-81.

Simon, Robert L. (1984). 'Good Competition and Drug-Enhanced Performance.' *Journal of the Philosophy of Sport*. XI; 6-13.

Young, Iris Marion. (1988). 'The Exclusion of Women form Sport: Conceptual and Existential Dimensions'. In *Philosophic Inquiry in Sport*. Edited by William J. Morgan and Klaus V. Meier. Champaign, Illinois: Human Kinetics Publishers; pp.335-341.

[lxxxvii] This is not just an ethical matter. It is also a legal matter in sport. The IOC rules in relation to doping maintain that any individual with a banned substance in their system is guilty of doping, regardless of how the banned substance got there. The athlete may be punished even if unaware of the banned substance being administered (Bhuvanenda, 1999:30). This rule, claimed as necessary by the IOC to stem the flow of drugs in sport, contravenes the judicial principle of 'innocent until proven guilty'. In this case, the person is presumed guilty until they can prove their innocence. In the absence of any evidence to the contrary, the athlete is considered guilty (McLaren, 1998:5). McLaren goes on to discuss how steadfastly sporting bodies maintained this principle in the case of Jessica Foschi. The banned substance, which appeared in Foschi's post-race urine test, is administered as a small, easily dissolvable pill which is tasteless, colourless and odorless. Foschi's parents organised a body toxicology, performed nine days after the drug test, where she tested negative for steroids. A physical examination, performed one month later by a paediatric endocrinologist, concluded that Foschi had shown no traces of past or present steroid use. Foschi, her parents and her trainer all passed lie detector tests which revealed that they had not deceived the ruling bodies of swimming in saying they had no knowledge of how the substance entered her system. Yet in the face of all this evidence, the ruling body of swimming, FINA, imposed a two-year suspension of Foschi. The Court of Arbitration in Sport subsequently reduced her punishment to a six-month suspension (McLaren, 1998:6).

[lxxxviii] Arguments of fairness (whose fairness?) can and have been used both for and against the drug ban. There appears to be no general consensus on the issue: some have suggested that it is fair for all athletes if drugs are banned (Schneider and Butcher, 1993-94; Simon, 1984), and others have argued that it is fair for all athletes if drugs are allowed and equally accessible (Brown, 1980, 1990; Fairchild, 1989; Lavin, 1987).

[lxxxix] Michael Burke currently lectures in the under-graduate Human Movement course at Victoria University.

[xc] There was a disparaging comedy skit at the time of the 1994 Australian Tennis Open, when the Melbourne zoo was trying to name a baby gorilla. The comic suggested they should name it Aranxta, after the champion female tennis player, Aranxta Sanchez-Vicario. What was disappointing was that Sanchez-Vicario, a champion tennis player, is derided for possessing a body which is muscular and strong; a body-type which makes up for an obvious lack of height.

[xci] Our insertion.

[xcii] It is interesting to note that the female-to-male sex change operation is largely an invisible one in our society. In contrast, the male-to-female operation is well known because of television programs, such as Chicago Hope, and because of athletes, such as Renee Richards. Why do we hear little about the other operation?

[xciii] As Catherine MacKinnon stated when two women were appointed to the Supreme Court of Minnesota: 'My issue is what our identifications are, what our loyalties are, who our community is, to whom we are accountable. I think it is because we have no idea what women as women would have to say. I'm evoking for women a role that we have yet to make, in the name of a voice that, unsilenced, might say something that has never been heard...' (cited by Rorty, 1991:3).

Reconciliation and Olympism The Sydney 2000 Olympic Games and Australia's Indigenous People

Michelle Hanna

The host nation of every Modern Olympic Games has a certain international authority from the time of winning the bid through to the staging of the Games. With this authority, the Sydney 2000 Olympic Movement has provided Indigenous Australians with the opportunity to have a representational dominion within mainstream national and international culture. Why this authority that comes with the Olympic Movement? It is because the Olympic Movement is the largest peacetime event, staged every four years, and in which every nation can potentially be involved.

The philosophy behind the Olympic Movement, *Olympism*, aspires to celebrate the excellence of the body, mind and soul through sport. This totalising, ideal concept of Olympism was inspired by ancient Greece and modernised by Frenchman Baron Pierre de Courbetin at the turn of the century, and is explained in the Olympic Charter:

> 'Olympism is a philosophy of life, exalting and combining in a balanced whole the qualities of the body, will and mind. Blending sport with culture and education, Olympism seeks to create a way of life based on the joy found in effort, the educational value of good example and respect for universal fundamental ethical principles. The goal of Olympism is to place everywhere sport at the service of the harmonious development of man, with a view to encouraging the establishment of a peaceful society concerned with the preservation of human dignity.'
>
> - *The Olympic Charter*

When Sydney won the rights to host the Olympic Games in 2000, it did so largely by aligning the nation ideologically, socially and politically with this philosophy of the Olympic movement. The successful Bid for the Games by the Sydney 2000 Bid Committee was very much 'sold' on the fact that Australia could display these democratic ideals of fairness, justice and equality.

This was most successful as the bid was contrasted to the bid of Beijing. The Beijing Bid was irritated by criticism from both internal democracy supporters and external human-rights watch organisations, and the international media. All criticised what they perceived as an oppressive and *actively abusive* treatment of the Chinese citizens by the Chinese Government. By contrast, while Australia was *not without* its own human rights abuse of its Indigenous people, clearly it was much easier to overlook an *abuse of neglect*, which is no less cruel, though less violent.

Australia's *abuse of neglect* of its Indigenous population did not arise as an impediment to the Sydney bid. This was helped further by the fact that visible Indigenous support was negotiated by the Bid Committee in return for Indigenous employment and participation in the staging of the Games. Won in 1993 under the Keating Government. which had a visible agenda for incorporating minority groups into the national character, the Olympiad began in 1997 under the Howard Government, which clearly had a different agenda towards minority groups and Indigenous issues. An attempt to reduce access to Native Title land, and a refusal to apologise for past Government policies to remove Indigenous children from their families in an attempt of assimilation, served to undermined the values of the nation on which the bid proposal was 'sold.' These, along with the escalating Pauline Hanson 'phenomenon', proved that Australia in the late 1990s was far from removed from the 19th century imperialist colonial attitudes towards institutionalised treatment of its Indigenous people.

These institutionalised systems of racism reflect what post-colonial theorist Edward Said calls *power knowledge*, whereby the coloniser

views the colonised as an inferior 'other', as one who does not know how to take care of themselves or what is good for them, so 'we'll tell you what's best for you'. The westerner has constructed an imagined opposite for themselves, as what the westerners; believe they *are not,* and therefore has little to do with what the 'other' *is*. Stereotypical attributes of primitiveness, exoticness or ignorance are given, and the culture is read in a condescending way, as though the westerner must represent the 'other', because the 'other' is incapable of representing itself.

What is necessary to move on from these attitudes where they are represented in Australia, is to 'undo' these systems of power knowledge where they exist. Writer Bain Attwood suggests:

> 'At the most fundamental level what is required is an acknowledgement that all knowledge is *interpretative;* that anthropology, archaeology, history, linguistics or cultural studies are not disciplines which *reflect* or *record* knowledge. but rather discourses which *construct or produce knowledge...* Subsequently, while Aboriginalists will continue to speak of Aborigines, we will not speak *for* Aborigines.'
>
> *- Bain Attwood, Power, Knowledge and Aborigines. [italics added]*

How then to go about this practically? How do we move on from colonial constructs of knowledge to reveal the truth? It is clear: we must invite Indigenous people to show us who they are on *their terms*. Non-Indigenous Australia can no longer overpower the minority and suppose to know what is best in the most lazy and convenient fashion. It is therefore necessary for a *new dialogue* between Indigenous and non-Indigenous Australians to open up.

So how is SOCOG, the Sydney Organising Committee for the Olympic Games, incorporating Indigenous people into the staging of the Games? SOCOG has committed itself to a significant incorporation of Indigenous people. Sandy Hollway, the CEO of SOCOG, has stated that:

> 'I simply do not believe that we can host the world's greatest international sporting and cultural event without the intimate involvement of our countrymen whose ancestors lived here for thousands of years. This would be utterly inappropriate and a huge opportunity missed.'
>
> *Sandy Holloway, CEO, SOCOG*

Indigenous relations within SOCOG have developed equitably and evolved considerably. The Aboriginal and Torres Strait Islander Relations program was set up in 1995, run by Australian sporting identity Gary Ella. Ibis program encourages the involvement of indigenous communities in key Games-related areas. Further, NIAC, the National Indigenous Advisory Committee was set up in 1998, which is a group of prominent Indigenous Australians who advise SOCOG of major decisions. They ensure that the Sydney Games will be reflective of the diversity of Australia's Indigenous cultures.

As many of you would be aware, the Torch Relay will begin at a site of significance to Indigenous culture, Uluru, carried by Indigenous athlete Nova-Peris Kneebone. The Torch Relay will have throughout Indigenous welcoming ceremonies to various localities. The Opening and Closing Ceremonies of the Games will incorporate Indigenous elements, as will various Welcome Ceremonies, the Medal Presentations, and the Volunteer Program. The image of the Games incorporates Indigenous elements, such as the logo and various gifts, as well as at various sporting venues.

These various ways in which Indigenous people are and will be figured in the staging and presentation of the Games creates a familiarity with Indigenous culture in mainstream Australia. The audience for anything involved with the preparation for the Olympic Games is much broader than any audience for either Indigenous land rights, for example, or Indigenous arts alone.

Perhaps most significant of the inclusion of Indigenous culture was the first Olympic Arts Festival, *The Festival of the Dreaming,* staged in Sydney in 1997. The Festival was a major celebration of Indigenous cultures, and

included 30 exhibitions. 14 dance and theatre productions, 8 performance troupes, 50 films, a literature component, 3 concerts and a number of special commissions. The essence of the festival was to present contemporary Indigenous culture with respect to ancient traditions, which is a significant break from colonial representations of an ancient, static Indigenous culture . To ensure a relevant and correct representation, the Indigenous festival organisers, headed by Rhoda Roberts and Lydia Miller, instituted a policy of Authorship and Control to SOCOG. This stated that:

> *'Authorship of the product, activity or event, and the control of it's development and presentation, where possible and relevant, should be in indigenous hands.'*

This gave Indigenous people not only the control to produce their own projects, but also to control the content; this is a huge leap from the 20th Century issue of non-Indigenous people observing and controlling the presentation of Indigenous art, usually from an anthropological position.

Rhoda Roberts, the Artistic Director, explained before the Festival that she wanted to use the presentation of contemporary Indigenous culture to break stereotypes, specifically, the stereotype of the 'angry black'. We are all familiar with the image of the 'angry black' - the protesting Aborigine who is complaining yet again about land rights for example, or prison conditions, or welfare. It is often only in this context that Indigenous people feature in the mainstream media, as a burden on our taxes or as people who are never happy and wanting more.

What was new and refreshing in this break from stereotypes was that the stories were often told as a 'good black yarn'. Humour was used as a presentation device in many instances, so there was not an element of 'guilt programming'. Rather than having a tone of 'look what you did to us, you should feel guilty', the Festival was more about inviting people to hear an Indigenous story. In her stage performance, *The Seven Stages of Grieving*, Deborah Mailman drew the audience into an imagining of an indigenous experience: 'Have you ever been black?, Ah, you know, you wake up one morning and you're black, aye? It happened to me this morning...' She told the audience of the 'black experience' of locking your keys in the car: when trying to open the door with a coat-hanger, she says '...so I'm fiddling around for as good five seconds and then I start hearing these sirens, and I look around: policeman, fireman, army, bloody UN, and that bloody sniffer dog - just to make sure everything is all right!'

In bringing both black and white audiences to rethink the history of the nation, the Festival provided a sound educational stepping stone from which to move on a path towards reconciliation. Roberts said in an indigenous newspaper at the time 'I believe the work we are doing with the Sydney Olympic Organising Committee will be one of the first attempts in this country at real reconciliation'. Project Coordinator Lydia Miller said '...now what I think is happening with the Olympics and all this interest in the Aboriginal arts is that people are trying to define or imagine a future together. In order to imagine a future, you must first articulate who or what you think you are.' The new contemporary Indigenous image which is currently in Australia came about only with the possibility of the Olympic movement - with the authority, reputation and money that comes with this large international sporting event.

The Festival of the Dreaming emerged as the voice of the Indigenous people where they did not have one in politics. It reached the public, it was a box-office success. But it was not a protest. It was not angry. It was a *celebration* of contemporary Indigenous culture, told in a friendly and endearing manner. It made a point of representing and introducing the many different land-based Indigenous cultures, and was a radical departure from holistic stereotypes of *one, Indigenous 'other'*, represented in a tokenistic manner. The program for the Festival included issues which non-Indigenous people do not usually include when representing Indigenous culture, such as deaths in custody, native title and the removal of children from their families. Roberts said immediately after the Festival that the goal of changing the stereotype and laying the foundations for future relations in the industry had been achieved. Most recently, the festival

has been referred to as 'the festival of the decade'.

The Festival brought contemporary Indigenous culture out of the fringes, and into the mainstream. Roberts saw the Festival as an opportunity to establish Indigenous relationships in the arts industry outside the confines of marginality, pushing for collaborative works between indigenous and non-indigenous companies, which *have* continued *after* the Festival Already then we now see Indigenous artists in the media as a result of their exposure from the festival - Leah Purcell and Deborah Mailman often feature in social pages. Leah and Deborah Cheetham went on to tour their shows nationally with the 1998 Olympic Arts Festival *A Sea Change,* and internationally with the 1999 Festival *Reaching the World***.** Incidentally, all four Olympic Arts Festivals will have an Indigenous component, which also incorporates the cultures of Oceania. Also, this year as part of the 1999 Olympic Arts Festival *Reaching the World,* 200 burial poles of great significance to the Indigenous people of Arnhem Land were exhibited in the Olympic Museum in Lausanne, Switzerland. The poles, or hollow log coffins, were created in the 200th year of colonial occupation of Australia, to commemorate the Indigenous people who died fighting for their land. *The Festival of the Dreaming* also instigated the Gamarada Dignitary program. This is where elders, or dignitaries, representing the land groups on which festival events took place welcomed the audiences and VIPs to their land. Gamarada means 'welcome, my friend' in the Sydney Gadigal language. This program shows one very important and significant way in which Indigenous culture can be acknowledged respectfully and incorporated into modern day life.

The Festival of the Dreaming alone could not instigate reconciliation, and nor can the Olympic Games. However the Sydney Olympics have provided an opportunity to open up a significant part of the of reconciliation process which is to educate both indigenous and non-indigenous Australians of the reality of Australia's indigenous people in the past and present of the nation. Perhaps most significantly, this was executed in a context *not of protest* and *marginality,* but with the authority of an international movement and in the *mainstream*. With the exposure of the Festival, it is infeasible that indigenous Australians can go back to being perceived as they were before the Olympiad or even during the bid, as the tokenistic and wholly misunderstood 'other.' A new dialogue has opened up between indigenous and non-indigenous Australia in the 'in-between' spaces of the nation, and it is promptly moving away from one in which the non-indigenous Australian invariably determines what is being said.

'Levelling the playing field...'Indigenous Footballers, Human Rights and the Australian Football League's Racial and Religious Vilification Code

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Introduction

In 1995 the Australian Football League introduced a code specifically prohibiting actions or speech that threatened, vilified or insulted another person, 'on the basis of that person's race, religion, colour, descent or national or ethnic origin'.[xciv] It was the first such law to be drafted and implemented by a major sporting code in Australia. According to AFL records, at the time of its introduction, there were 30 Indigenous players in its ranks. In 1999 there are 43 Indigenous players at the elite level, representing 6 percent of total players, about three times the proportionate rate of Aboriginal people in the community, making Australian rules one of only two team sports in the country with an over-representation of Indigenous players.

In my paper today I will examine aspects of the Indigenous players campaign that developed in the 1990s to end racial abuse in Australian rules football - and the responses to that campaign. I'll be using three images as prompts for discussion.

The first, a depiction of racial abuse in football, a photo of Peter Everitt and Scott Chisholm taken in 1999; the second, Nicky Winmar's protest at Victoria Park in 1993; and third, the reconciliation handshake, the primary image used by the AFL to launch its new rule in 1995. I begin from the premise that Indigenous people in Australia contend with an ongoing legacy and practice of racism, which is neither confined to, or excluded from, the realm of sport. The centrality of sport, and major sports events as a cultural milieu and potential site of resistance, is also suggested by the way Indigenous sportsmen and women have used the focus of sporting events to promote their rights and communities; producing some of the most powerful and potentially subversive visual statements on the politics of race.

The Extent of Abuse

Indigenous footballer, Michael Long said at the height of debate over the effectiveness of the racial abuse code:

> *Racism denies people the fundamental human right to be judged by their character, by what is inside. This is why it's not easy to experience a lifetime of racial abuse, be constantly reminded of it and yet be expected to simply ignore it.*[xcv]

The debate in the 1990s surrounding the introduction of the race abuse rule and its aftermath has led to revelations about the extent to which Aboriginal players have been subjected to racism and racial abuse.[xcvi] Indeed, one football scribe claimed that when Indigenous player Michael Long named Damian Monkhorst as a racial abuser in 1995 he had opened up a Pandora's box. It's an instructive metaphor. The ancient aetiology myth is about transgression: about the revelation of the unseen, the undesirable and the unspeakable. Some former white players and commentators laid claim to these woes as they took flight: ex-Collingwood player Tony Shaw was on record to the effect that he would make racist comments every week if it gave him an advantage; Former Richmond player Mal Brown said that Long should've been around in his day - the 1970s - when common racial taunts contained references to the killing of Aborigines. Derek Kickett, Indigenous player with Sydney, responded that words of

that ilk had been directed at him the previous week!

