

Contents

[Abstract](#)

[Introduction](#)

[Playing Culture: Spreading the Play and Widening the Defence of Consent?](#)

[R v Barnes: A New Style of Play in the Court of Appeal](#)

[Violence in Rugby Union: The Participants' Diverse Responses](#)

[Who Could Set the Boundaries of the Sports-Field?](#)

[Perceptions of Playing Culture: Playing by the Governing Bodies' Rules?](#)

[Conclusion](#)

[Bibliography](#)

ISSN 1748-944X

Perceptions of Playing Culture in Sport: The Problem of Diverse Opinion in the Light of *Barnes*.

ADAM PENDLEBURY
UNIVERSITY OF CENTRAL LANCASHIRE

ABSTRACT

Prior to *Barnes*, the boundaries of injury-causing conduct in sport, susceptible in law to the concept of consent were confined to actions *within* the rules of a game. Despite *Bradshaw* and *Billinghamhurst* implicitly eluding to a wider interpretation of consent it was *Barnes* that first acknowledged that contacts outside of the rules of the game can in certain circumstances, be consented to. Thus, we now have the notion of 'Playing Culture' firmly expressed in law. This paper addresses the problematic connection between criminal law concepts of consent and 'Playing Culture' in light of different perceptions of violence on

the sports-field. It summarises a sample of amateur rugby participants' responses to varying levels of violence and argues that the diversity of perception poses a problem for the organic development of regulation in sport. The paper concludes with some suggestions on how a process of education and reflection within Sports Governing Bodies might achieve a better regulatory relationship with the courts and with the concerns of wider society.

KEYWORDS

Sport – Consent - Playing Culture - Violence

INTRODUCTION

The law of consent relating to contacts in sport has been the subject of intense academic debate in recent years (James, 2002; Gardiner, 1994, 2006; Watson, 2002; McCutcheon, 1994). The ultimate reason for this was a discussion of injury-causing contacts in sport in the House of Lords case of *R v Brown* [1993] 2 WLR 556. Here, the ruling that sports-persons could consent to certain contacts resulting in actual bodily harm or greater to the victim was a major step forward in sports law jurisprudence. It fuelled a debate as to what contacts sports-persons could consent to and how far that consent could go. It also resulted in the Law Commission referring to the issue in two consultation papers (Law Commission 1994, 1995). In summary the state of play in the immediate aftermath of *Brown* appeared to be that incidents involving elements of foul play may not fall within the definition of the defence of consent. It can, therefore, be put forward that, after consideration of *Brown* and the Law Commission reports, *the rules of the game* were the decisive factor in determining whether contacts can be consented to. 1

PLAYING CULTURE: SPREADING THE PLAY AND WIDENING THE DEFENCE OF CONSENT?

The 'Playing Culture' of a sport refers to the way that the game is accepted and how it is expected to be played by those who are in some way involved in it. The law of consent is limited to the rules of the game, but 'Playing Culture' would include codes of conduct, tactics and commonly occurring incidents of foul play. This has the potential to widen the scope of consent and is a controversial concept in that it suggests the 'acceptability' of activity beyond the rules. It may, however, point to a more realistic way of controlling the sports-field. The history of this debate is long and complex (Gardiner, 2006, pp. 602-612). The Courts have been unwilling to expressly accept the concept but have referred to it obliquely on a number of occasions. In *R v Bradshaw* (1878) 14 Cox CC 83, the court stated that playing within the 'rules and practices' of the game would be a strong indicator that the conduct was legally acceptable. The reference to practices highlights that the conduct may stretch beyond the rules of a particular sport. In *R v Billinghamhurst* [1978] Crim LR 553 it was decided that players could only consent to force of a kind which could 'reasonably be expected to happen during a game.' Again this could be argued to be a wider interpretation of consent as acts of foul play could reasonably be expected to happen during the course of contact sports. 2

Further indirect support for Playing Culture stems from the case of *R v Blissett* (*The Independent*, 4th December 1992) in which the jury, when acquitting Blissett, relied on evidence given by the then Football Association Chief Executive, Graham Kelly. He stated that the type of challenge that occurred - jumping for the ball with an arm raised - was the type of challenge that would happen on average fifty times per match. It was obviously a dangerous challenge and also an instance of foul play (he was sent off for the 3

challenge) but Kelly seemed to be of the opinion that it would be within the reasonable expectations of the players. With the Court relying heavily on the evidence, it is further proof that consent was being widened to include the concept of Playing Culture. However, it was unfortunate that the court, as in the cases of *Bradshaw* and *Billinghamurst*, found themselves unable to expressly accept the concept.

