

Book Reviews

CURIOUS PLEASURES

Crime, Fear and the Law in True Crime Stories, by Anita Biressi. Basingstoke: Palgrave, 2001. Pp.238, £42.50 (hb), ISBN 0 333 74547 7.

This book, concerned as it is with the relations of crime and narrative, is itself situated in an interesting conjunction of narrative and metanarrative. It is both a commentary on the stories of crimes and criminals, and on the ways in which those stories have been read and represented by writers on them, so it stands already at a third degree of remove from what we could call the 'real crimes'. Oddly though, in its presentation, this book is returned through the levels of discourse to something approaching the style of those texts upon which it commentates. The cover shows a man in a Cambridge Rapist-style leather hood, his arms and body tattooed with the words 'murder', 'hate' and 'kill', against a night landscape of winter trees; exactly the kind of image that accompanies true crime accounts in books and magazines. The cover also bears the words 'Crime Files' in the graphic style of a police case-folder stamp, this being the general title of the series within which Biressi's book is published, and the brief overview of the series describes it as 'offering scholars, students and discerning readers a comprehensive set of guides to the world of crime and detective fiction'. I comment on these details of the book's presentation because it seems to me that they immediately raise questions about some of the difficulties that Biressi is attempting to unravel. What is the status of the writer on, or the reader of, true crime narratives? Wherein does the continued fascination with these stories lie and what is the nature of the pleasure derived from them? Further, in this context, how does an academic analyst differ from those other readers and writers of the genre? A suspicious police officer might be forgiven for being unable to see the difference between the isolated individual in a bedsit full of true crime books and newspaper clippings of grotesque murders, and the office of an academic containing exactly the same material. The 'scholar, student and discerning reader' defence hardly works, when this is the alibi that so many of the texts under examination themselves employ to justify the willing involvement of the writer and the interest of the reader in apparently indefensible material.

I do not mean to suggest that the subject is one that should not have been approached, only to point to an element of analysis that is missing from Biressi's own otherwise insightful discussion of 'how cultural critics engage with and politically interpret that troubling pleasure' (p.16), where there is a silence about her own subject position and the status of the academic metanarrative. She displays some scepticism about the use of various professional discourses such as law, medicine or psychoanalysis by true crime writers, yet no apparent consciousness of her own use of the professional discourses of literary and cultural analysis to interpret these. This is a field in which, as she rightly says, there are real consequences for those involved in more recent cases and, I would suggest, some debt of responsibility to those in the historical past.

It is perhaps this 'ethical jeopardy', as she calls the position of the true crime biographer in relation to his subject (p.26), that goes some way towards accounting for the relative scarcity of academic work on the subject. There is a very striking inverse

proportion between the proliferation of true crime material in different formats and any commentary on it. For this reason alone, Biressi's book is a welcome and timely intervention, but it is also welcome in that she works carefully and sensitively to establish her thesis. Her argument is that the various non-fiction accounts of crime found in popular journalism, 'law and order' television programming, quasi-governmental initiatives and true crime publishing have produced politically inflected subject positions, most notably those of the moral subject, the good citizen and the dangerous individual, and that this production has itself raised the interest in crime through the mobilisation of the real concerns of readers about personal vulnerability and physical danger in everyday life. It is a convincing thesis, with some important insights, particularly on the ambiguities of individualism and the ways in which the tensions between individual and community identity are fundamental to public discourses of law and order. Biressi also notes in detail the political inflections of such discourses, and this is very useful in a field where there is so frequently a resort to more metaphysical deployment of the terminology of good and evil, or at least to the conventional language of psychology, that discussion is rendered oddly apolitical. There are, however, and perhaps inevitably given the range and complexity of the material, some areas where further work needs to be done.

Biressi's analysis relies heavily, and to good effect, on the work of Foucault, but there are within this some of the same oversights that have been remarked upon in Foucault's own thinking. Principal among these, I feel, is the lack of differentiation of subject positions and, crucially in work of this kind, the lack of any commentary on gender. It is clear from the figures that Biressi gives for the circulation of the periodical true crime publications that the readership is overwhelmingly female and that mainstream women's weekly magazines contain a significant component of true crime presented as human interest features (pp.4–5). As it remains the case that the majority of notorious murders and sex crimes are carried out by men and that the majority of their victims are women, there are surely a number of serious questions to be asked about the particular nature of women's interest in such writing that cannot be answered by reference to a rather universalised 'moral subject'. If, as Biressi contends, true crime writing provides a forum for the real concerns of readers about their own personal vulnerability, then it must be necessary to articulate who it is that is concerned and about what. However, the opportunity to highlight the particular gendered inflections of the argument is completely lost. There are many instances where this discussion is conspicuous by its absence, such as in the section on readership, but the first case study chosen for detailed scrutiny is that of the Thompson sisters, who murdered their abusive father. One might ask very different questions about the nature of women readers' interest in this case, for example whether it could be that women might engage in fantasies of revenge, constituting themselves as agents of power, rather than rehearsing their fears about vulnerability as they might, say, in accounts of Peter Sutcliffe's murders. Such issues are also apparent in the section on looking at the body, where there is a brief, but wholly undeveloped comparison between pornography and the photographic and written representations of the victim's body in new true crime magazines. As Biressi then goes on to discuss the situating of the body as passive object in relation to the active knowing subject that is the viewer/reader, then the very detailed and varied mass of work that exists on the problematics of gender and objectification ought to be acknowledged.