The debate revealed that West Coast Indigenous player Chris Lewis had received racist hate mail and death threats. Michael McLean's experiences as a young Aboriginal player mirror that of other Aboriginal players.[xcvii] Notwithstanding the camaraderie of team mates, he was subject to racial abuse on a weekly basis, both by opposition players and, often with incredible menace, by supporters.[xcviii] In his first game in 1983 McLean was told by some supporters to go back to the country he came from, an amazing reference for a person with a heritage stretching back 40,000 years! Jim Stynes, originally from Ireland, described his astonishment at the level of racial abuse he had experienced over the course of a 12 year career, which began in the mid-1980s. Other non-Anglo players also provided examples of the abuse they had habitually received. These descriptions of terms of abuse are euphemistic, the trend normally adopted in newspaper and TV reportage, and I am not going to today, out of respect, inflict a barrage of racist terminology on an audience of both Indigenous and non-Indigenous people. (One example from the above must suffice as to the intimidating and violent character of this speech. What Mal Brown actually said that he said in the 1970s was 'Nigger, nigger, pull the trigger.'[xcix])

In interviews and documentaries Indigenous former players, such as Graeme Farmer and Syd Jackson, who played in the 1960s and 1970s respectively, have confirmed the relentless nature of this abuse through their careers. In an era that lacked any legal mechanism by which Aboriginal players could lodge a complaint, and with a football culture that told Aborigines to turn the other cheek, many Aboriginal players copped this hurtful and personal denigration in silence. However, some Aboriginal players did (and do) retaliate to on field abuse, and their actions have often gained them a suspension at the AFL's Tribunal. Retaliation to racial abuse has not been considered a mitigating circumstance.[c] A common response from racial abuse apologists, including at least one current player, was that what was said on the field should stay on the field, ie., that forms of so-called sledging are in some way undifferentiated. Michael Long and other Indigenous players have countered by arguing that such abuse is both morally wrong, and connected to power.

Racial abuse is of course a form of coercion: it misrepresents, pigeonholes and abjectifies its target. Constructed of and through imaginary stereotypes, it projects both fantasies and fears of difference, and Michael Long is correct in drawing attention to its innate immorality. But in Australia this speech-in-excess that is racial abuse is highly loaded, as the abuse directed at Michael McLean demonstrates. It is one inflection of a colonialist racial discourse expressing both power and history; a discourse which has attempted to impart codes of conduct for, and deny the human rights of, Indigenous people for 200 years. Indigenous player with Port Adelaide, Che Cockatoo-Collins, speaking about his own family's experiences in the stolen generations, has referred to the importance of non-Indigenous people understanding the historical and cultural context in which racial abuse occurs.[ci]

There isn't space here to detail these histories: of physical violence and dispossession; of social deprivation, discriminatory laws, racist practices. But it is important to underline the obsessional character, as Marcia Langton has described it[cii], of this white Australian code of racism: The scores of pieces of legislation passed by white parliaments to control Indigenous existence; the protectorate boards handed authority to determine all aspects of daily life in terms of residence, employment, marriage, travel, language, dress; the constant surveillance of Aboriginal communities by police, welfare, and their agents; the ceaseless attempts by white authority to define and re-define Aboriginal identity – to name but a few areas.

It is equally important to emphasise that the derogation of the fundamental and particular human rights of Indigenous people is ongoing. Our study of crime statistics in 1998 showed that Indigenous men in Victoria are arrested at the extraordinary rate of 350 per 1000 of population.[ciii] Nationally, fully 20 percent of the entire prison population is Indigenous. As Cunneen and McDonald have shown,[civ] in the criminal justice area alone Australia is potentially in breach of numerous articles

across a range of international human rights treaties to which it is signatory.

My point here is that the code of white Australian racism runs deep and wide, through history and society: it is a text without borders, a boundless text in the Derridean sense and in a multitude of ways Indigenous people have always resisted it. By speaking about the racism in their lives, and in sport, Indigenous sportsmen and sportswomen in the 90s have proffered a counter discourse, providing white Australians an opportunity to look at this reality, to examine the unexamined, to connect this verbal abuse with other abuses of human rights.

Protest

This photo is of Neil Nicky Winmar, Aboriginal man and footballer, now a veteran of 250 games, most played for the St.Kilda Football Club, was taken in 1993 at the Collingwood Football Club's ground, Victoria Park. No doubt you will be familiar with it. Since 1993 this image has been endlessly re-presented, in all forms of media,[cv] and its status (and reach) as iconography is rivalled only by that stunning image of Cathy Freeman at the Commonwealth Games in Victoria, Canada, holding aloft the Aboriginal flag in triumph. It represents the first of two defining moments in the modern Aboriginal campaign.

Winmar is facing the main grandstand at Collingwood, the pro-Collingwood supporter army, a sea of white faces, and he reportedly yells up at them as he points 'I'm black and I'm proud of it'. St.Kilda has won the match, the first time in years at Collingwood's home ground, and Winmar has been unstoppable, beating several opponents. Throughout the afternoon he has been repeatedly vilified and abused by the crowd. I've no doubt Winmar was aware that his gesture would be marked, of its strategic value, its semiosis, since both TV cameras and photo-journalists surrounded the arena. What he's said later indicates as much.

His action and this image touched off a media storm. The President of Collingwood Football Club says just days after its huge dissemination that Indigenous people would be alright if only they conducted themselves like white people[cvi]. Collingwood earns itself in return a traditional Indigenous curse[cvii], which they attempt to expiate later by playing a 'friendly' against an all Aboriginal team, who thrash their white opponents in front of a largely black crowd in the Northern Territory.

Winmar's deistic gesture produced one of the most profound, influential, multi-layered images on race in sport, on race per se, in Australia in the 1990s[cviii]. It has achieved such myth status, I believe, because it fundamentally shocked sporting culture; it also spoke directly to the em-bodying of race and its representation.

The skin he revealed was black, a traditional sign of negativity in dominant white culture. This gesture, and if you were in earshot, his accompanying language, signify his proud ownership of blackness, and he thus turns this traditional sign on its head. And he also immediately signified to the football and wider community that Aboriginal footballers were literally adopting a new stance, a new visibility, in contrast to the past; one that would confront the issue of racism in football head on. In the debate that followed, the AFL promised to introduce a code of conduct on racism.[cix]

The second decisive moment in the campaign to confront racial abuse in football occurred two years later. Essendon and Collingwood Football Clubs played before a full house of over 90,000 people at the Melbourne Cricket Ground on Anzac day 1995. Michael Long, the 1993 Norm Smith Grand Final medallist, claimed after the game that, in the presence of an umpire, he had been racially abused.[cx] Essendon Football club supported Long and lodged a complaint with the AFL, naming Collingwood ruckman Damian Monkhorst. After more than a week of intense media attention, (including commentary, TV replays of the incident, talk back radio, academic and legal opinion, and letters to the editor on the subject, some of which condemned Long for 'his thin skin'[cxi]), the AFL held a press conference, at which it was declared that the complaint had been successfully settled, but that there would be no penalty imposed. The terms of an apology and its acceptance were to remain secret. Officials of the Essendon Football Club, including coach Kevin Sheedy, and sections of the media were openly critical

of the process employed by the AFL and the outcome of the complaint.[cxii]

However, it was the Aboriginal players, led by Michael Long, deeply upset at this whole process, who ensured that this issue remained on the football agenda. Long demanded that strong penalties be introduced for players found guilty of racial abuse.[cxiii] The Aboriginal players also called for league umpires to have the power to report racial abuse, for an educational and cultural awareness program to be set up for players and clubs by the AFL, and that they have direct input in the drafting of the new code.[cxiv]

In the midst of negotiations with the AFL, the Aboriginal players also directly entered the media discourse. In interviews to media outlets around the country, they argued their case on moral grounds, in historical terms, and in relation to workplace practices. They threatened that they could not currently encourage their sons to enter football if racial abuse continued.

Two weeks after the Long case another racial abuse complaint from an Aboriginal player was lodged with the AFL, providing a new round of media speculation, comment and interviews. From the AFL's perspective the whole thing had become a PR disaster, and it issued an open letter to the community accepting that racism in football was a major issue, and that a code was forthcoming. Two months after Long's complaint the AFL's racial vilification rule was unveiled. The release vindicated the courageous public stand that Michael Long had taken two months earlier, and Winmar's protest two years before.[cxv] Notwithstanding the absence of stipulated individual player penalties, and the presence of some other flaws that would soon reveal themselves, many provisions of the rule were in substance what Aboriginal players had been demanding. The Aboriginal players, and Indigenous community groups applauded its introduction, calling it a first step victory. Collingwood Football Club, however, was less sanguine in its response - six weeks later the Collingwood Cheer Squad's banner pre-game carried the message 'Sticks and stones may break my bones but names will never hurt me', in response to which one letter writer to a daily newspaper proposed that Collingwood change its acronym title from CFC to KKK.[cxvi]

The Handshake

The Racial and Religious Vilification rule was directed at the on-field behaviour of players, but also covers the behaviour of club officials, coaches and other staff entitled to enter the football arena. In brief, the rule provides for complaints to be lodged by an umpire, player or club with the AFL; for the AFL to conduct a confidential mediation process involving the parties with an independent mediator; for a Tribunal hearing of the matter if mediation is unsuccessful; and fines of up to $50,000 be applied to the player's club in guilty cases. While the rule has been since amended (and indeed variously interpreted) elements of the code bear a strong resemblance to the processes contained in the Commonwealth's Racial Hatred Act, 1995, where mediation is also given central prominence, and which continues to provide the context of a civil law specifically prohibiting racial vilification, (ironically, passed after the AFL introduced its rule).

The Racial Hatred Act amended the Racial Discrimination Act 1975, which implemented Australia's obligations under ICERD, the International Convention on the Elimination of All Forms of Racial Discrimination - which came into force in 1969. Article 4a ICERD declares as 'an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin…'.[cxvii] Other international instruments that are relevant here are the International Covenant on Civil and Political Rights (ICCPR Article 20.2); the preamble of the Draft Declaration on the Rights of Indigenous Peoples; and the Universal Declaration of Human Rights 1948 itself, under Article 7. The States, with the exceptions of Tasmania and Victoria, have also enacted legislation aimed at racial vilification, mostly within the purview of civil law.

The AFL's Rule 30 was launched with fanfare. The league's match day publication 'Football

Record' carried the slogan 'Racism. The Game's Up.' on its cover flanking black and white hands clasped in a handshake, with details inside of the rule, and various AFL anti-racism initiatives, including education programs for all AFL staff, players and officials. In the four years from its inception there have been twelve complaints lodged with the AFL under the new rule.[cxviii] Two of these complaints were heard at the Tribunal, while the rest were resolved through mediation. Only one player has had a penalty imposed, and no club has been fined.

The handshake is a resonant gesture in Australian male sporting culture. But as Darren Godwell has shown it is a highly problematic gesture in cases of racial abuse.[cxix]

In racial vilification proceedings covered by media the handshake has operated as a sign of closure: the parties to the dispute emerge from mediation, and to the assembled media clasp hands. Everyone takes that photo. The image of the handshake mediates our understanding of the process. It signals that an agreement or understanding has been reached - a reconciliation - and that the racial politics that have consumed the media for the previous two, three days or week, can be safely re-interred. The normative football discourse - of bad knees, torn ligaments, and rising stars - can re-emerge. It's an apparently clear and clean image.

However, in most mediated cases where the fines or penalties imposed amount to nothing, such consummating handshakes amount to no more than phatic symbolism. From the earliest cases heard under the rule in 1995 Aboriginal players have been critical of the central role of mediation and the absence of penalties. Che Cockatoo-Collins and others argued that the abused player was being twice victimised by the process, and in 1997 Indigenous players called for mediation to be scrapped entirely at senior level. In 1999 some white people in football have come to understand this. West Coast coach Mick Malthouse said 'Let players guilty of racial vilification say sorry and then sit it out in the grandstand for two or three weeks. Then you'll find out how sorry they really are.'[cxx]

Out of the 12 cases of racial abuse that have been referred to the AFL since 1995 only one fits this category. In April this year Peter Everitt, whose image I've shown you earlier abusing Scott Chisholm, took a compromise settlement at mediation that involved a self-imposed four week suspension, a $20,000 fine, a racial awareness training program and loss of match payments. Everitt publicly apologised to Chisholm and his family and to the Aboriginal community.

The sporting handshake as metaphor for racial reconciliation in sport is therefore deficient. Like so much of the reconciliation discourse conducted by white society, it raises the prospect of an historical need for public dialogue and redress and, at that very point, smothers the gap necessary for that dialogue to take place. It is also a clue to an ambivalence that lies, consciously or not, at the heart of AFL policy on racism: on the one hand, the League has conducted a loud, public campaign condemning racism in football; on the other hand its rule prohibiting racial abuse mandates that all cases be mediated in total secrecy. Indeed, at the beginning of 1998, heavy penalties were introduced to the rule - not to apply to offenders, but to any party breaching its confidentiality provisions. Even the Australian Cricket Board now has a race vilification code which includes the penalty option of player fine or suspension.

The AFL wants to be seen as doing the right, progressive thing - but it does not want the racism in its ranks to be seen. The obsession with secrecy is therefore indicative of a desire to control the process, to foreclose public scrutiny, and the articulations of abused players; the common paradox of a corporatist approach.

It's a position destined to failure. Notwithstanding the encroachments of corporatism football remains - at least for now - a public document and a voyeurs palace. Tens of thousands of people witnessed the Everitt-Chisholm confrontation in real time, while hundreds of thousands consumed it in virtual space, where it was continually re-enacted. And while some cases of abuse may escape detection from this collective pan-opticon, there will inevitably be cases that don't.

In AFL football, a predominately white citizen audience - for the most part having little direct personal contact with Indigenous people - has in the 1990s, been witness to both the face-to-face confrontations of racial abuse events, and, the playing in to the game's wider discourses of an Indigenous perspective on those events, whatever the motivations of media outlets for their inclusion of those accounts. The introduction of a counter-narrative of resistance to the formerly impermeable colonial narrative of football has, at the very least, provided an opportunity for the testing of beliefs. While I can't say if racist attitudes have changed, some Indigenous players have reported that the behaviour of racial abuse being hurled over the fence at them has declined in the last two to three years.

However, in March this year John Elliot, President of the Carlton club, made a speech containing a series of racist remarks directed at Indigenous people.[cxxi] AFL Chief Executive, Wayne Jackson, declared Elliott's remarks were out of line with AFL policy on racism, and the AFL subsequently indicated that it would review rule 30 so as to include the off-field remarks of club officials.[cxxii] Shortly thereafter, Elliott publicly apologised for his offensive comments.

Racism in sport, racism in Australia, has not receded, and it would be naïve in the extreme to believe that the introduction of a code outlawing racial abuse would level the playing field for Indigenous people. But in the context of AFL history and its race relations, and notwithstanding the continued inadequacies of its rule, this statement condemning racist language in policy terms by the major football institution in the country does represent a remarkable shift in sports administrative culture; the rule itself a policy adoption that was hard to see forthcoming from the AFL even five and a half years ago, and simply unthinkable ten years ago.

In gaining a code, that will, with the inclusion of player penalties, work more consistently to player benefit, Indigenous players have had to confront a sports culture in which, traditionally, white codes attempt to dictate, order and define black bodies. Here for once in sport, the rules of engagement have had Indigenous input. In speaking back to racism's talking head they have therefore created a contested space, and this arena of contest relates to and feeds into a broader contest of ideas about country and history, identity and ownership: an arena where the very notion of a level field plays against other notions – such as sovereignty, and the particular, collective rights of Indigenous peoples.

[xciv] Racial and Religious Vilification rule, Article a). See Australian Football League, *Football Record*, Vol. 84, no. 13, Progress Printers, 30 June 1995-2 July 1995.

[xcv] *The Age*, 23 Ap. 1997

[xcvi] On the Aboriginal experience of racism in sport in general, and in football in particular, see the excellent work of Colin Tatz, *Obstacle Race: Aborigines in Sport*, University of New South Wales Press, Sydney, 1995. See also C Tatz, 'Racism & Sport in Australia', *Race and Class*, no. 36 (4), 1995, pp.43-54. For pictorial study of indigenous sportsmen and women see C & P Tatz, *Black Diamonds: The Aboriginal and Islander Sports Hall of Fame*, Allen and Unwin, St. Leonards, 1996.

[xcvii] See the article on McLean in *Sunday Age*, 3 Sept.1995.

[xcviii] Racial abuse has not been restricted to Aboriginal players. Jim Stynes has said, (*Australian*, 29 May 1997), that he was astounded by the level of racial abuse directed against him from his first game ten years ago. The level of abuse against Aborigines was still high in 1995, see Michael McLean's comments in the *Age*, 8 May 1995.

[xcix] See *The Age*, 3 June 1995; L. McNamara, 'Long Stories, Big Pictures: Racial Slurs, Legal Solutions and Playing The Game', *The Australian Feminist Law Journal* Vol. 10, 1998, pp.85-108.

[c] In the 1980s the Krakouer brothers were retaliating to abuse when reported, (*Sunday Age*, 3 Sept. 1995) as did Michael Long in 1993, see Tatz, *Obstacle Race*, p.154.

[ci] See the *Sunday Age*, 27 Ap. 1997.