The legal recognition of Playing Culture was comparatively more certain in Canada, in particular in the courts responses to incidents in two cases, involving acts of foul play during ice-hockey matches. There, the courts have expressly accepted that contacts outside of the rules of the game can be consented to. In *R v Cey* (1989) 48 CCC (3d) 480, during an ice-hockey match, the defendant skated towards the victim and pushed him into the boards with his stick. The victim suffered various facial injuries. The incident resulted in the defendant being dismissed from the ice. It was held that this was an act that fell within the Playing Culture of the sport. The concept of Playing Culture was approved of in *R v Ciccarelli* (1989) 54 CCC (3d) 121. The court relied heavily on the objective test from *Cey* in forming guidelines as to what acts would fall within the Playing Culture of sport. It was stated that the courts had to look at:

The nature of the game played; whether amateur or professional league and so on; the nature of the particular act or acts and their surrounding circumstances; the degree of force employed; the degree of risk of injury; and the state of mind of the accused' (Per Corbett, DCJ at p. 126).

Ciccarelli provides a useful guideline in terms of Playing Culture as it actually refers back to the incident in the ice-hockey match in applying the criteria. The attack occurred during a National Hockey League match. After the whistle had been blown to call a foul, the defendant struck his opponent three times on the head with his stick. The question that arose was whether this could be consented to. The trial judge considered that NHL ice-hockey was a fast vigorous game involving much bodily contact. In terms of the acts and surrounding circumstances it was stated that high sticking was an unusual practice and the actual striking of the opponent with a hockey stick after the whistle had been blown was not something that was a reasonable practice. The force used was excessive and had the potential to injure his opponent and finally the state of mind of Ciccarelli was retaliatory. On the basis of these facts it was decided that because hitting an opponent with a stick was so potentially dangerous and outside the reasonable practices that, despite the elite level of participation, the act could not be consented to and was therefore criminal.

It can therefore be put forward that the Canadian approach differed significantly from the English Courts' responses to contacts that were outside of the rules. They were innovative in their attitude to Playing Culture in expressly accepting that acts of foul play could, in certain circumstances, be consented to. They also attempted to provide guidelines to assist in how the concept should be interpreted. The English courts' lack of an express acceptance, or any attempt to define the concept, meant they were still of the opinion that the rules of the game should be the determining factor in deciding what is consensual harm on the sports field.

R v BARNES: A NEW STYLE OF PLAY IN THE COURT OF APPEAL

The case of *R v Barnes* [2004] EWCA Crim 3246 represents an important step forward in this regard. Here, the appellant had been charged with unlawfully and maliciously inflicting grievous bodily harm contrary to the Offences Against the Person Act 1861 s.20 after seriously injuring an opposing player during an amateur football match. The Prosecution considered that the elements of the offence were satisfied since the injury was (sufficiently) serious and that Barnes committed the tackle either intentionally or with foresight of at least some harm. The referee sent Barnes from the field for the challenge. In giving evidence he stated that, in his opinion, Barnes had jumped into the tackle with two feet, clearly warranting a dismissal for violent conduct. Barnes himself admitted that the tackle was hard, but contested that it was a fair sliding tackle in the course of play and that the injury was accidental.