The section on the body raises another issue that is not given sufficient attention in the book; the extent to which there is any difference between written and visual representation. There is some very interesting discussion of 'vernacular images' and

the arrangement of photographs as 'bearing traces of a working-class structure of feeling' (p.137) in historical true crime accounts, but the reliance elsewhere on narrative analysis of texts and their coherence with conventions of story-telling rather overwhelms this. The pleasures of the visual are of a different order than those of narrative, structured as they are on the opposite axes of linearity. The written narrative relies on movement through time, promising development and ultimate resolution, wherein the satisfaction of having understood the criminal and seen the case resolved lies. The reader here can identify her or himself with the forces of detection and resolution. The visual image is a moment in time. It has no past or future, no development or resolution and is where, arguably, the viewer is more closely and uncomfortably placed in the viewpoint of the murderer, looking down on the dead body. Of course, such a viewpoint could also be recuperated by identifying oneself as the privileged professional observer, the detective or the pathologist, but then also as the voyeuristic sightseer. What seems necessary here is the disentangling of the question of visual pleasure as distinct from narrative satisfaction, and some consideration of the complex nature of such pleasure. Such a discussion would also possibly add more detail to the otherwise rather bland and anonymous figure of the 'moral subject' who features so crucially in the argument.

The book is most uncertain in the section on histories of true crime, where it is very heavily reliant on secondary sources of commentary on earlier forms of writing about crime and criminals. This reliance on the reading of other critics means that there is very little of Biressi's own thesis evident in the chapter and some impetus in her argument is lost. The chapter thus misses some important points and propagates some errors. For example, Havelock Ellis was not a criminologist and certainly did not 'epitomise the new criminology' (p.65). There are also some terrific jumps in time, such as a switch from Defoe's writing in the early eighteenth century to a suggested bourgeois rejection of policing in the nineteenth century that are not sustainable on the evidence given. It seems to me that there is more to be said too, about the place of historical true crime, particularly that of the nineteenth century, in the formation of 'Heritage Britain', that other aspect of the Thatcherite 1980s. As I have already said, Biressi is very good on the locating of discourses of crime against certain recent political ideologies, and I would think that there are some interesting comparisons here with a return to Victorian values, the transformation of a difficult industrial past into a contemporary entertainment, and the apparently endless appetite of the public for the recreation of the past as it 'really was', as evinced by any number of television shows.

These are by no means fatal flaws in the book, however, and my remarks are perhaps more in the order of directions in which it would be interesting to see the debate develop. Biressi's work is a valuable contribution to this difficult but extremely important area of study.

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SPORTS AND THE COURTS

Sports Law and Litigation, by Craig Moore. 2nd edn., Welwyn Garden City: CLT Professional Publishing, 2000. Pp.292, £42.00 (pb), ISBN 1 858 11 257 5.

To talk of a discrete body of 'sports law' is misleading. So said Craig Moore in the

preface to the first edition of his book *Sports Law and Litigation* in 1997. Rather, a sports lawyer is concerned with the application of general legal principles in a myriad of sporting contexts. This is well illustrated by the approach taken by Moore throughout this, his second book, which consists of 12 chapters covering all the main substantive areas where sport and the law are inextricably linked.

In the introductory chapter, Moore highlights the speed at which the law surrounding sport has developed since the first edition of his book, particularly in terms of sports-related litigation. Inevitably this means that at the date of reviewing this book (February 2002) it is already out of date.

The first chapter provides a good introduction with a discussion of the government of sport and the roles of the different bodies involved in sport, ranging from administrators to governing bodies to central government. Through the discussion of *Jones and Another v. Welsh Rugby Football Union* (*The Times*, 6 March 1997), in which the High Court granted an injunction lifting the suspension imposed by the Welsh Rugby Union against a player until appeal, Moore illustrates how the courts have come to play a more central role in sport by quoting the learned judge in the case. Ebsworth J. stated that,

For many years sporting decisions had been made from the wet and windy touchlines but the modern professional game meant that such rulings now affected many people who earned their living from a game ... it was naive to argue that the decisions of disciplinary committees would not be challenged in court, because such sanctions imposed now had economic results on those affected.

This statement is testament to the increasing involvement of the law in sports-related activities. Sport has become one of the most popular global pastimes and most valuable commodities. It is inevitable that the law will play a central role in the development of this commodity.

The second chapter discusses the status of clubs and other sporting bodies from a commercial viewpoint. It contains useful analyses of the roles of private limited and public limited companies, unincorporated associations and clubs with charitable status, within a sporting club/association context. The book continues with the legal analysis of the effect of the commercial status of sporting clubs and bodies with a chapter on the taxation of sport. There is a useful analysis of those activities carried out by clubs and individuals that may give rise to tax liabilities.