[cii] M. Langton, 'Aboriginal art and film: the politics of representation', in Aboriginal Australia: land, law and culture, ed. P.Poynton, *Race and Class*, vol.35, 1994, no.4., p.96-8.

[ciii] G.Gardiner, 'Indigenous Men and Criminal Justice: Arrest and over-representation for arrests in Victoria, 1996/97', *Koorie Research Centre Discussion Paper 10*, Monash University, Clayton, 1998.

[civ] See C. Cunneen & D. McDonald *Indigenous Imprisonment in Australia: An Unresolved Human Rights Issue*, A.J.H.R. Vol. 3, no.2, 1997, pp.90-110.

[cv] For egs., see the *Weekend Australian*, 1 May, 1993; *Sunday Age*, Melbourne, 10 Ap. 1994; *Herald-Sun*, 2 May 1995.
[cvi] See *Sydney Morning Herald*, 8 May 1995, p.41,45.
[cvii] From Darwin Indigenous actor John Kelly. Collingwood suffered a string of losses. See *Herald-Sun*, 20 June 1995.
[cviii] Some Collingwood supporters apologised, see *Sunday Age*, 10 Ap.1994.
[cix] See *Weekend Australian*, 1 May 1993.
[cx] *The Age*, 28 Ap.1995.
[cxi] See *Herald Sun*, 5 Sept. 1995.
[cxii] See *The Age*, 8 May 1995. For criticism of the AFL see Martin Flanagan, Patrick Smith, the *Age*, 8 May 1995; editorial, the *Age*, 6 May 1995; Mike Sheahan, *Herald-Sun*, 2 May 1995.
[cxiii] See the *Australian*, 18 May 1995; *Herald-Sun*, 18 May 1995.
[cxiv] See the *Age*, 18 May 1995.
[cxv] And also elicited a rare public apology from the AFL, with Ross Oakley admitting to 'some mistakes along the way' in devising the rule, see *Herald-Sun*, 1 July 1995.
[cxvi] See the *Age* 16 Aug. 1995.
[cxvii] See B. Barker, *Getting Government To Listen: A guide to the international human rights system for indigenous Australians*, The Australian Youth Foundation, East Sydney, 1997, p.103. Australia reserved its position on Article 4(a), but declared its intent to introduce legislation to implement, at the time of ratification.
[cxviii] Summary from news reportage, advice of AFL, and Equal Opportunity Commission.
[cxix] See *The Age*, 2 April 1999.
[cxx] See *The Australian*, 8 April 1999.
[cxxi] See *The Age*, 10 March 1999.
[cxxii] *The Age*, 11 March 1999 & 27 March 1999.

Reclaiming Aboriginal Identity through Australian Rules Football: A Legacy of the 'Stolen Generation'

Stella Coram

Introduction

One of the key findings of the National Inquiry (1997) into the separation of Aboriginal and Torres Strait Islander children from their families - the 'Stolen Generation' (NISATSIC)[72] - was the sense of shame that many witnesses felt regarding their Aboriginal identity. As one witness so poignantly asked:

> 'How can you be proud of being Aboriginal after all the humiliation and the anger and the hatred you have? It's unbelievable how much you can hold in inside' (NISATSIC, 1997:15).

The National Inquiry (1997:4) found that the practice of forcibly removing children from their families was widespread and this is reflected in the life stories of Aborigines[73] in elite Australian football (Harris, 1989; Hawke, 1994; *AFL's Black Stars*, 1998; Stone, 1998; Connolly, 1998). Given that these men have adopted football as their principal mode of survival, it is appropriate to consider the role of the field as the basis for reclaiming Aboriginal autonomy and identity. Accordingly, this paper argues that the normative structures of Aboriginal kinships and identity, severed through familial separation, are re-emerging in a new and vibrant identity through the Australian Football League (AFL). This paper concludes that, in line with the recommendation of the National Inquiry (1997:30), the injustices associated with assimilation cannot be fully reconciled until a formal apology is offered to Aboriginal Australians. This paper also concludes that, despite the positives to flow from the field, there is a need for caution regarding the limitations of football as a vehicle for stemming Aboriginal disadvantage. That is, irrespective of the emerging identity through elite Australian football, the structures of inequalities in Australian sport and indeed core society remain largely unchanged.

Assimilation and Cultural Genocide

In order to set the context for analysing the link between football and identity, this paper commences with a brief review of the policy of assimilation as the fundamental basis for removing Aboriginal children from their families. Moreover, in drawing on the work of Beresford and Omaji (1998) *Our State of Mind: racial planning and the stolen generations*, this paper briefly reviews the long-term impact of assimilation.

Assimilation is simply one step in the long process of controlling Aborigines. Since invasion in 1788, Aboriginal Australians have been subjected to legislation designed superficially, at least, to protect them but ultimately to displace them. Under the Aborigines Act, the Central Board of Victoria adopted a policy of removing children designated as 'half or lesser caste' from their families (McConnochie, Hollinsworth and Pettman, 1991:109). Other states were to follow including West Australia and Queensland. Significantly, the practise of removing children continued right through to the 1960s and this contravened an international covenant, which Australia signed in 1945, to abolish racial discrimination (National Inquiry, 1997:27). Two ideological components underpinned assimilation. They comprised the absorption of the 'half caste' children into mainstream society and the demise of 'full-blood' Aboriginals. Indeed, the

[72] From here on, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander children (NISATSIC) will be referred to as the National Inquiry (1997).

[73] The term Aborigine is intended, in this paper, to be inclusive of Torres Strait Islanders.

1937 Conference of Native Welfare Ministers concluded that:

> 'The destiny of the natives of Aboriginal origin but not the full-blooded lies in their ultimate absorption by the people of the Commonwealth, and… all efforts should be directed to that end' (Quoted in McConnochie et. al, 1991:109).

Such selective social engineering was widely practiced. The National Inquiry (1997:4) estimated that between one in three and one in ten indigenous children were forcibly removed from their families and communities between 1910 and 1970. That the removal of children was carried out over a period of sixty years is a clear indication that more than one generation was taken, thus, leading Beresford and Oamji (1998) to use the term the stolen generations.

Assimilation included strategies that set out to dismantle Aboriginal culture and to sever familial ties through the denial of parental access. For example, the National Inquiry (1997:15) found that the children removed from their families were taught to feel contempt for their Aboriginality. The National Inquiry (1997:14-15) also found that the children were often told that they were unwanted or that their parents were dead. The removal of Aboriginal children was, and still is, justified, particularly by conservative sectors of the political spectrum, on the basis that it was to 'save' the children. However, documentation of human rights abuse of the children taken from their families render it difficult to agree with the rationalisation that the children benefited from being taken. In fact, there is evidence to suggest that the rationale that separation was positively intended was merely the rhetoric to obscure the organisation of a marginalised labour force. For example, the National Inquiry (1997:16) found that children were placed in work and that these children did not receive their wages. The National Inquiry (1997:17) further found that many of these children were subjected to sexual abuse in the workplace. Clearly the children were not better off.

The trauma of being taken is eloquently expressed by a former player, Syd Jackson, in the documentary *Black Magic* (1988) which celebrates the achievements of Aborigines from West Australia in sport. Jackson, who enjoyed a distinguished career in the Victorian Football League - the predecessor to the AFL - recalls the pain of being separated from his mother. Whilst much of the focus, quite rightly, in analysing the effects of forced separation has been on the children, the impact on those left behind should also be recognised. Similar to the experiences of the children, the National Inquiry (1997:21) found that the families suffered grievously as well. In a cruel twist, however, the National Inquiry (1997:23) also found that some adults experienced difficulties in gaining acceptance from their communities. This is a stark reminder that the underlying agenda of assimilation was successful in so far as, for some, the links to family appear irrevocably severed.

The Impact of Assimilation

The impact and consequences of assimilation are devastating and long standing. Beresford and Omaji (1998:191) contend that although the practice had ceased by the 1970s, unresolved grief and psychological dysfunction continue to plague the Aboriginal community. Not surprisingly, some, including Beresford and Omaji (1998), have linked familial separation to Aboriginal deaths in custody. For instance, the Royal Commission into Aboriginal Deaths in Custody found that of the 99 deaths it investigated, 43 were of people who had been separated from their families as children (The National Inquiry, 1997:13). In addition, a survey conducted by the Western Australian Aboriginal service suggested that separation is a significant factor in the over-representation of Aboriginal people in the justice system and the loss of cultural and spiritual identity (Beresford and Omaji, 1998:191). It could be argued, as a consequence, that the incarceration of Aboriginal men constitutes the contemporary form of controlled separation and dislocation of Aboriginal culture. Thus, the cycle of damage underpinning Aboriginal culture suggests that the vision of assimilation, which

was to dismantle the structures of Aboriginal culture, was largely realised.

The Football Field as a Site for Reclaiming Identity

The rise of Aborigines in elite Australian football is a recent phenomenon. With few exceptions, Aborigines until - the last fifty years - were generally excluded from competing in the VFL/AFL. For example, in 1949 there were only two Aborigines listed with the Victorian Football League (VFL) compared to 42 with the Australian Football League (AFL) in 1999.[74] Arguably, the rise of Aborigines in the AFL - an institution which demands only that a new recruit have the talent to succeed at the top level - is due in part to closure and lack of access to the mainstream labour market. The body of literature documenting the marginalisation of Aborigines in the labour market (Miller, 1987; Williams, 1992; Taylor, 1995; ABS, 1996; Sully, 1997) would support this. For instance, the *1996 Census of Population and Housing* (ABS, 1998:33) states that indigenous males experienced higher unemployment rates (24.6 percent) compared to the total male population rate of 9.9 percent.

Aside from the social and economic factors which may propel Aborigines toward professional football, of significance, to this paper, is that many former players experienced, first-hand, the trauma of being taken including Syd Jackson (Harris, 1989) and Graeme Farmer (Hawke, 1994). Furthermore, many of the current generation of AFL players are the children of stolen children including Michael Long (Stone, 1998), Scott Chisholm (Connolly, 1998) and Jeff Farmer (Brady, 1998). However, whilst assimilation was unquestionably inhumane, the orphanages provided children with rare opportunities to gain life skills through football. For example, anecdotal evidence[75] indicates that Aboriginal boys spent many hours playing kick to kick at the orphanages. Given that it is public knowledge that at least three former players grew up in orphanages - Norm McDonald (Harris, 1989), Graeme Farmer (Hawke, 1994) and Syd Jackson (*Black Magic*, 1988) it is conceivable that the missions constituted the early breeding grounds for Aboriginal excellence in football.

Not only did mission football foster skills development, it also aided the process of reforming kinship networks with other Aboriginal children. In that context, football represented an important symbolic site for reconstructing a sense of connection with other Aboriginal children. Conceivably, part of the reason that Aborigines appear to take draw on and take strength from football is the spiritual connection that Aborigines attribute to Football. For example, Atkinson and Poulter (1993) argue that the skills demonstrated by Aborigines stem from a connection to the traditional Aboriginal football played at corroborees in which teams were decided by a player's totemic or spirit being. In the contemporary context, the importance of football as a meeting point for Aboriginal communities, similar to the corroboree, is reflected arguably in the recently formed Rumbalara (meaning, the end of a rainbow) Football Club in Shepparton Victoria (Pinkney, 1997).

In recent times, the AFL field has served as a potent political site for reclaiming Aboriginal identity. This was no more apparent than with the eloquent actions of one of the leading Aboriginal players, Nicky Winmar. In 1993, Winmar lifted his guernsey, pointed to his black skin and declared his pride in his Aboriginality in response to racial heckling from opposition supporters (Editorial, *The Age*, 27.4.1993:12). The significance of Winmar's gesture is that it represented a shift in race relations in so far as he refused to be ashamed of his Aboriginality and to further tolerate abuse on the basis of his Aboriginality. Moreover, Winmar's show of pride, arguably, set the precedent for Aboriginal footballers, in particular Michael Long (Smith, 1995), to lodge complaints with the AFL regarding their mistreatment on the field and for the subsequent introduction of

[74] Data on Aboriginal footballers provided by Colin Hutchinson, the AFL Statistician.

[75] Kooris from the Victorian Aboriginal Youth Sport and Recreation Co-operative informed me, in 1997, that football was one of the few past-times that Aborigines were permitted to engage in at the missions and orphanages.

the Racial and Religious Vilification Code of Conduct by the AFL in 1995.[76]

Winmar's gesture, in many respects, also paved the way for the Reconciliation Match between the Aboriginal All Stars and the Collingwood Football Club - a club noted for its abuse of Aboriginal footballers - played in 1994 (*Souvenir Program*, 1994). However, the goodwill to flow from this match, which was won by the All Stars, was diminished when Dale Kickett, an Aboriginal footballer with the West Australian team, the Fremantle Dockers, was subjected to verbal abuse of the most insidious kind at the Collingwood home ground, Victoria Park in 1997. Patrick Smith, the senior sports journalist with the Melbourne newspaper *The Age*, observed (6 June 1998:20) that in the wake of National Sorry Day, which acknowledged the injustice of Aborigines taken from their families, Collingwood supporters could be heard calling out: 'Sorry Dale'.

It is suggested that the hostility directed toward Dale Kickett constituted a backlash similar to that which invariably accompanies concessions made to Aboriginal Australians. For instance, Beresford and Omaji (1998) note that support for Aboriginal issues declined after the 1967 Referendum granted citizenship rights to indigenous Australians. Given the historical tension of resentment toward Aborigines, one could argue that Michael Long's call for Essendon players to wear black arm bands in recognition of National Sorry Day (Stone, 1998) is unlikely to be repeated in subsequent years because to do so risks an unwelcome reminder of Australian racism. Such a gesture might also be seen as yet another concession for an undeserving minority.

Finally, it is conceivable that the disruption of separation re-emerges during the post-football period. Articles reporting on the problems encountered by some of these men, during their retirement, suggest that the Inquiry got it right in its finding that the trauma of being forcibly taken can never be forgotten. For example, there have been reports on the gambling problems experienced by the former great, Graeme Farmer (Russell, 1998) and this is indicative that football, in part, can only sustain the players for the duration of their careers.

Recovery and Redemption

The general consensus is that a formal apology to the 'stolen generation' is a necessary precursor to the recovery process. For instance, the National Inquiry (1997) argues that going home is fundamental to healing. Similarly, Beresford and Omaji (1998:236) also argue that an apology is a fundamental part of the healing process. But, for some, this is impossible. As the Inquiry observed, some witnesses who told their story were never able to go home as the links with those left behind were irrevocably severed.

> 'We may go home, but we cannot relive our childhood. We may reunite with our mothers, fathers, sisters, brothers, aunts, uncles, communities, but we cannot relive the 20, 30 40, years that we spent without their love and care, and they cannot undo the grief and mourning they felt when we separated from them' (NISATIC, 1997:3).

Aboriginal Australians negotiate the shifting terrain of their life experiences amid the trauma of separation and the spiritual and psychological vacuum created in its wake. The dismantling then of the structures of Aboriginal culture through dispossession, dislocation and assimilation means that the 'stolen generation' must constantly reconstruct a new sense of 'going home' in order to survive. In that context, the field represents part of the core of Aboriginal self-determination in reconstituting a vibrant and self-proclaiming identity where few opportunities exist elsewhere. However, there is a need to caution as the field may obscure the limited application of football as a panacea for redressing Aboriginal injustice. As Atkinson (1991:6) argues, there is a very real

[76] Given that the focus of this paper is the reformation of Aboriginal identity through football, there is limited scope for analysing the application of the Code of Conduct. Suffice to say, the Racial and Religious Code of Conduct, as it stands, has shortcomings the most notable of which is the lack of accountability for wrongdoing.

danger that the institutionalisation of recreational and sporting activities will only serve to subordinate and marginalise Aboriginal people within the Australian system. In addition, evidence of repeat offenders engaging in racial vilification (Smith, 1998) suggest that some non-Aboriginal players are yet to fully comprehend the significance of racism particularly for those affected by separation. Therefore, unless there are ongoing and substantial efforts to achieve social justice, there can be little prospect of substantially improving the conditions in which Aboriginal Australians conduct their lives (Final Report, 1992:1).

Conclusion

The interpretation of assimilation as genocide, I believe, is accurate. To remove generations of children from their families is, effectively, to remove the very foundations upon which a culture is built. Therefore, until such time that the Australian Prime Minister, Mr John Howard, offers an apology on behalf of the nation to the Aboriginal peoples there can never be any meaningful reconciliation between black and white Australians on a national level. Arguably, the absence of an apology is a reflection of Australian racism that is grounded in both a denial of Aboriginal injustice and a deep suspicion of Aboriginal Australians. Despite the ramifications of this, Aboriginal Australians have managed to reassert themselves and to reconstruct an Aboriginal identity that reflects their sense of autonomy and human dignity through the political fields of the AFL. Whilst it is important, however, to recognise the contribution of football to Aboriginal society and vice versa, it is equally important to consider the marginalisation of Aborigines in the mainstream labour market and the impact of this in propelling Aborigines toward sport as a career option.

References

AFL's Black Stars, Melbourne: Lothian Books, (1998).

An extract from The Royal Commission into Aboriginal Deaths in Custody, Final Report, Chapter 38, The Process of Reconciliation, Commonwealth of Australia, (1992).

Atkinson, J. (1991). *Recreation in the Aboriginal Community*, A Report to the Department of the Arts, Sport, the Environment, Tourism and Territories, Canberra: Australian Government Publishing Service.

Atkinson, W. and Poulter, J. (1993). 'The origins of Aboriginal Football Skills' in J. Andrews, I. Anderson and W. Atkinson (eds.) *Ngariaty: Kooris Talkin'* Melbourne: La Trobe University, 76-78.