In his summing-up, the Judge directed the Jury that the appellant could be guilty only if the prosecution had proved that the injury resulted from conduct that was not done by way of legitimate sport. He later issued a further direction after the Jury asked for clarification: that the appellant would be guilty if he realised when he did the act that some injury, however slight, which was over and above legitimate sport, might result from what he was going to do and yet he ignored, or was willing to take that risk, or even deliberately set out to take the risk when tackling his opponent. The appellant was convicted, but was granted leave to appeal on the grounds that the judge erred in directing the Jury that the unlawfulness of the appellant's action and the definition of recklessness were both related to the notion of 'legitimate sport' without giving guidance as to what constituted legitimate sport; furthermore, that the jury received no explanation of the concepts of consent or accident as a defence, nor the relevance of a genuine attempt to play by the laws of the game. The appeal was upheld on the basis that the summing-up was inadequate and thus the conviction was unsafe; of more importance, however, is the Court of Appeal's opinion on the types of behaviour within sport which should attract criminal liability and the role of

consent within the criminal law to physical contact within organised sports.

Prior to *Barnes*, as noted above, the Courts had not expressly accepted that conduct *outside* the rules could be capable of being consented to. The incident in *Barnes*, therefore, would have fallen outside the definition of the defence in that the act in question warranted a sending off. However, instead of *the rules* being the determining factor in deciding the criminal culpability of Barnes, the Court of Appeal adopted a different tack. 10

In making a judgment as to whether conduct is criminal or not, it has to be borne in mind that, in highly competitive sports, conduct outside the rules can be expected to occur in the heat of the moment, and even if the conduct justifies not only being penalised but also a warning or even a sending off, it still may not reach the threshold level required for it to be criminal (Per Lord Woolf, CJ at para. 15). 11

The Court of Appeal had, then, finally stated expressly that conduct *outside of the rules* of the game could, in certain circumstances, be consented to. This was an excellent opportunity for the Court of Appeal to give some guidance as to how Playing Culture might be interpreted in the law, especially in relation to its boundaries and thus what might constitute the threshold for criminal liability. The court took the vague approach of stating that only conduct that was *sufficiently grave* to be labelled as criminal should result in conviction. The Court endeavoured to provide guidance by drawing heavily upon the Canadian jurisprudence. 12

That level is an objective one and does not depend upon the views of individual players. The type of the sport, the level at which it is played, the nature of the act, the degree of force used, the extent of the risk of injury, the state of mind of the defendant are all likely to be relevant in determining whether the defendant's actions go beyond the threshold' (Per Lord Woolf, CJ at para. 15). 13

The guidelines in themselves are not unhelpful but the fact the court failed to apply them to the facts of the case provides an element of complexity. Surely, if the guidelines had been applied to the incident in question then Barnes would have failed in his appeal (Gardiner, 2006, p. 611). The Court relied heavily on evidence from the match official who referred to the challenge as a two-footed lunge. In terms of the nature of the act, the degree of force used and the risk of injury it would seem that the challenge was inconsistent with an act that would be consented to. Further, the evidence suggested that Barnes, after making the challenge, said words to the effect of 'have that' – an epithet certainly consistent with a state of mind intent on injuring an opponent rather than playing the game. The challenge by Manchester City's Ben Thatcher on Portsmouth's Pedro Mendes (The Times, August 25th 2006, p. 92) is a recent example of an incident inconsistent with an act that would be consented to. Thatcher jumped into Mendes, leading with the forearm and made contact with Mendes' face. This induced a fit, knocked him unconscious and left him bleeding from one ear and requiring oxygen and a drip. Comments from Mendes, the Portsmouth players and even the viewpoint of his own boss, Stuart Pearce (The Sunday Times, August 27th 2006, p. 6) highlight that the challenge was an unacceptable attempt to injure an opponent. The fact Manchester City imposed an internal suspension on Thatcher substantiates this point. 14