The fourth chapter on 'Media, Sponsorship and Image Rights' is a welcome new addition to the second edition of this book. It is an area that is developing at an alarmingly fast rate because of the globalisation of sport and the increasing awareness of multinational corporations of the marketing value of stars such as David Beckham, Ronaldo and Anna Kournikova, to name but a few. This area is a minefield for litigators, with sports personalities and clubs both trying to maintain exclusive control over use of the player's identity, and entrepreneurial opportunists trying to make a 'fast buck' at the expense of another individual's legal rights. Moore provides an informative summary of the law and issues in this area such as broadcasting rights, restrictive practices, competition law, trademark registration, passing off, character merchandising and the rights of sponsors.

The next chapter is on the subject of sport and the criminal law. In his introduction, Moore states that the division of the criminal law and the law of tort in the subsequent chapter is artificial, as the two share a certain amount of common ground. The

reviewer disagrees with this and is pleased that in the second edition of this book, the author has given sport and the law of tort a separate chapter. This is a constantly evolving area, largely because of the increasing number of injuries sustained in sporting events and the lack of redress available through the criminal courts.

The chapter on sport and the criminal law provides a concise summary of the implications of the criminal law upon various facets of the sporting world. There is brief discussion of injuries sustained on the field of play, as well as discussion of the disciplinary measures available through the governing bodies as an alternative to the criminal law. This is a very topical area at the moment, considering the sudden surge in spectator violence at football matches, with fans throwing missiles and players retaliating and facing potential criminal charges.

The following chapter on tort provides a much more detailed examination of the relationship between the law and sport with reference to player-on-player injuries, injuries sustained by spectators, the duty of care owed by professional bodies towards sportsmen, and the option of insurance as a form of redress for injured sportsmen, and concludes with a detailed discussion of the liability of golfers in tort.

The book also deals with a number of sports-related issues that the practitioner may rarely deal with, but by including these in the book the author provides the reader with interesting background information in a concise, intelligible summary of the law. For example, Chapter 7 deals with the interrelationship between law, sports, schools and local authorities. Chapter 8 deals with spectators, and Moore rightly envisages the conflict between the Football Disorder Act 2000 (at the time of his writing the Football Disorder Bill had been stalled) and the Human Rights Act 1998, a conflict which also demonstrates the increasing number of legal fields that are impacting upon sports, a natural consequence of which is that the subject of 'sports law' or 'sport and the law', whichever one prefers to call it, is developing at some speed.

Medicine and drugs in sport, is also given its own chapter, with a discussion of the history of doping back in 1866 to the contemporary doping cases. Consideration is given to the various medicines, illegal drugs and performance enhancing drugs, and the ramifications of the use of such drugs in a variety of sports.

A very useful detailed study of the contractual and employment aspects of sport is provided. This is, in the reviewer's opinion, one of the most useful chapters in the book, along with the chapter on 'Media, Image and Sponsorship', for the practitioner dealing with an individual sportsperson.

There are useful precedents contained in the Appendix, including letters before action, pleadings, application notices and even witness statements. Whilst they cannot be and are not meant to be definitive guides, they are nonetheless useful. One point that must be noted for future editions is that although he uses the correct terminology in the draft pleadings, Moore does occasionally lapse into pre-Woolf language and refer to 'plaintiffs'.

Sports Law and Litigation provides anyone practising sports law, be it for club, individual or governing body, with a useful guide to the various topics in this area, ranging from commercial aspects to employment and intellectual property law. It is not a definitive guide to sports law, nor does it attempt to be, covering so many topics. In his preface, Moore states that the principal objective of this book is to assist the legal practitioner who already works in this area of the law, and to be a practical work of first reference for full-time litigators, as well as for those who may use it only once in a lifetime. Moore achieves this with ease with a book that is well-written and constructed, informative and thought-provoking, and in the reviewer's opinion a

palatable introductory guide to sports law for academics of any level as well as to those practising in the field.

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Schillings

LAW AND OTHERS

Law and Literature: Journeys from Her to Eternity, by Maria Aristodemou. Oxford: Oxford University Press, 2000. Pp.xi + 304, £21.99 (pb), ISBN 0 1987 6436 7.

Though Law and Literature has a history stretching back several decades in North America, it has only recently had much impact in Britain. Maria Aristodemou taught the UK's first Law and Literature course when she was at the University of Bristol; now at Birkbeck College, she remains in the forefront of the movement in this country and internationally. Her book, '[l]ong awaited, much needed, and beautifully executed', as Peter Goodrich writes on the back cover blurb, represents state-of-the-art Law and Literature theory. Not interested simply in 'law' as depicted in 'literature', unconvinced by arguments that reading literature makes lawyers either more literate or more humane, Aristodemou recognises that law and literature have more similarities than differences, that they are both products of the same 'social, historical and cultural forces' (p.10), and that they 'sustain and reinforc[e] each other' (p.7).