Beresford, Q. and Omaji, P. (1998). Our State of Mind: racial planning and the stolen generations, South Fremantle: Fremantle Arts Centre Press.

Bringing them home: A guide to the findings and recommendations of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families, Human Rights and Equal Opportunity Commission, (1997).

Brady, N. (1998). 'Apologies flow for Sorry Day' The Age, May 23, 8.

Connolly, R. (1998). 'Demon gamble looking good' *The Sunday Age*, December 6, 9.

Census of Population and Housing: Aboriginal and Torres Strait Islander People, Australian Bureau of Statistics, Cat. No. 2034.0, Canberra: Australian Bureau of Statistics, (1998).

Editorial 'One man's timely protest' *The Age*, April 27, 12.

Harris, B. (1989). *The Proud Champions: Australia's Aboriginal Sporting Heroes*, New South Wales: New South Wales Press.

Hawke, S. (1994). *Polly Farmer: A Biography*, Fremantle: Fremantle Arts Centre Press.

Long, M. (1997). 'The Brotherhood' *The Age*, May 9, D6-D7.

Miller, P. (1987). *The Structure and Dynamics of Aboriginal and non-Aboriginal Youth Unemployment*, A Report Prepared for the Australian Council for Employment and Training, Canberra: The Australian Government Publishing Service.

Pinkney, M. (1997). 'Bag of goals at the end of the rainbow' *Herald Sun*, March 31, 14.

Roberts, P. (producer) *Black Magic* Southern Aboriginal Corporation, Australian Department of Aboriginal Affairs, (1988).

Roberts, P. (producer) *Marn-grook: An Aboriginal perspective of Australian Rules Football*, a CAAMA Production, Alice Springs, Northern Territory, (1996).
Russell, M. (1998). 'Footy legend down and out' *Herald Sun*, June 18.
Smith, P. (1997). 'Long's new claim of racial abuse' *The Age*, May 19, 2.
Smith, P. (1998). 'The black and white issue: racists crawl out of the wood' *The Age*, June 6, Sport 20.
Stone, D. (1998). 'Making up for years of stolen time' *The Sunday Age*, March 28, 3.
Souvenir Program: The Coca Cola Match of the Year, Collingwood vs Aboriginal All Stars, February 12, 1994, Northern Territory Football League, Football Park Darwin.
Sully, V. (1997). *Kooris at Work: The Future of Work*, Fitzroy: The Brotherhood of St Lawrence.
Taylor, J. (1995). *Indigenous employment and job segregation in the Northern Territory labour market*, Centre for Aboriginal Economic Policy Research 83, Canberra: The Australian National University.
Wilson, C. (1999). 'Everitt faces new charge' *The Age*, April 8, Sport 1.
Williams, C. (1992). *Beyond Industrial Sociology: the work of men and women*, Sydney: Allen and Unwin.

Ethics And Moral Behaviour In Sport: A Human Rights Issue

Doris Corbett

Introduction

We are living in an age where the perseverance of traditional ethical and moral behaviour in sport, and the protection of human rights values can no longer be assumed. It seems we need to have movies, popular books, magazines, and newspaper articles to bring our attention to the importance of preserving the basic moral, and ethical values which are necessary to the maintenance of our national communities.

It is not different in the sports world. Ethical and moral behaviour in sport is being challenged from all sides: professional, college, high school, and even in youth sports. Some would say that fair play, or sports-person-ship is a relic of the past, and that we have to be reminded of its value and work hard to preserve ethical and moral behaviour in sport because otherwise it will continue to dwindle away as other values have done in our society. In the midst of daily sporting scandals, it seems doubly important that we recommit ourselves to an ethical, and moral behaviour in sport.

During the past decade, their have been numerous conferences, and lectures on the topic of ethics and morality in sport and physical activity (Bain, Roberts, Singer & Berger, 1993; Beller & Stoll, 1992; Fain, 1992 & Gillespie, 1990; Kretchmar, Fraleigh, & Drowatsky, 1993; Kroll, Matt, Safrit, & Zelaznik, 1993; Corbett, 1998, 1996, 1993; Stoll, Beller, Cole, & Burwell, 1995; Stoll, Beller, Reall, & Hahm, 1994; Thomas & Gill, 1993; Zeigler, 1992). Ethical concerns have been raised about sport since as early as 1904 when Ohio State University President Thompson, stated that:

> 'An absorbing interest of the public and students has created an atmosphere not always purest...There has been evident improvement in the rules; what is needed most is to improve in the ethical standards of all persons interested in athletics. Conformity to athletic rules is too much of a technicality and not enough of a principle. Athletics, like every other form of amusement or business, must eventually rest on sound ethics...What is needed is efficient leadership by men to whom principle is dearer than anything else... We shall never reform athletics simply by rules, we shall reform it only when we have inspired young men to cling to high ideals and to be governed by sound ethics (as cited in Sabock, 1985:269-270).'

This lecture invites your attention to the topic of human rights as an ethical dilemma in sports. The use of the notion 'human rights' in this presentation is delimited to the idea that sport participants are entitled to sport, and the right of fair play in all sporting situations. Respect for this notion is inherent in the Olympic Charter and the concept of sportspersonship. In the context of this paper, sport is used as a medium to promote human welfare and social reform.

The lecture aims to highlight historical/political sport and human rights issues well-known in the literature and will show their relationship to ethical and moral conduct in sport and fair play. Sport should always represent fair play, and sport should always promote human rights. The lecture will demonstrate how sport can serve as a vehicle of change in society to promote human rights. The values we promote in sport are believed to be good. According to folk wisdom, sport

promotes excellence, and makes for a better and more productive society. It is commonly accepted that through sport one learns to persevere, to sacrifice, and to be self-disciplined, to work hard, to follow orders, to be a leader, and to work with others. If you accept the point of view that these characteristics are learned through sport, one must ask the question, 'what other traits are learned that are less desirable?' This is the heart of the question I wish to discuss with you this morning. I will focus on the less appealing side of sport and competition, emphasising how sport is played without regard for ethical and moral conduct and the protection of human rights. It is not the purpose of this lecture to condemn the institution of sport, but rather to propose some preventive measures.

First of all, the prevailing/normative values and conditions inherent in sport today need to be reflected upon and modified. Acceptance of victory at any price should not be rewarded or accepted. The pressures athletes, coaches, and administrators feel has to be challenged. Although I am critical of sport; much of the time, I am like you, I am an active participant in sport, and I am celebrating sport. I played high school basketball; participated in sport days in college because there were in those days, no varsity sports for women at my undergraduate alma mater. Today, I continue to be an active tennis player. I am revitalised by sport. In the past 18 years I have been involved in the research and teaching of sociology of sport. Therefore, I would like for you to place my critical analysis of sport within the context of my great love and affection for sport. By criticising sport, I hope that together we can improve sport for everyone.

This address is divided into three parts: (1) a discussion of sport socialisation that is anti-fair-play and thus, anti-thetical to the promotion of human rights, (2) ethical and moral issues in sport will be presented that impact on the promotion, and protection of human rights through the medium of sport, and lastly, the consequences of unethical human rights practices in sport will be discussed.

Sport Socialisation: Is Anti-Fair-Play and is Anti-thetical to the Promotion of Human Rights

My premise is that in sport, there is not a commitment to fair play. And without a commitment to fair play, human rights problems will continue to abound in sport. Fair play presupposes an acceptance of the rules, but it clearly transcends the mere playing according to the rules (Covrig, D.M., 1996:3). Fair play can only operate in an atmosphere of freedom, where the outcome is not determined in advance, and where there is an inner resolve to make it on one's own strength... and not take advantage of one's opponent by inappropriate means (Proost, 1972:1,3).

We glorify winners and forget about the losers in our society. Just think, when was the last time you remembered what team or individual came in second in a national championship in your favourite sport. Allow me to quote a few famous maxims that deal with the importance of ethical, and moral behaviour in sport, but is superficial in nature, and is anti-thetical to the promotion of human rights:

FAIR PLAY IS GOOD PLAY, but nice guys finish last.

IT TAKES A COOL HEAD TO WIN A HOT GAME. You need fire to win and there's nothing that stokes a fire like hate.

DISCRETION IS THE BETTER PART OF VALOR. Nothing ventured, nothing gained.

IT'S NOT WHETHER YOU WIN OR LOOSE BUT HOW YOU PLAY THE GAME. They ask not how you played the game, but whether you won or lost.

IT'S ONLY A GAME. Defeat is worse than death, you have to live with defeat.

It is evident that sport is experiencing a moral revitalisation due in part to the fact that our various cultures, nations and communities are in dire need of a moral education in civic decency. Moral education can go a long way in resolving the anomie, and the social crisis which we are experiencing throughout the world. Indeed, it is possible for human beings

to learn self-control and to respect the rights of others. The rampant use of alcohol and drugs by athletes, and the involvement by athletes and sport enthusiasts in criminal activity, and other forms of deviant behaviour has become historical and not cause for a victory celebration.

Athletes spend a great amount of their time in the sport culture, practising, and developing their sport skills, so the values and beliefs which they hold dear are often moulded by those whom they come in contact with in the sport environment in which they train and participate. Thus, they learn to model both positive and/or negative behaviour.

Because the desire to win is so important, some coaches push their athletes too hard, taking them away from school responsibilities, family and friends, and encouraging them to use illegal drugs. Sometimes, athletes are abused both verbally, and physically. It is not uncommon for coaches to encourage violence by their players. Vince Lombardi, the famous American football coach, is reported to have said, 'that to play this game, you have to have that fire within you, and nothing strokes that fire like hate.'

Permit me to cite just two examples of how coaches have tried to invoke, and incite aggressive behaviour from their athletes: (1) Mississippi State University football coach Jackie Sherrill, at the close of his last practice before a scheduled game with the Texas Longhorns, had a bull castrated in front of his players. (2) in another example, an Iowa high school coach whose team was about to play a team called the 'Golden Eagles' spray-painted a chicken gold and had his players stomp it to death in the locker room before the game.

Unethical behaviour is not just limited to coaches. Spectators frequently riot and throw objects at players and officials. It is not uncommon to witness spectators encouraging, and tolerating violence.

The frequency of athletic scandals, rule and code violations suggest that cheating in the quest for victory is widespread. For example: holding, and other forms of illegal interference are regularly taught as useful tactics in contact sports such as basketball, football, and water polo. Often tennis players call the lines to their advantage, wrestlers use illegal holds, cross-country runners fail to complete the entire course, golfers improve the lies of their balls, soccer players trip opponents, swimmers leave the starting blocks early, and young softball and baseball players are taught how to 'pull' pitches into the strike zone to deceive umpires. Consider also whether coaches should be allowed to verbally or physically abuse athletes or officials; whether fans should be protected from the misbehaviour of other fans; whether an athlete should ever be allowed to play when injured; whether fans should be allowed to yell 'kill the ref;' whether a parent should require a child to compete in a sport if the child does not want to play; whether it is OK for an athlete to use drugs such as amphetamines or anabolic steroids to enhance performance; or whether psychological ploys should be taught, sanctioned by coaches, and used by athletes. Your own attitude and reaction to these and other types of ethical, moral human rights issues reflect the effect and influence coaches, teachers, and administrators will have who work daily with sport programs. If amoral decisions are rendered in any of these situations, athletes will learn that justice, equality, consideration for others, and respect for the rules are not important. Because sport heroes are often televised taking part in violence, abusive language, and engaging in rule violations, young people model this type of negative behaviour.

These images are mere reflections of the human rights problems, and the ethical and moral behaviour concerns common to sport.

Human rights abuses in sport are regularly featured in today's newspapers. Here are some examples:

> *'Star athlete accused in sexual harassment case.'*
>
> *'Trash talking leads to brawl during post-game handshake.'*
>
> *'College coach suspended for verbal abuse of players.'*
>
> *'Fans arrested for fighting during game.'*

'NBA superstar suspended for physically attacking his coach.'

'College wrestler kicked off team for head-butting referee.'

'NFL player to appeal fine for head-to-head tackle of quarterback.

'Professional athlete arrested for driving while intoxicated.'

To combat unethical conduct and amoral behaviour in sport, rules have been established to prevent cheating in sport. Although cheating is not encouraged in an official way, it is considered an acceptable strategic weapon. In reality, however rules function as barriers to cheating, and as obstacles to overcome on the road to victory. Honesty is treated as a contingency value to be invoked only in specific circumstances that will not jeopardise winning (Figler, & Whitaker, 1991).

If our concern as educators is to provide quality HPER programs, an important aspect in achieving this goal must be a concern about the human rights values being communicated in our programs. From the very beginning, the concept of Fair Play has been an intrinsic aspect of sport. We might even argue as George Sage points out, that 'without fair-play, there is no sport.'

> 'Sport in modern societies is one of the means by which nation-states socialise their citizens, transmitting the symbolic codes of the dominant culture and inducing citizens toward conformity to beliefs and values that prevail in the wider society. At the same time, sport is one of the most salient moulders of national collective identity' (Sage, 1998:116).

Sport has universal value, and is a social movement striving to contribute to the development of a peaceful and better world. Society expects many important and worthwhile things from sport and uses sport to support various fundamental social values and ethical principles such as equality for all people, fair play, respect for the loser, friendship, solidarity, justice and democracy, international peace and understanding..

These universal values are embodied in the *Bill of Rights for Young Athletes* (Eitzen and Sage, 1997:76) and is an attempt to protect the human rights of youth from exploitation.

The *Bill of Rights for Young Athletes* states that it is a:

- Right to participate in sports
- Right to participate at a level commensurate with each child's maturity and ability
- Right to have qualified adult leadership
- Right to play as a child and not as an adult
- Right to share in the leadership and decision making of their sport participation
- Right to participate in safe and healthy environments
- Right to proper preparation in sports
- Right to an equal opportunity to strive for success
- Right to be treated with dignity
- Right to have fun in sports

Fair-play examples in sport can have a powerful ethical and moral effect on the socialisation of young people to sport and provide for them positive human rights sport experiences. The International Committee on Fair Play (CIFP) which is located in Paris, France was established in 1964. Each year, the CIFP awards distinctions under three categories:

1. distinctions are awarded to an athlete or team for a gesture of fair play that cost, or could have cost him or her the victory, or downgraded his or her sport performance;
2. distinctions are awarded to a person for his or her general attitude; his/her remarkable sport career, for an outstanding and constant spirit of fair play, and observing the unwritten rule of sport not to take advantage of an opponent's bad luck, and always accepting the referees' decisions even when they are wrong; and lastly,
3. distinctions are awarded to a person or organisation for an activity aimed at promoting fair play by organising national or local campaigns, giving lectures, writing articles in the press, or making comments on the radio or television.

More than 250 individuals have been honoured since 1964 and have received the Fair Play Award.

Human Rights: The Symbolic Power of Sports

The use of sport as a strategy for the promotion of ethical and moral behaviour in sport, and the protection of human rights should be a much more powerful weapon. Sport and sporting events have been used by revolutionaries and by reformers to fight against racism.

The need for sports to promote human rights is exemplified by the racial, ethnic and international overtones prevalent in the Olympic Games, and many other national and international sporting events. Some of you may recall the Louis-Schmeling boxing fight in 1938 and the associated racial overtones connected with this fight.

Sport mirrors and reflects our moral conscious. The victory stand demonstrations that occurred at the 1968 (Mexico City), and the 1972 (Munich) Olympic Games reflected on the social and human rights abuses felt by African-Americans and the Jewish people. Sport, used as a medium to convey a human rights ideology is epitomised by the terrorism that took place in Munich in 1972; by the fifty Hungarians who sought refuge during the 1956 Olympics; the anti-soviet riots in Czechoslovakia in 1969; South Africa's apartheid policy; and the 1970 'Soccer War' between Honduras and El Salvador. Sport and human rights have always been interconnected, particularly where society's reputation or national pride was at stake.

There are many other examples of athletes or nations using sports to make ethical, moral, and human rights statements.

The ideas of the Nazis concerning sports were quite outspokenly anti-internationalist and racist in the 1930s particularly toward Jewish people and Negroes. On the occasion of the 1932 Olympics the official Nazi newspaper *Volkischer Beobachter* (1932) editorialized:

> 'Negroes have no business at the Olympics. Today we witness that free white men have to compete with the unfree Negro. This is a debasement of the Olympic idea beyond comparison... The next Olympics will be held in Berlin in 1936. We hope that the responsible men know what will be their duty. The blacks have to be expelled. We demand it!' (August 19, 1932)

The Olympic Committee on Human Rights (OCHR) played an active role in the 1968 Mexican Olympic Games and the now famous Black athlete protest and attempted boycott. Black athletes wore black arm bands, black gloves, a black scarf around the neck and knee-length black socks to protest the injustice to Blacks in America.

Tommy Smith in explaining the symbolism of his and John Carlos's action stated that:

> 'I wore a black right-hand glove and Carlos wore the left-hand glove of the same pair. My raised right hand stood for the power in Black America. Carlos' left hand stood for the unity of Black America. Together, they formed an arc of unity and power.'

There are many other human rights examples which represent the symbolic power of sport, and the ethical and moral concerns of society. A quick review of some of the events associated with the Olympic games serve as a good example of the interconnection between sport and human rights (Eitzen & Sage, 1997:187). For instance:

- In 1936, The United States dropped two Jewish sprinters from the 400-meter relay.
- In 1948, Israel was excluded from participation because the Arab nations threatened a boycott.
- In 1956, Egypt, Lebanon, and Iraq boycotted the Olympics because of the Anglo-French seizure of the Suez Canal.
- Switzerland and the Netherlands withdrew from the Olympics in protest after the Soviet Union invaded Hungary.
- In 1964, South Africa was prevented from participating in the Olympics because of its apartheid policies.