Fafinski argues that the vague approach adopted by the Court of Appeal was either an acknowledgement that it was impossible to lay down clear guidelines, or a delegation of the determination of criminal liability to the jury (Fafinski, 2005). He correctly recognises, however, that there are problems inherent with the delegation approach. In other words what is sufficiently grave conduct to one person may be seen as an enthusiastic approach within the rules and practices of a game by another person. It would depend ultimately on their standpoints in relation to violence in particular sports. The author submits that communication between the courts and the Governing Bodies about Playing Culture, rather than delegation of the interpretation is the most appropriate approach. Without any clear guidance from the courts or the Governing Bodies as to what acts are included within the concept of Playing Culture a lot of reliance is placed upon the participants to behave appropriately. Given this, it is of great interest to ascertain what those actually involved in sport perceive as being conduct properly regarded as part of the game, and conduct that should attract criminal sanctions. 15

VIOLENCE IN RUGBY UNION: THE PARTICIPANTS' DIVERSE RESPONSES

The small field-work project involved an analysis of a North-West rugby union club's reactions to incidents of violence within their sport. The responses were collected from a small cohort of fourteen rugby players, which provided enough data to indicate a diversity of opinion in relation to incidents of violence on the rugby field. The participants were asked whether they would expect the Criminal Law to involve itself in certain incidents that resulted in serious injury. Although this in itself would be enough to analyse the participants' perceptions of differing levels of violence, the respondents were also asked to give reasons for their answers. 16

- The first incident involved a challenge that was not deemed a foul but yet resulted in a serious injury. 17
- 'If you were involved in a challenge that was not a foul but resulted in a serious injury, would you report the incident to the police?'*
- There was a common consensus that these incidents should not be subject to the criminal law. One party stated that 'injuries are part and parcel of the game,' with another participant putting forward that, 'serious harm is an inherent risk of playing the game.' This, of course, accords with the narrow interpretation of consent in *Brown* and is not a surprising response. All the respondents realised that rugby was a tough game in which there was, in every tackle, the possibility of injury. 18
- The next incident involved a challenge that was outside of the rules of the game, in which the perpetrator of the act was sent from the field. 19
- 'If you were involved in a challenge that was both late and high, deemed serious enough to result in your opponent being sent from the field and the challenge resulted in a serious injury to yourself, would you consider reporting the incident to the police?'*
- The responses to this incident can be split into two distinct groups. A large percentage of the participants accepted that incidents happened in a high-speed game that were outside of the rules, and inevitably, some of those would result in serious injury. They would expect the governing body, the Rugby Football Union (RFU) to impose internal disciplinary action upon the perpetrator of the act but would not expect the criminal law to be involved. A smaller group took the standpoint that even 'on the ball' incidents could be subjected to the Criminal Law. They based this on the fact that certain challenges can be made with the intent to injure one's opponent. They were of the opinion that challenges that were intended to injure them should be subject to the criminal law. This group also correctly identified the problem in the non-professional game of providing evidence of intent and would, as a result of this, be unlikely to make a complaint to the police. It would seem that these participants are giving their own subjective interpretations of Playing Culture based on the *mens rea* requirements of s. 20 of the Offences Against the Person Act. 20
- The final three incidents involved 'off the ball' acts, which included punching an opponent, kicking an opponent and finally head-butting an opponent. The questions were, as above, concerned with whether the participants considered them serious enough to consider reporting them to the police if serious injury was caused. 21
- Would you consider reporting to the police a punch, a kick or a head-butt, that resulted in serious injury to yourself?*
- My hypothesis was that these particular incidents would elicit the most diverse range of responses. The data certainly supported this. 22
- Members of the smaller group that considered incidents resulting in being sent from the field as potentially warranting the Criminal Law's involvement were all of the opinion that these off-the-ball incidents should be subjected to the Criminal Law. Some referred to them as 'cheap shots' others as 'cowardly acts of violence'. What was common amongst this group was a view-point that these acts were in some sense against the spirit of rugby union and, therefore, outside of the Playing Culture. 23
- The other subjects had diverse attitudes. In relation to punching, some of the respondents were of the opinion that, in a highly-charged game, incidents can 'flare up'. They put-forward the idea that even deliberate punches that resulted in injuries could be seen as part of the Playing Culture of the game. They added that incidents of that kind, although not common occurrences, could neither be said to be rare. They would expect the internal disciplinary mechanisms to impose tough sanctions upon the perpetrator of the act but would not expect the criminal law to involve itself. Some of these viewpoints seem to echo the opinion of former Welsh international Mervyn Davies in *R v Gingell* ([1980] Crim LR 661) in which he stated 'punching is the rule rather than the exception' and would also seem to accord with Graham Kelly's comments in *Blissett* in relation to aerial challenges in football. In other words punching is seemingly accepted by the rugby union participants as an integral part of the game. What is alarming is the fact the participants are apparently unaware that 'off the ball' punches, causing a less than trivial injury, have resulted in criminal convictions. This is highlighted in *Billinghamurst* where the court were determined to point out that even if punching is part of the actual Playing Culture of rugby, it is not part of the Playing Culture as defined by the court. 24
- The attitude in relation to kicking was reasonably similar to that of punching. A few respondents drew the distinction between kicking out at an opponent in a momentary lapse of control, and repeatedly kicking 25