The idea that legal texts should be read differently from other narratives, including fictional ones, is, Aristodemou explains, 'cultural rather than natural' and, furthermore, 'hierarchical, made by those with an interest in presenting their version of the truth as superior to that of other peoples' (p.4). If literature is recognised generally as open to many interpretations, law purports to provide answers which, if not certainly right, aim at least to be *certain*. But for Aristodemou, 'the institution called literature is [actually] another form of law-making' (p.9), with its own rules, values and prejudices. Her view is that law cannot be fully understood by reference to itself alone – that law does not have the tools to deconstruct itself – and that people educated as lawyers need other disciplines, other critical tools and other narrative possibilities to be able to examine law *through* the society and culture of which law and literature form intrinsic parts. Literature's value to legal scholars lies in the fact that it opens up possibilities, being on the one hand 'less reductive of the world's varied meanings than [conventional] legal texts', and on the other 'more likely than other forms of legislation to challenge existing laws and dominant values' (p.9).

Peter Goodrich recommends that readers start with the last chapter of the book, 'A Rebeginning' – Aristodemou's manifesto. I can see why he says this, but I think it makes more sense if you start at the real beginning, for it is in the first chapter that Aristodemou sets out her aims and her philosophy in the context of what has gone before in the Law and Literature movement. Central to her approach is the concept that ideas of law and classic narratives of English literature are not only culturally specific but *masculine*. Myths and fairy tales, for example, while presented as 'truths about the human condition', can be seen as attempts by a male subject 'to define himself by distinguishing himself from other: gods, slaves, barbarians, animals and, of course, women' (p.56). Similarly with the male legal scholar, whose 'distrust of emotions as clouding clarity of judgment and his attempt to expulse [sic] them from ethical thinking is ... not divorced from his fear of woman: to attend to the particular and the emotional may lead away from the modernist and masculinist model of justice and

rights, towards a model based on connectedness, towards acknowledging [woman]'s difference and her different voice' (p.15).

Throughout the 200-plus pages between the setting out and the summary of her project, this image of Woman ('Ariadne') weaves in and out. But Aristodemou is at pains to repudiate an essentialist notion of Woman, for her postmodern vision focuses on the range of different perspectives and alternative viewpoints which cast their critical gaze on the essentialist concepts of law. Women are not the only 'Others' of law; the narratives of English law are not only masculine but *white*. Aristodemou describes how, by importing Western legal concepts and institutions into the far reaches of empire, Britain was able to subjugate and control colonial peoples, 'not just in terms of the coercive role [law's] rules, courts, and penal machinery would exert, but the ideological role of making that same coercion appear natural and inevitable' (p.7). Once again, literature played a complementary role, cultivating 'a system of values that placed the white English author and reader at the centre and both literally and metaphorically "arrested" colonized groups into the role of the Other' (p.7).

Aristodemou's vehicles for critique are the literary texts she has selected, which range from traditional myths and fairy tales to feminist retellings of those tales, from classical drama to Shakespeare, from Emily Bronte to Toni Morrison, encompassing Camus, Marquez and Borges along the way. As this list shows, we are offered texts by women and by men, of different literary genres, from different periods and different societies. Every page contains insights (I found myself making extensive notes) which do truly illuminate our understanding of law. To take but one example, through her study of Greek and Shakespearean drama, Aristodemou demonstrates starkly how man's fear of woman is not only played out in literature, where the women are obliterated (as in the Oresteia), but forms the basis of laws which seek to control women: the laws of marriage, succession, citizenship, property. (To which one might add sexual offences, employment, equity and trusts ... is there any legal area which is exempt?)

Finally, in the concluding chapter so praised by Peter Goodrich, Aristodemou envisages the female lawyer, Ariadne, starting out in pursuit of justice. Here she describes the difficulties that 'Others' face when attempting to find a place for themselves in law, whose objective, rational, self-interested, competitive, authoritarian character denies accommodation to people with different experiences and viewpoints. Many readers will recognise the plight of Aristodemou's Ariadne, working within law school or legal profession; and empirical evidence certainly bears out the reality of this description of women's experiences in law today (see, for example, Clare McGlynn, *The Woman Lawyer*, Butterworths, 1998). Goodrich is right: this last chapter is a brilliant expose of the closed circle of the law – but so is the whole book. It's a vision of law which is as political as it is aesthetic, and it should be read by everyone with a genuine commitment to multiculturalism, inclusivity and justice.

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FOOTBALL: SELF-REGULATION v. LEGAL REGULATION

Regulating Football: Commodification, Consumption and the Law, by Steve Greenfield and Guy Osborn. London: Pluto, 2001. Pp.224, £9.99 (pb), ISBN 0 7453 1026 5.

This book has come out at the start of a football season that has seen the Office of Fair Trading renew its investigations into the price of replica kits, FIFA's new transfer regulations try to come into force and the government uncertain as to whether it would be able to ensure that the World Cup 2002 would be on free-to-air television. It traces the changes and developments in the regulation of the national game, from the unquestioned dominance of the FA and the clubs and the ideal of self-regulation, to the ever-increasing power of the players and media broadcasters and regulation by the law. It takes as one of its themes, 'the perception that the game has been taken away, changed and repackaged and, in this sense, made less palatable to the traditional bedrock of supporters' (p.ix). This is developed throughout by the authors and demonstrates how alongside this commercialisation of football, its regulation has moved from the sphere of public order to the need for its being controlled as an economic activity.