- The Black African nations 1976 boycott of the summer Olympics occurred because the International Olympic Committee (IOC) failed to ban New Zealand from permitting its rugby team to play in segregated South Africa, and The IOC allowed New Zealand to participate in the Games. Twenty-eight African nations boycotted the '76 Games.
- The international protest against South Africa grew and kept South Africa out of the 1968 Olympic games, setting the stage for South Africa to face complete isolation in international sport.
- In 1980, President Carter called for the United States to ban the Moscow Olympics because the USSR invaded Afghanistan. In total, some fifty-four nations participated in the boycott including West Germany, Canada, and Japan.
- In 1991, The International Olympic Committee agreed to allow South Africa to participate in the 1992 Olympic Games, if South Africa met certain conditions regarding the disassembling of apartheid (Eitzen & Sage, 1997:187).

South Africa was barred for years from the Olympic Games and other international competitions, most noticeably the Rugby World Cup which is the favourite sport of whites in South Africa. Nineteen- ninety-two saw the return of South Africa to the Olympic Games after an absence of thirty-two years caused by its system of apartheid in sport. With the fall of apartheid and the election of Nelson Mandela, the sports world accepted South Africa. In 1995, South Africa was allowed to host the World Cup in Rugby.

President Mandela used the Rugby World Cup as an opportunity to bring human rights change in South Africa. He visited the training camp of South Africa's team, 'the Springboks,' and while he was there, he put on the cap/ the Springbok hat. This was an important and significant gesture especially since the nickname 'Springbok' is a controversial name in South Africa, and was strongly associated with the pro-apartheid white regimes of the past. After putting on the cap, Mandela pointedly told the rugby players, 'The whole nation is behind you.' (Swift, 1995:32-35).

On another occasion, Mandela before a world cup soccer match gave a speech before a primarily black audience. He said, 'This cap does honour to 'our boys.' I ask you to stand by them tomorrow because they are 'our kind.' This is an important moment. Mandela is speaking to a black audience, but referring to a largely white rugby team (the Springboks) as 'our boys', 'our kind.' The Springboks won the World Cup defeating the world's two rugby powers, Australia and New Zealand, and for the first time in the history of South Africa, whites and blacks found themselves unified by a sport.

There are many other examples of how ethical, moral, and human rights issues have been used, misused, or abused in sport in the United States. For example:

- In the 1990s, country clubs throughout the United States that maintained exclusive memberships where challenged to accept minorities. The Birmingham's Shoal Creek Country Club agreed to admit minorities under the threat of having golf's Professional Golf Association (PGA) championship withdrawn from the site.
- In 1993, the Annandale Golf Club in Pasadena, California was scheduled to host the U.S. Women's Amateur golf tournament, but withdrew it's name in order to avoid bringing attention to the fact the Club had no minority as members.
- The National Football League (NFL) decided to rescind the decision to hold the 1993 Super Bowl in Phoenix, Arizona after the voters of Arizona rejected a paid legal holiday to honor Dr. Martin Luther King Jr for his good human rights works.

Cheating as a Human Rights Issue

The culture of cheating is an ethical and moral, and human rights issue. The quest to win must be achieved in a spirit of fairness. Getting a competitive edge unfairly should not be viewed as 'strategy' because it is cheating. Coaches often encourage cheating by looking the other way, as in the case of steroid use. And rule enforcers such as league commissioners and referees impose minimal penalties, or ignore them altogether. Cheating clearly violates the principles of fair play. Nonetheless, it is

common for basketball players to pretend to be fouled in order to receive an undeserved free throw and give the opponent an undeserved foul. In football, players are coached to use illegal techniques to hold or trip opponents without detection. Home teams have been known to gain an edge by increasing the heat by several degrees from normal in the visiting teams locker room in order to cause the opposing team members to feel lethargic and ill.

Although we may seldom hear about the good things that happen in sport, there are many examples of fair play in sport which promotes and protects the human rights of its participants.

In a Dartmouth and Cornell University football game a few years ago, it was established that Dartmouth had received a fifth down on its winning drive. The Dartmouth President forfeited the win.

In another case, a basketball team in Alabama a few years ago won the state championship. It was the first time ever that the school had won the state championship. A month after the championship, the coach found out that he had unknowingly used an ineligible player. No one else knew of the problem. Moreover, the player in question was in the game only a minute or two and did not score any points. The coach notified the state high school activities association and, as a result of having played an ineligible player, the state championship was forfeited.

Each of the above examples had an unusual resolution. They represent acts of true honesty, and a respect for the rights of others.

Violence as a Human Rights Issue

Another area of concern regarding human rights has to do with normative violence in sport. Player aggression is encouraged. Many sports demand body checking, blocking, and tackling. The culture of these sports, however, often go beyond what is safe, what is humane, and what is needed. Players are taught to deliver blows to the opponent, not just to block or tackle the opponent. They are taught to gang tackle, and to make the player carrying the ball to 'pay the price'.

Some examples:

At a major University in the South in the United States, a football player knocked an opponent so hard that he lay prone with his legs and arms up in the air. After the game, he received a 'dead roach' decal for his helmet.

Even though it is against league rules, many National Football league teams give monetary awards each week to the players who hit their opponents the hardest.

This listing of areas of human rights concerns for various aspects of sport is not meant to be exhaustive, but rather to highlight that there are many human rights dimensions relevant to sport. Certainly, the issue of equality, and drug abuse are human rights concerns. Regarding equality, it is noteworthy, and should be pointed out that the IOC now pays special attention to women in sports. On July 18, 1996, a clause was added to the Olympic Charter with regard to the role of the IOC which:

> '...Strongly encourages, by appropriate means, the promotion of women in sports at all levels and in all structures, particularly in the executive bodies of national and international sports organisations, with a view to the strict application of the principle of equality of men and women.'

Whether sport specific or generic to all sports, the lack of concern for the human rights of others in sport usually grows out of an overemphasis on winning. The fact that rational and ethical people suddenly change their behaviours verifies that winning has become too important in our world over fair, equitable, and just behaviours.

Sport and human rights are indeed intertwined. The worldwide popularity of sport and the importance attached to it by fans, the corporate world and by politicians alike make sport an ideal platform for the promotion of human rights.

Eric Dunning (1993:39-40) has Shepard the idea of sport as a civilising process. From the perspective of sport as a function to civilise society, it is commonly believed that sport teaches youth self-restraint, good manners, respect for others, honesty and fairness, and a balance between external constraints and self-constraints.

The examples cited in this lecture show how the power structure of sports can take the leadership and make a human rights difference. Most people would agree that sports provide outstanding opportunities for teaching sportsmanship, teamwork, self-discipline, cooperation, and honesty. None of these, however, are automatic outcomes.

Instead however, perhaps we have evolved to a place where we are comfortable defending, justifying, and accepting, human rights abuses in sport because we see it not only as a political issue, but also as an appropriate game strategy.

As we move into a new millennium, our profession is calling for a merging of insights from critical social theory with educational curriculum theory. Historically, critical social thought has been a component of the intellectual tradition in the social sciences and humanities in an effort to interpret the socio-political dynamics of society, or to explain it's social contradictions and inequities. The main purpose of this social criticism has been to attempt to help us to understand the issue of human rights and it's connection to sport, and thus, bring about positive changes to produce a different, a more humane, and more democratic, and just society.

For too long now, physical educators have overlooked how physical activity has promoted inequality by practicing racism, sexism, ageism, and social classism and in general by maintaining, and supporting social oppression and injustice in our world at large. Physical education curricula has not developed in students an awareness about the social consequences of games, sports, dance, and other physical activities. Nor has the profession helped our students become socially conscious of the role of contemporary human movement forms in reinforcing and reproducing structures of domination and social inequality (Sage, 1994).

Earle F. Zeigler (1994) one of the foremost writers on this subject states that:

1. Our programs should be directed to developmental physical activity in sport, exercise, and related expressive activities for people of all ages and conditions, and
2. There is an urgent need to elevate compassionate-cooperative behaviour to a level never deemed necessary before, while discouraging and downplaying excessive violence, intimidation, unsportsmanlike conduct, and ignoring the spirit of the rules.

Huelster (1982) and Zeigler (1994) have formulated and recommended six related principles for our consideration in an effort to promote moral and ethical behaviour in sport and protect human rights.

In order to promote attitudes that bring about a peaceful, productive state in our world, Huelster (1982) and Zeigler (1994) argue that we should as professionals in the field have a responsibility to utilise strategies to promote moral and ethical behaviour in sport and protect human rights through sport:

1. Continually stress the cooperative elements in our lives and the need for more cooperative play in competitive games and sports.
2. We should reward through a variety of forms giving recognition to those who epitomise the qualities of fair play and sportspersonship that we wish to encourage.
3. We should make every effort to cope with overly aggressive competitive behaviours by redirecting them into more responsible cooperative ones. (In this regard, the profession should be exerting direct pressure on rule-making bodies to make sincere efforts to eliminate undue violence and aggression from their sports).
4. We should insert the concept of 'individual freedom' to a much greater extent in sport and physical education programs by encouraging students to select freely the motor skills and play forms they want to learn. (Naturally this recommendation does not apply to the students who appear to not want to be involved in physical activity and therefore

would lose the opportunity to improve his or her quality of life by not learning and developing those knowledge and competencies necessary for a healthier and fuller life).

5. We should broaden program offerings to include more basic and exploratory sport skills such as: (a) exercise patterns for physiological and/or psychological benefits, (b) body mechanics and relaxation techniques, (c) swimming and water safety knowledge and techniques, (d) lifetime individual and dual sports, (e) risk sports, and (f) expressive movement activities including folk, social, and modern dance.
6. We should use teaching and coaching strategies which will involve task setting and problem solving techniques; and students should be helped to set performance-attainment goals beyond their expectations in order to promote the development of self-confidence (Huelster, 1982; Zeigler, 1994).

My concerns about the profession and its responsibility to impact on the promotion of a peaceful world that is respectful of human rights is further evidenced when we look closely at current norms and values as displayed in our daily living, when we examine the state of our political and economic governments, and when we acknowledge the status and impact of religion in our society, or take note of the condition of our environment.

Consequences of Unethical Human Rights Practices in Sport

As stated earlier, there is a widely held assumption on the part of parents, educators, banquet speakers, journalist and sport writers that sport plays a significant role in the shaping of moral values in our society. The paradox however, is that Sport as we know it today, and as it exists in most youth leagues, schools, and at the professional level truly does not promote positive character traits. Philosopher Charles Banham has stated that, for many, the sport experience encourages selfishness, envy, conceit, hostility, and bad temper.

The 'winning-at-all-cost' philosophy has led to the dehumanisation of athletes. Under these conditions, the consequences of sport participation is not surprising. Researchers Sharon Stoll and Jennifer Beller have studied over 10,000 athletes from the ninth grade through college. Their findings represent the consequences of unethical human rights practices in sport. They found that:

1. Athletes score lower than their non-athlete peers on moral development;
2. Male athletes score lower than female athletes in moral development; and
3. Moral reasoning scores for athletic populations steadily decline from the ninth grade through university age, whereas scores for non-athletes tend to increase.

Unfortunately, the longer an individual participates in sport, the less able they are to reason morally. Stoll and Beller say: 'While sport does build character if defined as loyalty, dedication, sacrifice, and teamwork, it does not build moral character in the sense of honesty, responsibility, and justice.

There is compelling evidence which suggest that, for many children, the pressures associated with sports produce low self-esteem, excessive anxiety, and aggressive behaviour. Children may experience 'sports burnout,' and abstain from physical activity for the rest of their life (Hellstedt, 1988:60,62).

What can be done? Physical educators and coaches are in a unique position to provide the foundation for a positive attitude toward sport. Sports must be put in perspective. 1)Coaches and parents should not emphasise winning at all cost. Sports for the fun of it, sports for pleasure, and the development of individual skills should be the objective. Coaches should be aware of skill improvement, and acknowledge such improvements. Athletic performance should not be compared with personal worth (Coakley, p. 106). Players should not be encouraged by trainers, or others to be permitted to play when they are injured or ill, in order to demonstrate virtue. 2) Participation should be emphasised. Hellstedt (p.70) reports that many children 9-14 drop out of sports because they spend too much time on the bench and not enough on the field. Thus, they perceive themselves as unsuccessful because their level of performance doesn’t earn

them more playing time. A study of young male athletes indicated that 90 percent would rather have an opportunity to play on a losing team than sit on the bench of a winning team.

There are a number of resources and tools that are available to assist educators as they try to work with ethical human rights issues. The JOPERD is specifically intended to function as a forum to address ethical issues. Other professional journals frequently address ethical issues related to sport and physical education. Books such as *Coach* (Sabock, 1985), *Ethical Decisions in Physical Education and Sport* (Shea, 1978), *Ethics and Morality in Sport and Physical Education: An Experiential Approach* (Zeigler, 1984), and *Sport Ethics: Applications for Fair Play* (Lumpkin, Stoll, and Beller, 1995) provide excellent case studies regarding ethical issues in physical education and sport.

In conclusion, educators should down-play the importance of winning in sport. Shakespeare was right when he noted that 'nothing can seem foul to those that win' (cited in Kohn, 1986:158).

The bottom line is that we must work and strive to freely and consciously as true professionals to use health, physical activity, dance, leisure, and sport programs to serve humankind. I know that we want to create a better social world for tomorrow's youth!

For as Paul Hoch (1972) would remind us: 'We will have humane, creative sports when we have built a humane and creative society ---- and not until then!'

I will close with a poem entitled:

A Child's Plea

Well, here it is another soccer season,
So, I am writing you for just one reason,
Please don't scream or curse and yell,
Remember, I'm not in the N.S.L.
I am only 11 years old,
And can't be bought, or traded, or sold,
I just want to have fun, and play the game.
And am not looking for soccer fame.
Please, don't make me feel I've committed a sin,
Just because my team did not win.
I don't want to be that great. You see,
I'd rather play and just be me.
And so, in closing, I'd like to give you one tip-
Remember, the name of the game is
SPORTSMANSHIP

Donny Chabot, age 11, Sault Sainte Marie, Ontario, (Smith, Smith & Small, 1983).

References

Bain, L., Roberts, G., Singer, R., & Berger, B. (1993). Ethical issues in clinical settings. *Quest*, 45, 69-119.

Barnhill, W. (1995). Speak up for character. *AARP Bulletin*, 36 (2), 19-20.

Beller, J.M., & Stoll, S.K. (1992, Spring). A moral reasoning intervention program for student athletes. *Academic Athletic Journal*, 43 57.

Coakley, Jay J. (1982). Sport in Society, Issues and Controversies (Second Edition). St. Louis: C.V. Mosby Company.

Corbett, Doris R. (1998). Civility in physical education and sport: the glue to society's moral and professional conduct. *Quest. (50), 307-318.*

Corbett, Doris R. (1996, April 21-24), 'Sport and the Revitalization of Morality.' 6th World Sport for All Congress. Proceedings, Korean Olympic Committee. Seoul, Korea. p.111.

Corbett, Doris R. (1993). 'Confronting the Agenda for the Year 2000 HPER - A Prediction for Lifelong Learning.' In *The Journal of ICHPER* (Winter, Vol. XXIX) No. 2, p.2.

Covrig, Duane M (1996). Sport, fair play, and children's concepts of fairness. *Journal for a Just and Caring education*. Thousand Oaks, July. p.3.

Dunning, E. (1993). Sport in the Civilising Process: Aspects of the Development of Modern Sport. In Dunning, E.G, Maguire, J.A., & Pearton, R.E. (1993). *The Sports Process A Comparative and Developmental Approach*. Human Kinetics Publishers: Champaign, IL. 39-64.

Eitzen, D.S., & Sage, G.H.(1997). Sociology of North American Sport. Brown & Benchmark Publishers: Madison, WI. pp.181, 187.

Fain, G.S. (1992). Ethics in health, physical education, recreation, and dance. Washington, DC: Office of Educational

Research and Improvement (ERIC Document Reproduction Service No. ED 342 775).

Fain, G.S., & Gillespie, IL A. (1990). Professional ethics and intellectual property - A national study. *JOPERD*, 61(3), 88-95.

Figler, S.K. & Whitaker, G. (1991). Sport and Play in American Life. William C. Brown Publishers: Dubuque, IA. p. 63.

Fraleigh, Warren P. (1994). Sport in Education? 'In *The Curriculum Process in Physical Education* by Jewett, Bain, & Ennis. Dubuque, Iowa: William C. Brown and Benchmark.

Hellstedt, Jon C. (1988 April). Kids, Parents and Sport: Some Questions and Answers. *The Physician and Sportsmedicine,* 16 (4) 59-71.

Hoch, P. (1972). Rip Off The Big Game. *Doubleday and Company*, New York.

Huelster, L.J. (1982). Social Relevance Perspective for Sport and Physical Education. In E.F. Zeigler (Ed.), *Physical Education and Sport: An Introduction*. Philadelphia: Lea & Feibger. pp. 1-22.

Kohn, A. (1986). No contest. Boston: Houghton Mifflin.

Kretchmar, R.S., Fraleigh, W.P, & Drowatzky, J.N. (1993). What does it mean to be ethical? *Quest*, 45 (1), 3-31.

Kroll, W., Matt, K., Safrit, M., & Zelaznik, H. (1993) Ethics in physical activity research. *Quest*, 45 (1), 32-68.