someone whilst they were down on the floor (*R v Lloyd* (1989) 11 Cr App R(S) 36). The latter, in the opinion of some of the participants, warranted the intervention of the criminal law.

For the most part, the reaction to a head-butt that caused a serious injury was that the criminal law should be involved. Most who advocated the position that punches and kicks could be part of the game were of the opinion that head butts could not, and should never, be accepted as part of the game. One participant made the point clear by stating: 26

whilst people may lash out during the course of a game, there is no excuse or reasoning behind head-butting an opponent. This is not an instinctive reaction during the course of an intense sporting encounter; it is a deliberate attempt to injure your opponent.

The difference in reaction could be attributed to the lack of these sorts of incidents on the rugby field. A few respondents in expanding on their reaction to head-butting stated that whilst punching and kicking happens during a match, head-butting had not been seen by them previously. 27

A minority of respondents, however, were still of the opinion that the criminal law should not involve itself. They were happy with the internal disciplinary mechanisms that had been put in place to address these particular types of incidents. Some stated that they would seek retribution themselves as this was the 'rugby way' of dealing with it. Fortunately, this was the response of only a small percentage of the respondents. 28

What is obvious even in this small sample is that there is a problematic diversity of opinion as to what properly constitutes the Playing Culture. Anderson (2006) has argued that 'despite a lingering attraction for the ethos of 'What happens on the field stays on the field', there seems to be acceptance by all those involved in sport that in cases of egregious violence, criminal liability should attach. The data however seems to contradict this. If we interpret egregious violence as really serious acts of violence, then a head-butt, a kick or a punch, that caused serious injury, would surely fall within this category. Given the fact that some of the respondents were of the opinion that these matters could be dealt with internally by the RFU it cannot be firmly argued that almost all participants are aware of and willing to use the redress of the Criminal Law. 29

Legally, if the *Barnes* criteria are adopted, without further explanation, it would be difficult to ascertain whether the nature of the particular acts are in fact common occurrences of foul play or isolated assaults clearly unconnected with what is accepted in, or expected of, the playing of the game. Certainly in relation to punches and reactive kicking of opponents, the data highlights that these particular incidents, in the opinion of a high percentage of the participants, are common occurrences. If this standpoint was taken on board then we cannot say objectively that the act was particularly unusual. As stated above, *Cey* makes clear that pushing someone into the boards was not seen as a usual practice whereas high sticking in *Ciccarelli* was held to be an abnormal occurrence within the game. Without an application of the guidelines to the incident in *Barnes*, a prediction as to how the criteria might apply is even more problematic. 30

WHO COULD SET THE BOUNDARIES OF THE SPORTS-FIELD?