The first five chapters discuss the changing nature of the regulation of football in specific contexts. The final chapter concentrates on the challenges that face football in the future. Chapter one charts the development of state and legal control of public order issues. The reactive nature of government responses and the intransigence of the football authorities are described against the backdrop of judicial enquiries and persistently ignored advice. As crowd safety became inexorably linked with crowd control, the various pieces of football specific legislation were passed, imposing an ever-greater control on spectators by the criminal law. Having described and discussed the regulation of spectators up to the Football (Offences & Disorder) Act 1999, they correctly foresee that any further disturbances at future championships are likely to produce further and more Draconian legislation. In chapter 6, they anticipate that following the disturbances at Euro 2000, further, more restrictive legislation that infringes the human rights of spectators would be passed. Within a couple of months, the Football (Disorder) Act 2000, with its emphasis on removing the passports not just of those convicted of football related offences but of those merely suspected of involvement in acts of hooliganism, had been passed. Although in many people's eyes a clear breach of the Human Rights Act 1998, this legislation has recently been held to be a legitimate restriction on spectators' movement in *Gough & Smith v. CC Derbyshire* [2001] EWHC Admin 554. Not only does this demonstrate the ever-increasing number of legal fields that are impacting on sport, but also the speed with which the subject of Sports Law is developing. As a result of the riots at Euro 2000, the book is out of date before it is published.

The remaining chapters concentrate on specific topics and how their regulation has changed over the years. Chapter two concentrates on the nature of clubs themselves, from their origins as 'bulwarks of the community' to major, publicly listed corporations. An entity that was originally governed by the Football Association and the Football League requires a different kind of regulation to one that must answer to the rules and regulations of the Stock Exchange. The necessary commercial regulation of some clubs has gone hand-in-hand with a consequent need for legal advice and regulation as a business. Others are now actively seeking, or through necessity have sought, the greater involvement of their fans. This has given an air of greater democracy to some clubs and a different set of legal imperatives to be addressed. Each

has shown that the law is playing a greater role, whether clubs opt for plc or community trust status.

Chapter three concentrates on the shift in power from the clubs to the players. Where the employment of players was once exclusively controlled by the clubs and football authorities, it is now dominated by players, their agents and the law. FIFA's new transfer regulations demonstrate an attempt to wrestle control of employment issues back from the players; however, the law is now so deeply entrenched in this issue that it is in reality the courts that now provide the lead in contractual regulation. This is mirrored in the discussions of on-field conduct in chapter four. Again an issue once dominated by the football authorities, participant violence and player injuries have come under the auspices of criminal law and the law of negligence. Despite the FA's overhauling of its disciplinary procedures in the last two seasons, the threat of actions for restraint of trade following a ban for foul or injurious conduct ensures that the law is never going to be far from this issue.

The last individual topic covered is that of racism in the game. This is a good example of effective regulation by both non-legal and non-governing body means. Although the law has played some role, the main thrust in the control of racist conduct has been from the combined attempts of the Commission for Racial Equality, the Professional Footballers' Association and the clubs by the use of the 'Kick It' campaign. Thus, by reference to the specific topics, all forms of regulation of football issues are examined by the authors. They conclude by exploring where the next site of contested regulation in football will be. They accurately foresee the problems associated with the further regulation of spectators, the ongoing disputes over contracts between the EU, FIFA and UEFA, and the uncertain influence of players' agents. Finally they briefly discuss the possible impact of a regulator for football as proposed in the final report of the Football Task Force. This new form of regulation could well be the future and could answer many of the questions relating to the regulation of the game posed by this book. Until then, the growth of the law will continue to take centre stage.

This book is well constructed and well written. It combines a description of the past and present regulation of football and tries to provide an insight into what the future holds. Its critique and comment demonstrates a sympathy for the game coupled with a realism that things cannot be left as they are without further recourse to the law or better ideas from within the game itself. In that way it will appeal to lawyers and non-lawyers, academics and fans of the game who want to know a little more of the background to what is Sports Law. Whether football likes it or not, it is the subject of legal regulation. What this book tries to do is ensure that the sport is regulated on its own terms, not by indiscriminate use of the law.

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HOW TO DRAFT A SOFTWARE LICENCE

Software Licensing, by David Bainbridge. 2nd edn., Welwyn Garden City: CLT Professional Publishing, 1999. Pp.280, £42.00 (pb), ISBN 1 85811 191 9.

Over the course of the last few years, the subject matter of this book, now in its second

edition, has very much come to the fore as an issue of note in legal practice relating to the IT industry. Licensing and associated issues were especially emphasised by the furore surrounding the so-called 'Millennium Bug' which was set to strike as the final year of the twentieth century (2000) began. Despite the fact that the Y2K problem proved to be very much a damp squib, in contrast to the assessment of it as a major issue in Bainbridge's preface written in late 1998, the issues raised continue to be relevant today, as does this informative and useful book.