Lumpkin, A., Stoll, S.K., & Beller, J.M. (1995). Sport ethics: applications for fair play. St. Louis: Mosby.

Miller, D.M. (1981). Ethics in sport: Paradoxes, perplexities, and a proposal. *Quest*, 32 (1), 3-7.

Proost, J. (1972). The concept of fair play in Homer's Greece. Unpublished master's dissertation, University of Toledo, Toledo, OH.

Rauscher, B (1995). It's a mad, mad, mad, mad, mad game: Outside the lines (Film). Bristol, CT: ESPN.

Sabock, R. (1985). Coach (3rd. Ed.). Champaign, IL: Human Kinetics.

Sage, George H. (1998). Power and Ideology in American Sport a Critical Perspective. Human Kinetics: Champaign, IL. p.123.

Sage, George H. (1994). Beyond Exercise, Sports Skills, and Time on Task: Toward a Socially Critical Curriculum for Physical Education. In *The Curriculum Process in Physical Education* by Jewett, Bain, & Ennis. Dubuque, Iowa: William C. Brown and Benchmark.

Shea, E.J. (1978). Ethical decisions in physical education and sport. Springfield, IL.

Stoll, S.K. Beller, J.M., Cole, J., & Burwell, B. (1995, March 30). Moral reasoning of Division III and Division III and Division I athletes: Is there a difference? Paper presented at the convention of the American Alliance for Health, Physical Education, Recreation and Dance, Portland, OR.

Stoll, S.K., Beller, J.M., Reall, M., & Hahm, C.H. (1994, March). The importance of teaching methodology in moral education of sport populations. Paper presented at the convention of the American Alliance for Health, Physical Education, Recreation and Dance, Denver, CO.

Swift, E. M. (1995, July). Bok to the Future, *Sports Illustrated*, 3, 32-33.

Thomas, J.R. & Gill, D.L. (Eds.). The academy papers: Ethics in the study of physical activity. *Quest*, 45 (1)

Ziegler, E.F. (1984). Ethics and morality in sport and physical education: An experiential approach. Champaign, IL: Stipes.

Ziegler, E.F. (1992). A pragmatic approach to applied ethics in sport and related physical activity. Reston, VA: American Alliance for Health, Physical Education, Recreation and Dance. (ERIC Document Reproduction Service No. ED 352 325)

Zeigler, E.F. (1994). How the Profession of Sport and Physical Education Might Provide Experiences Basic to World Peace. In *The Curriculum Process in Physical Education* by Jewett, Bain, & Ennis. Dubuque, Iowa: William C. Brown and Benchmark.

Where's the Umpire? The Code of Labour Practice for Goods Licensed to Carry the Logos of the Sydney Olympics and Paralympics

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There is a popular view that globalisation has lead to a 'race for the bottom' in terms of working conditions - with countries forced to compete on the basis of how brutally they repress workers' rights. This is not true in all industries - in many, labour costs are a fraction of overall costs and are not the main factor driving investment decisions (Schoenberger, 1997:75). There are nonetheless some industries for which the popular view is not too far from the mark. Production which is labour intensive and which requires relatively low-skilled workers[77] is increasingly being carried out in the 'Free Trade Zones'[78] of Asia, Latin America and Eastern Europe,[79] where it is the norm for workers to be forced to work long hours, to be paid barely enough to meet their needs and to be dismissed and either blacklisted or imprisoned if they try to form unions (AMRC, 1998). Industries where this type of production is common include toys, sport shoes and apparel. Many producers in these industries are seeking licenses to use the logo of the 2000 Sydney Olympic Games.

In February 1998 the Australian Council of Trade Unions (ACTU) announced that agreement had been reached with the Olympic and Paralympic organising committees (SOCOG and SPOC) on a code of practice covering the production of goods carrying that logo. As well as banning child labour and forced labour, the code (which I'll refer to as 'SOCOG's code') requires licensees to 'endeavour to provide workers with regular and secure employment,' ensure that working hours are not excessive, respect workers right to form unions and pay them enough 'to meet (their) basic needs and provide some discretionary income.'[80] This paper will draw on research into the labour practice code of the US sportswear giant, Nike Inc., to demonstrate that unless there is rigorous monitoring, consumers can have no confidence in codes at all. It will then consider the systems in place for monitoring SOCOG's code (such as they are) and suggest how they might be improved.

Early in 1996 on a weeknight in the rainy season, a highland village near Banjaran in West Java, Indonesia received an unexpected visitor. Peter Hancock, a young Australian academic researching factory conditions, completed a fairly arduous walk from the nearest road, approached an older man in the village and asked where he might be able to find women who worked at Feng Tay,[81] a nearby Taiwanese-owned factory which employed 7,000 people in the production of sport shoes for Nike Inc. The old man told him he had very little chance of seeing those women, as their families rarely saw them. They had left to go to the factory at 5am that

[77] Another important factor is the predictability of demand for a product. Products for which demand is highly unpredictable tend to be sourced close to markets so that orders can be quickly filled and transported to retail outlets.

[78] These zones are also sometimes called 'Special Economic Zones' (SEZs) or 'Export Development Zones' (EDZs).

[79] The rapid growth in imports from China is illustrative. Between 1996 and 1998 annual US imports from China rose from $US51 billion to $US71 billion, a 39% increase. The US imports five times as much by value as it exports to China and in 1998 the US trade deficit with China was $US57 billion and growing (US Census Bureau 1999). Most of this production occurs in the Special Economic Zones (SEZs) of China's coastal regions, where workers' rights are notoriously repressed (Chan 1996; AMRC & HKCIC 1997; Chan & Senser 1997a).

[80] The standards required in SOCOG's code compare favourably with the more rigorous international codes which companies have been willing to participate in – including the White House Apparel Industry Partnership Code of Conduct in the US (AIP 1997) and the Ethical Trading Initiative Base Code in the UK (ETI).

[81] Feng Tay owns a number of other large factories producing for Nike in Asia and South America and is one of Nike's largest suppliers.

morning, and although it was now 8pm they were yet to return. He said the women were known in the village as 'Mereka pergi dan pulang seperti hantu dari pabrik Setan' (Walking ghosts who work in Satan's factory) and if he wanted to speak to them he would have to become a ghost himself (Hancock, 1998:302).

When he did manage to interview workers from the factory he discovered that Feng Tay ranked worst of all factories in the region in terms of pay, working conditions and staff turnover. Eighty per cent of the women interviewed were working in excess of 70 hours per week and many were being paid significantly less than the local minimum wage of $A3.75 a day. He also interviewed a former Feng Tay supervisor, who had resigned because his conscience would not let him continue to work there. He had been trained in the systematic verbal abuse of women working in the factory - using the Indonesian equivalent of phrases such as 'fuck you' and 'move you stupid bitch' (Hancock, 1998:301-6).

Nike had introduced its labour practice code of conduct four years earlier, in 1992. Initially the main means of verification was that suppliers had to provide signed statements guaranteeing that particular labour standards were being respected (IRRC, 1998:254). From 1994 the accounting firm Ernst & Young was employed by Nike to audit whether the code was being implemented by Nikes' Indonesian suppliers (IRRC, 1998:271).[82] Despite this, Nike's code seems to have had no impact at all on conditions in the factory in Banjaran.

Hancock's findings are far from unusual. A number of reports into conditions in factories producing for Nike in China, Vietnam, El Salvador, Thailand and Indonesia, have revealed a pattern of wages at or below subsistence levels,[83] unconscionably long working hours[84] and dangerous and sometimes abusive working conditions[85] (Connor & Atkinson, 1996; AMRC & HKCIC, 1997; Chan, 1997; Nguyen, 1997; O'Rourke, 1997b; Hancock, 1998; Kernaghan, 1998). In December 1998 in Indonesia I met with workers from four different Nike suppliers (two garment factories and two shoe factories). The workers in the garment factories knew nothing about a code of conduct or any system for monitoring it. In the shoe factories workers told me that 'people from Nike in America' come to check on working conditions every four to six months but before they arrive factory managers hand out a list of questions which the auditors will ask and appoint selected workers to learn the answers the managers want them to give. No other workers are allowed to speak in the meetings - if they spoke freely they would be dismissed.

My purpose here is not to vilify Nike. I could equally have cited research into labour conditions in factories producing for many

[82] Nike is also involved in several other monitoring initiatives, including the Apparel Industry Partnership's Fair Labour Association (AIP, 1998) and the 'Global Alliance for Workers and Communities ' (see www.theglobalalliance.org). At the time of writing these initiatives are yet to be implemented so it is not possible to comment on their effectiveness.

[83] TNCs often complain that quoting wage levels in the currencies of 'developed' countries is misleading, since exchange rates mean that workers in the 'developing' world are able to live on wages that seem ridiculously low to consumers in industrialised countries when converted to, for example, US dollars. To counter this criticism, Ruth Rosenbaum has developed the Purchasing Power Index, which calculates how long it takes a worker to earn enough to pay for standard food items. The index shows, for example, that workers earning the legal minimum wage for foreign invested factories producing for companies like Nike in Vietnam must work for ten hours to be able to afford to buy one kilogram of chicken (ICCR 1998). See also (O'Rourke 1998).

[84] Several reports on factories producing for Nike have found evidence of workers working between 72 and 84 hours a week during peak periods (Connor & Atkinson, 1996; AMRC & HKCIC, 1997; Nguyen, 1997).

[85] Researchers have found many examples of extreme conditions, including exposure to carcinogenic gases at more than twenty times the legal limit in Vietnam (Ernst &Young, 1997; O'Rourke, 1997b), disproportionate and often violent punishments for small misdemeanors (AMRC & HKCIC, 1997; Hancock, 1997; Nguyen, 1997; IRRC, 1998:59) and widespread sexual harassment (Connor & Atkinson, 1996; Nguyen, 1997).

other companies which have labour practice codes, including Adidas, the Gap, Van Heusen, Disney, Mattel and Toys R Us .[86] In each case research indicates that those codes have done almost nothing to protect the rights of workers. Without rigorous and transparent monitoring by organisations workers have a reason to trust, codes of conduct are largely meaningless.

Amongst the licensees for the Sydney Olympics there are companies like Reebok, McDonalds and Mattel who have been found in the past to be sourcing products from exploitative factories.[87] In 1997, research by two Hong Kong human rights groups found one Reebok supplier in Dongguan in China paid wages 25 percent below the Chinese legal minimum and required workers to put in a standard 72 hour week (AMRC & HKCIC, 1997). In another of Reebok's Chinese suppliers the factory's regulations made it clear that any workers found to be involved in union organising would be dismissed and handed over to the police (Kernaghan, 1998:55). Also in 1997, in a factory producing McDonalds Happy Meals Toys in Da Nong city, Vietnam over 200 workers fainted after being exposed to dangerous levels of the poisonous chemical solvent acetone (Kernaghan, 1998:55). The workers were being paid 10 cents an hour - well below the legal minimum for that region in Vietnam (Cox, 1998) (AWO, 1997). Four years earlier, on May 10, 1993, Thai workers at the Kader factory in Bangkok were making Mattel's Cabbage Patch Kids dolls when they were caught in the world's worst industrial fire. 188 workers were burned to death in a factory which had no fire alarms or extinguishers and lacked fire exits. When the fire started the workers were locked in to the factory in case they stole toys during the fire (ICFTU, 1994).

What mechanisms are in place to ensure that this doesn't happen for goods carrying the logo for the Sydney Olympics? In SOCOG's code there is a requirement of written confirmation from licensees that they will uphold the code - an approach which has proved useless as a means of monitoring other codes. Suppliers are also required to disclose relevant information to SOCOG and to allow SOCOG staff access to factories to make inspections.

In response to my enquiries, Jim Sloman (SOCOG's Deputy Chief Executive) was only willing to say that SOCOG staff have inspected some factories (Sloman, J. 1999, pers. comm., 9 Aug.). Despite repeated faxes and phone calls requesting more information, he has refused to indicate how many inspections have been made or how many are planned. He will not say whether staff visiting the factories have any expertise in labour issues or whether factory managers are warned in advance that an inspection is coming. He will not even reveal whether SOCOG has a list of all the addresses of factories covered by the code and if there is such a list he is certainly not prepared to make it public.

SOCOG negotiated the Code with the ACTU and NSW Labour Council, and SOCOG has made the names of thirteen licensees (but not the addresses of their factories) available to these peak union bodies. The ACTU has approached some of the licensees for factory addresses - while some have been willing to provide addresses, four have refused. The ACTU does not have the resources to check factories itself, but it is contacting local unions to see what they can find out (Matheson, A. 1999, pers. comm., 30 Aug.). This is useful where local unions have the time and the resources to help, but for production occurring in 'Free Trade Zones' from which unions have been vigorously excluded, and for production in countries like China where independent unions are illegal this sort of investigation will not be possible. In any case it is likely to be those licensees with the most to hide who will be the most reluctant to provide the ACTU with factory addresses.

The Textile, Clothing and Footwear Union (TCFUA) has a particular interest in the production of uniforms for Olympic officials and volunteers. The union has demanded that SOCOG reveal the addresses of the factories in Fiji, Malaysia and Indonesia where some of

[86] See the following websites - http://www.globalexchange.org/economy/corporations/gap/overview.html , http://www.nlcnet.org/Campaign.htm

[87] Reebok often sources from the same factories as Nike, with the same low wages and poor conditions (AMRC & HKCIC 1997; ICCR 1998).

the uniforms are being made.[88] SOCOG has refused.

SOCOG has passed on to the Labour Council a copy of a report into conditions in those factories by Andrew McAllister, SOCOG's program manager for uniforms. This report has not been made public, but union officials who have seen it say it demonstrates very clearly why factory monitoring needs to be carried out by people with expertise in labour rights (ABC, 1999).[89] Chris Christodoulou of the Labour Council has described the report as 'superficial' and 'heavily reliant' on information from the employers themselves. Christadoulou also suggests that McAllister does not seem to understand the term 'Freedom of Association'. Evidently the report deals with this aspect of the code by repeatedly stating in factory reports that: 'there is no compulsory unionism. Employees negotiate directly with the employer' (Labour Net, 1999b).

The Sun Herald visited one of the Fijian factories producing Olympic uniforms last week and found that workers were only being paid $1 an hour and were not unionised, but otherwise reported favourably on the factory (O'Rourke, 1999). The reporter spoke to the factory manager but does not seem to have spoken to any of the workers. According to Raijieli Nicole of the Fiji Women's Rights Movement, garment workers are the lowest paid manufacturing workers in Fiji. She also claims to have considerable anecdotal evidence of exploitative conditions in the industry.[90] She says there is no union for Fijian garment workers, even though several attempts have been made to start one (Nicole, R. 1999, pers. comm., 23 Aug.).

Closer to home, Debbie Carstens of the Fair Wear Campaign in NSW is extremely concerned that clothes bearing Olympic logos may be being made by home workers in Australia under exploitative conditions. She points out that the NSW Government has a relatively strong purchasing code protecting the employees of the Government's textile, clothing and footwear suppliers - but this code has not been extended to cover SOCOG's purchases (Carstens, D. 1999, pers. comm., 13 Aug.).[91]

As it stands then, SOCOG is refusing either to make public the addresses of factories producing goods carrying Olympic logos, or to reveal the extent and nature of the factory monitoring being undertaken. In these circumstances, consumers can have no confidence at all that goods carrying Olympic logos are being made in decent and humane conditions. It is likely that a considerable proportion of such products are being made according to the exploitative and repressive work practices currently the norm in the global toy and clothing and footwear industries.

If SOCOG were genuinely committed to ensuring its code of practice was implemented, the committee would put in place a rigorous and transparent monitoring system, involving unannounced factory visits by local organisations with a demonstrated commitment to labour rights. At the very least, SOCOG should make public the addresses of all factories covered by the code. This would cost SOCOG nothing and it would make it possible for the media and interested parties to

[88] The TCFUA has learned that the clothing manufacturer Bonds will be producing 130,000 pairs of trousers and skirts and 7,000 blazers in Fiji, 15,000 business shirts in Indonesia and 60,000 nylon jackets in Malaysia (Tubner, B. 1999, pers. comm., 13 Aug.).

[89] Given that SOCOG is refusing to let current union officials participate in monitoring, the TCFUA has argued that a good compromise would be for Anna Booth, formerly of the TCFUA but now on SOCOG's board, to investigate conditions in the Fijian factories (Labour Net, 1999a). SOCOG considered this option but quickly decided against it when Pacific Dunlop (which owns Bonds) objected (Evans, 1999).

[90] Research in 1996 by my colleague Matthew Phillips into clothing factories in Fiji found that conditions varied considerably from factory to factory but in some factories machinists were paid less than $1.15 an hour and workers were expected to work in excess of 60 hours a week. (Phillips, 1996).

[91] This code requires TCF suppliers to make details of all factory registration numbers as well as worksheets and other information available to the government department making the purchase. Even this code of practice leaves monitoring up to the individual government department, however, and it is unclear whether any monitoring is taking place (NSWDPWS, 1998).

travel to those factories and find out from workers themselves what conditions are like. This in turn would put powerful pressure on licensees to meet the standards laid down in SOCOG's code. It would be a clear demonstration, even to cynics like myself, that sport can play a useful and important role in promoting human rights.

References

ABC (1999). 'Union seeks inspection of Olympic uniform manufacturers', *Australian Broadcasting Corporation News Online - Bi-daily bulletin mailing list <NEWSMAIL@YOUR.abc.net.au>*, Aug. 27.