Without further guidance it is difficult to state what acts will be incorporated into the Playing Culture of sport and thus what activities reside outside of the remit of the Criminal Law. But now that the concept of Playing Culture is expressly accepted in English law, who is to define its boundaries? The standpoint of the players is obviously important, but the discussion above and the results of the small sample of opinion serves to illustrate the problem of subjectively diverse responses to acts of violence. These individualised and unmediated views translate into similarly diverse conceptions of what would constitute Playing Culture. 31

Collective reflection of participants and organisers would, therefore, seem to be the most appropriate source and method of interpretation and this points to the relevant Sports Governing Bodies. They are the bodies who have the requisite knowledge and experience of rule-breaking within their sport. In practice, the governing body could impose tough penalties for injurious acts that are outside of the rules of the game. This imposition of penalties is a message that certain practices are unacceptable and thus beyond the Playing Culture. Of course this idea of the Governing Body defining Playing Culture is dependant on having a responsible Governing Body. Anderson (2006), considering *DPP v McCartan* unreported, November 1, 2004, District Ct (Irl) makes an interesting point relating to the Gaelic Athletic Association (GAA) after a serious assault had occurred on the field of play, stating (at p.26) that 'ill-discipline of a serious nature had been allowed to fester for too long and the GAA's existing disciplinary mechanisms had failed and needed to be overhauled.' If the governing body is not responsible in its fight against violence then the Criminal Law would have to involve itself. The decision concerning the point at which an act can no longer be dealt with solely by internal mechanisms is, of course, the point at which Playing Culture 32

runs out and criminal liability is introduced.

Playing Culture is, and always will be, dynamic. It could however, be evolutionary and progressive if it is allowed to take its place organically on the conscious agenda of the sport in question, and sport continues to reflect wider political and social concerns. Comments made recently by Sports Minister, Richard Caborn and the CPS have been disapproving of acts of violence on the sports-field (Gardiner, 2005, p. 998). This directly suggests that Sports Governing Bodies must not set too a high threshold for criminal intervention. It would seem from the Football Association's tough stance in relation to Ben Thatcher's challenge that they are in fear of legal action being taken against the player. The independent disciplinary commission handed him an eight match ban with a further fifteen matches suspended for two years in order to send a message out that this is completely unacceptable behaviour on the football pitch (The Times, September 13th 2006, p. 88). In providing this deterrent to Thatcher and his fellow professionals, this is certainly an example of responsible governance that would hopefully ease the concerns of society. 33

PERCEPTIONS OF PLAYING CULTURE: PLAYING BY THE GOVERNING BODIES' RULES?

In light of the express acceptance of the concept of Playing Culture in *Barnes*, what might the diversity of views in our small interviewing sample suggest? One thing is the need for education and discussion if we are to make regulatory progress in this area. The courts are willing to accept that contacts outside of the rules of the game can be impliedly consented to by the players. This, at least in the logic of regulation in sport, is an important step forward. The Governing Bodies are the appropriate sites of reflection and organisation in which a process of regulatory development might begin. Fafinski adds support to this approach: 'the presumption that criminal lawfulness corresponds with sporting lawfulness effectively allows Sports Governing Bodies to self police, by framing the gravity of violent acts on the field of play in terms of the laws of the game; expansion or contraction of fair play within sports will result in a corresponding movement at the boundaries of criminality, such that only conduct that markedly departs from that permitted within the laws of the game will justify the attention of the CPS.' 34

The Governing Bodies will hence be the starting point in analysing what incidents markedly depart from sporting norms. The two might come together in acknowledging that perceptions of Playing Culture can be informed by looking at the nature of the different incidents. Of course the Canadian jurisprudence and the Court of Appeal in *Barnes* ask us to do this. One way to achieve this would be by exploring the responses of the participants to varying levels of injury-causing acts. The majority of the participants interviewed (and the Court of Appeal in *Barnes*) was of the view that non-intentional injury causing acts, within the course of play, were acceptable. This could be a starting point for firming up and clarifying the role of Playing Culture as the nexus between rules of sport and the law: without proof of intent to cause injury, injury-causing acts within the course of play could be exempt from the Criminal Law's intervention. This would certainly not be ousting the courts' jurisdiction – and the wider community's legitimate concerns - inappropriately as *Barnes* expressly accepts that an injury-causing act outside the rules of the game could fall within the Playing Culture of the game. 35