Bainbridge's well-structured book begins with a short introductory chapter which explains not only the importance of software licensing (with reference to a number of real-world examples, such as *St Albans*), but also a good, non-technical explanation of what is understood by the term 'software', the steps involved in software development and distinctions between different types of software, such as off-the-shelf and bespoke software programs. This discussion of the technology is well presented for the lawyer with no experience of computer programming, setting out as it does everything that (s)he will require to know about the concepts in order to understand the legal issues without becoming bogged down in technical complexity. Following the introduction, the substantive part of the book begins with a chapter on copyright and software. This covers all the major elements of copyright as they relate to this specific context, including duration, authorship, ownership and moral rights. The chapter also deals with significant issues of copyright and computer programming languages, computer-generated works, and database rights under the 1997 regulations. The text has clearly been written with those with a legal background in mind, although it emphasises very much practical rather than theoretical aspects, as is consistent with its stated aim. 'The purpose of this book', writes Bainbridge in the introductory chapter, 'is to provide practical guidance in the drafting of licensing requirements.'

The focus on practical guidance continues into a third chapter, which discusses related issues of industrial property rights – confidentiality, patent, design rights, trade marks and so on. Following chapters discuss the legal environment in which a software licence is drafted, as well as defective liability issues. In respect of the legal environment, the book successfully draws together several different strands of relevant law, such as copyright licensing for different types of software, contracting issues such as the significance of the Unfair Contract terms Act 1977, data protection legislation and even the Computer Misuse Act 1990. Consideration is also given to the impact of European competition law. This section of the book is especially useful to its aim of providing a practical guide, showing as it does how these concepts may interrelate.

It is in its latter part that this book really comes into its own in terms of the stated purpose of acting as a practical guide to drafting a software licence. There is a broad consideration of all the key aspects of a licensing contract, including, for instance, obligations of the parties, renewal and termination, liability and, in particular, a good discussion of inclusion of terms relating to dispute resolution and alternative dispute resolution. Especially useful is a checklist of common terms and comments on what those terms tend to mean in practice. Bainbridge then considers off-the-shelf software licences and licences in respect of bespoke software each in turn, discussing the differing issues that are raised by each. These are, of course, two very different animals, and should ideally be discussed separately, not lumped together as in so many IT law texts. The practical slant of this book is further bolstered by a short chapter on issues in software procurement – feasibility studies, prototyping, tenders and so on – which helps the lawyer to understand not only the legal issues involved directly here, but also something more of the overall context in which software licences become an issue for the IT industry and the (commercial) end-users of its products.

This second edition of the book adds two short chapters to those which appeared in the first, dealing with the negotiation of a software licence and practical issues which arise in relation to outsourcing. The latter chapter especially offers advice that is arguably more useful now than when it was written in late 1998.

Finally, mention should be made of the Appendixes, which provide two example software licences; one in respect of bespoke software, the other relating to off-the-shelf products. These help immensely in understanding how such an agreement is put together and set out, again furthering the book's intention of providing a practical guide. The one criticism that can really be levelled at the book is in relation to the glossary provided; for instance, one might question the value of repeating a definition of software when this has already been eloquently dealt with in the introductory chapter. Perhaps this might be edited and expanded in future editions in order to produce something as useful as the rest of the book. On the whole, however, this is a very useful and eminently readable book that will be of much use, both to practitioners new to drafting such agreements and to students of IT law wishing to understand something more of the practical issues involved in applying the theory.

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REGULATING AMERICAN SPORT

Sports Law and Regulation, by J. Gordon Hylton and Paul Anderson (eds.). Milwaukee: Marquette University Press, 1999. Pp.588, US\$19.95 (pb), ISBN 0 87462 006 6.

In the Introduction to *Sports Law and Regulation*, the editors discuss the evolution of the discipline of sports law in the United States and note the 'unique quality of the legal problems associated with the sport industry'. The editors allude to the distinctive character of sports law, particularly as applied to antitrust law, taxation, contract and intellectual property. Contrary to early wisdom in the evolution of sports law, which held that there is no sports law *per se* just law applied to sports enterprise, the editors acknowledge the current state, that is, the existence of a true 'sports law' which can be addressed as a coherent whole.

With the foregoing in mind, the editors have selected a number of essays on various aspects of sports law, all of which originally appeared in the *Marquette Sports Law Journal*, the first scholarly journal in the United States devoted exclusively to the law of sport. These pieces serve as an introduction to the field of sports law for students of the sports industry, regardless of their prior legal training. It is the editors' intent to have a volume both suitable for classroom use and the general reader.

The selections chosen, dating from 1991 to 1998, are organised into five main parts. Part I has three selections related to 'Sports Franchise Issues'; two deal with franchise relocation and one piece deals with risk management. The organisation of this section points to the primary difficulty of this volume, that is, where should an essay be placed? Although risk management is an important topic to address in sports law, it is a challenge for the reader to ascertain that the essay on risk management 'really belongs with' the other two pieces in the section, which are discussions of franchise relocation. This is not a criticism of the quality of any of the essays chosen,

nor of their inclusion to illustrate important concepts in sports law; the reader must simply be attentive to the titles and content of each piece and not rely exclusively on the language designating each part.