AIP (1997). 'Report of the Apparel Industry Partnership', *The Corporate Examiner*, vol. 25, no.9, pp. 3-5.

AIP (1998). 'Charter Document - Fair Labor Association. Preliminary Agreement November 2, 1998', *Lawyer's Committee for Human Rights web site* - http://www.lchr.org/media/sweatshop.htm, New York, accessed 8 August 1999.

AMRC (1998). *We in the Zone, Women Workers in Asia's Export Processing Zones*, Asia Monitor Resource Centre.

AMRC & HKCIC (1997). 'Working Conditions in Sports Shoe Factories in China - Making Shoes for Nike and Reebok', *Asia Monitor Resource Centre & Hong Kong Christian Industrial Committee* - http://www.globalexchange.org/economy/corporations/nike/NikeReebokChinaReport.html, Hong Kong, accessed 25 July 1999.

AWO (1997). 'McDonalds in Vietnam', *Asia Workers Organising Newsletter*, vol. 15, no. 5, p. 4.

Chan, A. (1996). 'Boot camp at the shoe factory - where Taiwanese bosses drill Chinese workers to make sneakers for American joggers', *Washington Post*, 3 Nov.

Chan, A. (1997). 'Forget confucius. China's economic miracle is a triumph of military discipline, not Eastern religion - just do it', *Sydney Morning Herald*, 22 Feb.

Chan, A. & Senser, R. A. (1997a). 'China's troubled workers', *Foreign Affairs*, vol. 76, no. 2, pp. 104-17.

Connor, T. & Atkinson, J. (1996). 'Sweating for Nike - A Report on Labour Conditions in the Sport-shoe Industry', *Community Aid Abroad's site* - http://www.caa.org.au/campaigns/nike/sweating.html, Melbourne, accessed 5 July 1999.

Cox, S. (1998). 'The Secret Life of Toys', *Georgia Straight*, 5-12 Nov.

Ernst &Young (1997). 'Ernst & Young Environmental and Labor Practice Audit of the Tae Kwang Vina Industrial Ltd. Co., Vietnam', *Transnational Resource and Action Centre web site* - http://www.corpwatch.org/trac/nike/ernst/audit.html, San Francisco, accessed 3 Apr. 1998.

ETI (1999). 'Learning from Doing Review', *Ethical Trading Initiative web site* - http://www.eti.org.uk/briefings/framesets/f_page.html, London, accessed 20 Aug. 1999.

Evans, M. (1999). 'SOCOG secrecy fires union', *Sydney Morning Herald*, Aug. 28.

Hancock, P. (1997), *Women Workers in Nike Factories in West Java*, Briefing Paper, Community Aid Abroad, Melbourne.

Hancock, P. (1998). Industrial Development in Indonesia: Development for Whom? A Case Study of Women Who Work in Factories in Rural West Java, PhD Thesis, Edith Cowan University, Perth.

ICCR (1998). *Footwear Manufacturing Fact-Finding Report - Nike and Reebok Plants in Indonesia, Vietnam, China*, Interfaith Center for Corporate Responsibility, New York.

ICFTU (1994). *From The Ashes - A Toy Factory Fire in Thailand, An Expose of the Toy Industry*, Brussels.

IRRC (1998). *The Sweatshop Quandary Corporate Responsibility on the Global Frontier*, ed. P. Varley, Investor Responsibility Research Center, Washington DC.

Kernaghan, C. (1998). *Behind the Label 'Made in China'*, National Labor Committee, New York.

Labour Net (1999a). 'Former union leader to investigate SOCOG uniforms', *Workers' Online web site* - http://www.labor.net.au/workers/magazine/27/news5_socog.html, Sydney, accessed 20 Aug 1999.

Labour Net (1999b). 'SOCOG eyes wide shut on Games gear', *Workers Online Issue No 28 - 27 Aug.* - http://www.labor.net.au/workers/magazine Sydney, accessed Accessed 30 Aug. 1999.
Nguyen, T. (1997). 'Nike Labor Practices in Vietnam', *Vietnam Labor Watch web site* http://www.saigon.com/~nike/report.html, New York, accessed 4 May 1998.
NSWDPWS (1998). 'Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers', *New South Wales Department of Public Works and Services' web site* - http://www.dpws.nsw.gov.au/Policies/OutWorking/owcode.html, Sydney, accessed 20 Aug. 1999.
O'Rourke, D. (1997b). 'Smoke From A Hired Gun: A Critique Of Nike's Labor And Environmental Auditing In Vietnam As Performed By Ernst & Young', *Transnational Resource and Action Centre web site* - http://www.corpwatch.org/trac/nike/trac.html, San Francisco, accessed 30 July 1998.
O'Rourke, D. (1998). 'Comments on the Vietnam Section of the Tuck School Report: 'Nike, Inc.: Survey of Vietnamese and Indonesian Domestic Expenditure Levels'', *Transnational Resource and Action Center web site* - http://www.corpwatch.org/trac/nike/tuck.html, San Francisco, accessed 3 Apr. 1998.
O'Rourke, J. (1999). 'Anger at SOCOG's 'secret' clothing factory', *Sun-Herald,* 29 Aug., pp. 6-7.
Phillips, M. (1996). Regionalism, the state and the firm, Honours Thesis, University of Newcastle, Australia, Newcastle.
Schoenberger, E. (1997). *The Cultural Crisis of the Firm,* Blackwell, Cambridge, Mass.
US Census Bureau (1999). 'International Trade Statistics', *US Census Bureau web site* - http://www.census.gov/foreign-trade/sitc1/, Washington, accessed 20 April 1999.

To Serve and To Sell: Media Sport and Cultural Citizenship

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Introduction

The last half-century has witnessed profound and rapid changes in sport and media as social institutions subject to the great transforming pressures of late capitalism, and, according to theoretical inclination, the flowering of late modernity or the coming of postmodernity (Crook, Pakulski and Waters, 1992; Giddens, 1991; Harvey, 1989). Of particular importance has been the *relational* transformation of sport and media, whereby each has become a crucial component of the other (Wenner, 1998). For example, the pronounced and accelerating commercialization of sport, with the accompanying erosion of the amateur ethic, is intimately related to the media's capacity to extend the reach of sports culture into the deepest recesses of everyday life. This arrangement sets up a relationship of dependency of sport on the media for publicity, fees, and the support of sponsors necessary for its survival and development. At the same time, there is a striking and increasing reliance of the media on sport for content, and in the specific case of television on its capacity to generate large, loyal free-to-air audiences and enthusiastic pay subscribers.

Above and beyond this involvement of commerce (especially of a corporate nature) in sport is unprecedented intervention by governments, both in terms of funding and in pursuit of nationally prestigious and socially egalitarian outcomes. Just as national governments see themselves, through their support for and regulation of peak bodies like the Australian Sports Commission, the Australian Olympic Commission and the Confederation of Australian Sport, as 'custodians' of national sport, they also seek to control and regulate the 'transmission' of sport and of sports culture by exercising their power over the allocation of television licences.

The trends described above have not only considerably expanded the prominence of sport in everyday life, but they have concomitantly raised the stakes in regard to sport's role in the establishment and protection of human rights. The continued and spectacular expansion of sport as a domain of popular culture, as a key part of the entertainment, advertising, broadcasting and related industries, and as a field of state intervention, inevitably demands greater scrutiny of sport - and what I call the 'media sports cultural complex' (Rowe, 1999) - as a key arena of current and emergent conceptions of human rights. For example, the power of the sport-business-media nexus creates conditions whereby the large-scale commercial forces that 'deliver' sport to a substantial component of the population can come frequently into conflict with socially progressive goals related to citizenship, equity and access. This paper will briefly discuss work-in-progress[i] on a research study concerned with the changes to Australian television that have occurred since the introduction of Pay TV on Australia Day, 1995.

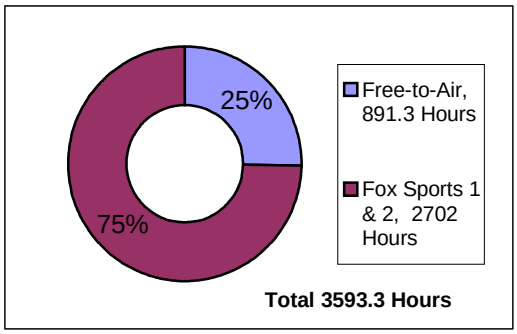
The study has three main starting points: first, that in the late twentieth century, high quality sports free-to-air television has become incorporated into a sense of 'cultural entitlement' of much of the Australian population. It is for this reason that the successive Australian Federal Governments have sought to protect events of 'national cultural significance' - all of them sporting and even when they are major overseas sports events like Wimbledon or the FA Cup Final – by specifying (through Ministerial gazettal) sports contests which they believe 'should be available free to the general public' under subsection 115(1) of the 1992 Broadcasting Services Act (the provisions of which were subsequently strengthened by amendment in 1995 - see Grainger (1996) for a full discussion of the Act's intent and early implementation). Hence, any 'siphoning' of major sports events from free-to-air to pay television represents, *prima facie*, an erosion of contemporary *cultural citizenship* rights. This relatively new concept extends the notion of citizen

entitlement beyond more conventional notions of the political (and, indeed, of more specific frameworks of indigenous and ethnic cultural maintenance) to the formerly 'discounted' realm of popular culture (see Rowe, 1996).

Second, and notwithstanding the first, sport on free-to-air television has substantially failed to represent the diversity of Australian sports, and has played a significant role in the marginalisation of many sports and of the people who play them. For example, as will be discussed below, free-to-air television has massively privileged men's over women's sports (see, for example, such 'snapshot' studies as Stoddart, 1994; Phillips, 1996). Third, this study assesses the claim by the providers of Pay Television in Australia, as a major part of the rationale for its introduction, that their mission is to correct the failings of free-to-air television by increasing the diversity of television coverage of Australian sport. The last proposition, in particular, needs to be tested empirically, and for this reason quantitative content analysis and qualitative textual analysis has been conducted on pay and free-to-air TV sport[ii]

The research findings to date, which are incomplete and must be interpreted cautiously[iii], are nonetheless instructive for this discussion, and are striking in terms of current debates over the rights pertaining to established and new forms of media sport delivery, choice and technology. After counting the amount of broadcast sport[iv] in Newcastle between May 18th and August 2nd, 1999 (11 weeks), we discovered, perhaps unsurprisingly, that there was a lot of it – just over 3593 broadcast hours in total (see Figure I). Of this sports broadcasting, 24.8 percent (891.30 hours) was on free-to-air television (ABC, SBS, Channels Seven, Nine and Ten) and 75.2 percent (2702 hours) on Newcastle's only (at the time of writing) Pay TV service – Foxtel, with its two dedicated sports channels, Fox Sports 1 and 2.

Figure I: Total Sport on Foxtel and Free-to-Air Television



One area of particular interest, given the debate about whether Pay TV in Australia would stimulate local production or would merely 'dump' large quantities of overseas TV sports content onto the Australian market (Lynch *et al*, 1996)), was the proportion of Australian-produced sport on television. Of the total sport on free-to-air television, 74.1 percent (660.35 hours) was Australian produced, but for pay TV, of the 2702 hours of broadcast sports TV, the level of Australian produced sport was proportionally much lower (20.5 percent), although in gross terms larger (see Figures II and III). In other words, while free-to-air television broadcasts only a quarter of all sport on television (in the Newcastle area), it is responsible for over half (54.4 percent) of Australian-produced broadcast sport See Figure IV). While sports broadcasts are 'traded' between free-to-air and pay TV sport, with pay-TV produced sport appearing on free-to-air and *vice versa* (although often as delayed telecasts or highlights packages), it is apparent that free-to-air TV is rather more Australian-production and content-oriented than pay TV.

Figure II: Free-to-Air Sport Between 18th May and 2nd August

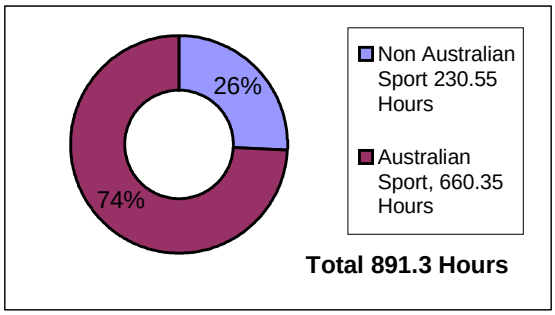


Figure III: Fox Sports 1 & 2 Sports Coverage Between 18th May and 2nd August

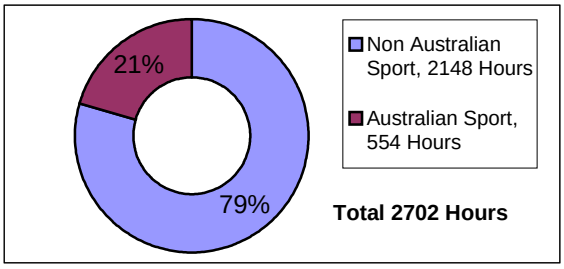
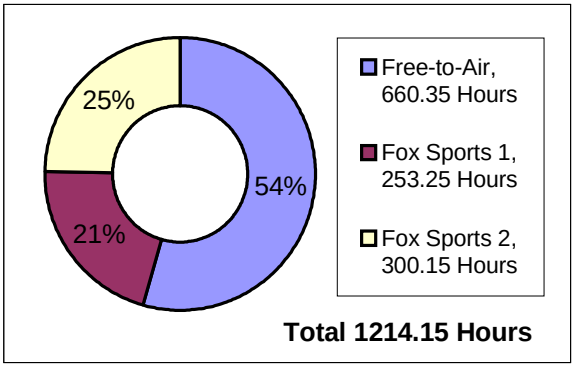


Figure IV: Australian Sports on Free-to-Air and Fox Sports 1 & 2



This is not, perhaps, an astounding finding in view of the 'global' reach of pay TV and its promise to bring the best of world sport to Australia - but, as was pointed out above, many such overseas-sourced events are already shown on free-to-air and are, in fact, legally protected by the anti-siphoning provisions.

With Fox Sports 1 and 2 in the sample period carrying 13.7 percent and 35.16 percent respectively of Australian-produced sport on their channels, a pattern is evident that pay TV is broadcasting large quantities of both premium and marginal overseas-produced sport combined with a smaller proportion of Australian-produced material. The device of

'badging' overseas sports programs (using some Australian studio-based commentary with all pictures and some commentary from the overseas broadcaster) as a mediating device designed to 'Australianise' largely imported sports content is partially disguising the production of Australian television sport 'offshore'. For example, 3.15 percent, 14.82 percent and 8.83 percent of sports programs on Fox Sports 1, Fox Sports 2 and free-to-air TV respectively were 'nominally' Australian-produced in this way. With developments in television technology (see Rowe, 1999), the possibilities of 'virtual Australianism' in sports production and commentary come more clearly into view.

Furthermore, the large expansion of channels precipitated by digitalisation, if combined with any weakening of the anti-siphoning provisions, will almost certainly lead to a further rationalisation of TV sport in Australia whereby pay TV channels themselves would split into those providing premium (including pay-per-view) and those supplying marginal content. The consequences for those citizens accustomed to receiving premium TV sport produced both in Australia and overseas will, therefore, be detrimental if there is any substantial 'leakage' from free-to-air television caused by the claiming of exclusivity by pay TV. Some recent changes, as is noted below, point to a substantial 'shakeout' in TV sport, with potentially serious outcomes for quality and equity. These developments may not trouble those members of the population able and willing to pay to view premium sport on television, but for sports followers – especially those who are insufficiently affluent to allow expenditure on new media delivery services – the consequences will be to degrade the quality of a form of popular cultural provision that, in Australia, has substantially passed from free-to-air public to commercial broadcasting (Wilson, 1998), and is now faced with the prospect of a further passage into the directly commodified realm of pay television.

Quality and Equity Questions

In recent times there has been a loss of free-to-air sports television magazine shows like Channel Nine's *Sports Saturday* and *Sports Sunday*, largely on grounds of cost-cutting. Such programming is migrating onto Pay TV, with the latter's availability to some degree undermining audiences and so advertising for the free-to-air programs. The release of the first ratings to include Pay TV in August 1999 revealed that:

> 'Four years after its introduction, pay television has captured 7 percent of the market, and around one in six households now subscribe.'
>
> (ABC Radio National, 1999, *The Media Report*, 8 August)

While some viewers in Australia (among which I count myself) may not mourn the passing of the 'matey' *bonhomie* of the likes of 'Kenny' Sutcliffe and 'Maxie' Walker (belatedly replaced until the closure of the programme by the 'non-matey' Nicole Stevenson) on free-to-air television, their replacement on pay television by shows like *Toyota World Sports* and *Extreme Sports*, with their familiar packaging of spectacular and bizarre sporting moments (usually synchronised with loud rock music), signals not so much the enhancement of viewing for Pay TV subscribers as the displacement and substitution of free-to-air content - with the difference being the direct subscription cost now imposed.