It is at this point that the Governing Body would have to think carefully about allowing other acts to fall within the Playing Culture of sport and thus classifying them as incidents suitable for internal regulation. Reactive punches, for example, are for the most part accepted as part of the game. Only a small minority were of the view-point that these incidents should be susceptible to the Criminal Law's involvement. In moving to some general suggestions from these particular illustrations, it could be argued that for an isolated reactive punch a ban would be an appropriate response to a first incident. Fafinski's (2005) standpoint, that only a high degree of departure from the accepted rules of play, should cross the policy threshold that justifies the interference of the courts, accords with my analysis of the data collected from a large majority of the subjects. In other words, the internal opprobrium could prove enough to prevent or minimise temporary lapses of control within a heated game. This cohort of participants all stated that if they were victims of such reactive conduct they would be happy with resort to internal mechanisms. If these incidents were criminalised then the prospect of a great increase in formal prosecution and litigation looms and this could not fail to create some reflex within the culture of the sport in question. The Governing Body would have to take this into account when suggesting the threshold for the Criminal Law's intervention. 36

With the governing body setting clear standards for the Playing Culture of sport, intersubjective agreement and understanding of the boundaries of acceptance and expectation can replace the dangerous confusion of widely differing and sometimes antithetical perceptions of sporting propriety. 37

CONCLUSION

This discussion has shown how the defence of consent in contact sports has developed from a narrow interpretation, from the principle enunciated in *Brown* to the wider interpretation expressly incorporating the Playing Culture in *Barnes*. This shows that English law is responding pragmatically to incidents in sport that are outside the rules of the game but not disassociated with the playing of the sports. They have 38

certainly taken lessons from Canada, where the concept has been accepted for a number of years. Unfortunately, unlike the courts in Canada, the Court of Appeal has failed to address, in any required detail, how Playing Culture can be defined and who might be the appropriate body to define it. An application of the facts in *Barnes*, to the guidelines, borrowed from Canadian jurisprudence could certainly have enhanced the understanding of the concept.

This missed opportunity is unfortunate as those involved in sport have little awareness of how the law may respond to certain acts of violence. The work with the amateur rugby union team highlighted a diverse standpoint in relation to acts of violence. Despite the majority being in agreement that 'on the ball' incidents should be exempt from the Criminal Law's involvement, the response in relation to 'off the ball' incidents highlighted that a large number of participants were unaware that certain acts of violence on the sports-field can result in the criminal law's involvement. 39

It may well be up to the relevant Sports Governing Bodies to provide the ubiquitous 'level playing field'. If they act responsibly they certainly have the expertise to set an appropriate boundary that sports persons should not cross if they want to avoid the Criminal Law's involvement. Until the Playing Culture is defined properly, or further guidance is given in the Courts, sports persons will still struggle to compete within the boundaries of the law. 40

BIBLIOGRAPHY

Anderson J (2005) 'Policing the Sports Field: the Role of the Criminal law' 2 International Sports Law Review 25.

Fafinski S (2005) 'Consent and the Rules of the Game: The Interplay of Civil and Criminal Liability for Sporting Injuries' 69(5) Journal of Criminal Law 414.

Gardiner S (1994) 'The Law and the Sports Field' Criminal Law Review 513.

Gardiner S (2005) 'Should More Matches End in Court?' New Law Journal, 1st July 998.

Gardiner S, et al (2006) Sports Law (3rd Ed) (London: Cavendish).

James M (2002) 'The Trouble with Roy Keane' 1(3) Entertainment Law 72.

Law Commission (1994) 'Consent and Offences Against the Person' Consultation Paper No 134 (London: HMSO).

Law Commission (1995) 'Consent in the Criminal Law' Consultation Paper No 139 (London: HMSO).

McCutcheon J (1994) 'Sports Violence, Consent and the Criminal Law' 45(3) Northern Ireland Legal Quarterly 45.

Watson M (2002) 'Violence and the Sports Field' 166(20) Justice of the Peace and Local Government Law 386.

adpendlebury@uclan.ac.uk.

An earlier version of this paper was presented at "The State of Play: Contemporary Developments in Sports Law," held at Lancashire Law School in April 2005. Thanks to all the delegates who contributed to the discussion.