Part II, entitled 'Labor and Disciplinary Issues', also has three selections. The first deals with player discipline in team sports. The second looks at the intersection between league labour disputes, sports licensing and the *force majeure* clause. The last essay in this section looks at the genesis of *PGA Tour Inc v. Martin* [2001] 532 US 1, and discusses the Americans with Disabilities Act 1990 (ADA) and its effect on sports law.

Part III, 'Sports Contracts', has two seminal pieces related to the negotiation of sports contracts. Martin Greenberg's essay from 1991 discusses the components of an employment contract for a college coach. It does so from a practical perspective and has long been acknowledged as important advice to consider for those who actually represent college coaches in their employment negotiations. The second piece, entitled 'The Art of Contract Negotiation' (1992), was authored by David Falk, a highly renowned sports agent. This article has also been widely used both in the classroom and in practical discussion of negotiation in the sports industry.

Part IV considers 'Amateur and Intercollegiate Sports', and is comprised of three selections. Raymond Yasser's essay, 'A Comprehensive Blueprint for the Reform of Intercollegiate Athletics' (1993), continues to be required reading for those who are concerned about the seeming irreconcilability between the 'amateur' model which is ostensibly embraced by the National Collegiate Athletic Association (NCAA), and the increasing professionalism and commercialism which, in reality, are well entrenched in collegiate sport. Although this essay was written almost a decade ago, Yasser's thoughtful critique remains timely in its discussions of the flawed structure upon which the behemoth of collegiate sport rests. The second essay in this section discusses the ADA as it pertains to amateur athletics. The third essay is a 1994 article dealing with Title IX of the Education Amendment Act 1972 and gender equity issues in collegiate athletics. This last piece, authored by T. Jesse Wilde, offers a good overview of the history of Title IX and offers a proposal to resolve the legal and ethical dilemma facing administrators regarding how to expand women's opportunities in athletics without seriously reducing opportunities for men.

Part V is entitled 'Perspectives' and includes two essays. The first, from 1996, explores the question of racial discrimination and harassment against the Black professional athlete. In particular, the author, Phoebe Weaver Williams, focused on roles that sports fans or spectators play in creating racially hostile working environments for Black professional athletes. The last essay in the volume, again from 1996, by co-editor Paul Anderson, also addresses racism in sport. Anderson addressed the ethical duty that sports lawyers have to combat racism in their roles within the sports industry.

This volume is certainly a welcome addition to one's library, both professionally and personally. The editors have chosen a number of seminal pieces from the sports law literature, making this volume a suitable companion to a sports law text in a sports law course, whether it is taught in a law school or within a sports management programme. The volume could also be used very well in a graduate level introductory course to the sports industry, because the essays, although using legal frameworks of analysis, touch on issues and problems in the sports industry which must be resolved by multiple analytical perspectives, including managerial and ethical frameworks. Anyone who is interested in the evolution of sports law as a distinct discipline should also find this volume very helpful.

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A SOCIAL SIDE TO FOOTBALL AND THE LAW

From Boot Money to Bosman: Football, Society and the Law, by David McArdle.
London: Cavendish, 2000. Pp.259, £35.00 (pb), ISBN 1 8594 1437 0.

This innovative book makes a major contribution to the literature on sport and the law. It has a very useful combination of legal principles, case law and socio-historical contextualisation, making it an attractive introduction for both sports studies students and students of sport and the law. The book benefits significantly from the author's involvement in primary research across a range of areas, including sex and race discrimination, stewarding in football matches and the work of the Football Task Force. The text is very well organised, with complimentary pairings of chapters which set the scene very well, rather than just reporting case law. The writing style is accessible, well-referenced but not over-quoted, with an interesting use of subheadings.

Chapter one examines law, leisure and the development of modern football, and considers how early versions of the enclosure laws were the predecessors of the Commons Registration Act 1965 and contributed to the changing leisure pursuits during the eighteenth and nineteenth centuries. In particular, it focuses on how enclosure contributed to the demise of most animal sports whilst assisting directly or indirectly in the development of boxing, foxhunting and, crucially, 'modern' football. How did certain sports attract considerable hostility from legislators and the judiciary against the background of the civilising process? It charts the effects of the Enclosure Acts as oppressive laws on access to enclosed land and customary rights to rural and industrial leisure pursuits, lawful sports and pastimes 'for the public good'. It also highlights the significance of clubs, pubs and factories in bringing football to working-class men.

The second chapter provides a socio-historical perspective of the hundred years of the players' registration scheme. It covers the abolition of the maximum wage, useful interpretations of *Kingbury v. Aston Villa Football Club* [1912], *The Times*, 28 March, and *Eastham v. Newcastle United Football Club* [1963] 3 All ER 139, highlighting a view of the transfer system as an 'employers' system run by clubs, which were part of a culture which regarded the football clubs as outside the EC law. This chapter sets the scene well for chapter three, on *Bosman and Beyond*. A very clear account of the *Belgian Football Association and others v. Bosman* [1996] All ER (EC) 97 case is introduced through a useful historical account of the structural arrangement of the European Community and Treaty of Rome. Prior to the *Bosman* case, there is a thorough review of relevant sports cases, transfer and quota systems and their relationship to European law and policy, with good access to relevant commentaries. A very well-structured analysis of the legal decisions follows, including the implications and the responses of governing bodies as well as a consideration of the impact of the case on other sports.