It is unlikely, however, that many sports fans will pay subscription fees to watch sports magazine programs, but there is strong evidence that they can be induced to do so in order to watch premium 'live' sporting events, especially when they are deprived of them after being 'captured' by pay TV. No global media proprietor understands this logic better than Rupert Murdoch, whose BSkyB satellite subscription service in Britain only prospered after capturing the 'live' rights to soccer's Premier League in 1992. As Murdoch forcefully observed to shareholders at the 1996 annual meeting of News Corporation:

> 'We have the long term rights in most countries to major sporting events and we will be doing in Asia what we intend to do elsewhere in the world, that is use sports as a battering ram and a lead offering in our pay television operations.' (quoted in Millar, 1998: 3)

Murdoch and other media proprietors (like Italy's Silvio Berlusconi) have gone further by moving from being sports broadcast rights owners to proprietors of sports teams in their own right. In the US, for example, Murdoch owns the LA Dodgers baseball club and has shares in the NY Knicks and LA Lakers basketball clubs, and the NY Rangers ice hockey team. In September 1998 BSkyB launched a take over bid for Manchester United, the world's richest and most famous sporting club (if not 'brand'), a move that was blocked by the Mergers and Monopolies Commission on the grounds that it was anti-competitive in broadcasting (with Murdoch on both sides of the rights negotiation table) and was not in the 'wider public interest', not least because it would entail 'reinforcing the trend towards growing inequalities between the larger, richer clubs and the smaller, poorer ones' - a long-term trend that started in serious earnest with the arrival of, first, the English Premier League and, second, its exclusive 'live' contract with BSkyB (see Miller, *et al*, 2000). In the UK broadcasters are currently prevented from taking stakes of more than 10 percent in more than one club (resulting in BSkyB and other European broadcasters like the French Canal Plus acquiring or seeking to acquire 9.9 per cent holdings in leading English Premier League clubs like Leeds United, Chelsea and Aston Villa). In this context, pay TV has been an important influence on the emergence and direction of what Anthony King (1998) calls the 'new consumption of football' which has seen sports fans (not least when viewing sport on television) increasingly re-positioned as customers within a Thatcherite framework of individual market choice. While all aspects of this change may not be malign (for example, through the assertion of consumer sovereignty against old-style paternalism) or uncontested (as in the case of political mobilisation among sport supporters opposing the take over of their football clubs by media corporations), the deepened and widened insinuation of commodity logic is likely to alienate many fans – culturally and materially – from the objects of their intensely experienced popular passions.

The wholesale involvement in sport of major broadcasters is, then, a matter of some disquiet. In Australia, we have already seen, in the 'Super League War', how 'duelling' media proprietors - in this case Rupert Murdoch and Kerry Packer - can have a massively damaging impact on a sport, with governments and sports fans little more than sideline spectators. The ensuing round of club mergers disillusioned many supporters by disrupting their sense of 'place identity' and affiliation, and led to club closures and, notably, the exclusion from the National Rugby League (NRL) competition of the renowned South Sydney Club. After hostilities ended in late 1996, the emergent joint venture, the NRL, contained representatives of both media camps, and the 'treaty' between Murdoch and Packer gave primacy over 'live to air' rugby league matches to pay TV. With the current anti-siphoning regime terminating in 2004, and first digital and then WEBTV on the horizon, pressure is building up to deregulate sports television in the name of 'choice', 'flexibility' and 'convergence'. The recent Productivity Commission inquiry has further thrown anti-siphoning laws into question, not least because those laws do unquestionably favour some economic enterprises over others. The Pay TV sector has long resented the 'market distortion' of the anti-siphoning laws, and the British-owned Cable and Wireless Optus' submission to the inquiry states, 'Anti-siphoning rules ought to be limited to such events as the Melbourne Cup, the grand final of certain major football codes and test cricket matches.' From this point of view anti-siphoning should be restricted to the bare, politically tolerable minimum.

In Britain, as we have seen, major live sports like soccer (including the Scottish Premier League), rugby union and cricket have 'migrated' to pay, leaving the over 60 per cent of non-subscribing viewers often only able to see the sports live in pubs and clubs. The argument put forward by pay TV operators that the rigid schedules of terrestrial television are inimical to live sports viewing is only partially sustainable, especially given that they have mirrored traditional live match times - such as Sunday afternoons - in their own schedules. A glance across the Tasman - and to the capturing of New Zealand's major sport, rugby union, by pay TV for live broadcasts - suggests a salient warning about the abandonment of the inclusive principles of cultural citizenship in favour of a leisure *cornucopia* that is available only to those who can afford the installation and subscription costs. This concern over Pay

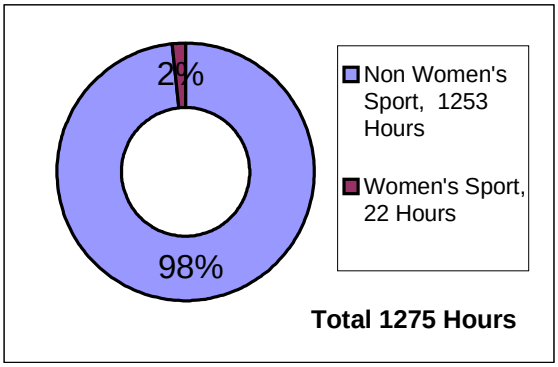
TV is not, however, to forget that there are several existing areas where cultural citizenship is in urgent need of enhancement under current televisual arrangements – for example, in the media representation of women's sport.

The Gender Order of TV Sport

It is important not to mythologise free-to-air television's contribution to sports TV just because it is in 99 per cent of households rather than 15 per cent, and does not have a subscription fee that prevents many viewers from watching. There is, for example, little evidence that free-to-air TV has taken the opportunity to broaden the scope of its sporting coverage in the face of the 'threat' from pay TV. In the study period the Australian-produced content on free-to-air TV was heavily skewed towards three male football codes (rugby league, rugby union and Australian rules football) accounting for an average of 54 percent of all sports programs, despite being broadcast on only two commercial stations in Newcastle.

In going beyond restricted questions of national broadcasting and appraising the nature of the TV 'sporting nation', the study examined the gender composition of broadcast sport for a month-long period (July 6-August 2, 1999), discovering that of a total of 1275 hours of broadcast sport on all pay and free-to-air channels (see Figure V), only 22 hours (1.7 percent) were devoted exclusively to women's sports[v].

Figure V: Women's Sport Broadcast On Free-to-Air and Fox Sports 1 & 2 Between July 6th and August 2nd



On free-to-air TV, 5.8 percent of all TV sport is devoted to women's sport, compared with 0.71 percent for pay TV (see Figures VI and VII). Fox Sports 2, which broadcasts for 4 days per week, carried no women's sport in the sample period - but neither did the commercial free-to-air channels Channel Seven, Nine and Ten, with the ABC and SBS carrying 68.18 percent of all women's sport broadcast (see Figure VIII).

Figure VI: Women's Sport on Free-to-Air TV Between 6th July and 2nd August

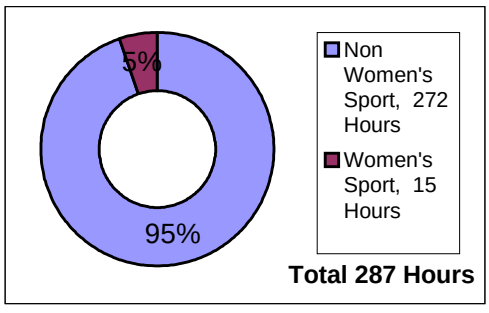


Figure VII: Women's Sport on Fox Sports 1 & 2 Between 6th July and 2nd August

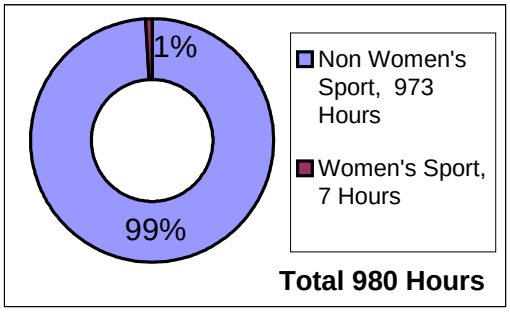
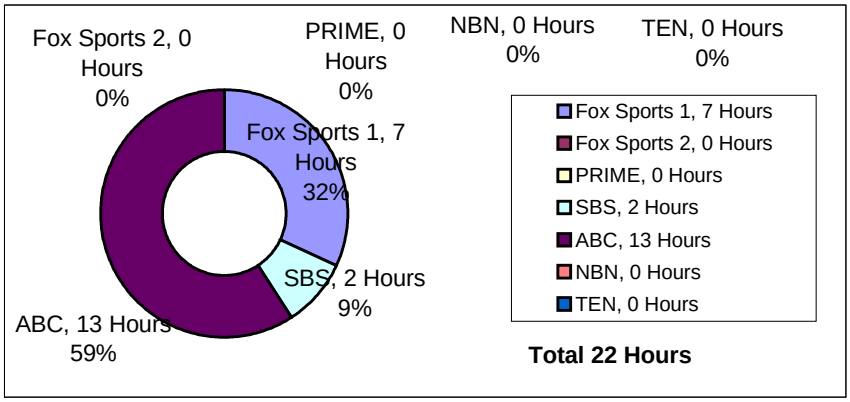


Figure VIII: Coverage of Women's Sport on Free-to-Air and Pay TV by Channel between 6th July and 2nd August



If pay TV is to provide greater diversity of sport on TV to reflect that of Australian sports culture, and given that it is freed from the audience maximisation 'imperative' of commercial free-to-air television, it might legitimately be expected that women's sport would be a growth area. This has yet to proven to be the case, and the same depressing results of the proportion of women's sport broadcast on television produced by earlier studies (such as Phillips, 1996) have so far been replicated in this study (and in others, such as Womensport Australia (1997), that have researched the print media). Apart from these 'quantitative' issues, the same 'qualitative' concerns raised in earlier studies (like McKay, 1997) over gender inequality are evident here and will be explored further within the study (although not in this context). These focus on the commercially induced sexualisation of women's sport. For example, the recent success of the women's World Cup Soccer in the USA was not allowed to stand on its own merits, and has become inextricably linked to images of the US player Brandy Chastain 'spontaneously' exposing her Nike sports bra (see Miller *et al*, 2000). The bra has since been launched into American stores with an extensive poster campaign featuring the photo of Brandy on-field exposure (with the US team later securing high-profile corporate endorsements of breakfast cereal and Disneyland). Similar issues have been raised concerning apparel - or lack of it - in the Olympic Beach Volley Ball event in the Sydney 2000 Olympics to be held on Bondi Beach. While there has been a growing sexualisation of male sport, it is women's sport

that feels most keenly the pressure to act and look sexy. It is still very hard for women's sport to 'take the TV eye' - even when it is supposedly 'niche marketed' on pay TV.

The project is exploring such issues of gender and sexuality in Australian sports TV in a fuller analysis of cultural citizenship in and through television sport, alongside those concerning ethnicity and indigeneity. For example, Soccer Australia's controversial policy of de-ethnicisation has raised important questions concerning the relationship between 'saleability' and ethnicity in media sport, just as sport television's coverage of racial vilification (including that conducted in its own studios under the guise of comedy) also needs to be addressed. Finally, the monitoring of sports-dedicated Internet message boards enables some analysis of certain sports fans' responses to the changes in television sport to be conducted. To date it has revealed discontent among sports fans concerning the operation of the anti-siphoning laws under the Broadcasting Act - such as the free-to-air power of 'veto' over certain live sports events on pay TV and, in contradiction, concern over the migration of some sports onto pay TV. Some fans also argue that saturation TV sports coverage is destroying incentives for ground attendance. The complex and sometimes conflicting responses of sports fans to changes in TV sports regimes will, it is hoped, help illuminate issues of citizenship and rights that are not always seen as paramount within the cultural sphere. As has been noted throughout, however, the data and analysis reported here reflect work-in-progress, and a more developed position must await a fuller unfolding of the research process.

Conclusion

This paper has been a very preliminary analysis of cultural citizenship and its attendant human rights in the area of broadcast sport. It has considered the rights and responsibilities of the sports media in their daily carriage of a key component of contemporary popular culture. The current research that it has addressed has sought to explore the issue of 'established cultural entitlement' in an era where some commentators have proclaimed the death of the defining 'mass' cultural relationship of the last 40 years - free-to-air television broadcasting to domestically situated viewers. The re-positioning of the 'general viewing public' as consumers with abundant choice rather than as cultural citizens with a general, non-monetised right to provision is of keen significance in the highly charged area of broadcast – and, as is sometimes claimed, the imminent post-broadcast - sport. As pay TV becomes more established in Australia, new forms of content delivery emerge, and sport features more prominently in the (perpetual) coming information revolution, critical and sceptical analysis is needed of the consequences for the quality of cultural citizenship of any rolling back of the role of the state and the rolling forward of the media sport market.

It may be felt that the rights of the 'armchair' sports viewer are of low priority when compared to some of the major issues of access, equity and the political manipulation of contemporary sport across the world. Yet it cannot be denied that the reach and power of today's sport - in other words, the reason why sport is now so important in 'millennial' politics - owes much to its omnipresence and to its prominent place in everyday life by virtue of its ready availability on 'the box in the corner'. The vast constituency of sports TV viewers, then, present an irresistible target both for media sport entrepreneurs and for those who appreciate the importance of exploring and enhancing cultural citizenship in some of the less obviously politicised spaces of everyday life.

References

ABC Radio National (1999). *The Media Report*. http://www.abc.net.au/rn/talks/8.30/mediarpt/stories/s41840.htm,. Thursday 8 August.

Crook, S., Pakulski, J. and Waters, M. (1992). *Postmodernization: Change in Advanced Society*. London: Sage.

Giddens, A. (1991).*Modernity and Self-Identity: Self and Society in the Late Modern Age*. Cambridge: Polity.

Grainger, G. (1996).The Broadcasting Services Act 1992: Present and Future Implications, in R. Lynch, I. McDonnell, S. Thompson and K. Toohey (eds), *Sport and Pay TV: Strategies for Success*. Sydney: School of

Leisure and Tourism Studies, University of Technology, Sydney, pp. 23-38.
Harvey, D. (1989). *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change*. Oxford: Basil Blackwell.
King, A. (1998). *The End of the Terraces: The Transformation of English Football in the 1990s.* London and New York: Leicester University Press.
Lynch, R., McDonnell, I., Thompson, S. and Toohey, K. (eds), (1996). *Sport and Pay TV: Strategies for Success*. Sydney: School of Leisure and Tourism Studies, University of Technology, Sydney.
McKay, J. (1997). *Managing Gender: Affirmative Action and Organizational Power in Australian, Canadian, and New Zealand Sport.* Albany: State University of New York Press.
Millar, S. (1998). Courtship Ends as Soccer and TV are United, *The Guardian*, September 7: 3.
Miller, T., Lawrence, G., McKay, J. and Rowe, D. (2000). *Playing the World: Globalised Sport and the New International Division of Cultural Labour*. London: Sage (forthcoming).
Phillips, M. (1996). *An Illusory Image: A Report on the Media Coverage and Portrayal of Women's Sport in Australia, 1996*. Canberra: Australian Sports Commission.
Rowe, D. (1999). *Sport, Culture and the Media: The Unruly Trinity*. Buckingham, UK: Open University Press.
Rowe, D. (1996). Taming the 'Media Monsters': Cultural Policy and Sports TV, Metro, vol. 105, pp. 57-61
Stoddart, B. (1994). *Invisible Games: A Report on the Media Coverage of Women's Sport*. Canberra: Sport and Recreation Ministers' Council.
Wenner, L. (ed) (1998). *MediaSport*. London: Routledge.
Wilson, H. (1998). Television's *tour de force*: The nation watches the Olympic Games, in D. Rowe and G. Lawrence (eds), *Tourism, Leisure, Sport: Critical Perspectives*, Melbourne: Cambridge University Press, pp. 135-45.
Womensport Australia (1997). *Inching Forward*: *Newspaper Coverage and Portrayal of Women's Sport in Australia: A Quantitative and Qualitative Analysis*, Canberra.

Notes

[i] The research on which this paper is based was funded by a 1999 Australian Research Grant Council Small Grant administered by The University of Newcastle. It is important to note that the data reported here (current at the time of the September 1-3, 1999 *Sport and Human Rights Conference* at which it was delivered) was 'hot off the press' and had not been thoroughly re-checked or analysed. Nonetheless, I believed that sufficient initial data were available and analysis possible to justify presentation at this 'landmark' event. In order to respect the nature of this publication as Conference Proceedings, I have only re-checked the accuracy of the data collected at that time, and have not included subsequently collected data. I would like to thank Andrew Taylor for his diligent work as Research Assistant on the project.

[ii] The channels surveyed were those available in the University of Newcastle's Media and Production Studies Group Research Room - FOX SPORTS 1 and 2, ABC, SBS, and Channels 7, 9 and 10. At the time of the study, a pay TV monopoly existed in Australia's sixth largest city, with the regional provider *Austar* servicing the adjacent city of Maitland and its *environs*.

[iii] As noted earlier, these preliminary research findings must be treated with caution – for example, no account has yet been taken of specific factors such as 'seasonality'. Nonetheless, for a project concerned with national cultural sovereignty and cultural citizenship, these data (especially on national origin, new media delivery and gender) are highly promising and suggestive.

[iv] For the purposes of this study, Australian-produced broadcast sport includes all sport where Australian production 'infrastructure' is involved in the delivery of sporting events. This category includes all live sports programs, delayed telecasts, repeats, highlights, condensed coverage, sports magazine and talk shows (such as World Sports, Sports Tonight) and 'mediated' telecasts where Australian commentary is added to overseas-produced broadcasts (like World Cup Cricket). It does not include sport within a general news bulletin, or programs with an Australian team or individual content, but no involvement in production. Nor does it include programs where foreign content is 'book-ended' with Australian presenters (for example, *The Afternoon Rush* on Fox Sports 1).

[v] In this context, women's sport is defined in content terms as including all live and recorded events involving exclusive female participation(such as netball, but not tennis or athletic events with single and mixed-sex events), and magazine programs which exclusively refer to women's sport (eg *Sportswoman*).