Chapter four argues that judicial responses to football-related violence and disorder, particularly in the years before and since the 1989 Hillsborough disaster, have coloured the several Acts of Parliament which have since been foisted on the football fan. This is followed by a review of sociological research on the 'hooligan phenomenon' as the 'English sickness' over the past three decades. This includes moral panics, reports, crowd segregation, media representation of incidents and ranges of behaviour, labelled as criminal, whether or not they were ever defined as 'football hooliganism'. The development of hooligan 'firms' operating away from football

grounds is examined, as is the judicial policy of imposing custodial sentences on 'hooligan' behaviour.

'Crowd Control or Customer Care?' clearly sets the agenda in chapter five, examining, among other things, safety a decade after the 1989 Hillsborough disaster, the Football Licensing Authority inspection approach and recent legislation. Part two, drawing on primary research of the author, examines the changing role of the steward, the police, safety officers and private security staff. Dr McArdle analyses the power relations between the agencies and clubs and perceptions around the division of work, resourcing and training of club stewards and security stewards and their views about internal training systems, compared to national NVQs. The role of, and risks faced by, the police, the agency steward and the club steward are analysed.

Chapter six challenges racism in football and takes a different approach to previous work on the racism of football fans. Rather than focusing on the conduct of spectators it pays attention to racism in the boardroom and changing room and the inadequate response to it. It includes very illustrative examples of rare industrial tribunal cases, and reviews the research of the Football Task Force into racism, which led to several recommendations for the FA, PFA, local government, Football Trust, Premier League and FLA Safety Officer's Association. It provides an analysis of the governing bodies' responses to such recommendations, reviewing some of their initiatives, such as the 'Kick It' campaign, club codes of conduct, training and public statements.

Chapter seven considers how the Sex Discrimination Act 1975 and Race Relations Act 1976 have impacted upon discriminatory practices within sport in general and football in particular. Differential treatment of sport by legislation on sex and race discrimination is examined. The legislation is then illustrated by direct discrimination cases under Sex Discrimination Act 1975, s.44, including key cases such as *Bennet v. FA* [1978] unreported CA judgment, *British Judo Organisation v. Petty* [1981] ICR 660, *Hardwick v. FA* [1997] unreported IT No.2200651/96, and *Couch v. BBC* (1998) unreported IT No.2304231/97. There is very good contextualisation of the legislation and analysis of cases, followed by a useful formulation of a three-stage test to determine if sexual discrimination is lawful within a particular sports context. It ends with an outline of the challenges facing governing bodies and clubs before they can claim to be equal opportunities employers and emphasises the importance of good policies to compensate for the limitations of s.44.

Chapter eight, written by Mark James, deals with player violence and injuries through the criminal and civil law. After introducing *R v. Brown* [1993] 2 All ER 75, it provides an overview of the sports injuries that draw the attention of the criminal law, from assault to grievous bodily harm with intent and homicide. The author questions the idea of players being punished twice by the internal mechanisms of sport, followed by the law of the land, but expects those in charge of the game to explore alternative ways of dealing with violence, which would obviate the need for recourse to the criminal law. There is some thoughtful commentary on the civil law standard of care in sport, *volenti* and a good understanding of the development of sport case law.

Chapter nine reviews the 'extensive' disciplinary powers held by sports governing bodies and questions assumptions around classifying all sport and leisure activities or bodies as 'private', referring to the jockey club as a 'true monopoly'. It includes thoughtful commentary on the implications of the Human Rights Act 1998 and the interpretation of public policy and public bodies on a case-by-case basis.

Chapter ten explores equal opportunities law in sport contexts, beginning with the

observation that the United States legislation found in Title IX Education Amendment Act 1972 can provide for positive discrimination in areas where women have been traditionally under-represented. The author again sets key cases such as *Bennett* and *Couch* in a broader context and provides a historical account of the development of women's football. He draws on critical commentary of the ambiguity of Title IX, coupled with a confused regulatory programme as inhibiting its potential use, as well as providing a clear commentary on its relationship with the Civil Rights Act 1978. It ends with a presentation and discussion of the *Hardwick* case and future possible legal actions by female coaches.

The final chapter, 'Blowing the Whistle', introduces workplace concerns around the rights of whistleblowers beyond the Public Interest Disclosure Act 1998. This chapter does not sit so easily alongside the rest of the book and has little to do with football. However, it is more important to recognise such neglected workplace concerns, which are rarely discussed in relation to sport. It deals with some difficult areas and contains important material on harassment and sexual abuse, with some very useful lessons to be learnt from the experiences and cases in the United States.

This is an excellent text which systematically locates principles and cases in a broader socio-historical context, regularly making useful comparisons with developments in the United States. It has the capacity to engage students and sports practitioners alike in football and the law in a thoughtful and non-threatening manner, which will encourage them to reflect on their practices and the implications of legal cases and developments in football. In the preface, Dave McArdle refers to the help he received and notes that as a result he hopes that 'those expecting *The Boys' Book of Football Law* will, I hope be disappointed'. Fortunately, I think they will.

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